

*Town of Farmington*

1000 County Road 8  
Farmington, New York 14425

**ZONING BOARD OF APPEALS**  
**Monday, October 23, 2017, 7:00 p.m.**

**MINUTES—APPROVED**

*The following minutes are written as a summary of the main points that were made and the actions taken at the Town of Farmington Zoning Board of Appeals meeting.*

**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  
Don Giroux, Town of Farmington Highway Superintendent  
James Morse, Town of Farmington Code Enforcement Officer

**Applicants Present:**  
Richard Cunningham, 750 Filkins Road, Newark, N.Y. 14513  
Lisa Jones, 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425  
Walt Kannapel, 5050 Rushmore Road, Palmyra, N.Y. 14522

**In Attendance:**  
Jim Grady

**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 staff, 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 February 29, 2017.

## 2. APPROVAL OF MINUTES OF AUGUST 28, 2017

■ A motion was made by MR. OPETT, seconded by MR. YOURCH, that the minutes of the August 28, 2017, 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, October 15, 2017, 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 Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 23rd day of October 2017 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:

**ZB1001-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-35 (A) to the Town of Farmington Codes. The applicant wishes to locate an existing above ground pool with a front setback 24 feet from the highway right-of-way line (a minimum setback of 75 feet is required). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1002-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-62 (B) to the Town of Farmington Codes. The applicant wishes to locate an above ground pool in the side yard (swimming pools are to be located in the rear yard). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1003-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-35 (A) to the Town of Farmington Codes. The applicant wishes to locate an above ground pool with a rear yard setback of 9 feet (a minimum of 30 feet is required). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1004-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter

165-58 (A) to the Town of Farmington Codes. The applicant wishes to locate an accessory structure, identified as Shed #2, with a rear setback of zero feet (a minimum of 5 feet is required). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1005-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-35 (A) to the Town of Farmington Codes. The applicant wishes to locate an accessory structure, identified as Shed #1, with a front setback 13 feet (a minimum of 75 feet is required). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1006-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-35 (A) to the Town of Farmington Codes. The applicant wishes to locate an accessory structure, identified as Shed #1, with a side yard setback of 4 feet 3 inches (a minimum of 30 feet is required). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1007-17: LISA JONES, 5688 CANANDAIGUA–FARMINGTON TOWN LINE ROAD, FARMINGTON, N.Y. 14425:** Request an Area Variance to Article V, Chapter 165-58 (A) to the Town of Farmington Codes. The applicant wishes to locate Shed #1 in the side yard (accessory structures are to be located in the rear yard). The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB1008-17: RICHARD CUNNINGHAM, 750 FILKINS ROAD, NEWARK, N.Y. 14513:** Request an Area Variance to Article V, Chapter 165-58 (A) to the Town of Farmington Codes. The applicant wishes to locate an accessory structure in the side yard, (accessory structures are to be located in the rear yard). The property is located at 5208 Shortsville Road and is zoned A-80 Agricultural District.

**ZB1009-17: VANCE KANNAPPEL, 5050 RUSHMORE ROAD, PALMYRA, N.Y. 14522:** Request an Area Variance to Article VII, Chapter 165-88 (A) to the Town of Farmington Codes. The applicant wishes to amend the original area variance enlarging the non-conforming structure exceeding 50%. The property is located at 5050 Rushmore Road and is zoned A-80 Agricultural District. *(Clerk's Note: Address corrected to 5050 Rushmore Road during the meeting discussion.)*

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

Tim DeLucia, Chairperson  
Zoning Board of Appeals  
Town of Farmington

#### 4. PUBLIC HEARINGS

**ZB #1008-17**

**Richard Cunningham  
750 Filkins Road  
Newark, N.Y. 14513**

**Area Variance**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 58 (A) of the Farmington Town Code. The applicant wishes to locate an Accessory Structure—a 1,200-square-foot pole barn—in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot. The property is located at 5208 Shortsville Road and is zoned A-80 Agricultural District.

Mr. DeLucia declared the Public Hearing open.

Mr. Cunningham presented this application.

He explained that he would like to locate a pole barn in the side yard portion of his lot to avoid the rear yard portion which is wet, often has standing water and would require a great deal of fill to build up the area. He said that he plans to locate the pole barn on the side of his home and that it would be level with the residence.

Mr. Brand said that he personally inspected Mr. Cunningham's property and viewed the practical difficulty of building the pole barn in the rear portion of the lot which is wet. Mr. Brand said that he has prepared two draft resolutions for board consideration this evening, i.e., the State Environmental Quality Review determination resolution and a resolution to approve the requested variance with conditions. Mr. Brand said that both draft resolutions were posted on the Town website and were provided to members of the board in advance of the meeting.

Mr. Giroux said that he had no issues with Mr. Cunningham's variance application. He expressed concern about the driveway and noted that the Town's Site Design Guidelines require that the first 30 feet of the driveway from the road's pavement and into the lot must be paved. He requested that this paving be completed prior to any additional construction on the property, especially before the blacktop plants close in November. Mr. Morse explained that this topic was addressed during Mr. Cunningham's Planning Board applications for preliminary and final Subdivision Plat and Site Plan approvals (November 16, 2016, and December 7, 2016). Mr. Cunningham said that he would take care of this prior to winter.

Mr. Cunningham also noted that a small portion of pavement was damaged when the Town crews worked on installing the house connection to the water main. He asked if he was responsible for the cost of repairing the damage. Mr. Brand said that the Town would be responsible for the cost of the repair if the damage was caused by the Town Water and Sewer Department crew. He and Mr. Morse said that they would report this to the Water and Sewer Department on behalf of Mr. Cunningham.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

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

**ZB #1009-17                      Vance Kannapel                      Area Variance  
5050 Rushmore Road (address corrected)  
Palmyra, N.Y. 14522**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article VII, Section 88 (A) of the Farmington Town Code. The applicant wishes to amend the original area variance enlarging the existing non-conforming structure exceeding fifty percent (50%) in the size of the structure. The Town Code allows a non-conforming one- or two-family residence to be enlarged but not by more than 50% of its existing size as long as the enlargement does not result in any further setback line violations or involve any change in use. The property is located at 5050 Rushmore Road (address corrected) and is zoned A-80 Agricultural District.

Walt Kannapel appeared on behalf of Vance Kannapel, his son.

He explained that Vance Kannapel would like extend the roof of an existing sugar shack to create a work area which would be protected from the weather. He said that much of the work is now performed outdoors and that the roof would provide protection from the elements. Mr. Kannapel said that his son has no plans to enclose the area and that the roof would extend approximately 12 feet to the north toward the wooded portion of the property and at a distance away from the property line.

Mr. Brand said that he has prepared two draft resolutions for board consideration this evening, i.e., the State Environmental Quality Review determination resolution and a resolution to approve the requested variance with conditions. Mr. Brand said that both draft resolutions were posted on the Town website and were provided to members of the board in advance of the meeting this evening.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

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

**ZB #1001-17                      Lisa Jones                      Area Variance  
5688 Canandaigua–Farmington  
Town Line Road  
Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 35 (A) of the Farmington Town Code. The applicant wishes to locate an existing Accessory Structure—an above-ground swimming pool—in the front-yard portion of the lot with a front setback of 24 feet from the highway right-of-way line. The Town Code requires Accessory Structures to be located in the rear-yard portion of the lot and a minimum front setback of 75 feet from the highway right-of-line line. The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

Mr. DeLucia declared the Public Hearing open. He concurrently opened the following Public Hearings on ZB #1002-17 through ZB #1007-17 which are related to this application.

**ZB #1002-17                      Lisa Jones                      Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 62 (B) of the Farmington Town Code. The applicant wishes to locate an existing Accessory Structure—an above ground swimming pool—in the side yard portion of the lot. The Town Code requires Accessory Structures to be located in the rear yard portion of the lot. The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB #1003-17                      Lisa Jones                      Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 35 (A) of the Farmington Town Code. The applicant wishes to locate an existing accessory structure—an above ground swimming pool—within the rear yard setback portion of the lot. The applicant is requesting a rear yard setback of 9 feet. The Town Code requires a minimum rear yard setback of 30 feet in the GB General Business District. The property is located at 5688 Canandaigua–Farmington Town Line Road

**ZB #1004-17                      Lisa Jones                      Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 58 (A) of the Farmington Town Code. The applicant wishes to locate an existing Accessory Structure, identified as Shed #2, with a rear yard setback of zero

feet. The Town Code requires a minimum rear yard setback of 5 feet in the GB General Business District. The property is located at 5688 Canandaigua–Farmington Town Line Road.

**ZB #1005-17                      Lisa Jones    Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 35 (A) of the Farmington Town Code. The applicant wishes to locate an existing accessory structure, identified as Shed #1, in the front-yard portion of the lot with a front setback of 13 feet from the highway right-of-way line. The Town Code requires a minimum front setback of 75 feet in the GB General Business District. The property is located at 5688 Canandaigua–Farmington Town Line Road.

**ZB #1006-17                      Lisa Jones    Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 35 (A) of the Farmington Town Code. The applicant wishes to locate an existing Accessory Structure, identified as Shed #1, in the side-yard portion of the lot with a side setback of 4 feet, 3 inches. The Town Code requires a minimum side yard setback of 30 feet from the property line. The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business District.

**ZB #1007-17                      Lisa Jones    Area Variance**  
**5688 Canandaigua–Farmington**  
**Town Line Road**  
**Farmington, N.Y. 14425**

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Article V, Section 58 (A) of the Farmington Town Code. The applicant wishes to locate an existing accessory structure, identified as Shed #1, in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot. The property is located at 5688 Canandaigua–Farmington Town Line Road and is zoned GB General Business.

Ms. Jones presented these applications.

She explained that this is the first home which she has owned and that she did not know that building permits were required for installation of the swimming pool and the two sheds. She said that she learned that permits were required for the installation of the

swimming pool and the sheds when she and her husband came to the Town Hall for a building permit for a proposed new porch.

Ms. Jones said that her intention was to improve the property from its condition when she purchased the home in 2008. She said that the home is the only residence near the corner of Canandaigua–Farmington Town Line Road and State Route 332 and that it is bordered on the north by a marsh and woods, and by a field which is located across the road on the south side of Canandaigua–Farmington Town Line Road.

Ms. Jones said that one of the sheds has a concrete pad for the floor.

Ms. Jones said that she hoped that the Town would appreciate the work which has been done to improve the property. She said that she never owned a home before and that she is learning about the many responsibilities of home ownership.

Mr. Brand said that these variance applications were referred to the Ontario County Planning Board which issued no specific recommendations and referred them back to the Zoning Board of Appeals (ZBA) for determinations.

Mr. Brand also reported that the required notification to the neighboring municipality (the Town of Canandaigua) was provided to Canandaigua Town Clerk Jean Chrisman.

Mr. Brand said that he has prepared resolutions for board consideration, i.e., the draft State Environmental Quality Review determination resolutions and draft resolutions of ZBA findings and determinations. Mr. Brand said that the resolutions were posted on the Town website and were provided to members of the board in advance of the meeting this evening.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

Mr. DeLucia then closed the Public Hearings on ZB #1001-17 through ZB #1007-17.

## **5. BOARD BUSINESS—DELIBERATIONS AND DECISIONS**

**ZB #1008-17**

**Richard Cunningham**

**Area Variance**

■ A motion was made by MR. MARSHALL, seconded by MR. OPETT, that the reading of the State Environmental Quality Review (SEQR) resolution on this application be waived.

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



■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the following resolution be approved:

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

**ZB #1008-17**

**APPLICANT: Richard Cunningham, 750 Filkins Road, Newark, N.Y. 14513**

**ACTION: Area Variance to locate an accessory structure—a pole barn in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot located at 5208 Shortsville Road**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

- 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:

**TOWN OF FARMINGTON  
ZONING BOARD OF APPEALS**

**AREA VARIANCE FINDINGS AND DECISION**

**APPLICANT:** Richard Cunningham  
750 Filkins Road  
Newark, N.Y. 14513

**File:** ZB #1008-17  
**Zoning District:** A-80 Agricultural  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** N.A.  
**County Referral #:** N.A.  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5208 Shortsville Road, 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 single-story two-car garage—to be located in the Side Yard portion of the lot. The Town Code requires accessory structures to be located in the Rear Yard portion of the lot in the A-80 Agricultural District.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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:** This application does not lie within the jurisdictional area provided in Section 239-1 of the New York State General Municipal Law. Therefore, no County Planning Board Referral, is required.

**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 Board finds that lot is primarily a wooded area with mature trees and under growth which provides a good visual buffer from adjacent properties and from along Shortsville Road. The Board also finds that the developed portion of the lot is setback several hundred feet north of Shortsville Road. The Board finds that placing the proposed accessory structure in the Side Yard location shown on the submitted sketch plan will have the least impact upon removing the established mature trees located upon the site. The Board finally finds that placing the proposed accessory structure upon this portion of the lot 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 only alternative to the requested area variance is to construct the proposed accessory structure in the Rear Yard portion of the lot. Constructing the accessory structure in the Rear Yard portion of the lot which the Zoning Board of Appeals finds would add considerable costs associated with creating a driveway to the rear portion of the site and the additional grading necessary on the site to install an accessory structure in such location. The Board finds that the proposed Side Yard portion of the lot is a feasible alternative to what is otherwise required by the Code.

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

**Reasons:** The Board finds that the requested area variance involves granting a variance of 100% to allow an accessory structure to be placed within the Side Yard portion of the lot. The Board has consistently found that granting an area variance in excess of 50% of what is required by Town Code 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 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 the applicant desires to use a portion of the Side Yard for this lot to construct a single-story two car garage is a self-created hardship due to the placement of the Principal Structure upon the lot.

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

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

X That the benefit to the applicant DOES outweigh any potential detriment to the health, safety and welfare of the Neighborhood or Community and, therefore, the requested Area Variance to construct an accessory structure, a single-story two car garage (30 feet by 40 feet) in the Side Yard portion of the lot located at 5208 Shortsville Road is APPROVED WITH THE FOLLOWING CONDITIONS:

1. There shall be no outdoor use of lighting that extends beyond the property boundary line onto adjacent properties.
2. The exterior of the proposed Accessory Structure is to match to the extent practical the other existing Principal Structure in building materials and color.
3. There shall be no water service installed within the proposed Accessory Structure.

**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 MR. YOURCH, seconded by MR. OPETT, that the preceding resolution be approved.

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

Motion carried.

**ZB #1009-17                      Vance Kannapel                      Area Variance**

■ A motion was made by MR. OPETT, seconded by MS. PURDY, that the reading of the State Environmental Quality Review (SEQR) resolution on this application be waived.

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

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the following resolution be approved:

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

**ZB #1009-17**

**APPLICANT:                      Vance Kannapel, 5050 Rushmore Road, Palmyra, N.Y. 14522  
(address corrected)**

**ACTION:** Area Variance to amend the original area variance enlarging the non-conforming structure by more than fifty percent (50%). The Town Code allows for an enlargement of a non-conforming residential structure but not exceeding an increase of fifty percent (50%).

**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) (7) as construction of a non-conforming residential structure by more than fifty percent (50%); and

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

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

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

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:

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

**APPLICANT:** Vance Kannapel  
5050 Rushmore Road  
Palmyra, N.Y. 14522  
(address corrected)

**File:** ZB #1009-17  
**Zoning District:** A-80 Agricultural  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** N.A.  
**County Referral #:** N.A.  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5050 Rushmore Road, (address corrected), Palmyra, N.Y. 14522.

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

**Requirement for Which Variance is Requested:** The applicant wishes to increase the size of an existing non-conforming structure—a sugar shack—with a roof line covering an open area underneath which would in effect exceed fifty percent (50%) in the size of the non-conforming structure. The Town Code does not permit enlargement of a non-conforming structure.

**State Environmental Quality Review Determination:** The granting of an Area Variance to enlarge a non-conforming accessory structure on 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:** This application does not lie within the jurisdictional area provided in Section 239-1 of the New York State General Municipal Law. Therefore, no County Planning Board Referral, is required.

**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 Board finds that the character of this neighborhood is primarily agricultural lands, open space and low density residential uses. The proposed building addition on this lot is located primarily within a wooded area with mature trees and under growth which provides a good visual buffer from adjacent properties. The Board also finds that the developed portion of the lot is setback several hundred feet north of Rushmore Road and that expanding the existing accessory structure—a sugar shack—will be located upon the lot in an area that is not visible from along the highway. The Board finds that adding to the existing accessory structure in the location shown on the submitted sketch plan will have the least impact upon changing the character of the neighborhood or will such enlargement 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 there is no feasible alternative to the requested area variance to enable the expansion to the existing sugar shack, an existing non-conforming accessory structure, to be placed elsewhere upon the site. The Board finds that any other

location would necessitate the removal of the existing non-conforming accessory structure on the lot.

3. Whether the requested variance is substantial.     Yes        \_\_\_ No

**Reasons:** The Board finds that the requested area variance involves granting a variance of 100% to allow an increase in the size of a non-conforming accessory structure. The Board has consistently found that granting an area variance in excess of 50% of what is required by Town Code 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 applicant desires to increase the size of a non-conforming accessory structure located upon this lot. The Board further finds that the alleged difficulty to increase the non-conforming accessory structure 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:

X That the benefit to the applicant DOES outweigh any potential detriment to the health, safety and welfare of the Neighborhood or Community and, therefore, the requested Area Variance to construct a structural addition to an existing non-conforming structure, a roof covering of an area adjacent to the existing sugar shack, located at 5050 Rushmore Road is APPROVED WITH THE FOLLOWING CONDITIONS:

1. The area variance is granted only for the construction of a roof addition to the existing sugar shack building which involves covering of an open area of ground underneath the proposed roof addition of 12 feet by 24 feet in size as shown on the submitted documents associated with this application.
2. No portion of this covered area shall be used for habitable purposes.

- 3. There shall be no outdoor use of lighting associated with the roof addition that extends beyond the property boundary line onto adjacent properties.
- 4. There shall be no water service installed for the proposed addition to the Accessory Structure.
- 5. In the future, should the applicant desire to enclose this roof addition area, a Building Permit shall be required for such enclosure.

**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.

*Clerk’s Note: Following the reading of the resolution, Mr. Kannapel informed the board that the address of the property should be corrected to read “5050 Rushmore Road.” It has been corrected in the resolutions above.*

■ A motion was made by MS. PURDY, seconded by MR. OPETT, that the preceding resolution be approved as corrected.

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

Motion carried.

<b>ZB #1001-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1002-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1003-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1004-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1005-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1006-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>
<b>ZB #1007-17</b>	<b>Lisa Jones</b>	<b>Area Variance</b>

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the State Environmental Quality Review (SEQR) resolutions for ZB #1001-17 through ZB #1007-17 be blocked for concurrent action and that the readings of the SEQR resolutions be waived.



Motion carried by voice vote. The SEQR resolutions for ZB #1001-17 through ZB #1007-17 were blocked for concurrent action and the readings were waived.

■ A motion was made by MR. MARSHALL, seconded by MS. PURDY, that the following SEQR resolutions be approved:

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

**ZB #1001-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing above ground pool with a front setback 24 feet from the highway right-of-way line. The Town Code requires a minimum front setback of 75 feet.**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1002-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing above ground pool in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot.**

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

**WHEREAS**, the Board finds the Action is identified in Section 617.5 (c) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1003-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing above ground pool with a rear setback 9 feet from the property line. The Town Code requires a minimum 30 feet setback from the property line.**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1004-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing accessory structure, a shed (identified as Shed #1) with a rear setback 0 feet from the property line. The Town Code requires a minimum 30 feet setback from the property line.**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1005-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing accessory structure, a shed (identified as Shed #1) with a front setback 13 feet from the property line. The Town Code requires a minimum 75 feet setback from the property line.**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1006-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing accessory structure, a shed (identified as Shed #1) with a side yard setback of 4 feet–3 inches. The Town Code requires a minimum setback of 30 feet.**

**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) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

**ZB #1007-17**

**APPLICANT: Lisa Jones, 5688 Canandaigua–Farmington Town Line Road**

**ACTION: Area Variance to locate an existing accessory structure, a shed (identified as Shed #1) in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot.**

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

**WHEREAS**, the Board finds the Action is identified in Section 617.5 (c) (7) as construction of an accessory non-residential structure involving less than 4,000 square feet in area; and

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

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

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

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

Motion carried.

■ A motion was made by MR. MARSHALL, seconded by MS. PURDY, that the Area Variance Findings and Decision resolutions for ZB #1001-17 through ZB #1003-17 be blocked for concurrent action as they are similar in nature and findings.

Motion carried by voice vote. The Area Variance Findings and Decision resolutions for ZB #1001-17 through ZB #1003-17 were blocked for concurrent action as they are similar in nature and findings.

■ A motion was made by MR. MARSHALL, seconded by MR. OPETT, that the chairperson read aloud the Factors and the Determination of the Zoning Board of Appeals for the resolutions for ZB #1001-17 through ZB #1003-17 and that the readings of the balance of the resolutions be waived.

Motion carried by voice vote. The chairperson read aloud the Factors and Determination of the Zoning Board of Appeals for the resolutions for ZB #1001-17 through ZB #1003-17. The readings of the balance of the resolutions were waived.

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the following resolutions be approved:

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

**APPLICANT:** Lisa Jones  
5688 Canandaigua–  
Farmington Town  
Line Road  
Farmington, N.Y. 14425

**File:** ZB #1001-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** 10/11/17  
**County Referral #:** 192-1017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 35. A.

**Requirement for Which Variance is Requested:** The applicant wishes to locate an existing accessory structure—an above-ground swimming pool—in the front yard portion of the lot with a front setback of 24 feet from the highway right-of-way line. The Town Code requires accessory structures to be located in the rear yard portion of the lot and a minimum front setback of 75 feet from the highway right-of-way line.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017, made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of shed #2. The pool is separated from the highway by a fence.”

**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 Board finds that the lot configuration would necessitate the granting of dimensional variances for any accessory structure that is to be placed upon this irregular shaped lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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

**Reasons:** The Board finds that there is no feasible alternative to the requested variance given the physical limitations associated with the existing lot’s dimensions.

3. Whether the requested variance is substantial.       Yes       No

**Reasons:** The Board finds that the variance being requested is a variance of sixty-eight percent (68%) from what is required by the Town Code (e.g., 24 feet instead of 75 feet). The Board has consistently found that a variance greater than fifty percent (50%) of what is allowed by the Town Code to be a substantial variance request. The Board, therefore, finds that this requested area variance is a substantial variance from what is otherwise required by the Town Code.

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.  X  Yes      No

**Reasons:** The Board finds that the alleged difficulty is self-created in that the above-ground swimming pool, an accessory structure to an existing principal structure, was installed without the Applicants first determining whether the placement of the pool upon the lot met the setback dimensions contained in the Town Code.

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

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

X  That the benefit to the applicant DOES outweigh any detriment likely to be created to the neighborhood or the community as a whole and, therefore, does grant the requested dimensional variance to allow the existing above ground swimming pool to remain upon the lot, located 24 feet from the highway right-of-way, and in the area shown on the submitted sketch plan with the following conditions:

1. The Applicant is to obtain a Building Permit for said above ground pool.
2. There shall be no outdoor lighting of the above ground swimming pool that is in violation of the lighting standards contained in Chapter 165 of the Town Code.
3. All chemicals used in maintaining the swimming pool are to be stored in a safe enclosed structure at all times.
4. This area variance is granted for the existing above ground swimming pool. In the event a different above ground swimming pool is to be installed upon this lot, said pool shall require a separate Building Permit and it shall not be located closer than 24 feet from the highway right-of-way.

**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.



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

**APPLICANT:** Lisa Jones  
5688 Canandaigua–  
Farmington Town  
Line Road  
Farmington, N.Y. 14425

**File:** ZB #1002-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:**  
October 11, 2017  
**County Referral #:** 192-2017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 62. B.

**Requirement for Which Variance is Requested:** The applicant wishes to locate an existing accessory structure—an above-ground swimming pool—in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017, made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of shed #2. The pool is separated from the highway by a fence.”

**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 Board finds that the lot configuration would necessitate the granting of dimensional variances for any accessory structure that is to be placed upon this irregular shaped lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of there being any future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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

**Reason:** The Board finds that there is no feasible alternative to the requested variance given the physical limitations associated with the existing lot's dimensions and the size of the above ground swimming pool.

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

**Reasons:** The Board finds that the requested variance involves a variance of one hundred percent (100%) from what is required by the Town Code. The Town Code does not allow accessory structures, such as the above ground swimming pool, to be placed in the Side Yard portion of a lot.

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 the alleged difficulty is self-created in that the above ground swimming pool, an accessory structure to an existing principal structure, was installed without the Applicants first determining whether the placement of the pool upon the lot met the setback dimensions contained in the Town Code.

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

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

X That the benefit to the applicant DOES outweigh any detriment likely to be created to the neighborhood or the community as a whole and, therefore, does grant the requested area variance to allow the existing above ground swimming pool to remain upon the lot, located within the Side Yard portion, and in the area shown on the submitted sketch plan with the following conditions:

1. The Applicant is to obtain a Building Permit for said above ground pool.
2. There shall be no outdoor lighting of the above ground swimming pool that is in violation of the lighting standards contained in Chapter 165 of the Town Code.
3. All chemicals used in maintaining the swimming pool are to be stored in a safe enclosed structure at all times.
4. This area variance is granted for the existing above ground swimming pool, in the event a different above ground swimming pool is to be installed upon this lot, said pool shall require a separate Building Permit and it shall not be located closer than 24 feet from the highway right-of-way.

**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.

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

**APPLICANT:** Lisa Jones  
5688 Canandaigua–  
Farmington Town  
Line Road  
Farmington, N.Y. 14425

**File:** ZB #1003-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** 10/11/17  
**County Referral #:** 192-2017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 35. A.

**Requirement for Which Variance is Requested:** The applicant wishes to locate an existing accessory structure—an above-ground swimming pool—within the rear yard setback portion of the lot. The applicant is requesting rear yard setback of 9 feet. The Town Code requires a minimum rear yard setback of 30 feet in the GB General Business District.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017 made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of shed #2. The pool is separated from the highway by a fence.”

**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 Board finds that the lot configuration would necessitate the granting of dimensional variances for any accessory structure that is to be placed upon this irregular shaped lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of there being any future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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

**Reason:** The Board finds that there is no feasible alternative to the requested variance given the physical limitations associated with the existing lot's dimensions and the size of the above ground swimming pool.

3. Whether the requested variance is substantial.      Yes      No

**Reasons:** The Board finds that the variance requested, 9 feet instead of 30 feet, involves a variance of seventy percent (70%) from what is required by the Town Code. The Board has consistently found that a variance request greater than fifty percent (50%) of what is required by the Town Code to be a substantial variance. The Board, therefore, finds that the requested variance to allow a rear yard setback of nine (9) feet instead of the required thirty (30) feet to be 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 above ground swimming pool, an accessory structure to an existing principal structure, was installed without the Applicants first determining whether the placement of the pool upon the lot met the setback dimensions contained in the Town Code.

#### **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 any detriment likely to be created to the neighborhood or the community as a whole and, therefore, does grant the requested area variance to allow the existing above ground swimming pool to remain upon the lot, located within the Side Yard portion, and in the area shown on the submitted sketch plan with the following conditions:

1. The Applicant is to obtain a Building Permit for said above ground pool.

- 2. There shall be no outdoor lighting of the above ground swimming pool that is in violation of the lighting standards contained in Chapter 165 of the Town Code.
- 3. All chemicals used in maintaining the swimming pool are to be stored in a safe enclosed structure at all times.
- 4. This area variance is granted for the existing above ground swimming pool, in the event a different above ground swimming pool is to be installed upon this lot, said pool shall require a separate Building Permit and it shall not be located closer than 9 feet from the rear lot line of the property.

**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.

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:

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

**APPLICANT:** Lisa Jones  
 5688 Canandaigua–  
 Farmington Town  
 Line Road  
 Farmington, N.Y. 14425

**File:** ZB #1004-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
 October 15, 2017  
**County Planning Action on:** 10/11/2017  
**County Referral #:** 192-2017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, 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 locate an existing accessory structure—identified as Shed #2—with a rear yard setback of zero feet. The Town Code requires a minimum rear yard setback of 5 feet in the GB General Business District.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017 made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of Shed #2. The pool is separated from the highway by a fence.”

## 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 Board finds that the lot configuration would necessitate the granting of dimensional variances for almost any accessory structure that is to be placed upon this irregular shaped lot except for this accessory structure in this location upon the lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of there being any future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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 with this application there is adequate room on this portion of the lot to place the accessory structure setback five feet from the rear lot line. The Board finds that relocating the accessory structure to meet the five-foot rear yard set-

back is a feasible alternative to the requested variance. The Board finds that granting the requested variance would not be granting the minimum relief necessary as is otherwise required of the Board by New York State Town Law.

3. Whether the requested variance is substantial.      Yes      No

**Reasons:** The Board finds that the requested variance involves a zero setback from the ear lot line instead of the minimum five feet required by Town Code. The Board finds that granting the requested variance involves granting a variance of one hundred percent (100%). The Board has consistently found that granting a variance greater than fifty percent (50%) of what is otherwise required by Town Code is a substantial variance. The Board finds that this requested variance is substantial.

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

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

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

**Reasons:** The Board finds that the alleged difficulty is self-created in that the location shown on the sketch plan for Shed #2, was installed without the Applicants first determining whether the placement of the structure upon the lot met the setback dimensions contained in the Town Code.

#### **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 not outweigh the detriment to the neighborhood or the community and that the requested area variance is DENIED. The Board further finds that granting the requested variance would not be necessary when the accessory structure is relocated upon the lot to meet the minimum five (5) foot rear setback dimension. The Board finds that under the provisions of New York State Town Law it must grant the minimum relief necessary based upon the Board's findings of the existence of a practical difficulty. In this instance, the Board finds there is no practical difficulty known which would prevent the applicant from complying with the minimum rear yard setback dimension of five (5) feet from the property line.



**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.

Mr. Marshall discussed the concrete pad which serves as a floor for Shed #2. He noted that there would be no practical way to break up the concrete to move the shed a distance of five feet.

Mr. Brand said that this evening’s discussion was the first that the Town staff heard of the concrete floor under the shed.

Mr. DeLucia suggested that a new section of concrete could be poured and the shed then could be moved to the new location. He said that this would avoid breaking up the concrete.

Mr. DeLucia explained that the board is concerned about safety and emergency vehicle access if and when the adjacent property is developed in the future and the existing Shed #2 is directly upon the property line. He said that safety must be a consideration of the board. Mr. DeLucia noted that it would be easy enough to add five feet of concrete for a new section of the floor and move the shed onto the new pad. He said that a 100 percent variance is substantial and is the driving factor in this determination.

Ms. Jones asked if there is a time limit in which to get this work done. Mr. Morse said that a period of time is provided in the permit regulations.

■ A motion was made by MR. YOURCH, seconded by MR. OPETT, that the preceding resolution be approved.

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

Motion carried.

■ A motion was made by MR. MARSHALL, seconded by MR. OPETT, that the Area Variance Findings and Decision resolutions for ZB #1005-17 through ZB #1007-17 be blocked for concurrent action as they are similar in nature and findings.

Motion carried by voice vote. The Area Variance Findings and Decision resolutions for ZB #1005-17 through ZB #1007-17 were blocked for concurrent action as they are similar in nature and findings.

■ A motion was made by MS. PURDY, seconded by MR. OPETT, that the chairperson read aloud the Factors and the Determination of the Zoning Board of Appeals for the resolutions for ZB #1005-17 through ZB #1007-17 and that the readings of the balance of the resolutions be waived.

Motion carried by voice vote. The chairperson read aloud the Factors and Determination of the Zoning Board of Appeals for the resolutions for ZB #1005-17 through ZB #1007-17. The readings of the balance of the resolutions were waived.

■ A motion was made by MR. MARSHALL, seconded by MR. OPETT, that the following resolutions be approved:

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

**APPLICANT:** Lisa Jones  
5688 Canandaigua–  
Farmington Town  
Line Road  
Farmington, N.Y. 14425

**File:** ZB #1005-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** 10/11/17  
**County Referral #:** 192-2017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 35. A.

**Requirement for Which Variance is Requested:** The applicant wishes to locate an existing accessory structure—identified as Shed #1—in the front yard portion of the lot with a front setback of 13 feet from the highway right-of-way line. The Town Code requires a minimum front setback of 75 in the GB General Business District.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017, made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of shed #2. The pool is separated from the highway by a fence.”

## **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 Board finds that the lot configuration would necessitate the granting of dimensional variances for almost any accessory structure that is to be placed upon this irregular shaped lot except for this accessory structure in this location upon the lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of there being any future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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 with this application there is adequate room on this portion of the lot to place the accessory structure setback at least thirty-eight (38) feet, from the front lot line. The Board finds that relocating the accessory structure to meet more than half the required seventy-five (75) foot front yard setback is a feasible alternative to the requested variance. The Board finds that granting the requested variance would not be granting the minimum relief necessary as is otherwise required of the Board by New York State Town Law.

3. Whether the requested variance is substantial.       Yes       No

**Reasons:** The Board finds that the requested variance involves a thirteen (13) foot setback from the front lot line instead of the minimum seventy-five feet required by Town Code. The Board finds that granting the requested variance involves granting a variance of eighty-two and seven tenths percent (82.7%). The Board has consistently found that granting a variance greater than fifty percent (50%) of what is otherwise re-

quired by Town Code is a substantial variance. The Board finds that this requested variance is substantial.

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 location shown on the sketch plan for shed #1 was installed without the Applicants first determining whether the placement of the structure upon the lot met the setback dimensions contained in the Town Code.

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

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

X That the benefit to the applicant does not outweigh the detriment to the neighborhood or the community and that the requested area variance is MODIFIED. The Board further finds that granting the requested variance would not be granting the minimum relief deemed necessary and that granting the requested variance would be substantial. Instead the Board finds that granting a variance to allow the accessory structure, Shed #1, to be placed thirty-eight (38) feet from the front lot line would involve granting a variance of forty-nine and four tenths percent (49.4%) which would not be a substantial variance and could be accomplished upon this portion of the site without imposing a practical difficulty upon the applicant. The Board finds that under the provisions of New York State Town Law it must grant the minimum relief necessary based upon the Board’s findings of the existence of a practical difficulty. In this instance, the Board finds there is no practical difficulty known which would prevent the applicant from complying with the minimum thirty-eight (38) foot front yard setback dimension from the front property line.

**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.

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

<b>APPLICANT:</b> Lisa Jones 5688 Canandaigua– Farmington Town Line Road Farmington, N.Y. 14425	<b>File:</b> ZB #1006-17 <b>Zoning District:</b> GB General Business <b>Published Legal Notice on:</b> October 15, 2017 <b>County Planning Action on:</b> 10/11/17 <b>County Referral #:</b> 192-2017 <b>Public Hearing held on:</b> October 23, 2017
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**Property Location:** 5688 Canandaigua–Farmington Town Line Road, Farmington, N.Y. 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 35. A.

**Requirement for Which Variance is Requested:** The applicant wishes to locate an existing accessory structure—identified as Shed #1—in the side yard portion of the lot with a side setback of 4 feet 3 inches. The Town Code requires a minimum side yard setback of 30 feet from the property line.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017, made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of Shed #2. The pool is separated from the highway by a fence.”

**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 Board finds that the lot configuration would necessitate the granting of dimensional variances for almost any accessory structure that is to be placed upon this irregular shaped lot except for this accessory structure in this location upon the lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of there being any future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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 with this application there is adequate room in the northwest portion of the lot to place the accessory structure setback at least twenty-five (25) feet, from the side lot line. The Board finds that relocating the accessory structure to meet more than half the required thirty (30) foot side yard setback is a feasible alternative to the requested variance. The Board finds that granting the requested variance would not be granting the minimum relief necessary as is otherwise required of the Board by New York State Town Law.

3. Whether the requested variance is substantial.       Yes       No

**Reasons:** The Board finds that the requested variance involves a setback of four feet-three inches (4' 3") from the side lot line instead of the minimum thirty (30) feet required by Town Code. The Board finds that granting the requested variance involves granting a variance of eighty-three and seven tenths percent (83.7%). The Board has consistently found that granting a variance greater than fifty percent (50%) of what is otherwise required by Town Code is a substantial variance. The Board finds that this requested variance is substantial.

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.  X  Yes      No

**Reasons:** The Board finds that the alleged difficulty is self-created in that the location shown on the sketch plan for shed #1 was installed without the Applicants first determining whether the placement of the structure upon the lot met the setback dimensions contained in the Town Code.

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

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

X  That the benefit to the applicant does  not  outweigh the detriment to the neighborhood or the community and that the requested area variance is MODIFIED. The Board further finds that granting the requested variance would not be granting the minimum relief deemed necessary and that granting the requested variance would be substantial. Instead the Board finds that granting a variance to allow the accessory structure, Shed #1, to be placed twenty-five (25) feet from the side lot line would involve granting a variance of seventeen percent (17 %) which would not be a substantial variance and could be accomplished upon this portion of the site without imposing a practical difficulty upon the applicant. The Board finds that under the provisions of New York State Town Law it must grant the minimum relief necessary based upon the Board’s findings of the existence of a practical difficulty. In this instance, the Board finds there is no practical difficulty known which would prevent the applicant from complying with the minimum twenty-five (25) foot side yard setback dimension from the front property line.

**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.

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

**APPLICANT:** Lisa Jones  
5688 Canandaigua–  
Farmington Town  
Line Road  
Farmington, N.Y. 14425

**File:** ZB #1007-17  
**Zoning District:** GB General Business  
**Published Legal Notice on:**  
October 15, 2017  
**County Planning Action on:** 10/11/17  
**County Referral #:** 192-2017  
**Public Hearing held on:** October 23, 2017

**Property Location:** 5688 Canandaigua–Farmington Town Line Road, 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 locate an existing accessory structure—identified as Shed #1—in the side yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot.

**State Environmental Quality Review Determination:** The granting of an Area Variance to erect an accessory structure upon 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 Ontario County Planning Board Referral 192-2017, dated October 11, 2017, made no recommendation other than to return to local board with comments. The comments include . . . “This is a rectangular lot with 236 feet of frontage and a lot depth of 68.25 feet. The lot configuration requires all accessory uses to be located in the side yard where there is insufficient depth to meet front and rear setbacks for the pool resulting in 3 variances for the pool. Variances are also required for locating Shed #1 in the side yard and for its front and side setbacks and for the rear setback of Shed #2. The pool is separated from the highway by a fence.”

**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 Board finds that the lot configuration would necessitate the granting of dimensional variances for any accessory structure that is to be placed upon this irregular shaped lot. The Board also finds that this lot does not have any adjacent dwellings and is located within an existing General Business District where residential dwellings are not a permitted use, therefore, the likelihood of future neighbors is highly unlikely. The Board also finds that the lot has been enclosed with a solid wooden fence thereby providing privacy to the outdoor portion of the lot and effectively screening such portion from the view of the traveling public. Based upon these findings, the Board finds that there will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties being created by the granting of the Area Variance.

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 variance given the physical limitations associated with the existing lot’s dimensions.

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

**Reasons:** The Board finds that the variance being requested is a variance of one hundred percent (100%) from what is required by the Town Code. The Board has consistently found that a variance greater than fifty percent (50%) of what is allowed by the Town Code to be a substantial variance request. The Board, therefore, finds that this requested area variance is a substantial variance from what is otherwise required by the Town Code.

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 the alleged difficulty is self-created in that the accessory structure, shed #1, was installed without the Applicants first determining whether the placement of the shed upon the lot met the setback dimensions contained in the Town Code.

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

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

  X   That the benefit to the applicant DOES outweigh any detriment likely to be created to the neighborhood or the community as a whole and, therefore, does grant the requested variance to allow the existing accessory structure, shed #1, to remain upon the lot, located in the side yard area shown on the submitted sketch plan with the following conditions:

1.     The Applicant is to obtain a Building Permit for said Shed #1.
2.     This area variance is granted for the existing accessory structure, Shed #1, to be placed upon the lot in the manner approved by this Board as documented in Files ZB #1005-17 and ZB #1006-17.

**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.

Mr. Brand then summarized the determinations of the seven resolutions, as follows:

- The pool may remain in its existing location.
- Shed #2 must be moved five feet forward.
- Shed #1 must be relocated to a position next to Shed #2.

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

Motion carried.

**6. PUBLIC COMMENTS—OPEN FORUM**

None.

**7. OTHER BOARD MATTERS**

Mr. DeLucia noted that the fourth Monday of December (which is the ZBA’s regular meeting evening) is Christmas Day. He asked about rescheduling the meeting. Mr. Brand suggested that the board wait until it is determined that a December meeting would be needed, and then reschedule the meeting if necessary.

**8. CODE ENFORCEMENT OFFICER REPORT**

Mr. Morse reported on the upcoming Ontario County Economic Development and Planning Department training sessions, as follows:

Session 1:	Developer Perspectives on Development Review
	Tuesday, October 24, 2017, 5:00 p.m. to 9:00 p.m.

Session 2: Municipal Board Perspectives on Development Review  
Wednesday, November 29, 2017, 5:00 p.m. to 9:00 p.m.

Ontario County Safety Training Facility, 2914 County Road 48,  
Canandaigua, N.Y. 14424

Free and open to the public. Space is limited. Pre-registration is required to:  
Deborah.henderson@co.ontario.ny.us or call (585) 396-4455

Mr. Morse reported that Indus Hospitality Group—which has proposed construction of a 2,500-square-foot Taco Bell Restaurant and a three-story 60-room Microtel Hotel on a parcel of land on the east side of State Route 332, south of Route 96, and west of Beaver Creek road in the vicinity of the east side of the KFC Restaurant (*see* minutes of the Project Review Committee, April 7, 2017)—has received a favorable determination from the U.S. Army Corps of Engineers regarding the wetland on the property. The company plans to move forward with the project and will submit 12 variance applications to the ZBA at the meeting to be held on November 27, 2017.

Mr. Morse also noted that a resident will be submitting an application at the same meeting for a lot-line adjustment issue.

## 9. DIRECTOR OF DEVELOPMENT AND PLANNING

Mr. Brand discussed the following topics:

- The Town Board will hold a Public Hearing on the Hathaway’s Corners Incentive Zoning Project (S. B. Ashley Company) on Tuesday, October 24, 2017. This project is proposed for a 126.1-acre site on the southwest corner of State Route 332 and County Road 41. The Town Board will consider the adoption of a Local Law entitled “A Local Law amending Chapter 165, Article III, Establishment and Designation of Districts, Section 165-12 of the Zoning Map” pertaining to the rezoning of the parcel to Incentive Zoning. The parcel is currently zoned R-1-15 Residential Single-Family, GB General Business and LI Limited Industrial.
- An Information Session has been scheduled on Monday, October 30, 2017, from 5:30 p.m. to 7:30 p.m. at the Town Hall for residents in the Auburn Meadows, Estates at Beaver Creek and Monarch Manor subdivisions to discuss the two bridge projects in their subdivisions which will span Beaver Creek. The session, which is open to all Town residents, also will include updates on the Auburn Trail project, the status of the development of Beaver Creek Park, and the new roads proposed in the Major Thoroughfare Overlay District (MTOD) which includes State Route 332, State Route 96 and County Road 41.
- A public information meeting on the proposed 32,000 HP electric-driven Compressor Station for the Empire North Pipeline property on Hook Road has been

scheduled for Thursday, November 9, 2017, from 5:30 p.m. to 6:30 p.m. for project displays, to be followed by a presentation and a question-and-answer session by National Fuel Gas Company at 6:30 p.m.

- The Town Codes Advisory Committee will begin work on Monday, November 13, 2017, at 6:30 p.m. at the Town Hall on the updates to the Town Code. Included in this review will be Town Code Chapter 144 on Subdivisions and Chapter 165 on Zoning. Mr. Brand said that new sections of the Town Code may be proposed and that a current section on stormwater pollution prevention regulations, which is now included within the Zoning chapter, will be transposed to its own separate section. Mr. DeLucia is the ZBA representative to this committee. Members of the committee are Dr. Michael Casale (Town Board representative), Edward Hemminger (Planning Board representative), Sue Hilton (Conservation Board representative), Code Enforcement Officer James Morse and Mr. Brand.

**10. NEXT MEETING DATE**

The next regular meeting of the Zoning Board of Appeals will be held on Monday, November 27, 2017, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8, Farmington, N.Y. 14425.

**11. ADJOURNMENT**

■ A motion was made by MR. OPETT, seconded by MR. MARSHALL, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 8:45 p.m.

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

Respectfully submitted,

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