

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, December 27, 2021, 7:00 p.m.

MINUTES—Approved

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

Board Members Present:

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

Staff Present:

John Weidenborner, Town of Farmington Zoning Officer

Staff Via Zoom:

Ron Brand, Town of Farmington Director of Development
Dan Delpriore, Town of Farmington Code Enforcement Officer
Kelly Cochrane, Town of Farmington Zoning Board of Appeals Member

Applicant’s Present:

Ronald & Elizabeth Harrington 5776 Collett Rd, Farmington

1. MEETING OPENING

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

The Pledge of Allegiance was recited.

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

This meeting was held both in person at the Farmington Town Hall and virtually on Zoom. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. A sign-in sheet was not used to avoid contact with pens, pencils and papers. The names of those attending tonight's meeting is available for public tracing should it be deemed necessary. Hand sanitizers were available throughout the building. Public access was restricted to the lobby, the main meeting room, and the public restrooms.

2. **APPROVAL OF MINUTES OF NOVEMBER 22, 2021**

■ A motion was made by MR. YOURCH seconded by MS BINNIX, that the minutes of the November 22, 2021, meeting be approved.

Motion carried.

3. **LEGAL NOTICE**

The following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper on Sunday, December 19, 2021:

ZB #1201-21: RONALD & ELIZABETH HARRINGTON, 5776 COLLETT ROAD, FARMINGTON, NY 14425: The applicants request an area variance to the provisions of Chapter 165, Article V, Section 61. A. of the Farmington Town Code. The applicants wish to erect a fence having 8-feet in height in the rear yard portion of their lot. The Town Code limits a fence to 6-feet in height to be erected or maintained on any lot whose permitted principal use is residential. The property is located at 5776 Collett Road and is zoned GI-General Industrial.

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

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

4. **CONTINUED PUBLIC HEARING**

ZB #1002-21: SCOTT A. HARTER P.E. 7172 VICTOR-PITTSFORD ROAD VICTOR, NY 14564:

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

Mr. Marshall continued the Public Hearing on this application and asks if there is anyone present who would like to speak for against this application.

Hearing none. Mr. Marshall then asks for any further questions from staff.

Mr. Weidenborner states that Mr. Brand has prepared a resolution for the continuation of this application at the request of the applicant.

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

5. NEW PUBLIC HEARINGS

ZB #1201-21: RONALD & ELIZABETH HARRINGTON, 5776 COLLETT ROAD, FARMINGTON, NY 14425:

The applicants request an area variance to the provisions of Chapter 165, Article V, Section 61. A. of the Farmington Town Code. The applicants wish to erect a fence having 8-feet in height in the rear yard portion of their lot. The Town Code limits a fence to 6-feet in height to be erected or maintained on any lot whose permitted principal use is residential. The property is located at 5776 Collett Road and is zoned GI-General Industrial.

Mr. Marshall opens the Public Hearing for this application.

Ronald and Elizabeth Harrington presented this application. Mr. Harrington states that everything they are looking to do is contained within his area variance application which was given to the board members.

Mr. Marshall then asks for questions from the board.

Ms. Binnix asks Mr. Weidenborner why the Town Code supersedes the Zoning Code.

Mr. Weidenborner explains that it isn't really Town Code verse Zoning Code. The issue with this lot is it is an existing nonconforming lot. This is a residential lot in an area that has been rezoned, since the house was built, to General Industrial. General Industrial does allow for an eight-foot fence but the zoning code for fences then puts in "unless it is residential" and that is what supersedes the GI because the residential use is in there. There are very few lots in our Town like this and looking at the area around it there was no detriment because it is residential in the GI District it falls under the other category.

Mr. Marshall then asks for any further comments from the board. Hearing none. He then asks for comments from staff.

Mr. Weidenborner states that there was a draft resolution prepared for the boards consideration.

Mr. Marshall then closes the public hearing.

6. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #1002-21 **Scott Harter P.E.** **Area Variance**
7171 Victor-Pittsford Road
Victor, N.Y. 14564

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

Motion carried by voice vote.

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

FILE: **ZB #1002-21 Area Variance**

APPLICANT: **Scott A. Harter, P.E. - c/o Tim Loughlin, Property Owner**
640 County Road #8, Farmington, New York 14425

ACTION: **Area Variance—Continuation of Public Hearing**

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has received an application for an Area Variance (File ZB #1002-21) to permit the construction of an Accessory Structure (a barn) within the Front Yard Portion of the lot located at 640 County Road #8; and

WHEREAS, a Public Hearing upon the proposed Area Variance was re-opened by the Board on December 27, 2021, at which testimony from the Applicant and the public was received and entered into the public record on this Application; and

WHEREAS, the property owner, Tim Loughlin, in an email to John Weidenborner, Town Zoning Inspector, dated December 20, 2021, at 12:43 AM requested continuation of the Board’s deliberation upon this Application to the January 2022 meeting to allow the property owner time to make sure the bank is o.k. with an alternative proposal to the requested Area Variance.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby take action to approve continuation of the Public Hearing upon this requested Area Variance to their meeting on Monday, January 24, 2022.

BE IT FURTHER RESOLVED that the Applicant is directed to consult with town staff during the coming weeks to resolve any amendments to this pending application.

BE IT FINALLY RESOLVED that a copy of this resolution is to be provided to the Applicant; the Property Owner; the Town Code Enforcement Officer; the Town Zoning Inspector; and the Town Director of Planning and Development.

The above resolution was offered by **MR. YOURCH** and seconded by **MR. RUTHVEN** at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, December 27, 2021. Following discussion, the following roll call vote was recorded:

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

Motion carried.

ZB #1201-21 Ronald & Elizabeth Harrington Area Variance
5776 Collett Road
Farmington, N.Y. 14425

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

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

ZB #1201-21

APPLICANT: Ronald & Elizabeth Harrington, 5776 Collett Road Farmington, NY 14425

ACTION: Area Variance to erect two seven-foot-long sections of eight (8) foot high privacy fence in the rear yard of the lot.

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

WHEREAS, the Board finds that the granting of an area variance is classified as a Type II Action under Part 617.5 (c) (17) of article 8 of the New York State Environmental Conservation Law.

NOW, THEREFORE, BE IT RESOLVED THAT the Board does hereby classify the proposed Action as a Type II Action under Section 617.5 (c) (17) of the SEQR Regulations.

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

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

The above resolution was offered by MR. YOURCH and seconded by MR. RUTHVEN at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, December 27, 2021. Following discussion, the following roll call vote was recorded:

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

Motion carried.

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

Motion carried by voice vote.

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

APPLICANTS: RONALD & ELIZABETH HARRINGTON	File: ZB #1201-21
5776 Collett Road	Zoning District: GI-General Indus
Farmington, New York 14425	Industrial
	Published Legal Notice on:
	December 19, 2021
	County Planning Action on: N/A
	County Referral #: N/A
	Public Hearing held on: December
	27, 2021

Property Location: 5776 Collett Road Farmington, New York 14425

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

Requirement for Which Variances are Requested: The applicants request an area variance to the provisions of Chapter 165, Article V, Section 61. A. of the Farmington Town Code. The applicants wish to allow an existing fence, having 8-feet in height and located within the rear yard portion of their lot, to remain. The Town Code limits a fence

to 6-feet in height to be erected or maintained on any lot whose permitted principal use is residential. The property is located at 5776 Collett Road and is zoned GI-General Industrial.

State Environmental Quality Review Determination: The granting of an Area Variance for an eight (8) foot tall fence, an “accessory structure,” is classified a Type II Action under Part 617.5 (c) 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 (ECL), article 8.

County Planning Referral Recommendation: N/A. Exempt Action by Ontario County Planning Board Bylaws, as it involves the granting of a single area variance not related to a subdivision or site plan.

FACTORS CONSIDERED AND BOARD FINDINGS

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

Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds that the current zoning of the property along the north side of Collett Road is General Industrial. The Board further finds that this residential lot is one of the last remaining existing non-conforming residential lots in this neighborhood. The General Industrial zoning district allows fences within the rear yard of any lot to be a maximum height of eight (8) feet. However, the Town Code further restricts the height of fences to six (6) feet where, as in this instance, the permitted principal use of the property is residential.

The Board further finds that due to the existing location of the house being twenty-five (25) feet from Collett Road and the layout of this residential lot, the applicants are requesting two (2) eight-foot-tall sections of fence for their privacy and to reduce road noise as much as possible. Each of the two (2) eight-foot-tall fences will have a total length of seven (7) feet, for a total of fourteen (14) feet in length.

The Board further finds that placement of these two sections of fence, within the rear yard portion of their lot, will be screened from neighbors along the south side of Collett Road. The Board determines that allowing two (2) eight-foot-high fences having a total length of fourteen (14) feet would not create an undesirable change to the character of the neighborhood, nor will it be a detriment to nearby properties.

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

Reasons: The Board determines that due to the site’s layout, the applicants have no feasible alternative to the requested variance that would create the same extent of privacy within the rear yard portion of their lot.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds that the requested privacy fence located within the rear portion of the lot would involve granting an area variance of thirty-three percent (33%) to what is otherwise allowed by the Town Code. The Board has consistently found that granting an area variance involving fifty percent (50%) or more of that allowed by the Town Code 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 considered 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 applicants purchased the property with the existing nonconforming structure and use and has then proposed an 8-foot privacy fence due to these existing conditions.

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

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

The benefit to the applicant does outweigh the detriment to the community or neighborhood; and, therefore, the requested area variance to erect the two Accessory Structures (two (2) eight-foot tall by seven-foot-long sections of privacy fence) within the rear yard portion of their lot is **Approved with the following conditions.**

- 1. The privacy fence shall not be higher than eight (8) feet in height above existing grade.

2. Each of the two (2) eight-foot-tall sections of privacy fence shall not be longer in length than seven (7) feet, for a combined total of fourteen (14) feet in length.
3. The color of the privacy fence shall match the color of the principal structure to the greatest extent practical.
4. Any light fixture to be attached to these two sections of privacy fence shall comply with the Town’s Dark Sky lighting standards contained in Chapter 165 of the Town Code.
5. The privacy fence shall be maintained in a safe and sound condition.

NOW, THEREFORE, BE IT RESOLVED that the Board in making this Decision 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 applicants.

The above resolution was offered by MR. YOURCH and seconded by MR. RUTHVEN at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, December 27, 2021. Following discussion, the following roll call vote was recorded:

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

Motion carried.

7. OTHER BOARD MATTERS

- Mr. Marshall and Mr. Ruthven will not be in attendance at the February 28, 2022 Meeting. Mr. Yourch will run that meeting. If anyone else has a conflict for that meeting, please let Mr. Marshall know.
- Mr. Marshall states that this is Ms. Attardi’s last meeting and thanks her for all her help and input that she has given to the board over the last 3 years.
- Kelly Cochrane will be appointed to fill the open position vacated by Ms. Attardi.
- Mr. Marshall asks all board members to review the Rules of Procedures and to email only him with any changes or updates they would like to make. He will then compile all the information to have a draft for them to review and approve at the January 24, 2022, meeting.

8. PUBLIC COMMENTS—OPEN FORUM DISCUSSION**9. DIRECTOR OF PLANNING AND DEVELOPMENT UPDATE**

- Mr. Brand states that he appreciates all of Ms. Attardi’s commitment to the Town during her tenure with the Zoning Board of Appeals and that she will be missed.
- Mr. Brand states that Kelly Cochrane has stepped up to fill Ms. Attardi’s chair and he thinks she will do a great job.
- The Final Draft of the Comprehensive Plan was posted today upon the Town Website.

10. ZONING OFFICER UPDATE

- Hates to see Ms. Attardi leave the board.
- Welcomes Ms. Cochrane to the board
- Next Meeting will be January 24, 2022
- Open Clerk of the Board of Position

11. CODE ENFORCEMENT OFFICER UPDATE

- Mr. Delpriore wants to thank everyone for a great year and looks forward to working with everyone in 2022
- Would like to wish Mr. Attardi the best with her new job and thanks her for all her hard work with the board.

12. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will be held on Monday, January 24, 2022, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8.

13. ADJOURNMENT

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

Motion carried by voice vote. The meeting was adjourned at 7:12 p.m.

Respectfully submitted,

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