

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, March 22, 2021 7:00 p.m.

MINUTES—APPROVED

The minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Farmington Zoning Board of Appeals. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is made in accordance with the Zoning Board of Appeals adopted Rules of Procedure. The audio recording is retained for four months.

Board Members Present: Thomas Yourch, *Acting Chairperson*
Jill Attardi
Tod Ruthven
Aaron Sweeney

Board Members Excused: Jeremy Marshall, *Chairperson*

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning
Dan Delpriore, Town of Farmington Code Enforcement Officer
John Weidenborner, Town of Farmington Zoning Officer

Applicant Present:

Karen Brake Farmington Chamber of Commerce
Douglas & Jamie Bailey 1769 Estate Drive, Farmington, NY 14425

Others Present:
None

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. by Mr. Yourch.

The Pledge of Allegiance was recited.

Mr. Yourch said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on January 25, 2021, as amended above.

This meeting was held in person at the Farmington Town Hall. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. Board members, Town staff and residents who were in attendance at the Town Hall remained at separated distances of at least six feet and used facemasks at distances of less than six feet. A sign-in sheet was not used to avoid contact with pens, pencils and papers. The names of those attending tonight's meeting is available for public tracing should it be deemed necessary. Temperature checks were conducted by Town staff at the entrance to the Town Hall. Hand sanitizers were available throughout the building. Guidelines and safety measures were posted on the meeting room door and in the lobby of the Town Hall. Separate entrance and exit locations were used. Public access was restricted to the lobby, the main meeting room and the public restrooms.

2. APPROVAL OF MINUTES OF JANUARY 25, 2021

■ A motion was made by MR. SWEENEY, seconded by MR. RUTHVEN, that the minutes of the January 25, 2021, meeting be approved.

Motion carried by voice vote with one abstention by MR. YOURCH.

3. LEGAL NOTICE

The following Legal Notice was published in the *Canandaigua Daily Messenger* newspaper on Sunday, March 14, 2021:

ZB #0301-21: KAREN BRAKE, ON BEHALF OF THE FARMINGTON CHAMBER OF COMMERCE, FARMINGTON, N.Y:

Request the renewal of a Temporary Use Permit in accordance with Chapter 165, Article VII, Section 91 of the Town of Farmington Codes. The applicant wishes to renew their temporary use permit for an additional five (5) years, to operate a farmer's market, on Fridays, between the last weekend of May and the last weekend of September every year till September 30, 2025, on a portion of the property known as the Farmington Country Plaza site located along the west side of New York State Route 332. The property is zoned GB General Business.

ZB #0302-21, DOUGLAS BAILEY, 1769 ESTATE DRIVE, FARMINGTON, NEW YORK 14425:

Request an Area Variance to Article V, Chapter 165, Section 61A of the Town of

Farmington Codes. The applicant wishes to erect a fence, six feet in height, which is to be located within the front yard portion of the lot. The Town Code restricts the height of fences when located within the front yard portion of a lot which shall not exceed four feet in height. The property is located at 1769 Estate Drive and zoned T.L. Section 278 – Cluster Development.

SAID BOARD OF APPEALS WILL MEET at said time and place to hear all persons in support of, or having objections to, such matters.

By order of:
Jeremy Marshall, Chairperson
Zoning Board of Appeals
TOWN OF FARMINGTON

4. NEW PUBLIC HEARINGS

ZB #0301-21: KAREN BRAKE, ON BEHALF OF THE FARMINGTON CHAMBER OF COMMERCE, FARMINGTON, N.Y:

Request the renewal of a Temporary Use Permit in accordance with Chapter 165, Article VII, Section 91 of the Town of Farmington Codes. The applicant wishes to renew their temporary use permit for an additional five (5) years, to operate a farmer's market, on Fridays, between the last weekend of May and the last weekend of September every year till September 30, 2025, on a portion of the property known as the Farmington Country Plaza site located along the west side of New York State Route 332. The property is zoned GB General Business.

Mr. Yurch opened the Public Hearing on this application.

Ms. Brake presented this application.

Ms. Brake is here to renew the Temporary Use Permit on behalf of the Farmington Chamber of Commerce.

Mr. Yurch then asked for comments or questions from the board.

Mr. Sweeney asks if everything will be operating the same as it was in the previous two (2) years with no changes.

Ms. Brake explains that her intention is for everything to operate the same however, she is considering changing it in the future to potentially allow vendors to work out of their vehicle. But she has no plans on making any changes at this time.

Mr. Yurch then asks for comments from the public. Hearing none he asks for comments from staff.

Mr. Brand states that the Chamber has had its challenges over the last two years because of rain and this thing called “Covid”. We appreciate the Chambers commitment to the Farmer’s Market, and we think it is something that is beneficial to the community. This is something that has the ability to expand. The Farmer’s Market is something the Town has identified a need for in the Farmland Protection Plan to help support the local farming industry. He adds that the Farmer’s Market has a very visible location, and he is hoping it is very productive in the coming five (5) year period. At the end of the five (5) years or before, the purpose of the Temporary Use Permit, is to provide a testing ground, if you will, for the operation and to see what kinds of criteria needs to be written into the Town Code to allow a Special Use Permit to be created. Once a Special Use Permit is created you have to allow it in whatever district it is put in. For example, if it is in the General Business District there is a lot of General Business District sites up and down NYS Route 332 and NYS Route 96 that a Special Use Permit could end up in and would not necessarily be the Chamber of Commerce. What we are trying to determine here is what kinds of criteria we will need while watching and observing how their system works and is operating. Within the next four (4) years the Town Board should be looking at some kind of code amendment to create criteria for a Special Use Permit for this. Once that is granted a Special Use Permit runs with the property.

Mr. Sweeny asks what the timeframe is on a Special Use Permit.

Mr. Brand explains that once a Special Use Permit is issued it runs with the property.

Mr. Weidenborner adds that a Special Use Permit can only be approved by the Planning Board.

Mr. Sweeney asks if there is a minimum amount of time that has to go by before it can become a Special Use Permit.

Mr. Brands states that we have not had a lot of experience because of the unique circumstances that they started under and we would like to have the minimum of one (1) to two (2) years to see how it is going to function. This Temporary Use Permit is going to be issued for five (5) years which is the maximum period of time with the intent to give the Town and Town Staff the opportunity to make those observations and create a legislation for the Town Board to act on.

Mr. Weidenborner adds that from the zoning standpoint this application is for a renewal of the Temporary Use Permit from a two (2) year time period to a five (5) year time period. As far as the information that he has received from the Code Enforcement Officer is that we have not heard of any complaints and have had no issues pertaining to this Temporary Use Permit. The Chamber has followed all the conditions issued with this Temporary Use Permit.

Ms. Attardi asks if the number of vendors can increase or are they limited.

Mr. Brand states that they are limited to the number approved by the site plan, however they can come back to obtain approval to modify that number.

Mr. Delpriore states that two (2) years ago the Zoning Board of Appeals did refer this application to the Planning Board for Site Plan Approval which was granted. This application would just be a continuation of the approved Site Plan and the current operations for the next five (5) years. He also states that he is a part of the Board for the Chamber of Commerce and they support the Farmer's Market even though it has had a few challenges. It is a great way to give back to the community and to support our local businesses. This is a great location for the Farmer's Market. The property owner, Rob Laviano, is in full support of this project as well. In the future, with the development that may be potentially going on in this area there may become a more permanent location for this Farmer's Market which could help the Town Board in writing the legislation pertaining to these types of Special Use Permits

Mr. Yourch asked if anyone in attendance wished to speak for or against this application, or to ask questions.

Hearing none Mr. Yourch then closed the Public Hearing on this application.

ZB #0302-21, DOUGLAS BAILEY, 1769 ESTATE DRIVE, FARMINGTON, NEW YORK 14425:

Request an Area Variance to Article V, Chapter 165, Section 61A of the Town of Farmington Codes. The applicant wishes to erect a fence, six feet in height, which is to be located within the front yard portion of the lot. The Town Code restricts the height of fences when located within the front yard portion of a lot which shall not exceed four feet in height. The property is located at 1769 Estate Drive and zoned T.L. Section 278 – Cluster Development.

Mr. Yourch opened the Public Hearing on this application.

Doug and Jamie Bailey presented this application.

Mr. Bailey explains that they are here tonight to apply for an area variance. The reason for the variance is because they are looking for additional room off the direct back corner of the house because they are putting in a pool. He understands that the fence would be considered their front yard from the zoning perspective because it is a corner lot. For us really it is more of a side lot then a front lot. Part of the reason they are requesting a variance to somewhat protect the aesthetics of the neighborhood by enclosing all the pool equipment which would typically run along the side of the house. We would also like to a line the fence, approximately fifteen (15) feet or so, up away from the direct back corner to the back yard neighbor's fence. They currently have a six (6) foot privacy fence and aesthetically it will look a lot nicer if they were to align with that.

Mr. Bailey then reviews the plans that he submitted to the Board with his application. He reviews where his neighbors' fence is located and where he plans to house the pool equipment. He feels that there will not be a detriment to the community or the folks pertaining to foot traffic or vehicle traffic because there is still another thirty-five (35) feet before you get to the road. The sidewalk is on the other side of the road so for sure there is no visual impairment, and the fence will not be obstructing the driveway that is near their place. He understands that there has been a lot of precedence in the area, and he has had a lot of conversations with Mr. Weidenborner about some of that and why some of those fences are in place. His direct next-door neighbor, with the exception that his house is turned ninety (90) degrees, has almost exactly the same set up. They are looking for the fence to come off of the house about an additional fifteen (15) feet.

Mr. Yurch then asks for comments from Town Staff.

Mr. Brand explains that this is the first that he has heard anything about a pool.

Mr. Weidenborner explains that the pool is mentioned within the application.

Mr. Brand states when he reviewed the application, he did not see any justification because there was nothing that he was made aware of that was going in that backyard area. When Mr. Brand and Mr. Weidenborner went out to take a look at the site there was no mention of a pool. He adds that perhaps there is justification to allow the fence however that is up to the Board to decide. The issue here is if you are going to have a straight-line solid fence then it should be buffered with some kind of landscaping.

Mr. Bailey adds the fence is a shadowbox style fence so you can technically still see through it but only from an angle. They do intend to landscape the inside portion of the fence line. They also have a greater plan to put together some landscaping and were initially thinking about some Dogwood Trees, or big trees, on both sides of the property including the side where the fence will be.

Mr. Weidenborner states that from the zoning standpoint, as discussed with everyone in the room, the Town looks at the front yard as the road facing. The prime example would be Mr. Bailey and his neighbor. Mr. Bailey's front yard is his neighbor's side yard, and they are located on the same street. It is not based on how the house is pointed because you could have a different front yard or side yard depending on what street you are on it is whatever side is facing the road. He has done a lot of research on this application and in the past this Board has consistently denied six (6) foot fences in front yard portions especially on corner lots. As far as the pool aspect, he apologizes if Mr. Brand was not informed of the pool, there are plenty of other locations in the backyard to the other side that would allow for a pool. The Board recently reviewed an application from a gentleman in a different subdivision whose hardship was that he did not have room in his backyard for additional structures and the application was denied because the applicant could not decide on which accessory structure he wanted. If he wanted more accessory structures, then he could buy a bigger property. The consistency with this Board has been to not grant variances for people to have more accessory structures. Those were the two thoughts that were

taken into consideration with this application. The resolution was drafted based on past decisions.

Mr. Bailey would like to add that Mr. Weidenborner is correct and they do have a big backyard. They did look at three (3) different locations where the pool could be located, and a couple of factors came into play. They have an existing patio, and they were going to place the pool behind that patio but then the pool would be almost against the backyard neighbors lot line or extremely close. That location would make the pool twenty (20) plus feet away from the house. On the right-hand side of the backyard there is a downward slope. They are looking to stay on the upward side of that slope. In all fairness it is not a huge grade but there is a downward slope in that area and honestly is not that accessible from that side of the house.

Mr. Sweeney asks if the downward slope goes towards the neighbor.

Mr. Bailey says yes, it is a downward slope towards the neighbor that he referred to that has the other lot. He adds that it almost seems like the property was carved out down the center to run a water collection ditch. He thinks that may have been done on purpose so things can drain down into there. That area is not an ideal location to entertain especially since water could collect down in that area. It does not turn into a huge pond or anything like that but there is some water collection there especially this time of year when it rains heavy. They are looking to put a nice sized patio around the pool that would tie into their existing patio as well.

Mr. Delpriore asks why a four (4) foot fence would not work for them.

Mr. Bailey states that they would not get much privacy from a four (4) foot fence.

Mr. Delpriore asks that since the four (4) foot fence is a requirement for this area if a four (4) foot fence combined with landscaping if the privacy they are looking for could be achieved for this area?

Mrs. Bailey states no that would look terrible.

Mr. Bailey adds that the four (4) foot fence does not look all that attractive and the landscaping would eventually develop, and maturing would take a considerable amount of time before that would actually provide real privacy.

Mr. Delpriore states that he understands that completely in a subdivision. The concerns he has, based on what he is hearing, is that when an inground pool is installed the contractor regrades the land so the swale Mr. Bailey is referring to is not really a concern.

Mr. Bailey states the swale runs all along the side of the property.

Mr. Delpriore explains that he was the Code Enforcement Officer who gave the Certificate of Occupancy for Mr. Bailey's house, so he is well aware of the grading that was done on

his property. He adds that he agrees with the Zoning Officer that there is room to have the pool installed on the other side of the back yard because grading is not an issue.

Mr. Delpriore then explains that the neighbors fence that Mr. Bailey is using as an example tonight was approved in error by the previous Code Enforcement Officer and that the application should have come in front of this Board for approval. Also, Mr. Bailey is requesting that his fence be located twice the distance from the house that the neighbors' fence is from their house because of this it is not an apples-to-apples comparison.

Mr. Bailey asks if it is possible for them to request a reduction in the distance from the house the fence could be placed. It would still accomplish a similar goal by concealing the pool equipment and then the fence will not be right on top of the pool.

Mr. Delpriore states that would be up to the Board to decide but adds that a four (4) foot fence would still conceal the pool equipment.

Mr. Bailey states that yes, the four (4) foot fence would conceal the pool equipment but it would not give them the privacy they desire.

Ms. Attardi then asks questions pertaining to the diagram that Mr. Bailey submitted with his area variance application.

Mr. Bailey then approached the Board to review the diagram and show where he intended to put the fence in relation to his garage and the proposed pool and where he intended to have the pool equipment located.

Mr. Weidenborner also asked the Board to take a look at the site plan that was included with the application because that may also help to answer some of their questions.

The Board and Mr. Bailey also discuss style of pool they are installing and possible different locations for the pool and fence to go to possibly meet code as well as possible landscaping ideas.

Mr. Yurch then verifies with the Town Staff where a six (6) foot fence could be located and would be approved to meet code.

Mr. Weidenborner approaches the Board and reviews the site plan with the members.

Mr. Yurch then asks the applicant if there is some negotiation to this that might help them out.

Mr. Bailey states he would consider bringing the fence in a little farther.

Mr. Yurch asks Town Staff if this is something that should get revisited?

Mr. Weidenborner states that is entirely up to the Board.

Mr. Delpriore then states that the applicant has mentioned that he would like to line his fence up with the neighbors' fence, so when you are standing on Estate Drive and you look down it will line up but then if you are standing on Clovertrail Drive and looking down there will be a gap. He adds that the applicants reasoning of bringing his fence out fifteen (15) feet to be in line with his neighbors' fence is a moot point since the applicant cannot place his fence right next to the neighbor's fence.

Mr. Bailey states that yes, the fences cannot touch but there is a mowing path that goes down in between there but having the fences run the same length and height would aesthetically look nicer.

Mr. Delpriore explains that he feels the applicant is making an issue at the Clovertrail Drive side to maybe make the Estate Drive side seem to look better only because you cannot see the neighbor's fence. He feels that the Board should consider the appearance from all angles especially from the Clovertrail Drive side.

Mrs. Bailey states that if you are looking at it from the same angle what does it matter if it is back or forward you are still going to see the same view.

Mr. Delpriore explains that you will be taking away fifteen (15) feet of that tunnel between two six (6) foot fences.

**Conversations then erupt between too many people to make out anything specific.

Mr. Delpriore then tries to bring all other conversation to an end and explain some of the points made to the applicants.

Mr. Weidenborner then approaches the Board and the applicant again to explain on the site plan what Mr. Delpriore had just explained to them.

The Board then begins to ask more questions of the applicant while pointing to various items on the site plan.

Mr. Weidenborner adds that the applicants neighbor did stop into the Town to make sure the Town was aware that their fence was not located on their property line. He adds that from the zoning standpoint he looks at this purely as a fence in a front yard regardless of aesthetics. His stance as the Zoning Officer is this is an application to put a six (6) foot fence in a front yard. The Board should take into consideration that if the applicants house was not located on a corner lot would the Board want to set a precedence of allowing a six (6) foot fence in a front yard. If there were ways to make this unique to this property, then the Board could go that direction, but you would have to find things that make his property more unique than any other property on a corner lot in that zoning district. He explains that when he was doing his research for this application, he was unable to find that uniqueness. The Zoning Board of Appeals is only able to grant the minimum relief necessary for a property. This application as presented would be granting a six (6) foot fence in a front yard.

Mrs. Bailey states it is not the front yard first of all it is the side yard.

Mr. Weidenborner then tries to explain the definition of a front yard and Mrs. Bailey continues that their neighbors have the same exact thing that they are trying to do and if that means we have to go in eight (8) feet just so they can have the gate she would be comfortable with that as her husband would but reiterates that her next-door neighbors have the same exact thing.

Mr. Weidenborner explains again that was approved by someone who had no authority to approve it and it was done in error.

Mr. Delpriore adds that they have to remember they can only look at the project in front of them. Yes, they can talk about precedence when they are talking about history. The thing the Board needs to look at are their five proofs and the major proof they need to consider here is this self-created. They are talking about a pool that has not even been installed yet.

Mrs. Bailey states they are digging in two weeks and the fence will go in once the pool is in.

Mr. Weidenborner states that to put it bluntly if you wanted this many accessories in your backyard then you probably should not have built in a housing development.

Mrs. Bailey states they did not build the house and had they known they probably would not have bought the house, to be quite frank.

****Again, conversations erupt with too many people to make out anything specific.**

Mrs. Bailey states they are trying very hard to make things look nice and not awkward and their neighbors put up a horrific wood fence with the little nook it is going to make it look awkward if they cannot at least get close.

Mr. Sweeney asks how much water pools in the swale on the other side of their property.

Mr. Bailey states not a lot of water pools there it is just on the awkward side of the house. The way the property is positioned everything favors the left-hand side.

Mrs. Bailey adds that the pool engineer did not recommend them going there they recommended that the pool goes off the back of their house or to the left, but they are limited.

Mr. Ruthven asks how big the pool is going to be and where will it be located in relation to the existing patio.

Mr. Bailey again approaches the Board to go over site plan.

Ms. Attardi asks if there are any code issues due to the egress location.

Mr. Weidenborner states that the access needs to remain unobstructed.

Mr. Bailey then discusses where the pool location will be, where the pool equipment will be and where fence gates will be on the site plan again with the Board. They all discuss different locations to meet code.

Mr. Sweeney asks if the six (6) foot fence is what is most important to the applicant.

Mr. Bailey says that either way they are putting in a six (6) foot fence for sure because they need the privacy.

Mr. Weidenborner states to the Board that the question in front of them is would they like to approve a six (6) foot fence in a front yard by Town Code definition.

Mrs. Bailey would like to warn everybody that it is going to look terrible. From the outside of the fence as you turn on Clovertrail Drive is going to look terrible. If they put the fence where they are allowed to do the way, it is going to come in with the neighbors fence it is just...

Ms. Attardi adds that is where the applicants landscaping will become very important.

Mr. Yourch asked if anyone in attendance wished to speak for or against this application, or to ask questions.

Hearing none Mr. Yourch then closed the Public Hearing on this application

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #0301-21	Farmington Chamber of Commerce c/o Karen Brake 1840 Magog Road Macedon, N.Y. 14502	Temporary Use
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■ A motion was made by MR. SWEENEY, seconded by MMS. ATTARDI, that the reading of the following State Environmental Quality Review (SEQR) resolution be waived, and that the resolution be approved as submitted by the Town staff:

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
SEQR RESOLUTION—TYPE II ACTION
ZB #0301-21**

**APPLICANT: Farmington Chamber of Commerce, c/o Karen Brake,
1840 Magog Road, Macedon, N.Y. 14502**

ACTION: Temporary Use Permit renewal to continue to operate a farmers’ market on Friday’s only, from 3:00 p.m. to 7:00 p.m., commencing on Friday, May 28, 2021 and ending on Friday, September 25, 2026, on a portion of the property at the Farmington Country Plaza site, 1560 State Route 332, Farmington, N.Y.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has reviewed the criteria, under Part 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations, for determining the Classification associated with the above referenced Action; and,

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) of the SEQR Regulations.

BE IT FURTHER RESOLVED THAT Type II Actions are not subject to further review under Part 617.

NOW, THEREFORE, BE IT RESOLVED THAT the Board in making this Classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the Town file upon this Action.

The above resolution was offered by Aaron Sweeney and seconded by Jill Attardi at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, March 22, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Excused
Aaron Sweeney	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by MS. ATTARDI, seconded by MR. RUTHVEN, that the reading of the complete Temporary Use Permit Findings and Decision resolution be waived, and that the Chairperson read aloud the Determination of the Zoning Board of Appeals.

Motion carried by voice vote.

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
TEMPORARY USE PERMIT FINDINGS AND DECISION**

APPLICANT: Farmington Chamber
of Commerce
c/o Karen Brake

File: ZB #0301-21
Zoning District: GB General Business
Published Legal Notice on: March 14, 2021

1840 Magog Road
Macedon, N.Y. 14502

County Planning Action on: N.A.
County Referral #: N.A.
Public Hearing held on: March 22, 2021

Property Location: 1560 New York State Route 332, Farmington, N.Y. 14425

Applicable Section of Town Code: Chapter 165, Article VII, Section 91. C.

Requirement for which Approval is Requested: The applicant wishes to renew, for a period of five (5) years, the Chamber of Commerce's farmers market operation, to be held each Friday afternoon between the hours of 3:00 p.m. and 7:00 p.m., beginning the last Friday in May (May 28th) and ending the last Friday in September (September 24th) to be located upon a portion of the Farmington Country Plaza Site, located at 1560 New York State Route 332.

State Environmental Quality Review Determination: A Temporary Use Permit to conduct an open-air farmers market is classified as a Type II Action under Part 617.5 (15) of the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined, under the SEQR Regulations, not to have a substantial adverse impact upon the environment or are otherwise precluded from further environmental review under Environmental Conservation Law, article 8.

County Planning Referral Recommendation: The Application is classified as an Exempt Action in the Ontario County Planning Board Bylaws, Appendix B, Item #2. This application involves a local permit renewal that has no changes from the previous application referred to the County in 2019 (County Referral #119.1-2019).

In accordance with the provisions contained in Chapter 165, Section 91.C. of the Farmington Town Code, this application for a five (5) year Temporary Use Permit renewal is based upon the following Findings by Zoning Board of Appeals (hereinafter referred to as Board):

The Zoning Board of Appeals, based upon the testimony provided at tonight's public hearing from Town Officials, determines that the Applicant has complied with all of the original conditions of approval included in the previous Temporary Use Permit Application (File ZB #0602-19).

In addition to the above determination made in accordance with Chapter 165, Article VII, Section 91. C., the Board makes the following determinations upon this Application for renewal:

No Temporary Use Permit will be granted without a clear understanding of the nature of the permit, the time period covered by the permit and a detailed listing of the conditions of approval. The following findings must be made by the Zoning Board of Appeals on any Temporary Use Permit:

- (1) The temporary use will be in harmony with the general purposes and intent of Article VII, Section 91. A. of the Farmington Town Code, taking into account the location and size of the proposed use, the nature and intensity of the operation involved in or connected with the proposed use and the size and location of the site in relation to adjacent sites and uses.

Proof: The Board finds, based upon testimony given tonight in the Public Hearing record, that the purpose of the proposed Temporary Use Permit is to allow for the seasonal operation of a farmers' market to continue in the format originally approved in 2019 for an additional five (5) year Period beginning the last Friday of May (May 28, 2021) and ending the last Friday of September (September 25, 2026). The Board further finds that the applicant has permission from the property owner (Mr. Robert Laviano, Farmington Country Plaza) to continue to use portions of the plaza site for up to 15 tents to be used for the farmers market operation; on-site parking; trash control; restroom to be provided by the Applicant; and a sandwich board sign to be placed along the Route 332 frontage only on the day of operation. The Board further understands that there will be no permanent structure placed on the property as part of this Temporary Use Permit. The Board further understands that no parking space(s) will be used for the farmers market which are located on the adjacent Prosecco Restaurant portion of the site. The Board further understands that the applicant will be responsible for not allowing any vehicles to temporarily park along the Route 332 shoulder in front of the farmers market. The Board further understands that at the close of each Friday's operation the following will occur: the tents are to be removed from the site; all litter is to be picked-up and deposited in approved containers; this portion of the site will be kept clean at all times; and there shall be no litter on the property resulting from the operation.

The Board further finds that the applicant, on behalf of the Farmington Chamber of Commerce, is the party responsible to administer the farm market operations and the control of the site during the five (5) year period specified above herein. Any change in this understanding shall be brought to the attention of the Town Code Enforcement Officer for follow-up action as may be deemed appropriate. The Board further determines that the applicant is aware of the limitations contained in the Town Code for the granting and renewal of a Temporary Use Permit which in this instance will terminate on September 26, 2025. Prior to that date the applicant will need to inform the Town of any intentions to continue to operate the seasonal farmers market at this location. The Town, in turn, will then consider acting upon an amendment to the provisions of Chapter 165 of the Town Code, to create Special Use Permit criteria for a farmers' market within certain zoning districts.

The Board further finds that a final site plan (PB #0703-19) was approved by the Town Planning Board on July 2, 2019. The Board further finds that there are no proposed changes to the approved site plan and, therefore, this Temporary Use Permit renewal will not require approval from the Town Planning Board. The Board further finds that in the event that during the specified five-year period above herein there are to be any changes to the approved site plan referenced, then a separate application for amending the conditions of approval for this Temporary Use Permit and/or for amending the approved site plan will be made by the Town Code Enforcement Officer.

(2) The proposed temporary use will not tend to depreciate the value of adjacent properties.

Proof: The Board finds that the character of the neighborhood is commercial with large volumes of traffic passing by the farmers market site. The Board further finds that the applicant intends to maintain the appearance of the farmers market and this portion of the Farmington Country Plaza Site. The Board further finds that the applicant has an agreement with the Property Owner to operate the farmers market on the identified portion of the site which is outside the right-of-way of New York State Route 332; and to have customers of the farmers market use only the designated

on-site parking spaces. The Board further understands that a separate on-site parking area has been agreed to by the property owner and shown on the previously approved final site plan by the Planning Board. The Board further understands that no food truck, or food cart, is part of this renewed Temporary Use Permit, unless occupying one of the tented sites shown on the approved site plan.

The Board, based upon these findings, concludes that renewal of the proposed Temporary Use Permit will not tend to depreciate the value of adjacent properties. On the contrary, the Board finds that said Temporary Use Permit will provide an opportunity to enhance the agricultural sector of the Town and County bringing potential customers to nearby businesses.

(3) The proposed temporary use will not create a hazard to health, safety or general welfare.

Proof: The Board finds that the proposed continued use to be identical with the findings identified above herein will not create a hazard to health, safety or general welfare of the community. The Board further finds that during the previously two (2) year Temporary Use Permit period, the town has received no complaints, and that during routine inspections it did not find any violations associated with the operation of the Chamber of Commerce’s Farmers Market.

Based upon the above findings, the Zoning Board of Appeals hereby makes the following decision:

The request for the Temporary Use Permit is hereby granted.

The request for the Temporary Use Permit is hereby granted with the following conditions set forth below.

The request for the Temporary Use Permit is hereby denied.

1. The Temporary Use Permit is hereby granted for a period of five (5) years that is to commence on Friday, May 26, 2021, and will automatically terminate on September 26, 2025.
2. The farmers market shall only operate on Friday afternoons during the above specified period and between the hours of 3:00 p.m. and 7:00 p.m. on each of the Fridays occurring within the specified time period.
4. The Temporary Use Permit is not transferrable to another party.
5. The Temporary Use Permit does enable the Applicant to hire employees directly related to the farmers market operations.
6. The site is to be kept free of all debris and litter in a manner acceptable to the property owner and the Town.

- 7. All overflow parking spaces to be used in conjunction with the farmers market operations are to have a dust-free surface.
- 8. The Temporary Use Permit is hereby granted with the understanding that the applicant will need to abide by the approved Site Plan Approval (PB #0703-19) that has been granted by the Town Planning Board. Any change to the site from the approved site plan will require submission to the Town Planning Board.
- 9. The Temporary Use Permit is hereby granted with the condition that the findings contained above herein by the Zoning Board of Appeals are hereby made conditions of approval for the renewed Temporary Use Permit.
- 10. The renewed Temporary Use Permit is hereby granted to the applicant for the sole purpose of operating a seasonal farmers market within the established portion(s) of the Farmington Country Plaza Site located on property at the at 1560 New York State Route 332.
- 11. One directional sandwich board sign may be located along the west side of the right-of-way boundary for New York State Route 332, adjacent to and in front of the farmers market site shall be permitted. Said sign is to be removed from along the right-of-way shoulder of the State highway at the end of each farmers market day of operation. Any additional signage will need to be applied for and approved in accordance with Town of Farmington Codes
- 12. At the end of the seasonal operation, all evidence of the farmers market operation is to be removed from the site.

The renewed Temporary Use Permit is hereby issued to Karen Brake, on behalf of the Farmington Chamber of Commerce, and is not transferable to a second party.

Upon the expiration of the requested Temporary Use Permit, the temporary use shall immediately cease and all equipment, supplies and materials relating to this permit shall be removed from the site and the site shall be returned to a condition acceptable to the Town Code Enforcement Official.

The above Resolution was offered by Tod Ruthven and seconded by Aaron Sweeney at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, March 22, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Excused
Aaron Sweeney	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0302-21 Douglas Bailey Area Variance
1769 Estate Drive
Farmington, N.Y. 14425

■ A motion was made by MR. SWEENEY, seconded by MS. ATTARDI, that the reading of the following State Environmental Quality Review (SEQR) resolution be waived, and that the resolution be approved as submitted by the Town staff:

FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
SEQR RESOLUTION—TYPE II ACTION

ZB #0302-21

APPLICANT: Douglas Bailey, 1769 Estate Drive, Farmington, N.Y. 14425
ACTION: Area Variance Chapter 165, Article V, Section 61.A., to erect a six-foot high fence to be located in the front yard portion of the lot.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has reviewed the criteria, under Part 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations, for determining the Classification associated with the above referenced Action; and,

WHEREAS, the Board finds that the granting of an area variance is classified as a Type II Action under Part 617.5 (c) (16) and (18) of Article 8 of the New York State Environmental Conservation Law.

NOW, THEREFORE, BE IT RESOLVED THAT the Board does hereby classify the proposed Action as a Type II Action under Section 617.5 (c) of the SEQR Regulations.

BE IT FURTHER RESOLVED THAT Type II Actions are not subject to further review under Part 617.

BE IT FINALLY RESOLVED THAT the Board in making this Classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the Town file upon this Action.

The above resolution was offered by Aaron Sweeney and seconded by Jill Attardi at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, March 22, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye	Aaron Sweeney	Aye
Jeremy Marshall	Excused	Thomas Yourch	Aye
Tod Ruthven	Aye		

Motion carried

■ A motion was made by MR. SWEENEY, seconded by MS. ATTARDI that the reading of the complete Area Variance Findings and Decision resolution be waived, and that the Chairperson read aloud the Determination of the Zoning Board of Appeals.

Motion carried by voice vote.

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

APPLICANT: Douglas Bailey
1769 Estate Drive
Farmington, N.Y. 14425

File: ZB #0302-21
Zoning District: T.L 278 Cluster Development
Published Legal Notice on: March 14, 2021
County Planning Action on: N/A
County Referral #: N/A
Public Hearing held on: March 22, 2021

Property Location: 1769 Estate Drive, Farmington, New York 14425

Applicable Section of Town Code: Chapter 165, Article V, Section 61 A

Requirement for Which Variances are Requested: The applicant wishes to erect a six-foot- tall fence, an Accessory Structure, in the front-yard portion of the lot. The Town Code requires a maximum height of four feet for a fence, an Accessory Structure, within the front yard portion of a lot.

State Environmental Quality Review Determination: The granting of an Area Variance to enable the construction of a taller Accessory Structure than is allowed by Town Code, in the front yard portion of an approved residential lot, is classified as a Type II Action under Part 617.5 (c) (7) of the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined, under the SEQR Regulations, not to have a substantial adverse impact upon the environment or are otherwise precluded from further environmental review under Environmental Conservation Law, Article 8.

County Planning Referral Recommendation: N/A. Exempt Action by Ontario County Planning Board Bylaws.

FACTORS CONSIDERED AND BOARD FINDINGS

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance.
 X Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds that the character of the immediate neighborhood is predominantly single-family detached dwellings. The property

in question, fronts along the two public roadways (Estate Drive and Clovertrail Drive). The Board further finds that there are a number of other sites in the neighborhood that have fences, which are classified as accessory residential structures. However, only one of these fences is six feet in height while being located within the front yard portions of the lot. This one fence was approved by a previous Code Enforcement Officer and is considered an existing nonconforming structure by code. The Board concludes that the proposed location for the six-foot-high fence would produce an undesirable change in the character of the neighborhood or would set a detrimental precedence for nearby properties.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance. Yes No

Reasons: The Board finds that there are at least two feasible alternatives to the requested area variance. The Board finds that the applicant could place a four-foot-high fence as allowed by code, which would be a feasible alternative to the proposed six-foot-high fence within the front yard portion of the lot. The Board further finds that the applicant could place a six-foot-high fence on this site by relocating the fence location to the rear yard portion of the lot.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds that the requested area variance involves a variance request which is a one hundred percent (100%) increase from the required prohibition for placement of a six-foot-high fence within the front yard portion of a lot located within this zoning district. The Board has consistently found that a variance in excess of fifty percent (50%) of what is otherwise required by Town Code is a substantial requested variance

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes No

Reasons: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQRA Regulations. The Board finds that the proposed Action is classified as a Type II Action under Section 617.5 (c) of the New York State Environmental Conservation Law (ECL), Article 8. The Board finds that Type II Actions have been determined not to have a significant adverse impact upon the environment and has thereby satisfied the procedural requirements of the ECL.

5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the Area Variance. Yes No

Reasons: The Board finds that the alleged difficulty associated with the placement of the proposed six-foot-high fence on the subject lot and within the front setback portion is a self-created difficulty. The Board further finds that there has not been any practical difficulty proven tonight which could help the Board in making its decision that any relief being granted would be the minimum relief required under New York State Town Law.

DETERMINATION OF THE ZONING BOARD OF APPEALS

BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs, finds:

The Board based upon its review of the record on this application finds that the benefit to the applicant does not outweigh the detriment to the community or neighborhood; and, therefore, the requested area variance to erect a six-foot fence in the applicant’s front yard is **DENIED**

NOW, THEREFORE, BE IT RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action and that a copy hereof be provided to the applicant.

The above resolution was offered by Tod Ruthven and seconded by Jill Attardi at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, March 22, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Nay
Jeremy Marshall	Excused
Aaron Sweeney	Aye
Thomas Yourch	Aye

Motion carried.

6. OTHER BOARD MATTERS

Mr. Sweeney stated that he had the opportunity to spend a day in the Building Department. He spent the morning with Assistant Code Officer Gordner learning the process of reviewing permits and also had the opportunity to go on some inspections with him. While on an inspection a resident questioned different locations on his property where he could construct a pole barn. Since the resident was interested in constructing the pole barn in a front yard portion of his property Assistant Code Officer Gordner then review the Zoning Board of Appeals process. Mr. Sweeney explained how helpful this interaction was to him because now he better understand the process the Building Department takes prior to any application getting to the Zoning Board of Appeals. He spent the afternoon with Zoning Officer Weidenborner. He was able to review this application with him on site and now has a better understanding of what Mr. Weidenborner looks at pertaining to zoning for each application. He feels that because he has spent this time with the Building Department, and he has a better understanding of the various things they look at and the procedures they

follow with every application. He encourages his fellow Board members to take some time in the Department as well.

Mr. Delpriore appreciated Mr. Sweeney’s comments and encourages any Board member who might want to do the same that they are more than welcome to spend some time in the Building Department. Even though he spent eight hours in the Building Department he was only able to really see a small window of everything that the Department does.

Mrs. Attardi expresses her interest in spending some time with the Building Department as well. With all the different Zoning Districts within the Town it will help her to better understand why something may be approved in one Zoning District but not in another District.

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

8. DIRECTOR OF PLANNING AND DEVELOPMENT UPDATE

Mr. Brand discussed the following topic:

- Issued copies of the MSOD Guidelines (Main Street Overlay District) to the Board Members
- County Planning has reviewed the MSOD and complimented to the Town on creating a Main Street Corridor.
- He asks the Board members to review the MSOD to see where they may have questions or where they may anticipate things that may come up in the future with the new MSOD
- The Board granting variance is the success of the MSOD becoming reality
- They have been working on many different local laws to begin to bring Town Code up to date. They will be presented to the Town Board a few at a time.
- The Comprehensive Plan should be on the website by the end of the week
- There is potentially an upcoming application pertaining to an area variance on a parcel of land without having any buildings showing where the variances are being requested
- We have not seen anything in writing as of yet but have heard that the Tops Incentive Zoning Project may be coming back to life

9. ZONING OFFICER UPDATE

- There will be a meeting on April 26, 2021. There is a possible application for the Board to review once the Town Attorney gives us approval whether the Board can act on the application or not. If not, then the meeting will be used as a training session.

10. TRAINING OPPORTUNITIES

2021 Municipal Bootcamp

A free annual program to provide certification credits to newly elected officials, planning and zoning boards and town officials sponsored by Hancock Estabrook and MRB Group.

The program includes 10 hours of remote training designed to provide a comprehensive education that encompasses all aspects of municipal governance. Each program will be provided remotely on the fourth Thursday of the month with subject matter experts and attorneys from Hancock Estabrook and MREB Group.

Thursday, March 25, 2021, 6:00 p.m. to 7:00 p.m.
Session 3: Leave It Better Than You Found It

Thursday, April 22, 2021, 6:00 p.m. to 7:00 p.m.
Session 4: What Not To Say, and What *Really* Not To Do

Thursday, May 27, 2021, 6:00 p.m. to 7:00 p.m.
Session 5: Come One, Come All to the Greatest Show on . . . well . . .

Thursday, June 24, 2021, 6:00 p.m. to 7:00 p.m.
Session 6: Planning From (At Least) Six Feet Away

Thursday, July 22, 2021, 6:00 p.m. to 7:00 p.m.
Session 7: Ask Me Anything

Thursday, September 23, 2021, 6:00 p.m. to 7:00 p.m.
Session 8: From Big to Small

Thursday, October 28, 2021, 6:00 p.m. to 7:00 p.m.
Session 9: Well, Aren't You Special?

Thursday, December 23, 2021, 6:00 p.m. to 7:00 p.m.
Session 10: All the Right Forms in All the Right Places

Questions to:

Wendy A. Marsh, Partner, Hancock Estabrook
wmarsh@hancocklaw.com
(315) 565-4536

Matt Horn, Director, Local Government Services, MRB Group
matt.horn@mrbgroup.com
(315) 220-0740

Registration link:

<https://register.gotowebinar.com/rt/4608077833213548299>

Open Government in Planning and Zoning Decision Making

February 3, 2021, 12:00 noon to 1:00 p.m.

Free webinar to members of New York Planning Federation

This session will discuss how open government laws apply to planning and zoning decision making, including technical legal requirements and recommended practices that go

above and beyond them. The webinar is part of the New York Planning Federation series “The Basics of Planning and Zoning in New York State.” The presenter will be Mark Schachner, Esq., Senior Principal Attorney of Miller, Mannix, Schachner & Hafner LLC in Glens Falls, N.Y., and Round Lake, N.Y.

Registration link:

<https://register.gotowebinar.com/register/9517785066313488>

10. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will be held on Monday, April 26, 2021, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8.

11. ADJOURNMENT

■ A motion was made by MR. SWEENEY, seconded by MS. ATTARDI, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Sarah Mitchell L.S.
Clerk *Pro Tem* of the Zoning Board of Appeals