

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, November 25, 2019, 7:00 p.m.

MINUTES—APPROVED

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

Board Members Present:

Timothy DeLucia, *Chairperson*
Jill Attardi
Jeremy Marshall
Thomas Yourch
One vacant position

Staff Present:

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

Applicants Present:

John Nardozi, 620 Park Avenue, Suite 135, Rochester, N.Y. 14607
Steven Nardozi, 620 Park Avenue, Suite 135, Rochester, N.Y. 14607
Robert and Martha Young, 1795 Estate Drive, Farmington, N.Y. 14425

Residents Present:

David Brown, 1039 Chapel Hill Drive, Victor, N.Y. 14564 (for 1322 Payne Road)
Jane Graf, 7878 Fowler Street, Fishers, N.Y. 14453
Sal Iorio, 5349 State Route 96, Shortsville, N.Y. 14548
Alice Kirschner, 5409 State Route 96, Shortsville, N.Y. 14548
Gerald J. Mayzak, 1355 Payne Road, Shortsville, N.Y. 14548
Richard Testa (Real Estate Agent), Howard Hanna Real Estate, 2349 Monroe Avenue,
Rochester, N.Y. 14618
Several others who did not sign in.

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After the Pledge of Allegiance was recited, Mr. DeLucia introduced the Zoning Board of Appeals members and explained the emergency evacuation procedures.

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

2. APPROVAL OF MINUTES OF OCTOBER 28, 2019

■ A motion was made by MR. YOURCH, seconded by MR. MARSHALL, that the minutes of the October 28, 2019, 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, November 17, 2019, that it was posted upon the Town of Farmington website (www.townofarmington-ny.com), and that it was posted upon the Town Clerk's bulletin board in the foyer of the Town Hall:

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 25th day of November 2019, commencing at 7:00 p.m., at the Farmington Town Hall, 1000 County Road 8, in the Town of Farmington, Ontario County, New York 14425 to consider the following applications:

ZB #1101-19: ROBERT YOUNG, 1795 ESTATE DRIVE, FARMINGTON, N.Y. 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 192-square-foot accessory structure, a shed, in the side 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. The property is located at 1795 Estate Drive and is zoned T.L. Sect. 278 Cluster Development.

ZB #1102-19: STEVEN NARDOZZI, 620 PARK AVENUE, SUITE 135, ROCHESTER, N.Y. 14607: Request a Temporary Use Permit in accordance with Chapter 165, Article IV, Section 18 of the Farmington Town Code. The applicant wishes to operate a residential construction, excavation and demolition company as well as use the property as storage of the equipment used for their day-to-day operations. The Town Code prohibits this use in the A-80 Agricultural District. The property is located at 5409 State Route 96 and is

zoned A-80 Agricultural.

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

Tim DeLucia, Chairperson, Zoning Board of Appeals

4. NEW PUBLIC HEARING

ZB #1101-19	Robert Young 1795 Estate Drive Farmington, N.Y. 14425	Area Variance
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The applicant is requesting an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to erect a 192-square-foot accessory structure, a shed, in the side 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. The property is located at 1795 Estate Drive and is zoned T.L. Sect. 278 Cluster Development.

Mr. DeLucia opened the Public Hearing on this application.

Robert and Martha Young presented this application.

Mr. Young delivered the following statement into the record of the meeting:

I would like to thank you for taking the time to meet with us tonight. We are hoping to resolve the issue of placing our shed on our property and hopefully it will be in the best place that’s good for the neighborhood. We also hope that you look at our case as being unique due to the layout of our property.

I will apologize for that large package that I gave all of you folks. From what the young lady—Sarah—said when I handed it in, she said that we have never seen this before. So, anyway, hopefully, I’ll ask if there are any questions at the end when I get through here.

We moved into the area just a year ago September and so, of course, we are not familiar with any of the Town codes. We came from a small place down in the Southern Tier—Almond, N.Y., if you know where that is—and typically a building permit is all you would need to place a shed or anything that you might want to put on your property. I want you to know that when we decided to place the shed in our backyard, our intention was to place it quite a ways in the backyard. When we came in to fill out the building permit, we did come in good faith, and while I was there I was asked to draw a rectangle on the map to show where this shed is going to

be located. The map that was given to me was just of our lot, which I'm sure you're familiar with, and as a matter of fact, I included it in your packet. I so just drew the little rectangle. I had no measuring devices and didn't realize how accurate it was supposed to be. And having gone through this, I probably would have taken the thing home with me and tried to make it more accurate—where I was placing it [the shed].

But having done that, the application was approved and when I came back and found out that we were out of compliance, I asked well why didn't you tell us about the code. From what I understand, from where I placed it on the map, it was in compliance. I think that was the problem. Had I known that it had to be specific, I probably would have taken more time and tried put it where it had to be.

So, anyway, after looking closer at our property and listening to our neighbor, I realized there's a little swale in our backyard—kind of a hill with a little bit of a swale, and if you go back and look just beyond the shed you can see that our backyard neighbor's property slopes and then our side neighbor's property slopes, and it all comes into the backyard. I think the developer—when he did the development—made that swale there on purpose to carry the water out.

Our neighbor told us at one point that sometimes in the spring it's like a lake in there. So, he said don't put it [the shed] there, make sure you get it out of that area. So that was one of the reasons we moved everything forward and didn't go by the drawing that I had provided on that map.

I basically placed the shed where it would not interfere with the water runoff and it also provided us a dry entry into the shed.

The swale is the main reason that we moved the shed forward. We ourselves observed—we had a storm back in June. The swale runs the whole length of our backyard, by the way. There must have been a stream about six inches deep that was running down through our backyard, and eventually hitting the sidewalk on the Town Line Road, and then going down the sidewalk. I mentioned that to one of the supervisors on the Town Line Road construction that was going on, and he said that there was nothing that they could do because it's on private property obviously. But anyway, that was the main reason that we moved the shed forward.

And of course at this point, once we completed the building permit and had it approved, we still had no knowledge of what the Town Code was, and didn't even know where to look for it. I guess the point of emphasis should be that we needed to be informed—that the code needed to be followed. And unfortunately she looked at our map and said, well you didn't put it in the side yard—so she assumed—and I can totally understand that.

There was no emphasis on the importance of the accuracy when I drew that rectangle—there was no measuring devices or scale that I had to use.

Besides the swale, there are some other obstacles that we had to deal with in placing our shed. One is—on the same side of our house that we have our shed—there's a 20-foot easement. Evidently one of the neighbor's sewer lines runs down through, so we had to avoid that. Plus the small hill in the back where the water runs off—we considered that as an obstacle because we couldn't put the shed up on the hill. It would be uneven or we'd have to put in a bigger pad on one end and not so much on the back end.

We later learned that because we're on a corner lot, we have two front yards. I guess you're probably familiar with that. So, as far as our backyard goes, that's even less room that we have for placing the shed.

So we had the pad installed. A couple of workers that built the patio for us—they had the equipment there and we thought we got a pretty good deal of installing the pad. It was over \$900, I know that. I directed them, I told them about where we wanted the pad. We discussed the swale. They thought that it was best to be put outside the swale. And they had their equipment right there. And they put in a beautiful pad. It was tamped, solid. They even dug out some of the topsoil to make sure it had a good base. So the pad was installed and obviously that would have been out of compliance itself.

I'd like to address some of the factors that have to be considered in looking at a variance, I guess in part of a response of the draft from Mr. Robertella.

The one factor—the undesirable change. We feel that there is not an undesirable change in our neighborhood because we have letters from our neighbors that are all in the packet—I think there are seven or eight of them—that all gave us positive reviews of where the shed was placed. We've also provided a lot of pictures that show that there is not—we thought that it looked pretty good. In fact, our neighbors have complimented us on that.

From the draft, there have been no variances for side yards in our neighborhood, However, we believe that at there must have been—there's a guy down the street that has a 12 x 20 shed and we believe that he had a variance for that, so whether that's an issue—I guess the point we're making is that variances have been applied in the past.

As far as the alternative to the variance is concerned, the clerk says that there is adequate space. However, moving the shed back four feet so that

the front of the shed is not over the plane of the back of the house—if we moved it four feet, that would put the entrance to the shed pretty much in the swale.

And the clerk says that there does not appear to be any hardships, but we consider several hardships that we have. We have property that has special circumstances that our neighbors don't have. We are unfairly burdened by the general rules. Our property is a corner lot, which I mentioned—the two front yards—plus the 20-foot easement and also the swale. And we also feel that the cost of rebuilding the pad and having the shed moved is also going to be hardship. We estimate it to be somewhere between \$1,000 and \$1,500.

And with a variance, the third factor that I want to mention is the variance is substantial. We feel that there is only four percent of the shed that's over the plane of the backyard. I showed a diagram in the folder that you should have received. That one is drawn to scale. And I think if any of you have driven by and looked at the shed—my wife has an artistic eye—I know that—and she doesn't notice the placement being out of place, as far as the angle from the street is concerned.

The fourth factor is the SEQR regulation and, of course, I don't think that there are any issues with that.

The fifth item is—was the alleged difficulty self-created?

And finally for a building permit, we want to emphasis again that we acted in good faith. We had no knowledge of the code. However, that's all part of being, I think, new to the area. We thought the approved building permit is all that we needed. However, we placed the shed in an area so not to be affected by the swale and unfortunately we were not informed of the code, or we would not be here tonight.

In closing, we appreciate you taking all of our information into consideration. We want you to know that we have acted in good faith and that our lot involves some unique circumstances, and we will face unnecessary hardships from the strict application of the code.

—Robert Young

Mr. DeLucia then asked for comments from the Town staff.

Mr. Delpriore said that the unique corner lot is similar to a number of corner lots in the Town, and that almost every house in subdivisions have swales because of drainage and the Town's MS4 requirements. He said that the direction of the water has been dealt with by drainage tiles or swales.

Mr. Delpriore said that the map that was provided by the applicant at the beginning of the process (which the board members received in their packets) shows that the shed sits back a distance and does have measurements as well, because the Building Department always asks for this information. He said that this map shows that the shed sits 40 feet off the back property line and 23 feet off the side property line, which during a Code review did not raise any red flags and the building permit was approved.

Mr. Delpriore said the final inspection of the shed showed that it had been placed dramatically toward the front with no notification to the Building Department of any changes to the plan. He said that the building permit clearly states that the Building Department is to be notified of any changes in the plans.

Mr. Delpriore said that he was not sure if other Area Variances for side yard setbacks for accessory structures have been issued in the Estates at Beaver Creek Subdivision. He said that he and the Building Department staff will look into this issue.

He also said that he and a staff member made a site visit to the property and that there was no evidence of ponding water in the drainage swale at the time of the visit. But he said that during a storm the drainage swales are expected to work as they have been designed

He said that the Building Department staff discussed these factors with the applicant and informed Mr. Young that the placement of the shed is not in a permitted location on the property.

Mr. DeLucia asked about the location of the shed on the “new” map. Mr. Delpriore said that the shed was located at a position of 40 feet from the back lot line on the “old” map and 53 feet from the back lot line on the “new” map. He said that the Town Water and Sewer Department will not permit any structure or planting within an easement and that the current position of the shed is right at the edge of a sewer easement.

Mr. Delpriore said that it appears from the photographs that have been submitted by Mr. Young that there seems to be room to move the shed back four feet or five feet and still not encroach upon the drainage swale.

He referred to the dotted line on one of the photographs that depicted the neighbor’s sewer line and said that the shed would have to be moved straight back, and not on a diagonal, to avoid encroachment upon the sewer easement.

Mr. Brand said that a draft resolution has been submitted by the Town staff for the board’s consideration this evening to classify this application as a Type II Action under the State Environmental Quality Review (SEQR) Act. He said that the Area Variance Findings and Decision draft resolution also submitted by the Town staff is based upon the minimal findings under Town Law and that it will be the board’s decision regarding this resolution.

Ms. Attardi referred to one of the photographs submitted by Mr. Young that depicts the shed. She said that it appears that the shed is raised above ground level. Mr. Young said that the shed is built on 4 x 4s and was placed atop a layer of crusher run gravel.

Ms. Attardi asked about the door of the shed. She reviewed the photos with Mr. Young.

Mr. Young said that the entrance to the shed would be located within the drainage swale if the shed were to be moved back four feet.

Ms. Attardi asked about the original drawing and if Mr. Young knew about the location of the drainage swale. Mr. Young said that he knew that the swale was there. Ms. Young said that they did not realize the impact of the drainage swale [upon the placement of the shed].

Ms. Attardi asked if it occurred to the applicants to check with the Town.

Mr. Delpriore read aloud a portion of the building permit application that indicates that the applicant must notify the Town of any changes and that the applicant agrees to abide by all Planning, Zoning and Town Board approvals. He said that it clearly states this on the application. Mr. Young said that he understands this.

Mr. Young said that they thought that they were good to go when they received their building permit. He said that the shed was placed in good faith. Ms. Young said that she really did not think that they were moving it that much [from the original plan].

Ms. Young said that they moved to Farmington from a country area that did not have the same requirements as the Town and the Estates at Beaver Creek Subdivision. She suggested that additional information should be provided to applicants to avoid this situation from happening to others.

Ms. Young also asked about zoning codes in the subdivision, in the Town and in Ontario County. Mr. Delpriore said that the Town Code includes regulations that apply to all zoning districts in Farmington, and that there are additional regulations for the County, State and Federal codes.

Ms. Young suggested that the building permit application could better inform applicants about the specific zoning code and district in which their properties are located. She said that she made online searches and could not find specific information about their zoning district. She said that this makes it impossible and complicated for people who are just moving in.

Mr. Weidenborner said that ultimately it is the responsibility of the applicants to be aware of the code requirements in their zoning districts. He said that there would have been no issues with this application if the shed had been placed in the location on the original map as provided with the signed building permit application.

Ms. Young asked how the Building Department staff measured the location of the shed when they came for a site visit. Mr. Delpriore said that measurements are made by sight and that the staff also uses wheels and tape measures. He said that the staff could tell by sight that a portion of the shed was encroaching upon the side yard.

Mr. Young said that his initial placement of the shed on the map at a distance of 40 feet from the back lot line was a guestimate. He said that he had no idea how important it was to be exact. He said that if he had known [how important it was to be exact] that he would have taken the map back to his home to be prepared.

Mr. Young said that it should be expressed [on the building permit application] how important it is to be accurate. Mr. Delpriore said that the building permit application indicates that it must be strictly followed.

Mr. Young asked if there are drainage swales on every property. Mr. Delpriore said that there are gentle swales in between most homes in the subdivisions to channel stormwater away from the homes.

Mr. Brand discussed whether the contractor who delivered the shed had asked if it was positioned in the correct location. He said that in approximately 95 percent of the cases the contractor will ask, and in approximately five percent of the cases (including this case) the contractor will not ask. There was no response to this inquiry.

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

There were no comments or questions from those in attendance.

Mr. DeLucia asked if there were any further comments or questions on this application this evening. There were no further comments or questions.

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

5. NEW PUBLIC HEARING

ZB #1102-19

**Steven Nardozzi
620 Park Avenue, Suite 135
Rochester, N.Y. 14607**

Temporary Use Permit

The applicant is requesting a Temporary Use Permit in accordance with Chapter 165, Article IV, Section 18 of the Farmington Town Code. The applicant wishes to operate a residential construction, excavation and demolition company as well as use the property as storage of the equipment used for their day-to-day operations. The Town Code prohibits this use in the A-80 Agricultural District. The property is located at 5409 State Route 96 and is zoned A-80 Agricultural.

Mr. DeLucia opened the Public Hearing on this application.

Steven and John Nardozzi presented this application.

Steven Nardozzi said that it is their plan to raze the dilapidated buildings on the property at 5409 State Route 96 and to renovate other buildings for use as storage of equipment and materials for their construction company.

He asked for clarification on Condition #2 in the draft Temporary Use Permit resolution that had been submitted by the Town staff for the board's consideration this evening, i.e., "No activities shall begin on the property before 7:00 a.m. weekdays, or 8:00 a.m. on Saturday. There shall be no Sunday hours of operation." He said that there is a difference between "construction activities" and the loading and unloading of equipment and materials onto and off trucks and trailers.

Mr. Delpriore said that demolition of existing structures and the rebuilding and renovation of structures would be considered as "construction activities" and could not begin prior to 7:00 a.m. on weekdays or 8:00 a.m. on Saturdays. He said that the Town has had issues with other business operators with noise prior to those hours. He said that the Town is not looking to upset the neighbors. Mr. Nardozzi said that they definitely would not begin to renovate a barn at 6:30 a.m.

Mr. Delpriore asked if the contractor's trucks could be loaded the night before for the next day's work. Mr. Nardozzi said that they could be loaded the night before on occasions, but he said that the language in Condition #2 is vague regarding "activities" versus "construction activities."

Mr. Weidenborner said that construction activities include demolition and rebuilding. He requested that Mr. Nardozzi be conscious of the overall noise associated with the contractor's day-to-day operations on the site and the effect such noise will have on the neighbors.

Mr. DeLucia said that a Temporary Use Permit is valid initially for two years and that it may not be renewed if issues arise that are not corrected.

Mr. Nardozzi said that he would like to be very clear that some trucks would be leaving the property earlier than 7:00 a.m. to travel to a job site and to be ready to begin work at a job site at 7:00 a.m.

Mr. DeLucia suggested that draft Condition #2 be revised to reflect that no "construction activities" would be permitted on the site prior to 7:00 a.m. and that noise would be kept to a minimum so as not to disturb neighbors. A citizen asked from the audience that noise also be kept to a minimum so as not to disturb dogs. Mr. DeLucia suggested that the condition be amended to include "neighbors" and "pets."

Mr. Brand asked Mr. Nardozzi exactly what types of activities would take place on the property prior to 7:00 a.m. Mr. Nardozzi said that employees would be coming to the site prior to 7:00 a.m. to load or unload equipment onto or off a trailer, to start vehicles and/or to move vehicles on the property. He said that these would be typical of a morning routine.

Mr. Delpriore asked how early would employees begin arriving. Mr. Nardozzi said that employees would begin arriving at about 6:30 a.m. Mr. Delpriore requested that noise be kept to a minimum between the hours of 6:30 a.m. and 7:00 a.m. He said that the Building Department would react to excessive noise by the receipt of complaints from neighbors about the operation.

Mr. Nardozzi said that he wanted to be totally upfront ahead of time. He said that he is prepared to make a significant investment in the property and to clean it up and renovate the structures.

Mr. Weidenborner said that the Building Department would provide the Zoning Board of Appeals with reports if noise complaints are received. He said that the Town staff would work with Mr. Nardozzi's staff on improvements if needed. He said that this would be the process.

Mr. Nardozzi asked about the noise and operation on the agricultural property around this site. Mr. Brand said that the Town has a Right to Farm Law and that normal farming operations include operations at various times of the day or night for harvesting and other agricultural work. He said that these activities are governed by the New York State Department of Agriculture and Markets and that such activities are regulated to promote normal farming operations.

Mr. Brand asked—for the record—that Mr. Nardozzi explain what the property will be used for and what site changes will occur over time from this use.

Mr. Nardozzi said that this is the 18th year of his company's operation. He said that he offers demolition services, that he fills in pools, excavates drain lines, and disposes of materials at approved landfill sites. He listed the types of equipment that he uses such as trucks, excavators, trailers and roll-off containers. Mr. Nardozzi said that he wanted to make it very clear about how this property would be used.

He said that he intends to clean up the property in a manner similar to their operations in Macedon, N.Y., and in Clifton Springs, N.Y., at which they also have cleaned up the sites and converted the use. He said that they are used to the scenario of operating their business in an agricultural zone.

Mr. Nardozzi said that they are residents of Victor, N.Y., and that it makes sense to live close to their shop.

Mr. Marshall asked about the day-to-day operation on the property. Mr. Nardozzi said that they first would demolish some of the structures and rebuild others. Following renovations, the property would be used for the storage of construction equipment and materials. He said that's it.

Mr. Marshall said that he would have a problem with operations prior to 7:00 a.m. He said that warming up a truck would be OK but loading a large excavator onto a trailer at 6:30 a.m. would ruffle some feathers.

Mr. Nardozzi said that they would be respectful.

Mr. Brand asked about bringing spoils material back to the site. Mr. Nardozzi said that any spoils or other materials would be enclosed in containers and dumpsters. He said that the materials would then be trucked to a landfill when the landfill is open. Mr. Brand asked about stockpiling of spoils. Mr. Nardozzi said that they intend to store mulch in a dry location on the property. He also said that crusher run stone, bank-run gravel and other materials would be stored in a material handling bin which sits down on the property and is not well visible from State Route 96.

Mr. Nardozzi asked about draft Condition 7, i.e., "There shall be a dust free surface for all access points from along State Route 96." Mr. Delpriore said that the New York State Department of Transportation will require a hard surface for vehicle entrance off the edge of the road and that the Town requires dust-free surfaces for parking areas.

Mr. Nardozzi asked about draft Condition #8, i.e., "There shall be adequate landscaping around the on-site parking area to adequately buffer this area of the site from adjacent properties." Mr. Brand said that the Planning Board will react to a landscape plan that the applicant must submit at the time of Site Plan approval by the Planning Board (*see* draft Condition #5). Mr. Delpriore said that draft Condition #8 has been included to make the applicant aware that the Planning Board will require landscaping.

Mr. Nardozzi said that the barns that will be renovated will remain in the same position as the existing barns. He said that their plan is to improve the property in the manner in which it was originally intended. He said that the property has been neglected for a period of time and that they just wish to improve the property.

Ms. Attardi asked about the existing home on the property. Mr. Nardozzi said that they intend to demolish it.

Ms. Attardi asked if offices would be located on the property Mr. Nardozzi said that the public would not be coming to the site but that a portion of the one of the structures will be used as an office to provide a space for the staff to complete paperwork, for restrooms, etc.

Ms. Attardi asked about the use of the proposed office on Sundays. Mr. Brand said that the Town would have no issues with the staff stopping in to use the office for paperwork on Sundays.

Mr. Nardozzi requested that the draft Temporary Use Permit resolution be corrected to remove references to a wildlife education area. Mr. DeLucia said that this would be corrected.

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

Mr. Brown (for 1322 Payne Road) said that he is an attorney and is semi-retired. He said that he has a horse boarding operation on his property on Payne Road (second driveway after turning south onto Payne Road from State Route 96). He said that he is usually not the type who objects to someone who wishes to improve property but that this area of Farmington is unique because most of the surrounding farms are designed to board horses—many of them racehorses from Finger Lakes Gaming and Racetrack during the off season. He said that this is true for him and for a number of his neighbors.

Mr. Brown said that horses are unique in that they react differently to noise. He said that, to be honest, he tries to keep noise to a minimum when working with horses. Mr. Brown said that racehorses are a huge investment [for their owners] and that it can be dangerous working with them when they are affected by noise.

Mr. Brown said that he can see this [the applicant's property] from his property, that he has been in the business [boarding of horses] for 20 years, and that his wife has been in the business all her life. He said that he can hear what goes on [on the applicant's property] because of the prevailing winds and that he can hear when the current owner dumps manure. Mr. Brown said that the background noise on State Route 96 does not bother his horses but that the horses will react to loud noise from other properties. He said that they perk up and can kick when startled. Mr. Brown said that he would not have a concern [with this application] if it was for a cow farm.

Mr. Brown said that there is noise involved with the dumping and loading of equipment. He said that these construction operations could create distinct difficulty at the same time that he is feeding the horses. Mr. Brown said that this is a unique area of the Town and that this [the applicant's business] is going to cause noise and problems for every [one of us].

Mr. Brown said that he supports cleaning up the property, that he knows the uniqueness of this area, and that this [application] will cause nothing but problems. He said that you [the Town] will get complaints. Mr. Brown said that the timing of Mr. Nardozzi's operations in the morning is at the same time that he is feeding his horses. He said that he is going to be feeding his horses at the same time that Mr. Nardozzi is going to be loading equipment, and that someone [on the horse stables property] may get hurt [by a startled horse]. Mr. Brown said that he strongly objects [to the application].

Mr. Iorio (5349 State Route 96) said that he has 50 acres of land and 30 thoroughbred horses. He said that his wife rides on the paddocks into a 20-acre field, that the noise from the applicant's operations will be banging all day and may cause the horses to run loose and create a dangerous situation. He also said that he has dogs in his home, which is about 1,000 feet from the barn where Mr. Nardozzi's operations will be located.

Mr. Iorio said that he built his home to be located on agricultural land and that Mr. Nardozzi's proposal is just not the type of business for agricultural land. He said that to have this next door to him is a slap in the face. Mr. Iorio said that the Town has always been strict about agricultural land. He requested that the Town stick to that. He said that he is definitely against it.

A citizen referred to a letter from another resident who wrote to express opposition to the application because of the expected effect of noise upon the horses.

Mr. Brown discussed the traffic on State Route 96 near Payne Road. He said that he has come close to having accidents at the intersection and that there will be a significant traffic problem there.

Mr. Iorio said that he breaks young horses as part of his business. He said that he prefers that it be quiet when working with these animals. He said that the horses buck whenever they hear something and that they do not need extra excuses.

Mr. Testa (real estate agent with Howard Hanna Real Estate) said that he is the listing agent for the property owner of 5409 State Route 96. He said that this property has been on the market for a considerable period of time. He said that he does not represent the prospective buyer (Mr. Nardozzi's company) but that he knows them and that they are a quality outfit. He said that they have completed similar renovation projects in other communities, that there are horse farms around their other operations, and that the horses do not spook. Mr. Testa said that his wife boards rescue horses near the south end of Mendon, N.Y., that there is a gravel pit nearby, and that her horses do not spook.

Mr. Testa said that a horse will spook because of a deer and for other different reasons. He said that he is familiar with agricultural operations when he used to live in Wisconsin, that farmers work 24/7, and on Sundays and in the evenings. He said that this is part of agricultural life but that Mr. Nardozzi's operations will be only during specific times.

Mr. Testa said that he knows this property very well, that he has been there many times and that the Town would welcome a company such as Mr. Nardozzi's to clean up and fix up the property. He said that he would think that the Town would welcome it, and so would all the neighbors.

Mr. Testa said that this property needs help and if these buyers are not going to buy because of the decision of the Zoning Board of Appeals, who else will buy it and spend \$100,000 or \$200,000 to fix it up. Or, he asked, would the Town spend the money to fix

it up. Here, he said, you have a private business that has been successful in other towns to fix up the property. He said that the Town would benefit to have it fixed up.

Mr. Testa said that State Route 96 is a busy road. He asked if a residence would be put here. He said that the Town has to think of the vision for the property. He said that there are other businesses nearby (Farmington Service, a medical building, the race track) and that the neighbors are also running their businesses. Mr. Testa asked if it is fair to say that they [they neighbors] can run their businesses and another party cannot. He asked if this is discriminatory.

Mr. Testa said that Mr. Nardozzi's business is an ethical operation and that he wants to clean up the property and make it look better. Mr. Testa said that he looks at many properties and that he has sold many properties in distress. He said that here we have an ethical company that wants to clean up the property and store equipment. He said that this operation is not like a farm where they are going to go out at 4:00 a.m.

Mr. Testa said that he appeals to the board to approve this [application] based on what this business entity is proposing. He said that he has tried to sell this property for the past two years and that he appeals to your [the board's] fairness and have it look better.

Mr. Testa said that traffic is traffic and that 8,000 vehicles to 10,000 vehicles a day use State Route 96.

Mr. DeLucia said that he understands Mr. Testa's point to sell the property and his point that Mr. Nardozzi seeks to improve the property. Mr. DeLucia said that the board is not interested in other towns and counties or Mr. Testa's work there. He asked Mr. Testa to be specific in his remarks about this property.

In summary, Mr. Testa said that Mr. Nardozzi's business is a very ethical company that has applied to run their business out of this property, to clean it up and to be part of the community, and that it is not unlike other businesses nearby

Mr. Brown said that this gentleman (Mr. Testa) has a pecuniary interest in this application. He said that he and his neighbors operate their businesses within the zoning code of the Town. He said that they are taking care of their horses and this gentleman's house (referring to Mr. Iorio's house) is right down the road. Mr. Brown said that he resents that they are doing something wrong. He said that they are doing what is consistent with what this Town is requiring of them. He said that a business like this [Mr. Nardozzi's application] will jeopardize the neighbors' businesses.

Mr. Nardozzi said that he is a local citizen in the community and in Ontario County. He said that he did not intend to offend anyone, that he is looking at the property, that he has no intent to upset anyone and this is why this process happens. He said that he wants to make it clear that he does not want to offend anyone.

Mr. Testa said that he also is not here to offend anyone. He said that this is not about the money at all, and that his commission on the sale would be relatively small. He said that he is speaking on behalf of the property owner who would like to sell the property, that the property owner cannot afford to fix it up, and would like it to look better for the community.

Mr. Marshall announced that he will recuse himself from any deliberations and consideration of this application because of a potential conflict of interest in the near future.

Mr. Brand suggested that the Zoning Board of Appeals continue this Public Hearing to the meeting on December 23, 2019, in light of the comments from the applicant and the neighbors, and to provide time for the Town staff to meet with code officers in other towns where Mr. Nardoizzi has sited similar businesses and to have the opportunity to speak with the New York State Department of Agriculture and Markets to discuss the issue of incompatible noises and their effects upon horses.

Mr. DeLucia said this this is a good recommendation.

Mr. DeLucia asked if there were any further comments or questions on this application evening. There were no further comments or questions.

■ A motion was made by MR. YOURCH, seconded by MS. ATTARDI, that the application of Steven Nardoizzi requesting a Temporary Use Permit in accordance with Chapter 165, Article IV, Section 18 of the Farmington Town Code to operate a residential construction, excavation and demolition company, as well as to use the property as storage of the equipment used for their day-to-day operations, be continued to Monday, December 23, 2019.

Motion carried by voice vote.

6. BOARD BUSINESS—DELIBERATIONS AND DECISIONS

ZB #1101-19 Robert Young Area Variance

■ A motion was made by MR. MARSHALL, seconded by MS. ATTARI, 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 #1101-19

**APPLICANT: Robert Young, 1795 Estate Drive,
Farmington, N.Y. 14425**

ACTION: Area Variance to erect a 192-square-foot accessory structure, a shed, in the side 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,

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

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

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

Jill Attardi	Aye
Timothy DeLucia	Aye
Jeremy Marshall	Aye
Thomas Yourch	Aye
One vacation position	—

Motion carried.

Mr. DeLucia then read aloud the conditions of approval from the following complete resolution:

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

APPLICANT: Robert Young
1795 Estate Drive
Farmington, N.Y. 14425

File: ZB #1101-19
Zoning District: T.L. Sect. 278 Cluster Develop.
Published Legal Notice on: Nov. 17, 2019
County Planning Action on: N/A
County Referral #: N/A
Public Hearing held on: Nov. 25, 2019

Property Location: 1795 Estate Drive, Farmington, N.Y. 14425

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

Requirement for Which Variance is Requested: The applicant wishes to erect a 192-square-foot accessory structure (a shed) in the side 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 192-square-foot accessory structure is classified as a Type II Action under Part 617.5 (15) 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.
 Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as the Board) finds that there are other accessory structures located within The Estates @ Beaver Creek neighborhood. The Board further finds that there have been no variances granted for allowing an accessory structure to be placed in the Side Yard portion of a Lot in this neighborhood. The Board based upon these findings determines that granting the requested area variance could produce an undesirable change in the character of the neighborhood by establishing precedent with this application for other similar applications in the future.

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

Reasons: The Board finds that the encroachment of the accessory structure’s proposed location on the property is minor in size and that there appears to be adequate space in the Rear Yard portion of the Lot to relocate the proposed storage shed. The Board further finds that there does not appear to be any hardship involved with moving the location for the proposed structure. Based upon these findings the Board determines that there is a feasible alternative to the requested area variance being sought by the applicant.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds that the requested encroachment into the Side Yard setback involves only a small portion of the building involving less than a ten percent (10%) vari-

Jeremy Marshall	Nay
Thomas Yourch	Nay
One vacant position	—

Motion defeated.

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that an Area Variance be approved for Robert Young, 1795 Estate Drive, to allow the existing 192-square-foot accessory structure (a shed) to remain in the current location in the side yard portion of the lot.

Mr. Brand said that the past practice of the Zoning Board of Appeals has been to include conditions of approval that could include lighting of an accessory structure to comply with the provisions of the Town Code, restrictions on water, and electrical service to an accessory structure, for example.

Mr. Young asked about landscaping around the shed. Mr. Brand discussed past practices of the Zoning Board of Appeals that has required landscape buffering around an accessory structure. He said that this shed is close to neighboring properties and that some landscaping would be in order.

Mr. DeLucia asked if a site plan is required. Mr. Brand said that a site plan is not required.

Mr. Young suggested that landscaping around the shed may include mulch and several plants.

Mr. Brand recommended that the costs for landscaping improvements be comparable to the costs the applicant has stated would have otherwise been involved with relocating the accessory structure to the Rear Yard portion of the site. He noted that placing mulch around the structure and a few low lying plants would not be, in his opinion acceptable and that planting of evergreens would be more appropriate. Ms. Young agreed stating that she would insist on a good landscaping plan around the building to screen it from neighboring properties. Mr. Young agreed.

■ A motion was made by MR. MARSHALL, seconded by MS. ATTARDI, that his original motion be amended that landscaping be consistent with the area around the shed and the neighborhood, and that any future proposed alterations (lighting, electrical, etc.) be requested as application(s) to the Code Enforcement Officer.

Roll call vote to accept the amendments as above:

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

One vacant position —

Motion carried.

Roll call vote to approve the original resolution as amended that an Area Variance be approved for Robert Young, 1795 Estate Drive, to allow the existing 192-square-foot accessory structure (a shed) to remain in the side yard portion of the lot:

Jill Attardi	Aye
Timothy DeLucia	Aye
Jeremy Marshall	Aye
Thomas Yourch	Aye
One vacant position	—

Motion carried.

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

There were no public comments or questions this evening.

8. BOARD MEMBERS’ COMMENTS

Mr. Marshall reported that he recused himself from consideration of Mr. Nardoizzi’s application because of his interest in the property at 5409 State Route 96. Mr. Marshall said that he had previous negotiations with the property owner for the purchase of the property and may continue his negotiations in the future based upon the decision on Mr. Nardoizzi’s application.

9. TRAINING OPPORTUNITIES

Conservation Easement Workshops for Farmland Owners

Tuesdays, December 9 and 16, 2019; and January 6 and 13, 2020
6:30 p.m. to 8:30 p.m.

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

Registration link: <https://tinyurl.com/y6wadcg>
or Ontario County Planning Department, (585) 396-4455

Future Training Opportunities Online

Ontario County Planning Department website now lists upcoming training:
<https://www.co.ontario.ny.us/192/Training>

10. NEXT MEETING DATE

The next regular meeting of the Zoning Board of Appeals will be held on Monday, December 23, 2019, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m.

11. ADJOURNMENT

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

Motion carried by voice vote.

The meeting was adjourned at 8:55 p.m.

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

Respectfully submitted,

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