

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS
Monday, October 24, 2016, 7:00 p.m.

APPROVED MINUTES

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

Board Members Present: Ann Vu, *Chairperson*
Timothy DeLucia
Cyril Opett
Nancy Purdy
James Russell

Staff Present:
James Morse, Town of Farmington Code Enforcement Officer

Applicants Present:
Derek G. Brocklebank, Esq., 51 North Main Street, Canandaigua, N.Y. 14425
David and Cindy Sue Chapman, 5513 Holtz Road, Farmington, N.Y. 14425
Michael Collins, 579 County Road 8, Farmington, N.Y. 14425

Resident Present:
Keith Holtz, 5499 Holtz Road, Farmington, N.Y. 14425

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After everyone recited the Pledge of Allegiance, Ms. Vu introduced the Zoning Board of Appeals members and staff, and noted that copies of the evening’s agenda were available on the table at the door.

Ms. Vu said that the meeting would be conducted in accordance with the adopted Zoning Board of Appeals Rules of Procedures for all public meetings.

2. APPROVAL OF MINUTES OF SEPTEMBER 26, 2016

In accordance with the Zoning Board of Appeals Rules of Procedures, Ms. Vu attested to the approval of the minutes of the September 26, 2016, meeting of the Zoning Board of Appeals and to the recording of the minutes in the Town Clerk’s Office.

3. LEGAL NOTICE

Ms. Vu attested that the following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper (the Town’s official newspaper) on October 16, 2016, that it was posted upon the Town of Farmington website (www.townoffarmingtonny.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 24th day of October, 2016, commencing at 7:00 p.m. at the Farmington Town Hall, 1000 County Road #8 in the Town of Farmington, Ontario County, New York, to consider the following applications:

ZB #1001-16: DAVID CHAPMAN, 5513 HOLTZ ROAD, FARMINGTON, N.Y. 14425: Request an area variance to Article V, Chapter 165-58A to the Town of Farmington Codes. The applicant wishes to keep a barn which does not meet side yard setbacks for an accessory structure due to placement (a minimum of 5 feet is required). The property is located at 5513 Holtz Road and zoned A-80 District.

ZB #1002-16: MR. AND MRS. MICHAEL COLLINS, 579 COUNTY ROAD 8, FARMINGTON, N.Y. 14425: Request an area variance to Article V, Chapter 165-58A to the Town of Farmington Codes. The applicant wishes to keep a barn which does not meet side yard setbacks for an accessory structure due to placement (a minimum of 5 feet is required). The property is located at west of 5513 Holtz Road and zoned A-80 District.

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

R. Ann Vu, Chairperson
Zoning Board of Appeals
Town of Farmington

4. CONTINUED BUSINESS

None

5. PUBLIC HEARINGS

ZB #1001-16	David Chapman 5513 Holtz Road Farmington, N.Y. 14425	Area Variance
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The applicant is requesting an Area Variance to Chapter 165, Article V, Section 58. A. of the Town of Farmington Codes. The applicant wishes to keep an accessory structure—a 30-foot by 50-foot detached pole barn (with an unknown sized addition that has been added to the pole barn)—that is to be located 3 feet-6 inches within the side yard portion of the adjacent lot that is owned by Michael Collins. The Town Code requires accessory structures to be located only in the rear yard portion of a lot and located five feet from an adjacent property line. The property is located at 5513 Holtz Road and is zoned A-80 Agricultural District.

Ms. Vu declared the Public Hearing open.

Mr. Brocklebank, an attorney from Canandaigua, N.Y., presented this application. David and Cindy Sue Chapman, and Michael Collins, also attended. Mr. Brocklebank said that he represents Mr. Chapman and that he also is appearing on behalf of Mr. Collins.

Mr. Brocklebank noted that the application of Mr. Chapman and the following application of Mr. Collins (ZB #1002-16) are parallel and involve the same zoning issue.

Mr. Brocklebank explained that a pole barn, which had been built many years ago, is encroaching over the Chapman property line and onto an adjacent lot that is owned by Mr. and Mrs. Collins. He distributed to the board members color aerial photos with a tax map overlay that depicted the lots, the pole barn, and a number of other adjacent lots and structures in the neighborhood.

Mr. Brocklebank said that the established character of the neighborhood along this portion of Holtz Road consists of residential single-family homes with various sized accessory structures upon their lots. He specifically called the board's attention to the accessory structures as shown on lots #8, #10, #12, #13, #14, #15 and #16 on the aerial photograph. He said that more than 50 percent of the lots in this neighborhood have large accessory structures. He also reported that a pole barn recently has been installed on the lot represented by #26 on the photograph. He said that this lot is owned by Kevin Holtz, who was present this evening.

He said that a farm operation on Holtz Road also includes several accessory structures and that the character of the neighborhood consists of single-family homes and that large accessory structures predominate. He said that both property owners (Mr. Chapman and Mr. Collins) are in support of the Area Variance applications.

Mr. Brocklebank said that both Mr. Chapman and Mr. Collins are coming before the Zoning Board of Appeals (ZBA) this evening with a very significant hardship. He said that the circumstances of this situation are unusual and that he has not seen an issue like this in the past. He said that a fraud was perpetrated upon Mr. Chapman in this transaction.

Mr. Brocklebank said that a permit regarding the pole barn was provided to Mr. Chapman by Mr. Jacobs, from whom Mr. Chapman purchased his property, and that a boundary

line agreement had been signed in 2007 by Mr. Jacobs and Mr. Collins concerning the pole barn location. He said that the permit was specific to the pole barn and was the evidence that was used by Mr. Chapman to proceed with the purchase and closing of the property from Mr. Jacobs. Mr. Brocklebank said that Mr. Chapman had no knowledge of any particular zoning issue at the time.

Mr. Brocklebank said that Mr. Chapman learned about the zoning issue with his property when he recently put his property up for sale. He said that several options have been investigated including the potential purchase of a portion of the Collins property upon which the pole barn sits. He said that this could not be done because of a current title problem involving a judgement upon the Collins property.

Mr. Brocklebank said that if Mr. Chapman were to purchase a portion of the Collins property, all the rights under the 2007 boundary line agreement between Mr. Jacobs and Mr. Collins would be extinguished. He said that if the current judgement were to be foreclosed, the judgement would take priority, and therefore Mr. Chapman could not bear that risk. As a result, Mr. Brocklebank said that Mr. Chapman cannot proceed with his prospective sale of his property. He said that Mr. and Mrs. Chapman are packed and ready to move, but that they cannot consummate the sale.

Mr. Brocklebank said that approval of the Area Variance would allow the pole barn to remain. He said that there have been no complaints about the pole barn of which he and Mr. Chapman are aware. He said that other options that have been considered to resolve the zoning issue included a cost estimate to move the structure (approximately \$35,000) and the possibility of removing a portion of the structure. He said that none of these avenues were reasonable or feasible, that the pole barn is in keeping with the character of the neighborhood and that application to the ZBA represents the only avenue to resolve the zoning issue.

Ms. Vu asked about consideration of a lot line adjustment. Mr. Brocklebank said that a lot line adjustment would raise the same title issue as the purchase of a portion of the Collins property, as it concerns the merger of the judgement against the Collins property and the risk that would be incurred by Mr. Chapman if the judgement were to be foreclosed.

Mr. Russell asked about the risk associated with a lot line adjustment. Mr. Brocklebank said that the risk is beyond the level that Mr. Chapman could assume. He said that the remaining opportunity for Mr. Chapman to resolve the zoning issue is through the granting of an Area Variance by the ZBA.

Mr. Brocklebank said that there are times when local zoning codes need to bend and that this is a classic example of when the local laws should bend. He said that the ultimate test would be balancing the benefit to the owner against the detriment to the neighborhood. He said the Area Variance would provide enormous benefit to Mr. Chapman with no impact upon the character of the neighborhood.

Ms. Vu asked if there is any precedent in New York State for a similar situation. Mr. Brocklebank said that decisions of zoning boards of appeals are not similar to the court system in which decisions from one case carry over and may be considered as a precedent for decisions in subsequent cases. He said that ZBA applications are unique on the facts and that they are unique on the decisions, and that the ZBA has the ability to vary local law requirements. He said that the granting of the Area Variance application in this matter is within the jurisdiction and purview of the ZBA.

Ms. Vu said that she understands how side setbacks and distances from property lines are within the ZBA's purview, but that she is struggling to understand how the pole barn on Mr. Collins's property is a zoning issue. Mr. Brocklebank said that the ZBA may vary a side setback all the way to zero on both the Chapman and Collins applications. He said that the board is not being asked to grant a negative setback variance. He said that the ZBA is being asked to grant a zero side setback for the Chapman application and a zero side setback on the Collins application. He said that the board would be limiting its jurisdiction to each application.

Ms. Vu suggested that the pole barn is not an accessory structure on the Collins property. She then read the definition of an Accessory Structure from Section 165-10 from the Town Code. She said that the pole barn is an Accessory Structure for the Chapman property—which receives the benefit from the pole barn—but that the Collins property receives no benefit from the pole barn and therefore is not considered an Accessory Structure on the Collins property. Mr. Brocklebank said that he disagrees with this interpretation. He said that the benefit of the Area Variance to Mr. Collins is neighborly accommodation and that the ZBA has an opportunity tonight to cure a major problem for Mr. Chapman by the issuance of the Area Variance, which he said is the substantive alternative to resolve this problem.

Mr. Brocklebank said that the board has the authority to do this and cure the issue. He asked what is the downside—which he then suggested is looking at Code and being slaves to Code without recognizing that the Town has an owner and constituent in the community who was—without question—the victim of a fraud, and that board has the ability to cure this. He said that this is what the applicant has requested. He said that the right answer is to grant the variances. He said that to spend time delving into esoteric arguments about what local zoning code says would be going in the wrong direction.

Ms. Vu disagreed with Mr. Brocklebank's remarks. She said that the board's obligation is to grant the minimum relief necessary and that the board's obligation is to uphold the Code of the Town. She said that she is not being argumentative or sticking to the Code. She said that she is trying to understand the rationale that would allow the granting of the variance. Mr. Brocklebank asked that if it is the position of the board that there is some other manner for Mr. Chapman to cure this problem, then the board should please tell him and Mr. Chapman what that is and the basis for it.

Mr. DeLucia discussed the options that have been considered by the applicant to resolve the issue, i.e., purchase the property, move the pole barn, take the pole barn away, or seek

action against the person who created the fraud. He asked if action against the person who created the fraud was considered. Mr. Brocklebank said that the statute of limitations for fraud is six years and that many more than six years have passed. As a result, he said that the applicant does not have a cause of action that could be sustained.

Regarding removing a portion of the pole barn or removing the structure, Mr. Brocklebank said that the pole barn cannot be cut back due to its construction and that building contractors do not wish to become involved on the project due to the current zoning violation. He said that the options sound wonderful in theory but that these options are not happening and this is why the applicant seeks an Area Variance. He said that Mr. Chapman is in a very real and very difficult situation.

Mr. Brocklebank asked if the Town has received any letters in opposition to the applications. Ms. Vu said that no letters in opposition have been received by the board. Mr. Brocklebank also noted that Mr. Chapman and Mr. Collins also are in attendance this evening and support the variance applications.

Mr. Morse noted that although the application reflects the pole barn size of 30 feet by 50 feet, there has been an addition to the structure during the time that Mr. Chapman has owned it and for which no permit has been issued. Mr. Morse said that the addition was discovered during a compliance inspection in preparation of Mr. Chapman's prospective sale of the property. Mr. Brocklebank said that Mr. Chapman wanted to have the addition inspected, but that the inspection cannot go forward because of the existing violation, a Catch-22 situation. Ms. Vu noted that the location of the addition to the pole barn is on the Chapman side of the property and does not encroach further onto the Collins lot.

Mr. DeLucia asked about the original permit for construction of the pole barn and why the encroachment onto the Collins lot was not discovered at the time that the final inspection for the Certificate of Occupancy was made. Mr. Morse said that a permit was issued at the time of original construction. He speculated that the Code Enforcement Officer at the time may have based the measurements upon those that were shown the drawings. Mr. Brocklebank noted that the application for the original Certificate of Occupancy (Exhibit C in the application materials) was signed by Adam Jacobs, the previous owner of the Chapman property, and indicates that the pole barn was to have been set five feet from the west property line. Mr. Morse noted that the violation notice was sent to Mr. Chapman, not to Mr. Jacobs. Mr. Brocklebank said that Mr. Chapman now is bearing the full brunt of this circumstance.

Mr. Russell asked if the board would be establishing a precedent if the Area Variance was approved. Mr. Morse said that this would be a question for the Town attorney. Mr. Brocklebank said that he did not believe that approval of the variance would have any precedential value because the facts and circumstances of this situation are exceptional and are extremely unusual. He also noted that with the improvements in zoning and land use laws, and enforcement, each of which is improving year to year and decade to decade, the possibility of something like this happening again is more remote. He noted that the original Certificate of Occupancy was issued in September 2004 and that the Chap-

mans purchased the property in August 2007. He said that it would have been wonderful if this situation had been identified before they had purchased the property.

Mr. Morse noted that the boundary line agreement was signed by Mr. Jacobs and Mr. Collins on July 24, 2007, and that the Chapman deed was filed on July 27, 2007. He said that the boundary line agreement was obviously a document that was provided for the transfer and sale of the property to Mr. Chapman, and that the boundary line agreement provided Mr. Chapman with the knowledge at the time of the purchase of the property in 2007 that the pole barn was over the property line. Mr. Brocklebank said that the issues are title-related at the closing of real estate and that boundary line agreements are recognized practices and procedures for resolving these types of encroachments. He said that the Chapmans relied on the boundary line agreement at the time of closing and that zoning was not considered at that time because of the Certificate of Occupancy that had been issued.

Ms. Vu said that she was not ready to close the public hearing. She said that she would like the opportunity to continue the conversation upon this application.

ZB #1002-16 Mr. and Mrs. Michael Collins Area Variance
579 County Road 8
Farmington, N.Y. 14425

The applicant is requesting an Area Variance to allow a portion of a detached Structure located upon an adjacent Lot at 5513 Holtz Road and partially upon the Applicant’s Lot, to remain in the rear yard portion of the Lot located at 579 County Road 8, with a zero setback from the property line instead of the 20-foot minimum rear yard setback for a Structure located on a Lot within the A-80 District as required by Town Code. The property is located at 579 County Road 8.

Ms. Vu declared the Public Hearing open.

This application concerns that portion of the pole barn owned by Mr. Chapman that encroaches upon the Collins property.

Mr. Brocklebank again noted that he is the attorney for Mr. Chapman and although he is not serving as the attorney for Mr. Collins that he has Mr. Collins’s permission to speak about the application.

Mr. DeLucia asked about the liability that prevents the sale of a portion of the Collins property (upon which the pole barn is located) to Mr. Chapman. Mr. Brocklebank said that there is a 2011 judgement on the Collins property that prevents the sale of the property. He said that the creditor seeks payment in full of approximately \$32,000. Mr. Collins said that this was an issue with a Wells Fargo mortgage and that this has been settled. Mr. Brocklebank said that as yet there is no record of the resolution of the judgement on file at the Ontario County Clerk’s Office.

Mr. Collins asked about the liability if someone is injured in that portion of the pole barn that is on his property. Mr. Brocklebank said that the full custody and control of the pole barn is with Mr. Chapman and that Mr. Collins would not be held liable for someone injured in the barn.

Mr. Russell asked if the Town could be held liable for an injury in the barn if the board approves the variance. Mr. Brocklebank said that a municipality does not have responsibility for an occurrence on private property. He also noted that Mr. Collins is held harmless from any and all injuries in the boundary line agreement that he and Mr. Jacobs signed.

Mr. Collins said that the pole barn was already standing when he purchased the property many years ago from Mr. Poppenhausen.

Mr. Opett suggested that these applications be tabled until such time that the board can receive comments from the Town attorney.

Mr. Brocklebank asked about the date of the next scheduled board meeting. Ms. Vu said that the next scheduled meeting date is Monday, November 28, 2016, but that the board is at liberty of calling a special meeting at an earlier date if the Town attorney is not available on November 28, 2016.

Mr. DeLucia said that absent an opinion from the Town attorney that he would suggest that the applications be denied.

Mr. Collins said that his property includes frontage on both County Road 8 and Holtz Road. He said that he prefers that everything remain as it is and that he does not wish to deal with this issue any further. He said that he is not against the applications but that he just does not wish to be part of this anymore. He said that he did not create this situation. Mr. Brocklebank noted Mr. Collins’s remarks that he does not object to the granting of the area variances. He said that the granting of the Area Variances is the remedy sought by Mr. Chapman.

Ms. Vu said that it appears to be the consensus of the board members that these applications should be tabled until the board can receive comments from the Town attorney. She said that the board believes that it would be beneficial to have the Town attorney’s comments prior to making a decision on the applications.

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

**TOWN OF FARMINGTON ZONING BOARD OF APPEALS
CONTINUATION RESOLUTION**

ZB #1001.1-16

APPLICANT: David Chapman, 5513 Holtz Road, Farmington, New York 14425

ACTION: Area Variance to keep a detached Accessory Structure, located in the rear yard area of the Lot, but encroaching within the side yard setback area from the property line of the Lot as required by Town Code. The property is located at 5513 Holtz Road.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Zoning Board) has received an Application for an Area Variance from David Chapman, 5513 Holtz Road, Farmington, N.Y. 14425, to keep a detached Accessory Structure, located in the rear yard area of the Lot, but encroaching within the side yard setback area from the property line of the Lot as required by Town Code. The property is located at 5513 Holtz Road; and

WHEREAS, the Board has received testimony at tonight’s Public Hearing, upon this Application, that will be entered into the public record upon this Action; and

WHEREAS, the Board desires to receive advice and counsel upon this Application from the Town of Farmington Town Attorney.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby move to table this Application and continue the Public Hearing to its meeting on Monday, November 28, 2016, or to an alternate date to be determined, with notification of the alternate date to be provided to the applicant and the applicant’s counsel if the Town Attorney is unavailable on that date.

**TOWN OF FARMINGTON ZONING BOARD OF APPEALS
CONTINUATION RESOLUTION**

ZB #1002.1-16

APPLICANT: Mr. and Mrs. Michael Collins, 579 County Road 8 Farmington, N.Y. 14425

ACTION: Area Variance allow a portion of a detached Structure located upon an adjacent Lot at 5513 Holtz Road and partially upon the Applicant’s Lot, to remain in the rear yard portion of the Lot located at 579 County Road 8, with a zero setback from the property line instead of the 20-foot minimum rear yard setback for a Structure located on a Lot within the A-80 District as required by Town Code. The property is located at 579 County Road 8.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Zoning Board) has received an Application for an Area Variance from Mr. and Mrs. Michael Collins, 579 County Road, Farmington, N.Y. 14425, to allow a portion of a detached Structure located upon an adjacent Lot at 5513 Holtz Road and partially upon the Applicant’s Lot, to remain in the rear yard portion of the Lot located at 579 County Road 8, with a zero setback from the property line instead of the 20-foot minimum rear yard setback for a Structure located on a Lot within the A-80 District as required by Town Code. The property is located at 579 County Road 8; and

WHEREAS, the Board has received testimony at tonight’s Public Hearing, upon this Application, that will be entered into the public record upon this Action; and

WHEREAS, the Board desires to receive advice and counsel upon this Application from the Town of Farmington Town Attorney.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby move to table this Application and continue the Public Hearing to its meeting on Monday, November 28, 2016, or to an alternate date to be determined, with notification of the alternate date to be provided to the applicant and the applicant’s counsel if the Town Attorney is unavailable on that date.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Ann Vu	Aye

Motion carried.

Following the vote on the above published resolutions, Ms. Vu explained that the Public Hearings remain open and that an alternate date for the November meeting would be selected and announced if the Town attorney is not able to attend on November 28, 2016, as noted in the resolutions. She said that all parties would be contacted to assure a mutually agreeable date if the Town attorney cannot attend on November 28, 2016.

6. OTHER BOARD BUSINESS

Code Enforcement Officer:

Mr. Morse commented on the following items:

- A preconstruction meeting was held today (October 24, 2016) in preparation for construction of the renovations and additions to the Farmington Town Hall. Mr. Morse said that the contractor is eager to begin and plans to arrive on the site this Thursday, October 27, 2016, for site preparations.

- Mr. Morse reported that a digital sign board has been installed on the freestanding sign in front of Burger King Restaurant on State Route 332. He said that the original sign application for this restaurant depicted one freestanding sign and two building-mounted signs. He said that the sign permit and the ZBA variances that were granted did not reflect a digital sign board. He reported that he instructed the restaurant operator not to operate this sign pending a variance application before the ZBA.

Board Members:

Mr. DeLucia asked about the location of the ZBA meetings during the Town Hall renovations. Mr. Morse said that the board would meet in the Town Court facility on Hook Road but that the meeting night may have to be adjusted because Town Court is held on the first through the fourth Mondays of each month. Mr. Morse said that the contractor plans to complete Phase 1 of the Town Hall project (the new addition on the west side of the Town Hall) and that offices would move into Phase 1 while Phase 2 (the Town Clerk's area and the meeting room) are under construction.

Mr. DeLucia asked about the bakery that was considered for the structure at the southwest corner of State Route 96 and Mertensia Road. Mr. Morse said that the auto dealer has restriped the parking lot and has been moving cars into and out of the lot, but that no plans have been submitted for a bakery at this time.

Ms. Vu announced that this would be her final meeting as a ZBA board member and chair. She said that she would be resigning from the board in preparation for her acceptance of a new position in Florida and that she would be moving this Friday, October 28, 2016. She expressed her thanks and appreciation to the board members for their support during her six years on the ZBA and four-and-a-half years as chairperson. Members of the board extended their thanks to Ms. Vu for her service and wished her well in her new opportunity.

7. NEXT MEETING DATE

The next regular meeting of the Zoning Board of Appeals will be held at the Town Hall on Monday, November 28, 2016, at 7:00 p.m.

8. ADJOURNMENT

A motion was made by MR. OPETT, seconded by MS. PURDY, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 8:25 p.m.

Following the meeting, the clerk secured the building.

Respectfully submitted,

John M. Robortella,
Clerk of the Zoning Board, *Pro Tempore* L.S.