

*Town of Farmington*

1000 County Road 8  
Farmington, New York 14425

**ZONING BOARD OF APPEALS**

*Established July 15, 1957*

**Monday, May 24, 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:** Thomas Yourch, *Acting Chairperson*  
Jill Attardi  
Tod Ruthven  
Aaron Sweeney

**Board Members Excused:** Jeremy Marshall, *Chairperson*

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

**Applicant Present:**  
Nick & Melissa Buttaccio 5005 Collett Road, Shortsville  
Douglas & Jamie Bailey 1769 Estate Drive, Farmington, NY 14425

**Others Present:**  
None

**1. MEETING OPENING**

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

The Pledge of Allegiance was recited.

Mr. Yourch 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 in person at the Farmington Town Hall. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. Board members, Town staff and residents who were in attendance at the Town Hall remained at separated distances of at least six feet and used facemasks at distances of less than six feet. 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. Temperature checks were conducted by Town staff at the entrance to the Town Hall. Hand sanitizers were available throughout the building. Guidelines and safety measures were posted on the meeting room door and in the lobby of the Town Hall. Separate entrance and exit locations were used. Public access was restricted to the lobby, the main meeting room, and the public restrooms.

## 2. **APPROVAL OF MINUTES OF APRIL 26, 2021**

■ A motion was made by MR. RUTHVEN seconded by MR. SWEENEY, that the minutes of the April 26, 2021, meeting be approved.

Motion carried by voice vote.

## 3. **LEGAL NOTICE**

The following Legal Notice was published in the *Canandaigua Daily Messenger* newspaper on Sunday, May 16, 2021:

### **ZB #0501-21, NICHOLAS & MELISSA BUTTACCIO, 5005 COLLETT ROAD, FARMINGTON, NEW YORK 14425:**

Request an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to erect a 2,400- square-foot accessory structure (a barn) in the front yard portion of his lot. The Town Code requires all accessory structures to be located within the rear yard portion of the lot. The property is zoned A-80 Agricultural.

### **ZB #0502-21, DAVID MILILLO, 33 SUSAN DRIVE, FARMINGTON, NEW YORK 14425:**

Request an Area Variance in accordance with Chapter 165, Article V, Section 58, E of the Farmington Town Code. The applicant requests to keep a 140 square-foot accessory structure (a shed) on his lot that is located within a Manufactured Dwelling Community.

The Town Code requires accessory structures, in a Manufactured Dwelling Community, not exceed the maximum buildable area of 100 square feet. The property is zoned RM-F Residential Multi-Family.

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

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

#### **4. NEW PUBLIC HEARINGS**

##### **ZB #0501-21, NICHOLAS & MELISSA BUTTACCIO, 5005 COLLETT ROAD, FARMINGTON, NEW YORK 14425:**

Request an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to erect a 2,400- square-foot accessory structure (a barn) in the front yard portion of his lot. The Town Code requires all accessory structures to be located within the rear yard portion of the lot. The property is zoned A-80 Agricultural.

Mr. Yurch opened the Public Hearing on this application.

Mr. & Mrs. Buttaccio presented this application.

Ms. Buttaccio stated that she has a few reasons as to why they would like the pole barn erected in the proposed location. For starters when you are looking at their house off to the left, where they would like the barn, has less shale than the rest of their property. Another point is behind where they would like the barn is where the gas line is. They also have their well outback and there is a standing body of water that was used to get the fill for their house. Located to the left is the septic tank. They feel that where the barn is going that it will be hidden by trees during the majority of the year. Outback behind the property they do not have much of a backyard because there is a lot of water during the spring and early summer. They have young children that are active in sports that have four wheelers and side-by-sides and the side yard, where she's sure everyone thinks that is where they should put it, is a nice area for the kids to run and do sports. They also have two Golden Retrievers, and their invisible fencing goes around that part. They do know of several other properties that have pole barns in front of their houses, one on Payne Road and one on Shortsville Road. They can provide addresses if that is needed. Their driveway is already in place and is located right there off where the barn will be located. They said they did not know if any of their neighbors had protested to not wanting this.

Mr. Yurch responded no.

Ms. Buttaccio states that is pretty much it for reasons.

Mr. Ruthven asks what the redline behind the house represents on the submitted site plan.

Ms. Buttaccio says if it located to the back left it is the propane line.

Mr. Ruthven asks the distance of the propane tank from the house.

Mr. Buttaccio said 150 feet from the house.

Mr. Yurch then asked for comments or questions from Town Staff.

Mr. Brand states that they have drafted two resolutions for the Town's consideration. One resolution is for the State Environmental Quality Review Regulations and the second is the resolution action for this requested area variance. Copies were provided to the applicant and posted upon the Town's website.

Mr. Weidenborner states that they did go out to review the site. The site is fairly newer with the house being built less than a year ago. This is a self-created hardship because this could have been a consideration while building the home. The propane tank could have been moved allowing the barn to be shifted back behind the house. We also went back and looked at where the little barn is located in the wooded area and it appears to them that there is plenty of area to build the barn back there, but we understand that it is not a convenient location. In the past the board has denied similar applications that have been based on similar types of situations where it was all deemed self-created with no real hardship on the property. The drafted resolution is based on previous applications.

Ms. Attardi asks Mr. Weidenborner to expand on the fact that there are no other structures in the front yard but the applicant states there are neighbors that do.

Mr. Weidenborner explains that there is a barn located up the road from the applicants that was built in 1972 that used to be a horse barn and is now used as storage. The research they have done they have found that most structures, in the general area, were built prior to codes. He adds that there is on Payne Road that was approved due to hardship because of a drumlin. It was literally the only place on the property to put the barn without digging out a hill which would have been an environmental consideration at that point.

Mr. Yurch then asks for comments from the public. Hearing none he asks for comments from the board.

Ms. Attardi asks that if the space directly behind the house going to the propane line if that is the play area that the applicant is referring to.

Ms. Buttaccio says no if you were looking directly at their house to the left of their property is an open yard.

Ms. Attardi then asks if there is a reason why the barn cannot be moved back further.

Ms. Buttaccio says that behind the house is the well and there is not much property back there and it backs right up to the woods.

Mr. Buttaccio states that it is very deceiving because the property goes on an angle and then straight back. There is also a gravity drain that goes back through there as well.

Mr. Ruthven asks the applicant if the pole barn could be turned to be in line with the house.

Mr. Buttaccio explains that they hit shale or bedrock at eighteen inches at certain spots. So, the dirt was brought up around the house to make it look like it is into a hill. We have a walkout basement, so there would be tons of water flooding down into the barn at that point. The water doesn't go anywhere it just sits there.

Mr. Ruthven asks what the applicant plans to build the pole barn on.

Mr. Buttaccio says a slab, and, in that spot, it is very flat and level. He states that it was mentioned for them to put the barn in the back where the other wood structure barn is, but they were hoping that one day one of their kids could build back there, so they didn't really want to put anything back there.

Mr. Yourch asks what is determining the 2400 square feet and is it possible to make the structure smaller to fit better.

Mr. Buttaccio explains that he has already purchased the lumber before the lumber costs increased. He explains that they could go smaller and that anything is possible at this point.

Mr. Ruthven states that he understands the applicants concerns about the water and asks if turning the pole barn and putting it on the side of the house is a possibility.

Mr. Buttaccio states that he would have to move the propane line and he wanted to keep it far away so it couldn't be seen from the road. He adds that he grew up in Shortsville and Manchester his whole life and he's never lived in the country and had to worry about propane or a well. He says he knows that a propane tank is pretty much an eyesore sitting in someone's yard.

Mr. Ruthven adds that if the pole barn was sitting there sideways it would pretty much hide the tank.

Mr. Buttaccio says that is what he was trying to do is to put the pole bard there to hide the tank. He explains that the proposed location is still about 118 feet off the road and eighty-eight feet from the house. It would not be seen by traffic it is very wooded.

Mr. Ruthven asks since they bought the lumber what their second option will be.

Mr. Buttaccio explains that it is not feasible to put it back where the old wood barn is.

Mr. Buttaccio then approaches the board to review the site plan map with the members.

Mr. Sweeney asks if they can build on bedrock.

Mr. Buttaccio says yes, it's just putting the poles in the ground is more costly. He adds that the land that he bought is awful and even with the dig hole tests they didn't realize what they were getting in to before they started the project.

Mr. Yourch asked if they could bring fill in if they needed too.

Mr. Buttaccio says they could but it would be very expensive. The dirt isn't expensive the trucking is expensive. He says like Mr. Weidenborner said maybe he should save his money until he can afford to put the barn where the board wants him to put it.

Ms. Buttaccio adds that there is a lot of water behind the property. Very swampy water.

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

Hearing none Mr. Yourch then closed the Public Hearing on this application.

**ZB #0502-21, DAVID MILILLO, 33 SUSAN DRIVE, FARMINGTON, NEW YORK 14425:**

Request an Area Variance in accordance with Chapter 165, Article V, Section 58, E of the Farmington Town Code. The applicant requests to keep a 140 square-foot accessory structure (a shed) on his lot that is located within a Manufactured Dwelling Community. The Town Code requires accessory structures, in a Manufactured Dwelling Community, not exceed the maximum buildable area of 100 square feet. The property is zoned RM-F Residential Multi-Family.

Mr. Yourch opened the Public Hearing on this application.

David Milillo and John Pisaturo presented this application.

John Pisaturo, Attorney of Law, is here representing his client. He asks the Board if they will be making their decision on the application tonight.

Mr. Yourch said the board will make their determination tonight.

Mr. Pisaturo states that he just became involved with this Thursday or Friday last week, so he had to scurry together a sufficient application on behalf of applicant. While distributing items to the Board and Town Staff he states that they may or may not have these items because it is important that he produce a history for the Board.

Mr. Weidenborner states that for the record the items Mr. Pisaturo distributed were in the members packets for the meeting.

Mr. Pisaturo states that the substance of those initial papers the applicant went to the park management and explained exactly what he was going to do. What mobile home he was going to rent and what was going to be the shed that he proposed. The manager said fine in writing and there is a statement here that says so. Now you permit 100 square feet, and this is 140 square feet. So that is important because it is not twice what the code says. Attached to this is his purchase to the storage shed which shows a significant financial attribution of \$4200.00. When this happened, he had the responsibility to further erect the shed in a manner consistent with the outside of his own trailer for aesthetic purposes. As a result, the Park Manager gave him written permission. Unfortunately, in this limited setting you and I have some appreciation of zoning laws and regulations that may affect how we deal with this. At the same time, besides that cost, when he was advised to come to court or to these proceedings, I asked him to take some pictures. The character of the neighborhood is something very crucial to your understanding and evaluation. He states that the shed is attractive and is not in any way a detriment to the area. In order to evaluate the character of the neighborhood there are five pictures that he has for their presentation. He starts with number nineteen, which is the first two photographs, is exactly the same size if not larger than the one that he is trying to construct.

Ms. Attardi asks Mr. Pisaturo if the shed in the picture was a one hundred and forty square foot shed.

Mr. Pisaturo says larger right David?

Mr. Milillo states that he thinks that it is about the same size, but he did not go out and measure.

Mr. Ruthven says but you do not know if it is exactly the same.

Mr. Milillo states that he has been a general contractor for thirty years and he can tell you pretty darn close.

Mr. Pisaturo asks Mr. Milillo if the shed from 97 is greater and Mr. Milillo says yes.

Mr. Pisaturo says that this one at 97 is greater than the one he is trying to get approval for.

Ms. Attardi asks Town Staff if the shed Mr. Pisaturo is referring to is the storage or maintenance shed for the park.

Mr. Weidenborner says that it is the maintenance shed that is on a vacant lot and is referred to in the draft resolution.

Mr. Pisaturo says so that is the purpose of it.

Mr. Weidenborner and Ms. Attardi both respond yes.

Mr. Weidenborner adds that the shed he is referring to was also approved prior to code.

Mr. Pisaturo begins to review the pictures again with the board. He says here is one from 97 and here is another one from 54.

Mr. Milillo says that 97 has two sheds on the lot but he did not take the pictures of the other shed because it was more dilapidated in the back of the lot.

Mr. Pisaturo says 54 is about the same as Mr. Milillo's shed.

Mr. Milillo says it is bigger.

Mr. Pisaturo says and last but not least we have the one at 98 that aesthetically is not in the best condition.

He left the pictures with the Board Members to circulate and review.

Mr. Pisaturo says as you can see things are already there. The issue being grandfathered in.

Mr. Weidenborner says that if he has addresses, he can look up the permits. He adds that the shed at 97 right now is a 100 square foot shed and was permitted last year as a 10x10.

Ms. Attardi then asks Mr. Pisaturo to show her what picture is 97.

Mr. Pisaturo says it is the ugly looking one with the fence.

Mr. Milillo points out the picture and says no that 97 is bigger.

Ms. Attardi asks Town Staff if that is the one that is 100 square feet.

Mr. Weidenborner says yes that is 100 square feet, but it is tall, but it went in prior to the new code. Previously the height allowed was fifteen feet. The updated code states maximum height of eight feet. Per the permit in the system, it was a 100 square foot application and was completed stating that it was 100 square feet.

Mr. Pisaturo says there is a law in the State of New York, which I'm sure you have your state manuals, that give you direction about what may or may not be appropriate for an area variance. In that regard in the State of New York and in the Forth Department Greece, Perinton, have gone onto further hearings for the appellate division and in each case, they looked at the criteria that he is asking them to consider tonight. If they can demonstrate significant economic injury and secondly the variance will not affect the neighborhood. So, with all due respect looking at this shed verses those that are there it is obviously brand



new, it is obviously much more attractive than anything that is there and in your review of this matter I know that you will see there is no adverse on the character of the neighborhood. I think these pictures say that when you look at the dimensions or as we find by the Zoning Officer there is no decline in the value of the properties. In fact, by looking at these pictures it would seem that this improves the character of the neighborhood does not diminish it in any way. I believe based upon what I have just proved you with review and evaluation there is substantial evidence in your discretion to grant the approval based on economic hardship and based upon the absence of diminishment of the character of the neighborhood I think the area is improved. You can tell that you published this, although this may have been one with a cluster of other residents who received or saw this notice that they would have been highly likely upset to come to appear or in writing or otherwise to object. It would be our position that the application is sufficient from both the standpoint of law and from the standpoint of practicality. In review of this and other settings that it is around that there is nothing being changed that they are already there and that by approving this you are merely granting with your discretion the authority for him to maintain it in its present location. I appreciate your considerations and obviously if you have any questions both Mr. Milillo and I can answer them. He relied upon the park. He didn't rely on somebody who was far detached from the scene. He didn't try to do anything offensive or in objections or defiant. Pictures are worth a thousand words. Looking at what we have here I think the law, the facts and the pictures and the material that has been provided to you support you granting the variance in this situation based upon the two factors of the character of the neighborhood and economic hardship. I appreciate your time and obviously we are here to answer any questions. He didn't just go out there and do what he wanted. Here he relied upon that manager and of all the people that should know it is unfortunate to spend that kind of money, to comply with the aesthetic appearance of his trailer, sometimes things happen, and I would hope that you would rectify what maybe with the discretion you have to grant this. Thank you all for your time.

Mr. Yurch then asks if Mr. Milillo has anything he would like to add.

Mr. Milillo states that he has lived in two other mobile home parks. Orchard Grove in Holley, he never needed a permit, and a park in Ontario and he never needed a permit from them either. He states that he never spoke to the manager, as Mr. Weidenborner has stated, he spoke to one of the owners that signed off on this before he bought the mobile home. So, he gave up the garage and sold his house in Greece and he needed the additional room because he does not have anywhere else to put things. There were no problems he gave it to him in writing. I would never have bought the mobile home. I bought a brand-new mobile home a brand-new shed built by the Amish and had it delivered. I apologize that I didn't know that I needed a permit for this area. I thought Farmington was more rural because I came from Greece.

Mr. Yurch then asks for comments from Town Staff.

Mr. Brand states that they have drafted two resolutions for the Town's consideration. One resolution is a Type II Action under SEQR and the second is the resolution that has been

prepared evaluating the criteria based on our findings. Copies were provided to the applicant and posted upon the Town's website.

Mr. Pisaturo adds that they object to the findings that were made because there was no adverse effect on the character of the area because of all the things that came before all of you today doesn't seem to be anyway disrespectful or anyway contradictory that the improvement and the enhancement that this brought to the trailer park. It seems it should permit you to grant your approval in contradiction to what may have been a predetermined proposal without having so many information that was provided here today.

Mr. Weidenborner then reviews the pictures with the Board: #97 (is actually a vacant lot with no number anymore) is the shed that was approved years ago for the previous park owners to be used as a maintenance shed on an empty lot. This shed was approved before the code by the Planning Board. The shed that is in fact at #97 is permitted as a one hundred square foot shed. The shed located at #54 is also permitted as a 100 square foot shed. The shed at #99 he could not find a permit, from his tablet sitting in the meeting, but looks like it goes back a few years and could be before code. The shed at #19 it does appear that it is 100 square feet but does appear to be a few years old. He would know better if he went out to the site. As we know the Town does update their codes throughout the years to try to better the community. We do go through each of the mobile home communities to do yearly inspections for their Special Use permits. He recently performed those inspections with our new Code Officer Leland. We drive down every street looking for any violations within the parks. We then present that information to the Town Board. The issues that arose with Mr. Milillo's shed is this Manufactured Community was recently purchased by Cook Properties, who also owns Farmington Mobile Home Community. They are working with the previous owners, Choice Properties, to finish constructing the homes like Mr. Milillo purchased. From his personal point of view, the previous owners are just trying to get rid of these trailers and saying what they can to sell them. Unfortunately, when Mr. Milillo went to ask for permission for the shed, he talked with Brian Cook because the property manager was diagnosed with COVID and was out for a week and a half. Katie is who I normally work with. She previously was at Farmington and now she handles both parks. Cook actually hired her from the previous owner of Farmington because she is so great with her communities. She would have caught the error and told Mr. Milillo that he could not have the shed. He has spoken with Brian since then and he has apologized a lot about it. Unfortunately, the way we look at it is Brian cannot change Town Code. He could approve a 200 square foot pole barn in writing, and he still could not build that because of Town Code. Unfortunately, he was not aware of the permits. If he would have reached out and talked to the Town, we would have told him that 100 square feet is the max. I cannot argue that on his lot it does look nice there. He has one of the bigger lots. If the Board approves this, they will be in away putting out a suggestion to others to come in and do the same thing. It would be setting the precedent of having a bigger shed. The Town Board went and purposely redid this code back in 1997 to help the communities to keep the size down to 100 square feet. We do write violations if the shed is not in good shape and by doing that, we are getting some redone. However, we do have the pre-existing non-conforming clause in the code, so if they were previously approved larger sheds they can replace at the same size.

Mr. Pisaturo interrupts Mr. Weidenborner to state that yes Mr. Milillo did not know the law and yes, he relied on somebody who should have known. The reliance that he put on those people the owner he is sure is a result of this whether the Zoning Officer or this case comes back and hits him in the head this is not something that is going to repeat itself. But once he had the authority to spend \$4200.00 to put it there, he is really at a loss in more ways than we would like to admit. But I would assume that because of the facts of this case whether it was the young lady that was mentioned or it was the person in charge of the trailer park I'm sure they will notify or even send out as part of the ramification a notice to perspective buyers. This is please complying with the current law as it now stands because otherwise, they would probably buy the trailer, but they may not know anything about the shed until they are comfortable, and they know what they are doing. I think this will put the owners on notice, put the managers on notice and make them assist in your continuous regulation in compliance with the zoning law so this kind of waste this kind of economic loss should have never happened. There was nothing intentional, not vindictive, or defiant and the forty-foot addition that you would hopefully grant, looking at all the things that I have presented to you, would not appear to be. You are not putting a liver store in the middle of the trailer park. You are not doing anything to enhance the use of the area or in any way degrade the other properties.

Mr. Weidenborner then continues and states that he has talked to Mr. Cook on numerous occasions about this and he has apologized for his oversight. He has tried to work with the property owner and from my understanding he has offered to purchase the shed from the homeowner to remove it at his cost due to his mistake. The homeowners denied it.

Mr. Milillo says he was never told that by Mr. Cook.

Mr. Weidenborner added that he explained that would be a civil matter at that point between Mr. Cook and the homeowner.

Mr. Milillo states that before he bought this brand-new mobile home, and paid cash, I would never have bought it if he could not put it there. I had approval from the realtor that sold it to him and approval from the owner. I did not know anything about having to get a permit for forty additional square feet.

Mr. Pisaturo says your approval would stop this in its entirety. Who can afford lawyers, courts, and all the things that are so negative in this world today in order to right something to make it correct. Sue that guy it's probably a corporation LLC weather he gets his money even if he wins in court is another obstacle that I'm not looking for more work. I'm not trying to do anything that will cost more money I'm merely trying to impose a sense of the whole picture so you can use the discretion that you have knowing the limitations of this request.

Mr. Delpriore states that one comment he would like to make is about the effort that the Town makes informing our residents whether it is sending out newsletters and postings on social media. We are informing people all the time what is required for Building Permits

and if they are unsure to always call the Town before doing any work anywhere you go in the State. He completely understands where they are coming from however they should have known.

Mr. Milillo interrupts Mr. Delpriore to state that he was moving back and forth for several weeks from Greece, and my attorney will testify he was the attorney when I closed on my loan, several weeks I was moving back and forth. I only bought the property and plan on being here two years. My fiancé is a nurse and we only moved here because she has to travel from here to Syracuse to do her clinicals. Once her clinicals are done she will be a nurse practitioner. I'm out of here. I will build a house in Farmington or in Canandaigua or wherever.

\*\*Conversations then erupt between too many people to make out anything specific.

Mr. Pisaturo says that something in writing is usually always accepted by all. We are not here to get away with murder. We are not here to do anything in defiance of your ordinance. There is an authority that you have as a Zoning Board to grant with your discretion in certain situations.

Mr. Pisaturo then discusses his time on a Zoning Board and his time as Chairperson. He states they granted variances because they were enhancements or benefits to the community. Mr. Milillo is not trying to do anything underhandedly there is no deception its as clear as the paper that he got approval on. With that understanding he is hopeful that they can weigh these factors to determine that it is within their discretion to grant this. Not maybe next time because next time your people are maybe going to have Mr. Cook as a condition of this situation to attach a copy of the code that deals with the sheds to his application. It's not the end of the world for him. It's not an additional expense. He may have misled you about what he would and wouldn't do but that simple modification is going to stop from adding more work from innocent people. They are just trying to find a home a place to live. Thank you.

Mr. Brand would like to clarify one point that if the Board does act to grant the variance it is not granted to the property owner or the renter it goes with the property. So, the next person is entitled to a building that size.

Mr. Pisaturo states that yes, they are establishing a pattern for this one house but are you doing something extremely large or offensive or inconsistent with the properties around it. There are so many places around here that have their sheds. They may have been clarified by the Zoning Officer but is this really stuck out like an eyesore. Does it appear to be something offensive. If somebody in that neighborhood thought this was offensive usually you listen to the public more than sometimes lawyers but as a result, I'm only thinking that no one found this with objection, nobody thought this was going to hurt them, nobody thought this was wrong. Sometimes right from wrong has its place and this is one of those situations. I'm not asking you to bend the rules I'm asking you to merely find that the laws that there is no adverse effect to the neighborhood and with compliance of the law of the State of New York that the area variance regulations that this is consistent.

Mr. Ruthven states but you are asking us to bend the rules.

Mr. Pisaturo attempts to interrupt Mr. Ruthven and Mr. Ruthven says let me finish. He states that you are asking us to bend the rules because you are asking us to change the code. The applicant did not come to the Town to ask for permission. Whether he knew it or not he went to seek approval from the mobile home park, which he got permission great, but there was another side that he is required to also come to the Town. Whether he did it or not that is the Town Code. If the applicant would have come to the Town, he would have known that he would have gotten a certain size shed for that lot. So, you are asking us to bend the rules.

Mr. Pisaturo cuts off Mr. Ruthven and says no you have authority just like when I was a Judge in Gates for 30 years. You have a discretion when someone walks in with a DWI in your judiciary capacity you have the right to apply the law not to bend the rules. If the law says these two factors are crucial to a determination of whether or not to grant. The law says that not Farmington. If the court of appeals, the State of New York, the Forth Department found it necessary Pittsford, Greece, Fairport, and other ones if you look under the Forth Department, they say that you are not bending the rules that you are applying what the law says under area variances. I would merely suggest you are following the law not changing the law. That is what this board is for. It's not that he writes up a resolution and you rubber stamp it and that's that. He has a job to do, and he is going to lean towards regulations. But all of you with your commonsense lean towards merit, there is the law, there is a reason when the right thing to do is to grant it.

Mr. Sweeney says you talk about the laws that we are governed by and there are five factors that we must consider here as Board members. One being if an undesirable change will be produced in the character of the neighborhood, whether the benefit sought can be achieved by a feasible alternative, if the alleged difficulty was self-created, and whether the requested variance is substantial. We as a Board must go through these and decide each one individually.

Mr. Pisaturo interrupts Mr. Sweeney to say collectively though is you look at the criteria are you doing something substantially in violation of an ordinance by granting this approval, probably not. Those criteria are things that you look at. Are you ever going to get 100%, I don't think so.

Mr. Sweeney says maybe, maybe not, but we also must determine if we can make this better.

Mr. Pisaturo states he wasn't stupid he was ignorant of the zoning laws which 80-90% of the public have no knowledge of what any of that is all about until maybe a builder or an owner of a property brings it to your attention. Then you have to evaluate what you can do, with or without permission. I don't know how much further he could have went. It's one thing if he just jumped into it. Here he is relying upon a realtor that is supposed to be

serving him, he is relying on an owner, not just a girl in the office, and with that kind of authority this guy is in this business with more than one location.

Mr. Sweeney states they do have authority, but they do not have the Town authority. It is the applicant's responsibility to contact the Town and ultimately it was not up to Brian Cook to say this was ok. This is an issue between management and the applicant.

Mr. Pisaturo says he spent the money relying on other people.

Mr. Ruthven states that he understands that, and we can talk about that all night but that is not...

Mr. Pisaturo cuts him off to say that it is not a self-imposed hardship. Maybe he listened to the wrong people. Maybe there is a lawsuit down the road. But to simplify and make things right, he lost his money and he never heard anything from Mr. Cook. They have the right to right the wrong.

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

Hearing none Mr. Yourch then closed the Public Hearing on this application

Mr. Yourch asks Mr. Brand if this is something that should be tabled and discussed at further length.

Mr. Brand states that to be very blunt and honest with you I have heard nothing here tonight to change the draft resolution that was prepared for your consideration.

## 5. BOARD BUSINESS—DELIBERATIONS AND DECISION

<b>ZB #0501-21</b>	<b>Nicholas &amp; Melissa Buttaccio</b>	<b>Area Variance</b>
	<b>5005 Collett Road</b>	
	<b>Farmington, N.Y. 14425</b>	

■ A motion was made by MS. ATTARDI, 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 #0501-21**

**APPLICANT: Nicholas & Melissa Buttaccio, 5005 Collett Road, Farmington, N.Y. 14425**



**ACTION: Area Variance to erect a 2,400-square-foot accessory structure (a barn) in the front 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 that the granting of an area variance is classified as a Type II Action under Part 617.5 (c) (16) and (18) 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) 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 Ms. Attardi and seconded by Mr. Ruthven at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, May 24, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Aaron Sweeney	Aye
Jeremy Marshall	Excused
Thomas Yourch	Aye
Tod Ruthven	Aye

Motion carried.

■ A motion was made by MR. SWEENEY, seconded by MS. ATTARDI, 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**

**APPLICANT:** Nicholas & Melissa Buttaccio

**File:** ZB #0501-21

5005 Collett Rd  
Farmington, N.Y. 14425

**Zoning District:** A-80 Agricultural  
**Published Legal Notice on:** May 16, 2021  
**County Planning Action on:** N/A  
**County Referral #:** N/A  
**Public Hearing held on:** May 24, 2021

**Property Location:** 5005 Collett Rd, Farmington, New York 14425

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

**Requirement for Which Variances are Requested:** The applicant wishes to erect a 2,400 square-foot accessory structure (a barn) in the front yard portion of his lot. The Town Code requires all accessory structures, in any district, to be located in the rear yard portion of the lot.

**State Environmental Quality Review Determination:** The granting of an Area Variance for an a 1,680-square-foot accessory structure is classified as 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, Article 8

**County Planning Referral Recommendation:** N/A. Exempt Action by Ontario County Planning Board Bylaws.

**FACTORS CONSIDERED AND BOARD FINDINGS**

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

  X   Yes           No

**Reasons:** The Zoning Board of Appeals (hereinafter referred to as Board) finds the neighboring properties are all zoned A-80 Agricultural. The Board further finds that the character of this neighborhood is predominantly single-family sites fronting along both sides of Collett Rd. The Board further finds that there is no record of any building permits in the neighborhood that have been issued for an accessory structure in the front yard portion of the lot. The Board further finds that it has consistently denied application requests elsewhere to place accessory structures in the front and side yard portions of residential lots within the A-80 District where, as in this instance, there is no proof of a practical difficulty complying with the Town Code requirements.

The Board further finds that it is a requirement of New York State Town Law (Section 267. B. (c) to grant the minimum variance deemed necessary and adequate and at the same time preserve and protect the character of the neighborhood. The Board, based upon these findings, determines that the applicant has failed to prove the existence of any practical difficulty in complying with the zoning district requirements. The Board finally finds that granting the requested relief without such documentation would contribute to an undesirable change being produced in the character of the neighborhood or would likely be a detriment to nearby properties.



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

**Reasons:** The Board finds that the property contains a total of approximately 20.4 acres of land which, based upon an aerial photo of the lot identifies a number of alternative locations for this accessory structure (a barn) to be placed while meeting the Town of Farmington zoning requirements. The Board based upon this finding determines that the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance.

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

**Reasons:** The Board finds that the requested placement of the accessory structure in the side yard setback portion of the lot would require granting a 100% variance to what is otherwise required by Town Code. The Board has consistently found that a variance involving fifty percent (50%) or more 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 alleged difficulty is self-created in that it is the applicant’s choice where he is requesting to locate the accessory structure (a barn) on the property. The board finds that by relocating the accessory structure to other available locations on the property, where allowed by Town Code, will provide the applicant the structure he is requesting without the need for a variance.

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

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

**The benefit to the applicant does NOT outweigh the detriment to the community or neighborhood; and, therefore, the requested area variance to erect an Accessory Structure (a barn) in the applicant’s front yard portion of the lot is **DENIED**.**

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

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

The above resolution was offered by Mr. Sweeney and seconded by Ms. Attardi at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, May 24, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Excused
Aaron Sweeney	Aye
Thomas Yourch	Aye

Motion carried.

<b>ZB #0502-21</b>	<b>David Milillo</b>	<b>Area Variance</b>
	<b>33 Susan Drive</b>	
	<b>Farmington, N.Y. 14425</b>	

■ A motion was made by MR. SWEENEY, 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 #0502-21**

**APPLICANT: David Milillo, 33 Susan Drive, Farmington, N.Y. 14425**

**ACTION: Area Variance to keep a 140-square-foot accessory structure (a shed) on a leased parcel located within a Manufactured Dwelling Community. The Town Code requires an accessory structure not exceed the maximum buildable area of 100-square-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 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) 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. Sweeney and seconded by Mr. Ruthven at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, May 24, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Aaron Sweeney	Aye
Jeremy Marshall	Excused
Thomas Yourch	Aye
Tod Ruthven	Aye

Motion carried

■ A motion was made by MR. RUTHVEN, seconded by MS. ATTARDI that the reading of the complete Area Variance 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**

<b>APPLICANT:</b> David Milillo 33 Susan Drive Farmington, N.Y. 14425	<b>File:</b> ZB #0502-21 <b>Zoning District:</b> RMF – Residential Multiple Family <b>Published Legal Notice on:</b> May 16, 2021 <b>County Planning Action on:</b> N/A <b>County Referral #:</b> N/A <b>Public Hearing held on:</b> May 24, 2021
---	--

**Property Location:** 33 Susan Dr, Farmington, New York 14425

**Applicable Section of Town Code:** Chapter 165, Article V, Section 58. (E)

**Requirement for Which Variance is Requested:** The applicant wishes to keep a single-story accessory structure (storage shed), having a total area of 140 square feet, on his parcel located

within the Woodlawn Manufactured Dwelling Community. The Town Code requires any accessory structure (storage shed) located within a Manufactured Dwelling Community have a maximum buildable area of 100 square feet.

**State Environmental Quality Review Determination:** The granting of an Area Variance for an a 140-square-foot accessory structure is classified as a Type II Action under Part 617.5 (17) 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 the New York State Environmental Conservation Law, Article 8.

**County Planning Referral Recommendation:** N/A. Classified an Exempt Action from referral by the Ontario County Planning Board Bylaws.

## 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 there are a number of accessory structures (storage sheds) on parcels located within the Woodlawn Manufactured Dwelling Community. The Board further finds that almost all of the accessory structures are 100 square feet in area or less. The Board further finds that there is one shed located in this neighborhood, which is located on a nearby vacant parcel, that is that is approximately 150 square feet in area and being used as the Community's maintenance shed structure. The Board further finds that this structure was approved prior to the enactment of the current code provision regulating accessory structures within a Manufactured Dwelling Community.

The Board further finds that by granting the requested area variance it would enable the Applicant and future occupants of this parcel to have an accessory structure which would be larger in size than other accessory structures permitted within this Manufactured Dwelling Community.

Based upon these findings, the Board determines that granting the requested relief would contribute to an undesirable change being produced in the character of the neighborhood and that granting the requested relief would likely be a detriment to nearby properties.

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

**Reasons:** The Board finds that Applicant can replace the existing accessory structure with a conforming accessory structure that will fit within the boundaries of the subject parcel.

Therefore, the Board determines that there is a feasible alternative to the granting of the requested variance.

3. Whether the requested variance is substantial.      Yes      No

**Reasons:** The Board finds that the requested variance involved with the placement of the accessory structure within the side yard portion of the parcel would require granting a variance that is forty percent (40%) larger than what is otherwise required by Town Code. The Board has consistently found that a variance involving fifty percent (50%) or more of that otherwise required by Town Code is a substantial variance.

Therefore, the Board determines that the requested variance is not substantial.

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.

Therefore, the Board determines that the requested variance would not have an adverse effect upon the physical environmental conditions in the neighborhood.

5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the Area Variance.    X Yes    \_\_\_ No

**Reasons:** The Board finds that the applicant purchased and placed the subject accessory structure on his parcel prior to contacting the town for a building permit, or without researching the Town Code to determine the maximum size allowed for an accessory structure on a Manufactured Dwelling Community. The Board further finds that even though the applicant did receive a letter of approval from his landlord to place the accessory structure on the subject parcel, the landlord does not have the authority to ignore the requirements of the Town Code.

Therefore, the Board determines that the requested variance involved an alleged difficulty the is self-created.

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

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

**The benefit to the applicant does NOT outweigh the detriment to the community or neighborhood; and, therefore, the requested area variance to allow an over-sized Accessory Structure (a storage shed) to remain on the applicant's Manufactured Dwelling Community parcel is **DENIED**.**

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

**BE IT FINALLY RESOLVED** that the Board directs this Resolution be placed in the public file upon this Action; and that a copy hereof be provided to the applicant and to the owner of the Woodlawn Manufactured Dwelling Community.

The above resolution was offered by Mr. Ruthven and seconded by Ms. Attardi at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, May 24, 2021. Following discussion, the following roll call vote was recorded:

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Excused
Aaron Sweeney	Aye
Thomas Yourch	Aye

Motion carried.

Mr. Pisaturo would like the record to reflect that they object to the findings and decisions of the Board.

## **6. OTHER BOARD MATTERS**

None

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

None

## **8. DIRECTOR OF PLANNING AND DEVELOPMENT UPDATE**

Mr. Brand discussed the following topic:

- All Board Members have received the electronic filings from court for the Delaware River Solar Project. To receive two hours of training we are asking the Board Members to read through it to see all the factors that the Planning Board took into consideration. This was a very long process, and we are still awaiting on a decision from the Judge. As of last week, the judge has deferred the decision to June 21, 2021, to allow plaintiff's attorney to respond to what was submitted by the Town. Mr. Brand, Mr. Delpriore, and Mr. Brabant have been reviewing the decommissioning plan which will be reviewed by the Planning Board and approved by the Town Board.
- New Manufactured Home Dwelling regulations were adopted by the Town Board at their last meeting. The Town Board held a public hearing prior to adopting the new regulations.
- They will be scheduling a public information meeting for the Comprehensive Plan that has been on the Town website since April.

- There will be a public information meeting pertaining to the Route 96 and Route 332 subarea study that is being done by Bergmann Associates. The study was done under a grant that was made by the Genesee Transportation Council to the Town of Farmington, Town of Canandaigua, and Ontario County. The study looks at access management to these major highways and helps in future grant applications.
- He is very happy with what he is seeing with Byrne Dairy, Meyers, and with the new Auto Wash coming in, the Route 96 Main Street Corridor vision is starting to occur more rapidly than anticipated.

## 9. ZONING OFFICER UPDATE

- There will be a meeting on June 28, 2021. There were two applications received in the Town Development Office for the Board's consideration.

## 9. CODE ENFORCEMENT OFFICER UPDATE

- The Town will now be using Zoom for all meetings. The next Zoning Board of Appeals meeting will be conducted in person and through Zoom. The meeting will be recorded and placed to view on YouTube.

## 10. TRAINING OPPORTUNITIES

### 2021 Municipal Bootcamp

A free annual program to provide certification credits to newly elected officials, planning and zoning boards and town officials sponsored by Hancock Estabrook and MRB Group. The program includes 10 hours of remote training designed to provide a comprehensive education that encompasses all aspects of municipal governance. Each program will be provided remotely on the fourth Thursday of the month with subject matter experts and attorneys from Hancock Estabrook and MREB Group.

Thursday, May 27, 2021, 6:00 p.m. to 7:00 p.m.

Session 5: Come One, Come All to the Greatest Show on . . . well . . .

Thursday, June 24, 2021, 6:00 p.m. to 7:00 p.m.

Session 6: Planning From (At Least) Six Feet Away

Thursday, July 22, 2021, 6:00 p.m. to 7:00 p.m.

Session 7: Ask Me Anything

Thursday, September 23, 2021, 6:00 p.m. to 7:00 p.m.

Session 8: From Big to Small

Thursday, October 28, 2021, 6:00 p.m. to 7:00 p.m.

Session 9: Well, Aren't You Special?

Thursday, December 23, 2021, 6:00 p.m. to 7:00 p.m.

Session 10: All the Right Forms in All the Right Places

**Questions to:**

Wendy A. Marsh, Partner, Hancock Estabrook

[wmarsh@hancocklaw.com](mailto:wmarsh@hancocklaw.com)

(315) 565-4536

Matt Horn, Director, Local Government Services, MRB Group

[matt.horn@mrbgroup.com](mailto:matt.horn@mrbgroup.com)

(315) 220-0740

**Registration link:**

<https://register.gotowebinar.com/rt/4608077833213548299>

**10. NEXT MEETING**

The next regular meeting of the Zoning Board of Appeals will be held on Monday, June 28, 2021, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8.

**11. ADJOURNMENT**

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

Motion carried by voice vote.

The meeting was adjourned at 8:17 p.m.

Respectfully submitted,

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