

*Town of Farmington*

1000 County Road 8  
Farmington, New York 14425

**ZONING BOARD OF APPEALS**

*Established July 15, 1957*

**Monday, May 20, 2019, 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*  
Jill Attardi  
Jeremy Marshall  
Nancy Purdy  
Thomas Yourch

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

**Applicants Present:**  
Lucas and Laura Marsh, 6059 Holly Lane, Farmington, N.Y. 14425

**In Attendance:**  
Jim and Nancy Falanga, 373 Ellsworth Road, Palmyra, N.Y. 14522  
Frances Kabat, Esq., The Zoghlin Group PLLC, 300 State Street, Suite 502,  
Rochester, N.Y. 14614

**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 and explained the emergency evacuation procedures.

Mr. DeLucia said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on February 25, 2019.

Mr. DeLucia reported that Cyril Opett, who was appointed to the Zoning Board of Appeals in 2017, has resigned from the board. Mr. DeLucia extended the thanks and appreciation of the board to Mr. Opett for his years of service to the community.

Mr. DeLucia then welcomed Jill Attardi, who was appointed by the Town Board on May 14, 2019, to serve the remainder of Mr. Opett's term that will expire on December 31, 2021. Members of the board and the Town staff welcome her to the service of the Town.

## 2. **APPROVAL OF MINUTES OF APRIL 22, 2019**

■ A motion was made by MS. PURDY, seconded by MR. YOURCH, that the minutes of the April 22, 2019, meeting be approved.

Motion carried by voice vote. Mr. Marshall abstained due to his absence from the meeting on April 22, 2019. Ms. Attardi also abstained.

## 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, May 12, 2019, that it was posted upon the Town of Farmington website ([www.townofarmington-ny.com](http://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** a Public Hearing will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 20th day of May, 2019 commencing at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8, Town of Farmington, Ontario County, New York, to consider the following application:

**ZB #0501-19: LUCAS MARSH, 6059 HOLLY LANE, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-58B to the Town of Farmington Codes. The applicant wishes to erect an accessory structure of 384 square feet (a maximum of 200 square feet is allowed). The property is located at 6059 Holly Lane and zoned RS-25 and A-80 Districts.

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

Timothy Delucia, Chairperson, Zoning Board of Appeals

**4. CONTINUED PUBLIC HEARINGS**

<b>ZB #0902-18</b>	<b>Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003</b>	<b>Area Variance</b>
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the south property line on proposed Lot 2 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum rear setback of 160 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

<b>ZB #0903-18</b>	<b>Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003</b>	<b>Area Variance</b>
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the south property line on proposed Lot 3 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum rear setback of 160 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

<b>ZB #0904-18</b>	<b>Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003</b>	<b>Area Variance</b>
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the north property line on proposed Lot 3 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum front setback of 180 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

<b>ZB #0905-18</b>	<b>Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003</b>	<b>Area Variance</b>
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the north property line on proposed Lot 4 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code re-

quires a minimum front setback of 180 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

This project was discussed at the Project Review Committee (PRC) meetings on August 3, 2018, and September 7, 2018.

Mr. DeLucia reconvened the Public Hearings on ZB #0902-18, ZB #0903-18, ZB #0904-18 and ZB #0905-18 which were opened by the Zoning Board of Appeals on September 24, 2018, and which were continued on November 26, 2018; December 17, 2018; January 28, 2019; and April 22, 2019.

(The Public Hearings on the Preliminary Four-Lot Subdivision, Preliminary Site Plan and Special Use Permit applications were opened by the Planning Board on November 7, 2018, and were continued on December 5, 2018; January 16, 2019; April 17, 2019; and May 15, 2019. The Public Hearings before the Planning Board will reconvene on June 5, 2019.)

There were no representatives of the applicant in attendance this evening.

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

Ms. Kabat (attorney for a group of residents and landowners) presented a letter with a number of enclosures to the board. The attachments included:

- VDER Order dated February 22, 2018
- Rowe Realty letter dated March 20, 2019
- Agriculture Enhancement Board letter dated October 5, 2018
- Agriculture Enhancement Board letter dated April 9, 2019
- Town of Farmington Conservation Board October 22, 2018, meeting minutes

Ms. Kabat then delivered the following statement into the record of the meeting:

I am here today to explain why the area variances for the project should not be granted.

At the last meeting, I briefly discussed why the area variances should not be granted. I am providing a letter to you which discusses these points further. I will not read the letter to you, but I will highlight a few points.

If granted, the area variance requests will essentially eliminate the boundaries between the three proposed parcels to create one large solar facility, instead of three separate solar facilities sited on distinguishable tax parcels. The developer is applying for funding under a PSC tariff which limits the size of solar facilities to 5MW. The Project is 7MW.

The Applicant seeks a variance from the setback requirements set forth in Town Code in order to reduce the total area covered by the Project. While the area covered by the Project will be reduced if the Applicant's variance requests are granted, the request will contribute to an undesirable change in the character of the Project site as the end result will be a densely massed solar farm out of scale with the surrounding neighborhood.

Severely reducing the interior setbacks between the three proposed project sites will transform the Project Site into a massive industrial use sited in a pastoral agricultural neighborhood. The Project's 7MW densely configured site plan will impact neighboring properties and will become an external obsolescence, driving down property values. Similarly, it will fragment critical masses of farmland with an industrial, non-farm use. The fact that the solar developments are allowed as specially permitted uses does not obviate the need for the Town to review the details of the solar development to determine if it conforms to the character of the surrounding neighborhood and community.

The Applicant has not demonstrated that the relief it seeks cannot be achieved by some feasible method other than the requested setback variance. While the Applicant seeks to reduce the amount of land covered by the Project, reducing the interior lot lines of the proposed project parcels is not the only way to accomplish this goal.

The Applicant seeks a variance reducing interior setbacks to 20 feet, which essentially eliminates interior setbacks between the three proposed solar facilities and the parcels on which they are sited. The Zoning Board may consider the magnitude of the variance request in light of the cumulative effects of multiple variances on the property.

The variances requested herein are substantial when one considers the cumulative effects of the variance. A reduction of 300 feet represents a 88% reduction in setback. This is substantial by any calculation. The Applicant's requested area variances will effectively create one contiguous 30-acre project parcel purely for financial benefit.

For the reasons set forth above, the proposed variance will have an adverse effect on the physical and environmental conditions in the neighborhood. The proposed action converts 30 acres of prime agricultural farmland into a 7MW industrial scale solar facility. The Project will result in the physical disturbance of at least 1.1 acres and that the project will require creation of an access road, burying of electric cables, installation of a steel post support structure for 21,000 solar arrays, construction of a concrete pad for each solar system and installation of inverter and transformer equipment.

Here, placement of an industrial solar facility on agricultural land is inconsistent with the goals and recommendations of the Town's Comprehensive Plan and County's Agricultural Enhancement Plan. The agricultural character of the Project site will be transformed by the addition of the densely packed, ground-mounted solar arrays, resulting in an industrial use sited in a pastoral agricultural neighborhood. This action will directly contravene the findings of the Ontario County Agricultural Enhancement Plan—2018 which designates the Project's land as a priority for protection.

Stormwater runoff from the panels will present substantial stormwater management challenges, as the panels will concentrate the runoff.

Project site contains two federally regulated and two state regulated wetlands. This wetland system is identified as an "environmentally sensitive area" by the Town of Farmington Comprehensive Plan Future Land Use Map (#10).

The Applicant's difficulty was wholly self-created as its requests for area variances are based on the configuration of its site plan and the applicant's desire to obtain PSC funding for its solar project. It is, *per se*, self-created.

But for the Applicant's subdivision application, it would not be required to comply with the interior set-back requirements, as the property is currently one large parcel. The Applicant's difficulty has been self-created merely for financial gain and to circumvent the PSC's rules.

There has been no showing whatsoever that the variances requested are the minimum necessary to relieve the applicant's alleged hardship.

In conclusion, the Planning Board needs to complete its SEQRA review before you can make a decision regarding the developer's application. I believe that the next ZBA meeting will be held on June 24th. Thank you.

—Frances Kabat, Esq.

Mr. Falanga (373 Ellsworth Road) asked the board to keep in mind the data which has come in over the past six months. He said that not one penny of this project benefits the Town of Farmington, that not one bit of energy produced on this solar power plant stays in the Town of Farmington, and that the Town will be stuck with a 35-year eyesore. Mr. Falanga said they were talking about the decommissioning plan last week at the Planning Board. He said that the reality is that the company (Delaware River Solar) is in for the money grab. He said that they have already flipped some of their leases [on other plants] and that they will not be around when it comes time for that [the decommissioning]. Mr. Falanga asked that the board keep in mind the rural nature that we all love in Farmington.

Mr. Brand said that the Planning Board completed the State Environmental Quality Review (SEQR) Full Environmental Assessment Form Part 2—Identification of Potential Project Impacts on May 15, 2019. He said that the Planning Board asked for additional mitigation measures from the applicant for several potentially large impacts of the project which were identified during the Part 2 discussion.

Mr. Brand said that Part 3 of the SEQR form will be prepared by the Planning Board after their review and acceptance of the applicant's responses to their additional Part 2 questions, following which the Planning Board will make the SEQR determination of significance (either a Positive SEQR Declaration or a Negative SEQR Declaration). He said that these actions may come at the Planning Board meeting on June 5, 2019, depending upon receipt and acceptance of the applicant's responses and the Planning Board discussion.

There were no further comments or questions on these applications this evening.

## 5. NEW PUBLIC HEARING

**ZB #0501-19**

**Lucas Marsh  
6059 Holly Lane  
Farmington, N.Y. 14425**

**Area Variance**

The applicant is requesting an Area Variance to Article V, Chapter 165-58B to the Town of Farmington Codes. The applicant wishes to erect an accessory structure of 384 square feet (a maximum of 200 square feet is allowed). The property is located at 6059 Holly Lane and zoned RS-25 and A-80 Districts.

Mr. DeLucia opened the Public Hearing on this application.

Lucas and Laura Marsh presented this application.

Mr. Marsh acknowledged receipt of and referred to the Town staff draft resolution that was distributed earlier today and that recommended denial of the Area Variance.

He discussed the draft responses to the test questions.

Mr. Marsh said that he disagreed with the finding in Question #1 that the Area Variance would produce an undesirable change in the character of the neighborhood. He said that he could build a garage on his property of up to 800 square feet without a variance and that he is not even asking for half that [square footage] for his proposed storage shed. He said that there would not much difference in the aesthetics of the shed or a garage other than some structural differences and the overhead door on a garage. He said that he cannot see what the difference would be between the 384-square-foot shed and what could be a much larger garage.

Mr. Marsh said that the pole barn on the lot behind his property—referred to in the draft resolution—is 2,592 square feet and is much larger than the various sheds in the neighborhood. Mr. Marsh said that he was not sure how that property owner was able to build a barn so large in the neighborhood. He said that the neighbor's zoning is the same RS-25 and A-80 as his zoning. He said that his neighbor's barn is more than three times the size of a garage and more than 10 times the size of the shed which he proposes.

Regarding Question #2, Mr. Marsh said that he did not seek out the alternative of building a garage because of the other points.

Mr. Marsh said that although his requested Area Variance may be substantial when compared to the 200-square-foot shed requirement, it is not substantial when one considers that the Town Code permits a garage of up to 800 square feet on the property without a variance. He said that the shed would be virtually the same structure as a garage except for the overhead door and a floor. He said that obviously an overhead garage door would have to be taller than a walk-in door. Mr. Marsh also said that he received conflicting information about the amount of weight that a garage floor would be required to carry.

Mr. Marsh said that he agrees with the response to draft Question #4.

Regarding Question #5, Mr. Marsh said that he does not know if the Area Variance application could be considered self-created. He said that he would not have a limit in the number of square feet for his proposed shed if his property was not in the RS-25 Zoning District. He said that the 200-square-foot limit is giving him the unnecessary hardship.

Mr. Marsh said that he obtained a price of \$8,600 for the base 16-foot x 24-foot Wood-Tex shed sold through Ace Hardware. He said that the price increases by 16.3 percent to \$10,000 if an overhead garage door is added. He said that he does not need a garage and that they will use the shed for the storage of lawnmowers, children's toys, and other items. He said that their intent is to never put a vehicle in the shed. He said that he has received other prices for a structure to be constructed on site and other possibilities. He said that the cost of a garage is always more [than the cost of a shed] and that they will never use the shed as a private garage for the storage of vehicles.

Mr. Marsh said that he has already removed an 8-foot x 12-foot shed (which they donated to a church) and a second rusty metal shed from the property, both of which were nearly a combined total of 200 square feet. He said that he knows that they need more square footage for the storage of their items but that they did not want to have two separate structures. He said that the aesthetic appeal of the building is just as important as its function and that he would not want to just up put any kind of building. Mr. Marsh said that if he is forced to have a garage with an overhead door, he would not just put in the cheapest overhead door. He said would like to have windows and carriage doors to add value.

Mr. Delpriore said that the Town Code has specific definitions for sheds and garages.



Mr. Weidenborner said that the difference in the Town Code between sheds and garages is that sheds must be a maximum of 200 square feet and single story, that garages must be a maximum of 800 square feet and that a garage must have an overhead door.

Mr. Marshall asked to confirm that the major difference between a shed and a garage, other than size allotment, is that a garage has an overhead door. Mr. Delpriore also said that a detached garage also requires a floor strong enough for vehicles, lawnmowers, bicycles and other items.

Mr. Delpriore said that the Town staff researched other accessory structures (sheds) in Mr. Marsh's neighborhood. Except for the pole barn which was built behind Mr. Marsh's property on a different road, Mr. Delpriore said that all sheds near him are 200 square feet or under.

Mr. Brand said that the applicant requests a structure of 384 square feet which is a 92 percent variance over the Town Code requirement. He said that board just heard the attorney for the residents (regarding the solar farm) just lecture [you] that the Zoning Board of Appeals is obligated to grant only the minimum relief necessary under State law. Mr. Brand said that no one is telling the applicant that he has to build a garage of 800 square feet, but a storage building of 384 square feet could be obtained by identifying the structure as a private garage with an overhead door.

Mr. Brand said that there are alternatives available to the applicant which would not cost a great deal of money to achieve. He said that the board has not seen any real justification why the alternatives have not been sought with this application.

Mr. Brand said that the approval of this Area Variance would put the Zoning Board in a corner with very little that could be done to prevent other neighbors from requesting similar variances. He said that sooner or later this would create an overcrowded situation (lot coverage) in a nice residential neighborhood.

Mr. Delpriore said that Town staff must examine all options to minimize the impact [of variances] upon a neighborhood.

Mr. Marsh said that he understands this but that the requirement to construct a garage would create a significant and unnecessary increase in price for him because he and his family do not plan to use this structure to store vehicles. He said that he applied for a variance because he did not think that it was such a big deal. He said that if he can build a garage of 800 square feet and that the only difference between a garage and a shed is the overhead door, it would have virtually the same impact upon the neighborhood. He said that it does not make a lot of sense that he could build a garage of up to 800 square feet but a shed of this size [384 square feet] or smaller would be a detriment to the neighborhood where the only difference is an overhead door.

Mr. Marsh said that you [the board] are going to force me to spend money on something I don't need for a building that is virtually the same, and has the exact same impact on the neighborhood.

Mr. Marsh asked how the property owner behind him was able to construct a 2,592-square-foot pole barn if the property is zoned the same [as his property]. He asked if that property owner did something that he (Mr. Marsh) can do. Mr. Delpriore said that Mr. Marsh is more than welcome to come to his office to discuss this.

Mr. Marsh said that he was just asking for a building without an overhead door to keep his cost down. He said that he thinks this is a reasonable request for a variance. He said this is where he is coming from and that is why he is here tonight.

Mr. Delpriore said that he very much respects Mr. Marsh's view and that from the point of the Town Code there is a difference of the definitions of a shed, a detached garage, and a pole barn. He said that the described use of the neighbor's pole barn may have affected how the neighbor received approval for the pole barn from a previous board.

Ms. Marsh expressed concern about having the structure called a private garage. She said that the family does not need a garage and that they would not be using the shed as a garage. She said that they would not be driving over the lawn to reach it, and that damage could be caused to the septic system if they tried to drive across the lawn to reach the shed. She said that if the structure were to be used as a garage, they are concerned about damage to the property by vehicles [driving over the lawn and septic system].

Mr. DeLucia then asked if there were any further comments on this application. There were no further comments or questions from those in attendance

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

**6. BOARD BUSINESS—DELIBERATIONS AND DECISIONS**

<b>ZB #0902-18</b>	<b>Delaware River Solar</b>	<b>Area Variance</b>
<b>ZB #0903-18</b>	<b>Delaware River Solar</b>	<b>Area Variance</b>
<b>ZB #0904-18</b>	<b>Delaware River Solar</b>	<b>Area Variance</b>
<b>ZB #0905-18</b>	<b>Delaware River Solar</b>	<b>Area Variance</b>

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the reading of the following resolution be waived and that the resolution be approved as submitted by the Town staff:

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION  
CONTINUATION OF PUBLIC HEARINGS**

**Files:                   ZB #0902-18 Area Variance**

**ZB #0903-18 Area Variance**  
**ZB #0904-18 Area Variance**  
**ZB #0905-18 Area Variance**

**APPLICANT:** **Delaware River Solar LLC, c/o Peter Dolgos, 33 Irving Place, New York, NY 10003, on behalf of Roger and Carol Smith, 4790 Fox Road, Palmyra, N.Y. 14522, owners of property at 466 Yellow Mills Road**

**ACTION:** **Area Variances—Continuation of Public Hearings**

**WHEREAS**, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has received applications for four area variances (Files ZB #0902-18, ZB #0903-18, ZB #0904-18 and ZB #0905-18) to enable the proposed subdivision of land that is required for the operation of a proposed solar farm, with a proposed total of three solar panel arrays, one array to be located upon each of the three proposed lots, comprising a total of approximately 37.5 acres of land, a part of Tax Map #010.000-01-037.131, which contains a total of 135.4 acres of land; and

**WHEREAS**, the subdivision of land is a prerequisite for the applicant to comply with the New York State Energy Research and Development Authority (NYSERDA) restrictions for the maximum level of energy being generated by an operating solar energy farm on a parcel of land; and

**WHEREAS**, the actions to grant a total of four area variances—two front setback and two rear setback variances—are part of the procedural requirements for the construction and operation of the proposed solar power farm on the above referenced three proposed parcels of land; and

**WHEREAS**, on September 24, 2018, the Board classified these actions as being Type I Actions under the requirements of Article 8 of the New York State Environmental Conservation Law; and

**WHEREAS**, the Board, after having classified these actions as Type I Actions, directed that a coordinated review be conducted with Involved and Interested Agencies; and

**WHEREAS**, the Board on Monday, September 24, 2018, declared its intent not to be designated the Lead Agency for these Actions; and

**WHEREAS**, Board, on Monday, September 24, 2018, opened the Public Hearings upon these Actions and received testimony from the public; and

**WHEREAS**, the Planning Board, on Wednesday, November 7, 2018 did by resolution, designate itself the Lead Agency for making the determination of significance upon the Action; and

**WHEREAS**, the Planning Board in their resolution dated May 15, 2019, moved to table any further discussion upon the requested Actions; and has continued the SEQR deliberations upon the requested Area Variances, Special Use Permit, Preliminary Subdivision Plat and Preliminary Site Plan approvals to June 5, 2019; and

**WHEREAS**, in accordance with the procedures established by the State Environmental Quality Review Act (SEQRA), the Board may not make a decision upon any part of the proposed Action until the Lead Agency has made a determination of significance.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board does hereby move to continue the Public Hearing upon these requested Area Variances to their June 24, 2019, meeting.

**BE IT FINALLY RESOLVED THAT** the Board does hereby direct a copy of this resolution be provided to the Town Planning Board, the Applicant, the landowners and one copy placed in the Town Project File on this Application.

Jill Attardi	Aye
Timothy DeLucia	Aye
Jeremy Marshall	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

<b>ZB #0501-19</b>	<b>Lucas Marsh</b>	<b>Area Variance</b>
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■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the reading of the following State Environmental Quality Review (SEQR) resolution be waived and that the resolution be approved as submitted by the Town staff:

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

**ZB #0501-19**

**APPLICANT:** Lucas Marsh, 6059 Holly Lane, Farmington, N.Y. 14425

**ACTION:** Area Variance to Chapter 165, Article V, Section 58. B. to erect a free standing single story accessory building, a storage shed, having a total of 384 square feet in area. The Town Code restricts the size of an accessory structure to a maximum of 200 square feet in area. The property is located at 6059 Holly Lane and is zoned both RS-25 Residential Suburban and A-80 Agricultural District.

**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) (9) as being a Type II Action in that it involves: (9) construction of an accessory structure (a wooden storage shed) involving more than 200 square feet in area.

**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.

Jill Attardi	Aye
Timothy DeLucia	Aye
Jeremy Marshall	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by MR. MARSHALL, seconded by MS. PURDY, that the reading of the following complete resolution be waived and that the Chairperson read that portion of the resolution entitled “Determination of the Zoning Board of Appeals Based Upon the Above Factors:”

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

**APPLICANT:** Lucas Marsh  
6059 Holly Lane  
Farmington, N.Y. 14425

**File:** ZB #0501-19  
**Zoning Districts:** RS-25  
Residential-Suburban & A-80 Agricultural  
**Published Legal Notice on:** May 12, 2019  
**County Planning Action on:**  
Not Applicable  
**County Referral #:** Not Applicable  
**Public Hearing held on:** May 20, 2019

**Property Location:** 6059 Holly Lane, Farmington, N.Y. 14425

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

**Requirement for Which Variance is Requested:** The applicant wishes to erect a single story accessory structure, a storage shed, having a total area of 384 square feet. The Town Code requires a maximum total area of 200 square feet.

**State Environmental Quality Review Determination:** The granting of an Area Variance is classified as a Type II Action under Part 617.5 (c) (9) as being a Type II Action in that it involves: (9) construction of an accessory structure (a storage shed) involving more than 200 square feet in area, which is not allowed by Town Code. 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:** This action lies outside the jurisdictional review area of Ontario County Planning Board, as otherwise provided for under the provisions of Section 239-1 & -m of the New York State General Municipal Law. Therefore, no referral was made 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.  
X Yes    \_\_\_ No

**Reasons:** The Zoning Board of Appeals (hereinafter referred to as Board) finds that there are a number of accessory structures (storage sheds) located within the neighborhood (e.g. Holly Lane, Elder and Hawthorne). The Board further finds that all of these accessory structures are 200 square feet in area. The Board further finds that there is one pole barn located on the lot behind 6059 Holly Lane that meets the square footage requirements in the A-80 Agricultural District. The Board further finds that granting the requested area variance would enable the construction of an accessory structure which would be significantly larger in size than other accessory structures in the RS-25 & A-80 Zoning Districts. The Board finds that granting approval of such action would produce an undesirable change in the character of the neighborhood and is viewed as being a detriment to nearby properties.

Based upon these findings, the Board determines that an undesirable change will likely be produced in the character of the neighborhood and that granting the requested relief would likely 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 has failed to prove that a detached private garage sized 384 square feet in area could not constructed upon the property which would meet Town Code requirements provided an overhead door was used in the building’s design.

3. Whether the requested variance is substantial.     Yes         No

**Reasons:** The applicant is seeking an area variance that would allow an accessory structure, a storage building, to have a total of 384 square feet in area. The Board finds this to be an increase in building area of ninety-two percent (92%) above what is allowed by Code. The Board has consistently found that a variance greater than fifty percent (50%) of what is otherwise required by the Town Code is a substantial variance. The Board, based upon these findings, determines that the proposed area variance to allow an accessory structure having a total area of 384 square feet 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 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.         Yes         No

**Reasons:** The Board finds that the alleged difficulty is self-created in that the applicant has failed to adequately identify why an alternative relief to the requested area variance has not been pursued. The Board finds that granting the requested relief would not be granting the minimum relief necessary, as is required by New York State Town Law.

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

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

The Board based upon its review of the record on this application finds that the benefit to the applicant does not outweigh the detriment to the community or neighborhood and, therefore, the requested area variance to allow a 384 square foot accessory structure is DENIED.

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

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

Jill Attardi	No
Timothy DeLucia	Aye
Jeremy Marshall	No
Nancy Purdy	No
Thomas Yourch	No

Motion defeated.

■ A motion was made by MR. MARSHALL that the application of Lucas Marsh (ZB #0501-19) for an Area Variance to Chapter 165, Article V, Section 58 B to erect a single story accessory structure (a storage shed) having a total area of 384 square feet, be approved with the stipulation that the accessory structure exterior setting must be consistent with the principal structure (the house).

Mr. DeLucia asked if the Area Variance defaults to approval because the resolution to deny the Area Variance was defeated. Mr. Brand said that the resolution does not default to approval because of the defeat of the denial.

Mr. Brand said that this [Mr. Marshall's motion] places the Zoning Board in very precarious position because now you [the board] are doing just contrary to the findings and tests where you are saying that a 92 percent variance is contrary to your standards that you always follow. He said that the board also heard tonight that there are alternatives available to the applicant that he has not yet considered or undertaken. He said that the board also heard that the character of the neighborhood is accessory structures within the code. Mr. Brand said that if we are going to change the code, then that is a legislative action.

Mr. Marshall then withdrew this motion.

■ A motion was made MR. MARSHALL, seconded by MS. ATTARDI, that the deliberations on ZB #0501-19, application of Lucas Marsh, 6059 Holly Lane, Farmington, N.Y. 14425, for an Area Variance to Chapter 165, Article V, Section 58 B to erect a single story accessory structure (a storage shed) having a total area of 384 square feet, be continued to **JUNE 24, 2019**, to allow more time for the applicant to work with Town staff on a reasonable solution to this application.

Mr. Brand said that the board has not made a decision on this Area Variance application. He said that the board has not accepted the resolution to deny the variance and that the board has not approved a resolution for approval or modification of the variance. He said



that the board is now in position of asking for more information and seeks to continue its deliberations to June 24, 2019.

Mr. Brand also said that he would seek a legal opinion from the Town Attorney on the effects of tonight's decision upon the requested Area Variance and would provide a written response to the board.

*(Clerk's Note: The Town Attorney's response to Mr. Brand's inquiry was received on Tuesday, May 21, 2019, and appears at the conclusion of the minutes beginning on Page 18—JMR.)*

Jill Attardi	Aye
Timothy DeLucia	Aye
Jeremy Marshall	Aye
Nancy Purdy	Aye
Thomas Yourch	Aye

Motion carried.

## **7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION**

None.

## **8. OTHER BOARD MATTERS**

Mr. Delpriore introduced and welcomed John Weidenborner who has been hired as a Zoning Officer and who will eventually assume Mr. Delpriore's role at the meetings of the Zoning Board of Appeals. Mr. Delpriore also reported that August Gordner has been hired as a Code Enforcement Officer for the Town.

Mr. Delpriore said that Janyce Feistel will retire at the end of next week as administrator of the Building Department. She has served the Town of Farmington for many years.

Mr. Brand requested that board members revisit the Town solar regulations to assure that they fully understand all caveats as they pertain to the four Delaware River Solar Area Variance applications now before the board.

Ms. Attardi and Mr. DeLucia commented on their attendance at the Genesee/Finger Lakes Regional Planning Council Spring 2019 Regional Local Government Workshop that was held on May 17, 2019. Ms. Attardi discussed the sessions on zoning boards, planning boards and case law. Mr. DeLucia discussed the session on solar projects which were conducted by a solar developer, a solar planning consultant and a solar advisement counselor. He noted that some solar arrays are high enough for a tractor to maneuver underneath and that the arrays turn with the sun.

**9. NEXT MEETING DATE**

The next regular meeting of the Zoning Board of Appeals will be held on Monday, June 24, 2019, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m. (or at the Town Highway Department, 985 Hook Road, depending upon the status of the Delaware River Solar application).

**10. ADJOURNMENT**

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

Motion carried by voice vote.

The meeting was adjourned at 7:50 p.m.

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

Respectfully submitted,

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John M. Robortella L.S.  
Clerk of the Zoning Board of Appeals

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**E-mail from Town Attorney, re: Lucas Marsh Area Variance application:**

Subject: Marsh Appeal  
Date: Tue, 21 May 2019 13:10:14-0400  
From: Jeff Graff jgraff@rileygraff.com  
Reply-To: jgraff@rileygraff.com  
To: Ron Brand (E-mail) (E-mail) rlbplans@gmail.com

Ron:

As I understand the motion made by the ZBA for the Marsh appeal, it was moved and seconded to deny the area variance. If that was the motion, then an "Aye" vote approved the resolution to deny the area variance and a "No" vote voted against the resolution to deny the area variance. As the final vote was 4 "No" votes and 1 "Aye" vote, the resolution to deny the area variance was NOT approved.

A vote to NOT DENY (a double negative) is not the same as vote to approve the area variance. NYS Town Law Section 267-a 13. (b) states in part, “if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within sixty-two days after the close of the public hearing on this matter, the appeal is denied.”

You have told me that the public hearing on this appeal was held and closed on May 20, 2019. Therefore, if the ZBA has not passed a vote to approve this area variance (and assuming it has not denied the area variance) by July 22, 2019 (62 days ends on Sunday, July 21, 2019 so the ZBA has one additional business day to approve an area variance), this application is automatically denied.

Note that NYS Town Law requires the ZBA, in the granting of an area variance, to grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Therefore, if the ZBA is not inclined to grant the specific variance requested, it is permitted to grant a lesser variance that meets this requirement.

Please let me know if you or the ZBA have further questions.

Jeff

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