

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, November 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:

Jeremy Marshall, *Chairperson*
Thomas Yourch
Jill Attardi
Tod Ruthven
Jody Binnix

Staff Present:

John Weidenborner, Town of Farmington Zoning Officer
Ron Brand, Town of Farmington Director of Development
Dan Delpriore, Town of Farmington Code Enforcement Officer

Staff Via Zoom:

Adrian Bellis, Town of Farmington Planning Board Member

Applicant's Present:

Tim Loughlin 640 County Road 8, Farmington
Scott Harter P.E. 7172 Victor-Pittsford Road, Victor

Others Present:

Chris Wade 670 County Road 8, Farmington

Others Via Zoom:

Jim Loughlin 646 County Road 8, Farmington

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. by Mr. Marshall. The Pledge of Allegiance was recited.

Mr. Marshall 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 both in person at the Farmington Town Hall and virtually on Zoom. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. 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. Hand sanitizers were available throughout the building. Public access was restricted to the lobby, the main meeting room, and the public restrooms.

2. APPROVAL OF MINUTES OF OCTOBER 25, 2021

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

Motion carried.

3. LEGAL NOTICE

There was no legal notice published for this meeting.

4. CONTINUED PUBLIC HEARING**ZB #1002-21: SCOTT A. HARTER P.E. 7172 VICTOR-PITTSFORD ROAD VICTOR, NY 14564:**

Request an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant's client wishes to erect a 3,456 square-foot accessory structure (a barn) in the front yard portion of their lot located at 640 County Road 8 in the Town of Farmington. The Town Code requires all accessory structures to be located within the rear yard portion of the lot. The property is zoned RR-80 Rural Residential.

Mr. Marshall continued the Public Hearing on this application.

Scott Harter presented the above application. Mr. Harter started by recapping from the previous meeting. Last time they discussed bringing in what they like to call a "mini site plan" to show the proposed location of the barn, the desired location verses the location where it will be compliant. They created a drawing showing those two locations for contrast showing one verses the other. The one that is desired is the one that is most optimal from the standpoint of access and a variety of other things some of which he identified in a letter that he sent on November 12, 2021. One of the major aspects of the location of the barn not only from the standpoint of ultimate access but Chris the neighbor to the south has

a viewshed, if you will, across the rear yards. Not only a viewshed onto Tim's property but also a viewshed onto Chris's property. The compliant location directly interferes with that and the aerial photographs and drawings that they did shows that quite clearly. With addition to that it is more difficult to put in a compliant barn in a compliant location. Some justification metrics are based on the drawings that you see before you for the compliant location the driveway must curve more to reach the building where the straight direct approach as shown is much more useful, practical, and safe. The driveway square footage is 3,050 square feet verse the desired location having 1,420 square feet so 1,630 additional square feet of driveway is required. The result with culvert from driveway connection creates a low point for a drainage structure capture and is not desirable in this area from a future use perspective close to the house. The existing power transformer is a concern in addition to the general access around the residence this is for the compliant location. Also for the compliant location the hillside must be cut to fit the driveway as shown this results in additional excavation, land disturbance, and is likely to enter some groundwater springs as has happened in the past. The drainage swale for the compliant location follows the south boundary line about 280 lineal feet verse 125 from the desired location so 155 additional lineal feet of swale and related excavation is needed for the compliant location. The distance from the northeast corner of the proposed barn as the desired location the County wrote eight the west boundary line on County Road 8 which is coincidence to the front lot line of the subject parcel is 779 feet the distance from the same point to the compliant location is 942 feet. The distance from the northeast corner from the proposed barn in its desired location to the property line, which is the rear property line of homes 646 and 652, is 294 feet. The distance from the same point on the compliant location to the same location is 458 feet. Those are the metrics based on the drawings that you are looking at. Mr. Harter states that he wanted to present that information because there was some interest and thought it was something to be considered for justification of the variance.

Mr. Marshall then asks if there are any questions from the board.

Mr. Ruthven asks the applicant if they did a cost analysis of both locations.

Mr. Loughlin states that he has verbals from a contractor he had come out to the site. The verbal for the requested location is \$3800 - \$4200 for site work and for the compliant location, which includes cutting into the hill, is \$17,500 - \$18,500.

Mr. Marshall then asks for any further questions from the board. Hearing none, he then asks for questions from staff.

Mr. Harter then asks if it would be helpful for him to go through the five criteria that the board considers now or later.

Mr. Marshall agrees and tells Mr. Harter to continue.

Mr. Harter states that the five criteria he believes the board wants to evaluate is:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties.

Answer: No. The immediate neighbors are in support of this project. They recognize the value in this project, and they recognize it is sited in a good location. It takes into consideration any other concerns. Particularly Chris Wade, the neighbor most effected, is here tonight in support of the variance.

2. Whether the benefit sought can be achieved by some other feasible method for the applicant to pursue other than an area variance.

Answer: If they wanted to put it up on the hill, it could be put up on the hill. It doesn't make sense for them to put it up there for reasons mentioned the neighbors and the environment is much less disturbed by the location presented.

3. Whether the area variance is substantial.

Answer: You can use the numbers that were presented to consider whether you think it is substantial or not. He explains that a barn that is that far off the highway and is that far off of adjoining properties does not pose a substantial area variance request.

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

Answer: He always looks at the word neighbor when he reads through this. When he looks at the immediate neighborhood, he feels it is satisfied with the proposed project.

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.

Answer: The alleged difficulty is self-created by virtue of the project itself. He adds there are very few projects that come before the board that are not self-created.

Those are their responses to the five criteria the board uses to balance to the benefit to the applicant verse the detriment to the environment.

Mr. Marshall then asks if anyone else would like to speak for or against this application.

Chris Wade from County Road 8 in Farmington states that he is still in favor of this project. He adds that the only impact on any neighbor would be on him. Their houses sit back far enough from the road, with his house sitting slightly ahead of Tim's but almost parallel. He states that he has two barns next to his house and if you were to put Tim's barn where code requires it is going to put it out of place based on the two he already has. Tim's requested place for the barn would almost put all the barns in a row. He believes that the aesthetics from the road would be much better. There is a hedge row between Tim's dads

house, Mr. Mayor's house, and his property and where the proposed barn will be. The hedge row is full sized trees not just brush and they are blocking his barns and will block the barn that Tim is talking about building. The impact to any other neighbor is nonexistent. The impact to him if the barn is built where code says, it will block the view of his property. He explains that they are asking for this together as neighbors and he hopes the board passes it for them. He adds that while driving around Farmington he noticed other barns in front of houses and there are a few right around them. There is one on County Road 8 and there is one on Hook Road off of Martz Road, so variances have been given in the past.

Mr. Marshall then asks if anyone else would like to speak for or against this application.

Tim Loughlin, the owner of the property and the resident requesting the variance, thanks the board for their time tonight and thanks staff for the time they have put into his application. Mr. Loughlin explains that he wants this barn in this flat spot. There was a board member that visited the site and he tried to explain that people hear that they built on a hill. Going back to the aerial photos there was a barn that sat there we talked about that barn, and it was pointed out the last time. They tore that barn down because it was old and falling apart and was down before construction because it was built right in front of the house. That was the flat part of the land. He didn't look at the hill and say I just want to cut a big hole in a hill and try to deal with this the rest of his life. Where they are proposing it is a flat spot now and there are flatter spots much closer to the road. The proposed location is the optimum place to put it and always where he hoped to put it. He adds that he feels they are doing the right thing by the land, the environment and by the neighborhood. He looks at his neighbors and he talked extensively to discuss these things. Bill Mayor, at 652, is in support of this, his father is in support of this as well. He asks the board to put themselves in his situation. There is a neighbor that opposes this barn built to code and him and Chris did work through some compromises and now they are both happy with the plan that was put together.

Mr. Marshall then asks for any questions from the board. Hearing none he asks for questions from staff.

Mr. Ruthven asks if the barn was in the backyard if the barn would sit higher than his house.

Mr. Harter says yes.

Mr. Ruthven asks how much higher.

Mr. Loughlin says it will sit roughly five feet higher than his house.

Mr. Yurch asks what the square footage of his house is.

Mr. Loughlin says its 2533 but they have an unfinished room upstairs that is 1000 square feet, and they have unfinished area above the garage for future storage. Roughly they would be the same square footage of around 3500 square feet.

Ms. Binnix asks if they considered building the barn in line with the house.

Mr. Weidenborner states that was one of the original suggestions that was made to them when they applied for their permit.

Ms. Binnix asks if the barn was built in line with the house if it would reduce the cost.

Mr. Loughlin states that in the initial proposal that was presented at the last meeting they did have to cut a little into the field. To optimize the site, they actually moved it about twenty-five feet further to the east. Once you get to a certain spot it is kind of like a big roll. He explains that when Mr. Weidenborner and Ms. Binnix were at the site, they talked a bit about the code interpretation that Mr. Delpriore had about the barn being in line with the house and up until that day he was always told it needed to be behind the house. He was never told it could be next to the house. He says he does understand it now and he is not taking issue with it. When he had another Code Officer over in June, he was told he could not build it next to the house yes Chris did it, but code had changed, and he couldn't do it anymore. To hear that was additional news to him. There still will be additional driveway, additional cost, and more cut into the slope.

Mr. Delpriore states that the applicant was instructed to meet with Town Staff to discuss this before this meeting. No meeting was ever set up.

Mr. Harter says the reason they did not take advantage of that opportunity was largely because the neighbor Chris and wanting to put the structure in a location that was satisfactory to the neighbor.

Mr. Delpriore explains that this is exactly why we like to meet ahead of time. There might have been some middle ground where we could meet and could have been presented that to this Board about moving it to the front plain. Is that code compliant, no, we always say the rear plane. This whole barn is proposed in the front yard so when we look at substantial, we are not looking at a dollar amount, we are looking at variants to the code. This is over a 100% variance. That is a substantial variance. When he looks at something that is lined up with the front of the house, yes it may be in the side yard, but it would be a lesser variance.

Mr. Marshall then asks Mr. Loughlin if that is something he would like to explore or if he would like to move forward with the application as submitted.

Mr. Loughlin explains that he just does not think that is the right thing by his neighbor. It still puts it well in his view. He does understand Dan's suggestion in the meeting in the compromise, but he thinks not having that meeting to compromise they were heading the other direction. They were moving the barn to the east. The original location there was

some topography that they were going to have to deal with. They optimized the site by moving it twenty feet. They also optimized that to the neighbors request as well. It really fits the neighborhood with everything being in line. He really feels that was the spirit of the change. He understands the desire to have the meeting for the compromise but wanted to optimize the land for the least disturbance and to make a compromise with his neighbor.

Mr. Delpriore states that the applicant has stated that he did not listen to the recommendation of the Board and that the applicant has also increased the variance making it more substantial.

Mr. Harter asks what they are considering substantial.

Mr. Marshall explains that substantial is anything that is more than 50% of what the Town Code says.

Mr. Delpriore explains that if the Town Code says that the building has to be behind the rear plane and the building is only ten feet past that plane then it is only 10% encroaching of the whole building. In this case the whole building is going in the front yard which is 100% variance and the further forward you move it the greater the percentage.

Mr. Harter says in his experience he has seen boards define substantial differently. He has seen Boards take a look at the dimensions, similar to what he presented tonight, to take a look at how far the barn is from the highway under one scenario verses how far away it is under the other scenario. Then take the two numbers and compare them and/or do it from the side property line and take a look at those numbers and then come up with numerically the justification that way. He understands what they are saying but based on his experience appearing before other Zoning Boards in other Towns in Ontario County and Monroe County substantial is the determination made by the Board as to what they consider substantial. Usually, the numbers he presents are the numbers they use coming up with the determination.

Mr. Weidenborner explains that our Town Code does not say that the barn cannot be in the front yard if the house is fifty feet from the road. Our code says it cannot be in the front yard. So, using those numbers does not really help in this case because code says that it is not allowed in the front yard. Now if the code said it was not allowed within 100 feet from the road or in the front yard then you would get into the percentages. The biggest thing with this code is that it says 100% no accessory structures are allowed in the front yard in the Town of Farmington. That is what the code says in all districts for residential lots. Some of the barns that Mr. Wade was referring to are 100-year-old barns, there are some that are pre-existing or agricultural. They could not find any barns within this zoning district that were approved. They did find that one of the neighbors who submitted a letter of disapproval of this application was denied a similar variance. Code just looks at it as being in the front yard. Currently the Town Code says nothing in the front yard.

Mr. Harter says that he understands that the code says that but the disconnect here is the whole purpose of the Zoning Board of Appeals and how they interpret it. After the Town

Staff does their thing and evaluates it, they hand it over to them and what they determine is substantial in their deliberations as the governing force. Not necessarily your definition of substantial. You have done your job. You flagged the need for the variance here, I get that, I think we all get that.

Mr. Weidenborner explains that part of their job is letting the Board know what the Town has done in the past to prevent them from opening themselves up to an Article 78 hearing for lawsuits from the previous three or four that have been denied in the past. The Board should be similar in their approvals and denials or else they are setting a precedence and they are changing Town Code or spot zoning which is illegal in New York State. Changing Town Code is up to your elected officials not your appointed boards.

Mr. Harter says that he has never seen an area variance ever confused with spot zoning. He has seen a use variance confused with spot zoning. He mentions that every application is unique and not necessarily a precedence is being set. Every application that moves forward is subject to this review process and the deliberations by this Board specific to that piece of property. He has never seen two pieces of property that have ever been the same.

Mr. Loughlin adds that he has been a resident of this Town for forty-four years. He knows four people that have asked for this variance. Two were denied and two were approved. He doesn't know about the last year, but he does know people who have been denied and people who have been approved.

Mr. Weidenborner explains that he could not find any that were approved but that would help his case if he could tell them so they could find them. They may be in different zoning districts. There are some in the A-80 zoning district from years ago. This code went into effect within the last fifteen to twenty years.

Mr. Marshall then asks for any further questions from staff.

Mr. Delpriore explains that many of the items they are discussing with them would have been handled in a staff meeting and that is why this Board always recommends those meetings. You are absolutely right that the decision is with the Board, but we sit in all their meetings, and we understand what they are looking for. A meeting with staff is highly important.

Mr. Marshall then asks Mr. Loughlin if he would like to meet with Town staff or if he would like to continue to the Board determinations.

Mr. Loughlin agrees and asks to meet with Town staff.

Mr. Delpriore tells the applicant to call the office to set up a time and says the ball is in their court at this point. Have your discussions and then set up a meeting with us. We will have all our staff, including the Town Engineer, sit in on the meeting so all avenues can be reviewed.

Mr. Ruthven also asks the applicant to bring the cost statements as well.

Mr. Weidenborner states that during the meeting they will also discuss all of the possible compliant locations for the barn. You have to show why all the compliant locations are not going to work. We have to show on paper why it isn't going to work there and why your application is different then all the others.

Mr. Marshall says the Board is asking for the applicant to meet with Town staff to find out the best compromise alternative. It could be what you have planned it may not be but let's just take a look, so we have all the information to make a decision.

Mr. Marshall then asks is there is anyone online that wishes to speak for or against this application.

Hearing none. Mr. Ruthven makes a motion to continue the public hearing until the December 27, 2021, meeting and was seconded by Ms. Attardi motion was caried with all voting aye.

Mr. Marshall then states that Public Hearing will be continued on this application.

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #1002-21

**Scott Harter P.E.
7171 Victor-Pittsford Road
Victor, N.Y. 14564**

Area Variance

■ A motion was made by MR. RUTHVEN, seconded by MS. ATTARDI, that the Public Hearing remained open and continued until December 27, 2022.

Motion carried by voice vote.

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
CONTINUATION**

ZB #1002-21

**APPLICANT: Scott A. Harter P.E.
7171 Victor-Pittsford Road
Victor, NY 14564**

ACTION: Request an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant's client wishes to erect a 3,456 square-foot accessory structure (a barn) in the front yard portion of their lot located at 640 County Road 8 in the

Town of Farmington. The Town Code requires all accessory structures to be located within the rear yard portion of the lot.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has continued a public hearing from October 25, 2021 upon the above referenced Action; and

WHEREAS, the board after hearing further discussions has decided the application be tabled until the December 27, 2021 Zoning Board of Appeals meeting to allow the applicant to have a meeting with Town Staff to discuss options.

NOW THEREFORE BE IT RESOLVED that the Board tables further discussion upon the above referenced Action; and

BE IT FURTHER RESOLVED that the public hearing upon the proposed area variance is hereby continued to the Zoning Board of Appeals scheduled meeting on Monday, December 27, 2021.

The above resolution was offered by MR. RUTHVEN and seconded by MS. ATTARDI at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, November 22, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Aye
Thomas Yourch	Aye
Jody Binnix	Aye

Motion carried.

6. OTHER BOARD MATTERS

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

8. DIRECTOR OF PLANNING AND DEVELOPMENT UPDATE

- The Solar Committee had it’s first meeting. The next scheduled meeting is December 6, 2021, at 6:30p here. The second draft will be posted on the Town website on December 1, 2021, which will incorporate comments received as a result of the first workshop. There were not a lot of comments from residents but there were comments made by the committee.
- The Town received an appeal to the judge’s decision on Delaware River Solar Project. It will now go to the District Court of Appeals.
- The Board did hold a training seminar this evening with all Board members present.

9. ZONING OFFICER UPDATE

- Next Meeting will be December 27, 2021.
- Open Clerk of the Board of Position
- Requests Mr. Marshall be present at the staff meeting for the application continued tonight.

10. CODE ENFORCEMENT OFFICER UPDATE

- Suggests putting information submittal timelines in the Rules of Procedure for 2022 so it allows ample time for review.

11. 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 MRB Group.

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>

12. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will be held on Monday, December 27, 2021, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8.

13. ADJOURNMENT

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

Motion carried by voice vote. The meeting was adjourned at 7:38 p.m.

Respectfully submitted,

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