

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, July 23, 2018, 7:00 p.m.

MINUTES—APPROVED

The following 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: Timothy DeLucia, *Chairperson*
Jeremy Marshall
Cyril Opett
Nancy Purdy
Thomas Yourch

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning

Applicants Present:
Michael Birkby, Conifer Realty LLC, 1000 University Avenue, Suite 500,
Rochester, N.Y. 14607
Kip Finley, P.E., Director of Development, Indus Hospitality Group, 950 Panorama Trail South,
Rochester, N.Y. 14625
Jerry Goldman, Woods Oviatt Gilman, 2 State Street, Rochester, N.Y. 14614
Laura Van Buren and Ren Christenson, 5914 Tweed Trail, Farmington, N.Y. 14425

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After the Pledge of Allegiance was recited, Mr. DeLucia introduced the Zoning Board of Appeals members, explained the emergency evacuation procedures, and noted that copies of the evening’s agenda were available at the door.

Mr. DeLucia said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on March 19, 2018.

2. APPROVAL OF MINUTES OF JUNE 25, 2018

■ A motion was made by Thomas Yourch, seconded by Cyril Opett, that the minutes of the June 25, 2018, meeting be approved.

Motion carried by voice vote.

3. LEGAL NOTICE

Mr. DeLucia attested that the following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper (the Town's official newspaper) on Sunday, July 15, 2018, that it was posted upon the Town of Farmington website (www.townofarmington-ny.com), and that it was posted upon the Town Clerk's bulletin board in the foyer of the Town Hall:

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 23rd day of July, 2018, commencing at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8, in the Town of Farmington, Ontario County, New York, to consider the following applications:

ZB #0701-18: INDUS HOSPITALITY GROUP, 950 PANORAMA TRAIL S., ROCHESTER, N.Y. 14625: Request an Area Variance to Article V, Chapter 165-43 B (1) (c) of the Town of Farmington Codes. The applicant wishes to erect a commercial speech ground sign having a total sign area of 100 square feet which exceeds the maximum square footage of 64 square feet allowed by Town Code. The property is located at 1301 NYS Route 332 and is zoned GB General Business District.

ZB #0702-18: INDUS HOSPITALITY GROUP, 950 PANORAMA TRAIL S., ROCHESTER, N.Y. 14625: Request an Area Variance to Article V, Chapter 165-43 B (2) (c) of the Town of Farmington Codes. The applicant wishes to display two commercial speech business messages on one freestanding sign. The property is located at 1301 NYS Route 332 and zoned GB General Business District.

ZB #0703-18: INDUS HOSPITALITY GROUP, 950 PANORAMA TRAIL S., ROCHESTER, N.Y. 14625: Request an Area Variance to Article V, Chapter 165-43 B (1) (a) of the Town of Farmington Codes. The applicant wishes to display a second commercial speech building mounted identification sign. The Town Code allows only one commercial speech building mounted identification sign. The property is located at 1301 NYS Route 332 and zoned GB General Business District.

ZB #0704-18: INDUS HOSPITALITY GROUP, 950 PANORAMA TRAIL S., ROCHESTER, N.Y. 14625: Request an Area Variance to Article V, Chapter 165-45 A (12) of the Town of Farmington Codes. The applicant wishes to erect an off-premises commercial speech business identification sign. The Town Code prohibits off-premises

commercial speech signs within 660 feet of the right-of-way of State Route 332. The property is located north of 1301 NYS Route 332 and zoned GB General Business District.

ZB #0705-18: INDUS HOSPITALITY GROUP, 950 PANORAMA TRAIL S., ROCHESTER, N.Y. 14625: Request an Area Variance to Article V, Chapter 165-43 B (1) (a) of the Town of Farmington Codes. The applicant wishes to display a third commercial speech building mounted identification sign. The Town Code allows only one commercial speech building mounted identification sign. The property is located at 1301 NYS Route 332 and zoned GB General Business District.

ZB #0706-18: CONIFER REALTY LLC, 1000 UNIVERSITY AVENUE, #500, ROCHESTER, N.Y. 14607: Request an Area Variance to New York State Town Law, Section 280-a. The applicant wishes to create a lot without direct access to a mapped public street. The property is proposed Lot #2 Pintail Crossing and is zoned RMF Residential Multi-Family District.

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

Tim DeLucia, Chairperson
Zoning Board of Appeals
Town of Farmington

4. CONTINUED PUBLIC HEARING FROM JUNE 25, 2018

ZB #0602-18	Laura Van Buren 5914 Tweed Trail Farmington, N.Y. 14425	Area Variance
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The applicant wishes to erect an accessory structure, a 12-foot by 12-foot open-sided gazebo, an Accessory Structure, to be located in the side-yard portion of the lot. Section 58. A. of the Town Code allows accessory structures to be located only within the rear yard portions of a lot and shall be subject to the same locational requirements affecting the principal structure on a lot, except those located within the A-80, RR-80, RS-25, R-1-15, R-1-10, R-2, RMF, RB, NB and GB Zoning Districts. It is the Code Enforcement Officer's interpretation of this section that this provision applies to lots located within any IZ Incentive Zoning District as well and, therefore, an Area Variance is required to permit the proposed gazebo in the side yard portion of this lot.

Mr. DeLucia reconvened the Public Hearing on this application which was opened on June 25, 2018 and continued to this meeting.

Ms. Van Buren is present to speak on the above application. She had nothing further to add at this time.

Mr. DeLucia then read into the record an email from Jim Morse, Code Enforcement Officer for the Town. Mr. Morse's email stated that he had spoken with Town Operations in regards to this application and the intent of the Hickory Rise Incentive Zoning Project was to never allow accessory structures in a side yard without acquiring a variance.

Mr. DeLucia then asks for any further comments or questions from the board, staff, or the public in regards to this application.

There were no further comments or questions on this application.

Mr. DeLucia then closed the Public Hearing on this application.

5. NEW PUBLIC HEARINGS

ZB #0706-18	Conifer Realty LLC 1000 University Avenue, #500 Rochester, N.Y. 14607	Area Variance
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The applicant is requesting an Area Variance to New York State Town Law 280-a. The applicant wishes to create a lot without direct access to a mapped public street. The property is proposed Lot #2 Pintail Crossing and is zoned RMF Residential Multi-Family District.

Mr. DeLucia opened the Public Hearing on this application.

Mr. Goldman presented this application. Michael Birkby, Project Coordinator from Conifer, is also present. Mr. Goldman explains that after a development project has begun they realize later that there is a need to divide phases into separate lots for financing purposes. Sometimes there is an issue with Town Law 280-a relative to the requirement of access on to a mapped street. They have encountered an interesting circumstance regarding this lot. The lot was created out of the old Glacier Lakes Waterpark and is located in the far end near the residential section. The Town Board rezoned this to allow for this development and each end does have access unto a public street. However, the access from Phase II goes to Running Brook Road and the neighbors on Running Brook Road and the Town have determined they would not like to have direct access from Pintail Crossings into that subdivision. Instead everything will be directed out to Quentonshire Drive then out to County Road 41 and that is why they are requesting a variance. The project is fully conforming with code and there are no other variances necessary. They have met with the Town Board and Planning Board relative to the development of the project. They have received final site plan approval for Phase I of the project totally completed. He understands that the town has received a brief comment in regards to the project and he would like to address those issues. This has been an area that has had some drainage challenges down in Farmbrook. They are doing this to help improve those drainage issues and the Planning Board has acknowledged that. They do have retention ponds located on the property and the neighbor questioned if those ponds will be fenced as a safety precaution.

He states that the retention ponds will have a split rail fence with wire mesh and will be gated so access can be controlled in that area. The second question was also pertaining to the retention ponds and if they will attract more mosquitos. The fact of the matter is being that they normally keep it very much under control and the water is not stagnant and they do not anticipate any change in the condition that is relative to what is there currently. As related to the 280-a aspect of the application they do have a total of 114 apartment units that are going to be part of this project and the access they have now is sufficient. There will be an emergency access out to Running Brook Road but will be for emergency access only with a crash gate not for the public to go back and forth.

Mr. DeLucia asks for Mr. Goldman to elaborate on the crash gate. Mr. Goldman explains it's a gate that is in place where an emergency first responder vehicle can break through to obtain access to the site in an emergency situation. It is not a solid barrier.

He then asks for any comments or questions from staff.

Mr. Brand stated that he did receive a call from Karis Vaillancourt, 5785 Dalton Drive, and she stated that she had two concerns about the project. Her concerns are: (1) the storm water detention/retention facility being proposed near her property. She is concerned that children will drown in the facility and wants to know if it will be fenced-in. (2) She is concerned about mosquitos breeding and the disease they bring. She wanted her concerns to be entered into tonight's public hearing because of illness she will not be attending. He sent the questions to Mr. Goldman in advance so he could be prepared to answer those questions which he has done. Ms. Vaillancourt was also concerned about drainage issue on her property and he forwarded that information to both the Highway Superintendent and the Town Supervisor.

Mr. DeLucia then ask for any further questions or comments from the board, staff or the public pertaining to this application.

There were no further comments or questions on this application.

Mr. DeLucia then closed the Public Hearing on this application.

ZB #0701-18	Indus Hospitality Group 950 Panorama Trail S. Rochester, N.Y. 14625	Area Variance
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The applicant is requesting an Area Variance to Article V, Chapter 165-43 B (1) (c) of the Town of Farmington Codes. The applicant wishes to erect a commercial speech ground sign having a total sign area of 100 square feet which exceeds the maximum square footage of 64 square feet allowed by Town Code. The property is located at 1301 NYS Rout4e 332 and is zoned GB General Business District.

ZB #0702-18	Indus Hospitality Group	Area Variance
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**950 Panorama Trail S.
Rochester, N.Y. 14625**

The applicant is requesting an Area Variance to Article V, Chapter 165-43 B (2) (c) of the Town of Farmington Codes. The applicant wishes to display two commercial speech business messages on one freestanding sign. The property is located at 1301 NYS Route 332 and is zoned GB General Business District.

**ZB #0703-18 Indus Hospitality Group Area Variance
 950 Panorama Trail S.
 Rochester, N.Y. 14625**

The applicant is requesting an Area Variance to Article V, Chapter 165-43 B (1) (a) of the Town of Farmington Codes. The applicant wishes to display a second commercial speech building mounted identification sign. The Town Code allows only one commercial speech building mounted identification sign. The property is located at 1301 NYS Route 332 and zoned GB General Business District.

**ZB #0704-18 Indus Hospitality Group Area Variance
 950 Panorama Trail S.
 Rochester, N.Y. 14625**

The applicant is requesting an Area Variance to Article V, Chapter 165-45 A (12) of the Town of Farmington Codes. The applicant wishes to erect an off-premises commercial speech business identification sign. The Town Code prohibits off-premises commercial speech signs within 600 feet of the right-of-way of State Route 332. The property is located north of 1301 Route 332 and zoned GB General Business District

**ZB #0705-18 Indus Hospitality Group Area Variance
 950 Panorama Trail S.
 Rochester, N.Y. 14625**

The applicant is requesting an Area Variance to Article V, Chapter 165-43 B (1) (a) of the Town of Farmington Codes. The applicant wishes to display a third commercial speech building mounted identification sign. The Town Code allows only one commercial speech building mounted identification sign. The property is located at 1301 NYS Route 332 and zoned GB General Business District.

Mr. DeLucia opened the Public Hearings on applications ZB #0701-18, ZB #0702-18, ZB #0703-18, ZB #0704-18 and ZB #0705-18.

Mr. Finley presented the above applications.

Mr. Finley states that when they were going through the planning process there was a lot of discussion about signage because what currently is in the code for pylon signs does not always result in the best-looking situation. They were urged to apply for variances in re-

spect to their pylon signs and in regards to one of the Taco Bell building signs. A Taco Bell has three signs on a building which when added up is still less than what is allowed by the Town Code in square footage they would just like to spread the signs around the building. They were urged to combine the Taco Bell and KFC sign, a total of 100 square feet, onto one pylon sign which will exceed the sixty-four square feet allowance. They would also like to move the Microtel pylon sign further towards the south side of KFC so the Dunkin Donuts sign and the Taco Bell/KFC signs are not all bunched together. The New York State Department of Transportation has some rules on State Route 332 because it's a touring route and they have jurisdiction over signs that may not be right at the entrance to a business development and they determined that they need a Department of Transportation permit to allow the Microtel sign located away from the driveway. He adds that Jim Morse has the form to sign if the Board agrees to grant the area variance and once signed they will get their permit and will be all on record with the Department of Transportation.

Mr. DeLucia then asks Mr. Finley if he could show the Board where the signs will be located. Mr. Finley then reviews, on the site plan, in what locations the signs will be located.

Mr. DeLucia then asked for comments or questions from staff.

Mr. Brand explains that these applications were submitted to Ontario County Planning under the general municipal law. County Planning came back sighting their policy that any sign along a major highway that require a variance were automatically recommended denial. The burden is then placed back on the board that if you wish to consider the merits of this application you must come up with a resolution to over-ride the county's recommendation with reasons why you are doing so. The resolution would require a majority plus one vote to over-ride the county. If a majority plus one vote is not obtained then the board is required to deny all the applications based on the county recommendations. The county planning did provide some technical advice that is a bit confusing to the recommendation of denial. The technical advice states that the design scenario does not adversely affect the character of the neighborhood and will improve the traffic safety along Route 332.

Mr. DeLucia asked if the board, staff or public had any further questions or comments for this applicant.

There were no further comments or questions on this application.

Mr. DeLucia then closed the Public Hearings on all of the applications.

6. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #0602-18

Laura Van Buren

Area Variance

5914 Tweed Trail
Farmington, N.Y. 14425

Zoning District: IZ Incentive Zoning
Published Legal Notice on: June 17, 2018
County Planning Action on: N.A.
County Referral #: N.A.
Public Hearing held on: June 25, 2018 and
July 23, 2018

Property Location: 5914 Tweed Trail, Farmington, N.Y. 14425

Applicable Section of Town Code: Chapter 165, Article V, Section 58. A.

Requirement for Which Variance is Requested: The applicant wishes to erect an accessory structure, a 12-foot by 12-foot open-sided gazebo, an Accessory Structure, to be located in the side-yard portion of the lot. Section 58. A. of the Town Code allows accessory structures to be located only within the rear yard portions of a lot and shall be subject to the same locational requirements affecting the principal structure on a lot, except those located within the A-80, RR-80, RS-25, R-1-15, R-1-10, R-2, RMF, RB, NB and GB Zoning Districts. It is the Code Enforcement Officer’s interpretation of this section that this provision applies to lots located within any IZ Incentive Zoning District as well and, therefore, an Area Variance is required to permit the proposed gazebo in the side yard portion of this lot.

State Environmental Quality Review Determination: The granting of an Area Variance to enable the construction of a Accessory Structure in the side 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: The property does not lie within the jurisdictional area set forth in Section 239-1 of the New York State General Municipal Law and, therefore, is not subject to a referral to the Ontario County Planning Board.

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.
 Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds that the Town Board, in establishing the criteria for the zoning incentives for the Hickory Rise Incentive Zoning Project, of which this property is part of, did provide for Accessory Structures to be located within the side and rear yard setback portions of lots provided that a minimum setback of 5 feet from the side and rear property lines exists. The Board further finds that there are a number of other sites in the neighborhood that have accesso-

ry structures that are located within the side and/or rear yard portion of the lots. The Board further finds that this lot is a corner lot having two front yards, one fronting Tweed Trail and one fronting Harlowe Lane. The Board further finds that the proposed location for the gazebo, being in the side yard portion of the lot fronting along Tweed Trail will be well screened from adjacent developed properties that exist along Harlowe Lane. Based upon these findings, the Board concludes that the proposed location for the gazebo would not produce an undesirable change in the character of the neighborhood or would be detrimental to nearby properties.

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

Reasons: The Board finds that there is no feasible alternative to the requested area variance. The Board finds that placing the proposed gazebo in the location identified on this lot is a desirable location which is not likely to adversely affect the character of the neighborhood or be a detriment to nearby properties. Thus, the Board finds that it is not necessary to consider any other alternative location for the proposed gazebo on this site.

3. Whether the requested variance is substantial. X Yes ___ No

Reasons: The Board finds that the requested area variance involved with this application is a variance request which is a one hundred percent (100%) increase from the prohibition in Section 58. A. for placement of an Accessory Structure within the side yard portion of a lot. 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 X No

Reasons: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQR 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. X Yes ___ No

Reasons: The Board finds that based upon the interpretation made by the Code Enforcement Officer of Section 58.A. of the Town Code, the alleged difficulty associated with the placement of the proposed open sided gazebo within the side yard portion of the lot is a self-created difficulty. The Board has further found above herein that placing the proposed Accessory Use in this side yard portion of this lot will have less of an adverse im-

pact upon the neighborhood and adjacent properties than would be achieved by placing the gazebo in any other location upon the lot. Therefore, the Board finds that there is indeed a practical difficulty in locating the permitted Accessory Use in any other location on the site. The Board, in making this finding has determined that its decision is the minimum relief being granted as is 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:

That the benefit to the applicant outweighs any known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is approved with the following conditions:

1. The gazebo shall be located within the side yard portion of the lot and only in the area shown on the application sketch plan; and
2. The gazebo shall remain open sided and shall not be enclosed in the future and used for storage; and
3. There shall be no water or electrical service provided to the gazebo; and
4. The gazebo shall be secured to the ground and maintained in a good condition.

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.

■ A motion was made by Cyril Opett, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0706-18	Conifer Realty LLC	Area Variance
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■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Nancy Purdy, seconded by Jeremy Marshall, that the following SEQR resolution be approved:

APPLICANT: Conifer Realty LLC, 1000 University Avenue, #500, Rochester, N.Y. 14607

ACTION: Area Variance to New York State Town Law, Section 280-a to create a lot without direct access to a mapped public street. The property is proposed Lot #2 Pintail Crossing Subdivision.

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 the Action is identified in Section 280-a of New York State Town Law, involves the granting of a variance to enable the construction of one-family, two-family and three-family dwelling units on a parcel of land that does not have direct access to a public street which is further classified as being a Type II Action under the State Environmental Quality Review Regulations [§617.5 (c) (13), article 8, New York State Environmental Conservation Law].

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.

- Timothy DeLucia Aye
- Jeremy Marshall Aye
- Cyril Opett Aye
- Nancy Purdy Aye
- Thomas Yourch Aye

Motion carried.

Mr. DeLucia then read aloud the following resolution:

APPLICANT: Conifer Realty LLC **File:** ZB #0706-18
 1000 University Ave **Zoning District:** RMF Residential Multi-Family
 Suite #500 **Published Legal Notice on:** July 15, 2018
 Rochester, N.Y 14607 **County Planning Action on:** N.A.
County Referral #: N.A.
Public Hearing held on: July 23, 2018

Property Location: Proposed Lot #2, Pintail Crossing Subdivision

Applicable Section of Town Code: New York State Town Law, Section 280-a

Requirement for Which Variance is Requested: The applicant wishes to create a lot without direct access to a mapped public street. The property is proposed Lot #2, Pintail Crossing, and is zoned RMF Residential Multi-Family District.

State Environmental Quality Review Determination: The Town of Farmington Zoning Board of Appeals has, under separate resolution, classified the proposed Action as being a Type II Action. Type II Actions have been determined under article 8 of the New York State Environmental Conservation Law not to have a significant adverse effect upon the environment. Therefore, no further review is required.

County Planning Referral Recommendation: The site does not lie within the jurisdictional review area described in Section 239-1 of the New York State General Municipal Law, therefore, no County referral was made for this Action.

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.
 ___ Yes X No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of this neighborhood to be a mix of multiple-family, single-family detached and single-family attached dwelling units, a large public safety agency and active farmland adjacent to the proposed site. The Board further finds that access to this site will be from a cross-access easement from Quentonshire Drive through Section 1 of the Pintail Crossing Site; and by an emergency vehicle crash gate entrance only from Running Brook Drive. The Board further finds that the fire chief of the Farmington Fire Department has publicly expressed his acceptance of this emergency vehicle crash gate entrance as part of the overall site plan review of the Pintail Crossing Project. The Board further finds that all traffic associated with this Action will use only Quentonshire Drive to access County Road 41. The Board, based upon these findings, finds that granting the requested will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties.

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

Reasons: The Board finds that the applicant does not have site plan approval that would enable direct access the adjacent Running Brook Drive. This restriction is based upon neighborhood opposition to such access and the results of the Traffic Impact Study provided to the Town Planning Board as part of the approval process. The Board, therefore, finds that there is no feasible alternative to the requested variance.

3. Whether the requested variance is substantial. ___ Yes X No

Reasons: The Board finds that the minimum width in access that is identified in Section 280-a of New York State Town Law is fifteen (15) feet. The Board further finds that access to Lot #2 of the Pintail Project is twenty (20) feet in width. Therefore, the Board finds that the requested variance is not to the minimum access width but to direct access to a public street provided by an easement in place that is greater in width than the minimum required by New York State Town Law.

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

Reasons: The Action has been identified as being a Type II Action for the reason set forth above herein.

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 X No

Reasons: The Board finds that one of the conditions of final site plan approval granted by the Planning Board involves there being no direct access to adjacent public streets (e.g. Running Brook Drive and Red Fern Drive). The Board also finds that the alleged difficulty was not self-created based upon the applicant's expressed need to have a separate tax map account created for Section 2 of the Pintail Crossing Project in order to satisfy conditions being imposed by the applicant's lending institution involved with funding the approved site improvements.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

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

That the benefit to the applicant does outweigh the detriment to the community and the neighborhood; and, therefore, the variance is granted with the following conditions:

1. The applicant is to obtain final subdivision plat approval from the Town Planning Board.
2. The Final Subdivision Plat Map is to identify this variance by the file number and date of granting said variance.
3. The liber and page for filing the access easement from Quentonshire Drive across Section 1 of the Pintail Crossing Project is either to be shown on the Final Plat Map, or a copy of the filing document(s) is (are) to be provided to the Town Development Office for filing with the property file.
4. No Building Permits shall be issued by the Town until these conditions of approval have been satisfied.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0701-18 through ZB #0705-18

Indus Hospitality Group Over-ride County Planning Board’s Recommendation

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the resolution be waived.

Motion carried by voice vote. The reading of the resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following resolution be approved:

ZB #0701-18 through ZB # 0705-18

APPLICANT: Indus Hospitality Group, 950 Panorama Trail, Rochester, New York 14624

ACTIONS: Requests for area variances to: (1) erect a commercial speech ground sign having a total square foot area of 100 sq. ft.; (2) Display two commercial speech business messages on one freestanding commercial speech sign; (3) Display a second building mounted commercial speech business identification sign; (4) Erect an off-premises freestanding commercial speech sign; and (5) erect a third building mounted commercial speech sign, upon properties located at 1301 New York State Route 332.

WHEREAS, the Ontario County Planning Board (OCPB) referral #109 of 2018 recommended denial of all five of the above referenced area variance requests for commercial speech signs citing the following findings: (1) The proposed signs are on land along a corridor identified by the OCPB as being a primary corridor for tourists visiting Ontario County; (2) Protection of the community character along these corridors is an issue of countywide importance; (3) Local legislators have standards for signage that allows for business identification to safely direct customers onto the specified site; (4) It is the position of this Board (OCPB) that the proposed signage is excessive; and (5) Excessive signage has a negative impact on community character; and

WHEREAS, the Zoning Board of Appeals (hereinafter referred to as ZBA) has given consideration to the above referenced OCPB referral #109 of 2018 and to the technical assistance comments made therein; and

WHEREAS, in order for the ZBA to over-ride the recommendation of denial it must first provide a resolution setting forth the ZBA's findings for doing so; and

WHEREAS, said resolution must be adopted by a majority plus one vote of the entire membership of the ZBA; and

WHEREAS, the ZBA has reviewed the public record upon this application and has given consideration to the applicant's practical difficulties for complying with the Town Code for the five requested area variances; and

WHEREAS, the ZBA desires to take action upon the requested area variances.

NOW, THEREFORE, BE IT RESOLVED that the ZBA does hereby find the County Planning Referral #109 of 2018 is based upon their findings that the proposed signs along State Route 332 require variances are therefore subject to Administrative Review Policy 7A which classifies such signs as class 2 referrals recommended for denial.

BE IT FURTHER RESOLVED that the technical assistance comments made by the OCPB identify the following... "the number and location of signs is as requested by the Town of Farmington and appropriately balances the character and safety concerns of the Town and the visibility needs of the businesses."

BE IT FURTHER RESOLVED that the ZBA finds that the above cited technical assistance comments made by the OCPB conflict with the stated reasons for recommending denial of these applications that were submitted to the OCPB for its review under the provisions of Sections 239-l and -m of the New York State General Municipal Law.

BE IT FURTHER RESOLVED that the ZBA believes that it is obligated to consider these applications in order to determine whether there is justification for acting upon said matters as prescribed in New York State Town Law as opposed to otherwise merely accepting the OCPB’s recommendation based upon an undocumented policy which would deny the applicant and the ZBA its rights.

BE IT FURTHER RESOLVED that based upon the ZBA’s findings that the purpose for granting these requested area variances include: (1) the proposed development of the three businesses upon three sites sharing a common access point along State Route 332 does complement the driveway spacing regulations contained in Chapter 165, Section 34.1 of the Town Code, the Town’s Major Thoroughfare Overlay District (MTOD) Regulations and thus the purpose for enacting such regulations; (2) this portion of State Route 332 is heavily traveled on a daily basis by both visitors to the County and commuters to and from work, which in the finding of the ZBA warrants the need to adequately identify the shared access location for a total of four businesses and to give consideration to the sharing of commercial speech signs; (3) the ZBA agrees with the OCPB’s comments that the number and location of signs as requested with the five referrals appropriately balances the character and safety concerns of the Town and the visibility needs of the businesses; (4) the ZBA finds that providing protection of the community character and the highway safety along this heavily traveled highway while allowing for business identification sufficient to safely direct customers onto the specified sites is being provided by the proposed area variance applications.

BE IT FURTHER RESOLVED that the ZBA, based upon the findings set forth above herein does hereby take action to over-ride the OCPB’s recommendation of denial contained in County Referral #109 of 2018.

BE IT FINALLY RESOLVED that copies of this resolution are to be provided to: the applicant; Greg Trost, Assistant Resident Engineer, NYSDOT Ontario County Office; and to the Ontario County Planning Board, Ontario County Office Building, Suite 200, 20 Ontario Street, Canandaigua, New York 14424.

- Timothy DeLucia Aye
- Jeremy Marshall Aye
- Cyril Opett Aye
- Nancy Purdy Aye
- Thomas Yourch Aye

Motion carried.

ZB #0701-18	Indus Hospitality Group	Area Variance
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■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following SEQR resolution be approved:

APPLICANT: Indus Hospitality Group, 950 Panorama Trail S., Rochester, N.Y. 14625

ACTION: Area Variance to Article V, Chapter 165-43 B (1) (c) to erect a commercial speech ground sign having a total sign area of 100 square feet on property at 1301 NYS Route 332

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 the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (15) 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.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the reading of the area variance resolution be waived.

Motion carried by voice vote. The reading of the area variance resolution was waived.

APPLICANT: Indus Hospitality Group **File:** ZB #0701-18
950 Panorama Trail S. **Zoning District:** GB General Business & MTOD
Rochester, N.Y. 14625 **Published Legal Notice on:** July 15, 2018
County Planning Action on: July 11, 2018
County Referral #: 109-2018
Public Hearing held on: July 23, 2018

Property Location: 1301 NYS State Route 332

Applicable Section of Town Code: Article V, Chapter 165-43 B (1) (C)

Requirement for Which Variance is Requested: The applicant wishes to erect a commercial speech ground sign having a total sign area of 100 square feet which exceeds the maximum square footage of 64 square feet allowed by Town Code. The property is located at 1301 NYS Route 332 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The Board finds the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

County Planning Referral Recommendation: The Ontario County Planning Board Referral #109-2018 recommended denial of the requested area variance citing the referral as being classified as a Class 2 referral and the position of the Board that the proposed signage is excessive, having a negative impact on community character.

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.
 Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of the neighborhood is predominantly highway oriented commercial businesses with the majority being grouped on individual and separate sites (e.g. Sugar Creek, Mobil Gas, Realtor, Laundromat, etc.) and Farmington Plaza Site (e.g. Burger King, stores located within the plaza building at the southwest corner of State Routes 96 & 332). The Board further finds that the character of this site involves a total of four (4) businesses (e.g. Dunkin Donuts, Taco Bell, Microtel and KFC) sharing a common point of access to State Route 332. The Board further finds that the character of the neighborhood involves a major highway fronting along properties in the area which has high volumes of traffic (27,000 vehicles per day ADT). The Board further finds that the proposed 100 square

foot free-standing commercial speech sign is to replace requests that otherwise might involve two (2) 64 square foot free-standing commercial speech signs (one for Taco Bell and one for KFC). The Board further finds that combining two (2) commercial speech signs on one (1) free-standing sign serves notice to the traveling public while reducing the visual pollution created by excessive signage along our major highways. Therefore, based upon these findings the Board determines that the proposed 100 square foot sign will not have an adverse impact upon the character of the neighborhood or will it be a detriment to 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 the applicant could request an area variance to place a second free-standing sign on the KFC site which would only identify the Taco Bell restaurant. Such a second sign would also require a variance to permit off-premises advertising. Whether or not the Board would grant such requests is unknown, however, the applications do involve a feasible alternative to what is being requested.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds the request involves granting an area variance to increase the size of a free-standing commercial speech sign, from sixty-four (64) square feet to one hundred (100) square feet, by thirty-six percent (36%) from what is otherwise permitted by Chapter 165 of the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) is a substantial 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 determined the proposed area variance is a Type II Action under the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined not to have an adverse impact upon the environment.

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 Final Site Plan approval granted by the Planning Board for the KFC Restaurant, the Taco Bell Restaurant and the Microtel Hotel restricts the number of curb cuts for the three (3) proposed businesses to one (1) shared curb cut. The Board further finds that the frontage along State Route 332 for all four sites would not meet the spacing criteria contained in Chapter 165, Section 34 of the Town Code, the Major Thoroughfare Overlay District (MTOD) Regulations thereby permitting a second point of access along this major highway. The Board further finds that combining (or sharing) space on one free-standing commercial speech sign necessitates a larger sign than the sixty-four (64) square foot sign permitted by Code in order to enable the mes-

sages being conveyed to be quickly identifiable to the traveling public. The Board further finds that allowing one sign larger in size would create less of a visual impact upon the environment than allowing two signs spaced close together on the limited frontage for this site. The Board, therefore, concludes that there is no feasible alternative to that being proposed by the requested area variance.

**DETERMINATION OF THE ZONING BOARD OF APPEALS
BASED UPON THE ABOVE FACTORS**

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

That the benefit to the applicant does outweigh known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is granted with the following conditions:

1. The proposed commercial speech sign shall not contain any changeable copy, flashing lights, or other type of animated messages.
2. The proposed commercial speech sign shall comply with the Town’s lighting standards contained in Chapter 165 of the Town Code.
3. The proposed commercial speech sign shall have a landscaped border surrounding the base of the sign that is acceptable by the Planning Board.
4. The proposed commercial speech sign shall be permitted only in the location shown on the submitted sketch plan drawing.
5. The proposed commercial speech sign shall not restrict or impair the visibility of any other free-standing commercial speech sign at this location where there is a shared point of access to and from State Route 332.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye

Thomas Yourch Aye

Motion carried.

ZB #0702-18 Indus Hospitality Group Area Variance

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following SEQR resolution be approved:

**APPLICANT: Indus Hospitality Group, 950 Panorama Trail S.,
Rochester, N.Y. 14625**

**ACTION: Area Variance to Article V, Chapter 165-43 B (2) (c) to display
two commercial speech business messages on one freestanding
sign on property at 1301 NYS Route 332**

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 the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (15) 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.

Timothy DeLucia Aye
Jeremy Marshall Aye
Cyril Opett Aye

Nancy Purdy Aye
Thomas Yourch Aye

Motion carried.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the reading of the area variance resolution be waived.

Motion carried by voice vote. The reading of the area variance resolution was waived.

APPLICANT: Indus Hospitality Group **File:** ZB #0702-18
950 Panorama Trail S. **Zoning District:** GB General Business & MTOD
Rochester, N.Y. 14625 **Published Legal Notice on:** July 15, 2018
County Planning Action on: July 11, 2018
County Referral #: 109-2018
Public Hearing held on: July 23, 2018

Property Location: 1301 NYS State Route 332

Applicable Section of Town Code: Article V, Chapter 165-43 B (2) (C)

Requirement for Which Variance is Requested: The applicant wishes to erect a free-standing commercial speech ground sign which would display two commercial speech business messages on one free-standing commercial speech ground sign. The property is located at 1301 NYS Route 332 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The Board finds the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

County Planning Referral Recommendation: The Ontario County Planning Board Referral #109-2018 recommended denial of the requested area variance citing the referral as being classified as a Class 2 referral and the position of the Board that the proposed signage is excessive, having a negative impact on community character.

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.
 Yes X No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of the neighborhood is predominantly highway oriented commercial businesses with

the majority being grouped on individual and separate sites (e.g. Sugar Creek, Mobil Gas, Realtor, Laundromat, etc.) and Farmington Plaza Site (e.g. Burger King, stores located within the plaza building at the southwest corner of State Routes 96 & 332). The Board further finds that the character of this site involves a total of four (4) businesses (e.g. Dunkin Donuts, Taco Bell, Microtel and KFC) sharing a common point of access to State Route 332. The Board further finds that the character of the neighborhood involves a major highway fronting along properties in the area which has high volumes of traffic (27,000 vehicles per day ADT). The Board further finds that the proposed 100 square foot free-standing commercial speech sign is to replace requests that otherwise might involve two (2) 64 square foot free-standing commercial speech signs (one for Taco Bell and one for KFC). The Board further finds that combining two (2) commercial speech signs on one (1) free-standing sign serves notice to the traveling public while reducing the visual pollution created by excessive signage along our major highways. Therefore, based upon these findings the Board determines that the proposed 100 square foot sign will not have an adverse impact upon the character of the neighborhood or will it be a detriment to nearby properties.

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

Reasons: The Board finds that the applicant could request an area variance to place a second free-standing sign on the KFC site which would only identify the Taco Bell restaurant. Such a second sign would also require a variance to permit off-premises advertising. Whether or not the Board would grant such requests is unknown, however, the applications do involve a feasible alternative to what is being requested.

3. Whether the requested variance is substantial. X Yes ___ No

Reasons: The Board finds the request involves granting an area variance of one hundred percent (100 %) from what is otherwise permitted by Chapter 165 of the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) is a substantial variance.

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

Reasons: The Board has determined the proposed area variance is a Type II Action under the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined not to have an adverse impact upon the environment.

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 X No

Reasons: The Board finds that Final Site Plan approval granted by the Planning Board for the KFC Restaurant, the Taco Bell Restaurant and the Microtel Hotel involves three

(3) proposed businesses sharing one (1) shared curb cut along this section of State Route 332. The Board further finds that combining (or sharing) space on one free-standing commercial speech sign to enable the two messages being conveyed to be quickly identifiable to the traveling public is less of a detraction to the attention of motorists that would be involved with viewing two separate signs. The Board further finds that allowing one free-standing commercial speech sign in lieu of two free-standing commercial speech signs would create less of a visual impact upon the environment. The Board, therefore, concludes that while there is a feasible alternative to that being proposed by the requested area variance. Such an alternative would create unnecessary commercial speech signage along this heavily traveled highway and would contribute to the creation of visual pollution along our major entryway to Ontario County.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

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

That the benefit to the applicant does outweigh known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is granted with the following conditions:

1. The proposed commercial speech sign shall not contain any changeable copy, flashing lights, or other type of animated messages.
2. The proposed commercial speech sign shall comply with the Town's lighting standards contained in Chapter 165 of the Town Code.
3. The proposed commercial speech sign shall have a landscaped border surrounding the base of the sign that is acceptable by the Planning Board.
4. The proposed commercial speech sign shall be permitted only in the location shown on the submitted sketch plan drawing.
5. The proposed commercial speech sign shall not restrict or impair the visibility of any other free-standing commercial speech sign at this location where there is a shared point of access to and from State Route 332.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0703-18 Indus Hospitality Group Area Variance

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following SEQR resolution be approved:

**APPLICANT: Indus Hospitality Group, 950 Panorama Trail S.,
Rochester, N.Y. 14625**

**ACTION: Area Variance to Article V, Chapter 165-43 B (1) (a) to display
a second commercial speech building mounted identification
sign on property at 1301 NYS Route 332**

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 the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

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.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the reading of the area variance resolution be waived.

Motion carried by voice vote. The reading of the area variance resolution was waived.

APPLICANT: Indus Hospitality Group **File:** ZB #0703-18
 950 Panorama Trail S. **Zoning District:** GB General Business & MTOD
 Rochester, N.Y. 14625 **Published Legal Notice on:** July 15, 2018
County Planning Action on: July 11, 2018
County Referral #: 109-2018
Public Hearing held on: July 23, 2018

Property Location: 1301 NYS State Route 332

Applicable Section of Town Code: Article V, Chapter 165-43. B (1) (a)

Requirement for Which Variance is Requested: The applicant wishes to erect a second building mounted commercial speech sign on the Taco Bell Restaurant building. The Town Code allows only one building mounted commercial speech sign. The property is located at 1301 NYS Route 332 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The Board finds the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

County Planning Referral Recommendation: The Ontario County Planning Board Referral #109-2018 recommended denial of the requested area variance citing the referral as being classified as a Class 2 referral and the position of the Board that the proposed signage is excessive, having a negative impact on community character.

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.

Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of the neighborhood is predominantly highway oriented commercial businesses with the majority being grouped on individual and separate sites (e.g. Sugar Creek, Mobil Gas, Realtor, Laundromat, etc.) and Farmington Plaza Site (e.g. Burger King, stores located within the plaza building at the southwest corner of State Routes 96 & 332). The Board further finds that the character of this site involves a total of four (4) businesses (e.g. Dunkin Donuts, Taco Bell, Microtel and KFC) sharing a common point of access to State Route 332. The Board further finds that the character of the neighborhood involves a major highway fronting along properties in the area which has high volumes of traffic (27,000 vehicles per day ADT). The Board further finds that the proposed second building mounted commercial speech sign is two (2) signs, one placed on the tower facing south and the other places on the tower facing west, both signs have the bell logo and the words Taco Bell. The Board further finds that said signs are part of corporate design features for the building selected by the Town Planning Board for this site. The Board further finds that said signs will be internally illuminated. The Board further finds that said signs are intended primarily to direct motorists to the restaurant once they are on the shared drive for this multiple use site. Therefore, based upon these findings the Board determines that the proposed two additional building mounted signs will not have an adverse impact upon the character of the neighborhood or will they be a detriment to 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 the design of the building chosen by the Planning Board necessitates the tower construction on the corner of the building with the two-building mounted commercial speech signs being required by corporate agreements. The applicant has identified to the Board that changing the design features of the Taco Bell building is very difficult to achieve with corporate agreements in place. The applicant has also identified to the Board that to change the building design would necessitate a new application to the Planning Board for an amended site plan. The Board, therefore, finds that there does not appear to be a feasible alternative to the requested variance.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds the request involves granting an area variance of two hundred percent (200 %) from what is otherwise permitted by Chapter 165 of the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) is a substantial 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 determined the proposed area variance is a Type II Action under the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined not to have an adverse impact upon the environment.

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 X No

Reasons: The Board finds that Final Site Plan approval granted by the Planning Board for the Taco Bell Restaurant involves a building design that requires two commercial speech building mounted messages being conveyed on the tower portion of the two faces of the building. The Board further concludes that the building elevations selected was not self-created.

**DETERMINATION OF THE ZONING BOARD OF APPEALS
BASED UPON THE ABOVE FACTORS**

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

That the benefit to the applicant does outweigh known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is granted with the following conditions:

1. The proposed commercial speech building mounted signs shall not contain any changeable copy, flashing lights, or other type of animated messages.
2. The proposed commercial speech sign shall comply with the Town’s lighting standards contained in Chapter 165 of the Town Code.
3. The proposed commercial speech sign shall be permitted only in the location shown on the submitted building elevation drawings.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye

Nancy Purdy Aye
Thomas Yourch Aye

Motion carried.

ZB #0704-18 Indus Hospitality Group Area Variance

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following SEQR resolution be approved:

**APPLICANT: Indus Hospitality Group, 950 Panorama Trail S.,
Rochester, N.Y. 14625**

**ACTION: Area Variance to Article V, Chapter 165-45 A (12) to erect an
off-premises commercial speech business identification sign on
property north of 1301 NYS Route 332**

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 the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

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.

Timothy DeLucia Aye
Jeremy Marshall Aye

Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the reading of the area variance resolution be waived.

Motion carried by voice vote. The reading of the area variance resolution was waived.

APPLICANT: Indus Hospitality Group **File:** ZB #0704-18
 950 Panorama Trail S. **Zoning District:** GB General Business & MTOD
 Rochester, N.Y. 14625 **Published Legal Notice on:** July 15, 2018
County Planning Action on: July 11, 2018
County Referral #: 109-2018
Public Hearing held on: July 23, 2018

Property Location: 1301 NYS State Route 332

Applicable Section of Town Code: Article V, Chapter 165-43. B (1) (a)

Requirement for Which Variance is Requested: The applicant wishes to erect a free-standing commercial speech sign identifying the Microtel Inn to be placed along the State Route 332 frontage for the KFC Restaurant site. The sign is considered to be an off-premises commercial speech business identification sign. The Town Code prohibits off-premises commercial speech signs within 660 feet of the right-of-way of State Route 332. The property is located at 1301 NYS Route 332 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The Board finds the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

County Planning Referral Recommendation: The Ontario County Planning Board Referral #109-2018 recommended denial of the requested area variance citing the referral as being classified as a Class 2 referral and the position of the Board that the proposed signage is excessive, having a negative impact on community character.

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.

___ Yes X No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of the neighborhood is predominantly highway oriented commercial businesses with the majority being grouped on individual and separate sites (e.g. Sugar Creek, Mobil Gas, Realtor, Laundromat, etc.) and Farmington Plaza Site (e.g. Burger King, stores located within the plaza building at the southwest corner of State Routes 96 & 332). The Board further finds that the character of this site involves a total of four (4) businesses (e.g. Dunkin Donuts, Taco Bell, Microtel and KFC) sharing a common point of access to State Route 332. The Board further finds that the character of the neighborhood involves a major highway fronting along properties in the area which has high volumes of traffic (27,000 vehicles per day ADT). The Board further finds that the proposed free-standing off-premises commercial speech sign is to be located along the frontage of the KFC site to identify the Microtel Inn building which is located behind the KFC building. The Board further finds that the applicant believes the proposed sign will assist motorists traveling along this busy highway alerting them to the Microtel building's location which is set back over 100 feet from the edge of the highway. The Board further finds that said sign will be internally illuminated. The Board further finds that said sign will be a maximum of fifteen (15) feet in height above ground, contain a maximum of 64 square feet of sign area and be setback fifteen (15) feet from the highway right-of-way. Therefore, based upon these findings the Board determines that the proposed free-standing off-premises sign will not have an adverse impact upon the character of the neighborhood or will it be a detriment to nearby properties.

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

Reasons: The Board finds that the location of the Microtel Inn building is setback over 100 feet from along the adjacent highway and is hidden from view in both directions from along the highway. The Board finds that the location of the sign on the KFC site provides maximum separation from other signs located on the KFC site. The Board also finds that the location of the sign on the KFC site provides minimum blockage of the line of sight from motorists traveling north on State Route 332. The Board, therefore, finds that there does not appear to be a feasible alternative to the requested variance.

3. Whether the requested variance is substantial. X Yes No

Reasons: The Board finds the request involves granting an area variance to permit an off-premises commercial speech business identification sign within 660 feet from the edge of right-of-way of State Route 332. The Board finds that the applicant desires to locate the off-premises sign fifteen feet (15 ft.) from the edge of right-of-way of State Route 332. The Board finds that the requested variance involves a reduction of ninety-seven-point seven three percent (97.3%) of what is otherwise required by Chapter 165 of the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) is a substantial variance.

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

Reasons: The Board has determined the proposed area variance is a Type II Action under the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined not to have an adverse impact upon the environment.

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. X Yes No

Reasons: The Board finds that Final Site Plan approval granted by the Planning Board for the Microtel Inn site involves a building location that has been proposed by the applicant and, therefore, is a self-created hardship.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

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

That the benefit to the applicant does outweigh known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is granted with the following conditions:

1. The proposed freestanding commercial speech sign shall not contain any changeable copy, flashing lights, or other type of animated messages.
2. The proposed commercial speech sign shall comply with the Town's lighting standards contained in Chapter 165 of the Town Code.
3. The proposed commercial speech sign shall be permitted only in the location shown on the submitted site plan drawings.
4. The proposed freestanding commercial speech sign is subject to a permit from the New York State Department of Transportation, as it is determined to be an "off-premises" sign (NYSDOT Off-Premises Permit Form). The Town Code Enforcement Officer is hereby directed to sign the DOT Permit Form and provide the signed form, along with a certified copy of this resolution, to Douglas R. Johnson, Real Estate Specialist I, New York State Department of Transportation, Region 4 Office of Right-of-Way, 1530 Jefferson Road, Rochester, New York 14623.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0705-18 Indus Hospitality Group Area Variance

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the following SEQR resolution be approved:

**APPLICANT: Indus Hospitality Group, 950 Panorama Trail S.,
Rochester, N.Y. 14625**

**ACTION: Area Variance to Article V, Chapter 165-43 B (1) (a) to display
a third commercial speech building mounted identification sign
on property located at 1301 NYS Route 332**

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 the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

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.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the reading of the area variance resolution be waived.

Motion carried by voice vote. The reading of the area variance resolution was waived.

APPLICANT: Indus Hospitality Group **File:** ZB #0705-18
 950 Panorama Trail S. **Zoning District:** GB General Business & MTOD
 Rochester, N.Y. 14625 **Published Legal Notice on:** July 15, 2018
County Planning Action on: July 11, 2018
County Referral #: 109-2018
Public Hearing held on: July 23, 2018

Property Location: 1301 NYS State Route 332

Applicable Section of Town Code: Article V, Chapter 165-43. B (1) (a)

Requirement for Which Variance is Requested: The applicant wishes to erect a third building mounted commercial speech sign on the Taco Bell Restaurant building. The Town Code allows only one building mounted commercial speech sign. The property is located at 1301 NYS Route 332 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The Board finds the Action is identified in Section 617.5 (c) (15) of article 8 of the New York State Environmental Conservation Law (hereinafter referred to as SEQR Regulations) as an Action involving minor temporary uses of land having negligible or no permanent impact upon the environment and is therefore classified as being a Type II Action. Type II Actions are not subject to review under the SEQR Regulations.

County Planning Referral Recommendation: The Ontario County Planning Board Referral #109-2018 recommended denial of the requested area variance citing the referral as being classified as a Class 2 referral and the position of the Board that the proposed signage is excessive, having a negative impact on community character.

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.

Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the character of the neighborhood is predominantly highway oriented commercial businesses with the majority being grouped on individual and separate sites (e.g. Sugar Creek, Mobil Gas, Realtor, Laundromat, etc.) and Farmington Plaza Site (e.g. Burger King, stores located within the plaza building at the southwest corner of State Routes 96 & 332). The Board further finds that the character of this site involves a total of four (4) businesses (e.g. Dunkin Donuts, Taco Bell, Microtel and KFC) sharing a common point of access to State Route 332. The Board further finds that the character of the neighborhood involves a major highway fronting along properties in the area which has high volumes of traffic (27,000 vehicles per day ADT). The Board further finds that the proposed third building mounted commercial speech sign is one (1) sign placed over the public walk-in entrance to the building that reads Taco Bell. The Board further finds that said sign is part of corporate design features for the building selected by the Town Planning Board for this site. The Board further finds that said sign will be internally illuminated. The Board further finds that said sign is intended primarily to direct the public to the main entrance to the restaurant once they are on site. Therefore, based upon these findings the Board determines that the proposed additional building mounted sign will not have an adverse impact upon the character of the neighborhood or will they be a detriment to 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 the design of the building chosen by the Planning Board necessitates the sign location for the building entrance sign. The applicant has identified to the Board that changing the sign design features of the Taco Bell building is very difficult to achieve with corporate agreements in place. The applicant has also identified to the Board that to change the building design would necessitate a new application to the Planning Board for an amended site plan. The Board, therefore, finds that there does not appear to be a feasible alternative to the requested variance.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds the request involves granting an area variance to permit a third building mounted sign involves a variance of three hundred percent (300 %) from what is otherwise permitted by Chapter 165 of the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) is a substantial 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 determined the proposed area variance is a Type II Action under the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined not to have an adverse impact upon the environment.

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 X No

Reasons: The Board finds that Final Site Plan approval granted by the Planning Board for the Taco Bell Restaurant involves a building design that requires a building mounted commercial speech building mounted message being located on the building and over the main public entrance to the building. The Board further concludes that the building elevations selected was not self-created.

**DETERMINATION OF THE ZONING BOARD OF APPEALS
BASED UPON THE ABOVE FACTORS**

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

That the benefit to the applicant does outweigh known detriment(s) to the neighborhood, or community and, therefore, the requested area variance is granted with the following conditions:

1. The proposed commercial speech building mounted signs shall not contain any changeable copy, flashing lights, or other type of animated messages.
2. The proposed commercial speech sign shall comply with the Town’s lighting standards contained in Chapter 165 of the Town Code.
3. The proposed commercial speech sign shall be permitted only in the location shown on the submitted building elevation drawings.

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 and the Town Planning Board.

■ A motion was made by Jeremy Marshall, seconded by Thomas Yourch, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye

Cyril Opett Aye
Nancy Purdy Aye
Thomas Yourch Aye

Motion carried.

7. PUBLIC COMMENTS

None

8. OTHER BOARD MATTERS

Jeremy Marshall, Nancy Purdy and Cyril Opett all need training hours for this year. Mr. DeLucia will verify with Marcy Daniels, Confidential Secretary, on the hours she has credited each member.

9. DIRECTOR OF DEVELOPMENT

The Zoning Board of Appeals needs to appoint a member to the *Comprehensive Plan Update Committee*. Nancy Purdy asked to be appointed and all board members agreed.

Peter Ingalsbe, Town Supervisor, and Ron Brand had a meeting with Assemblyman Brian Kolb identifying for him the activities going on in the Town. They went over where the activity was and what the needs were for the Town. They discovered in 2004 we received a grant from GTC to do a feasibility analysis. The report identified projected population growth through the year 2025. We achieved that population growth in 2014. The document is well out of date and they will be asking Ontario County Planning to sponsor the application to update the study.

10. NEXT MEETING DATE

The next regular meeting of the Zoning Board of Appeals will be held on Monday, August 27, 2018, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m.

11. ADJOURNMENT

■ A motion was made by Jeremy Marshall, seconded by Cyril Opett, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 7:52 p.m.

Following the meeting, the clerk locked the front entrance doors to the Town Hall.

Respectfully submitted,

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