

**TOWN OF FARMINGTON  
ZONING BOARD OF APPEALS MEETING MINUTES**

**Approved MINUTES**

The following minutes are a written summary of the main points that were made and the actions taken at the Town of Farmington Zoning Board of Appeals meeting held on April 27, 2015.

**Zoning Board of Appeals Members**

Ann Vu	Chair	Present
Ed Hemminger		Present
Wesley Pettee		Excused
Cyril Opett		Present
Tim DeLucia		Present

**Town Staff Members**

Ron Brand	Director of Development
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**Also Present**

John Malvaso	FSI Systems
Pat Coggi	Finger Lakes Food Cart
Emma	Finger Lakes Food Cart

**Open Meeting**

Ann Vu called the meeting to order at 7:00 pm. She explained the emergency evacuation procedures and rules of procedures of the meeting.

**Approval of Minutes**

Timothy DeLucia made a motion to accept the March 16, 2015 and the March 23, 2015 meeting minutes and Cyril Opett seconded the motion. A voice vote was taken and the motion was passed with three (3) Ayes with Ed Hemminger abstaining.

**BOARD BUSINESS:**

Ann Vu stated that the Legal Notices were published in the town’s official newspaper the Daily Messenger on Monday, April 20, 2015 for tonight’s Public Hearings. She also attests to the posting of the agenda on the Town’s website and on the Bulletin Board located at the Town Hall. Copies of the legal notices and tonight’s agenda are on the sign-in table. She asked everyone in attendance to please sign-in.

**NEW BUSINESS:**

**ZB 0401-15**

**John Malvaso**

**Temporary Use Permit**

Applicant is requesting two amendments to the provisions of a Temporary Use Permit that was granted on July 28, 2014 (File #ZB 0703-14). The Applicant desires to change the hours of operation from 10:00 a.m. to 7:00 p.m./Sunset to read 6:00 a.m. to Sunset. The Applicant also desires to change the location for the placement of the food cart operation to allow the food cart operation to be in front of the pillars but behind the actual sidewalk that is located at the southwest corner of the intersection of State Routes 96 and 332. The property is located at 6081 New York State Route 96, the Farmington Commons Plaza and is zoned GB General Business District.

Ann Vu declares the Public Hearings open.

John Malvaso, Pat Coggi and Emma are all present to speak on behalf of the above application. Mr. Malvaso explains that the food cart has been operational for a year now in its current location at the Gateway. Mr. Malvaso explains that tonight they are requesting a change in the currently approved operating hours to allow Patrick and Emma to serve breakfast. They are also requesting a change in the currently approved operating location. They would like to move the cart closer to the fountain and floral area near the southwest corner of the intersection. Their current location near the clock and picnic area they feel is obstruction their operations from motorists passing by. Mr. Malvaso adds that one day last year they did move the cart to the requested area and their business for that day tripled. He adds that the negative part about that day was that there was a complaint about the cart being in that location and the Code Enforcement went out and had them move the cart back to the approved location. They are unsure of where the complaint came from and why but they would like approval to move closer to the intersection.

Ann Vu then asks for questions or comments from the staff.

Ron Brand, Director of Development, explains that the caveat Mr. Malvaso questions is that the resolution adopted in July 2014 identifies the location for the operation of the food cart which is to be back by the clock in the state right of way. In that resolution Mr. Kofahl also recommends and the Board agrees that the applicant place a sandwich board directional sign at the Route 96 entrance to the plaza identifying the food cart operations.

Pat Coggi explains that the original application showed the location of the food cart closer to the corner. He explains that he was under the impression that that was the agreed upon location. Mr. Brand clarified that the conditions of approval result in the food cart being allowed but not nearer to the corner where Mr. Coggi is now requesting.

Ann Vu explains she recalls from the July meeting that the conversation was to place the food cart back by the clock to reduce potential traffic safety concerns. She adds that she

believes that the complaint that was raised by the member of the town was due to a near fender bender at the intersection.

Mr. Coggi explains that in Canandaigua he operates less than fifteen feet from traffic right on the sidewalk and Giovanni in Victor operates on the sidewalk. He adds that he is, at times, located right near a cross walk in Canandaigua. He feels that it is more distracting for someone driving by trying to look through the trees to see what is going on than if he was located out in the open. He adds that he does have directional sign at both entrances to the plaza.

Ann Vu explains that the difference between where he operates in Canandaigua and where Giovanni operates in Victor is that there are parked cars between them and the road.

Mr. Hemminger adds that there is also a big difference in the speed of the cars passing by in the Victor and Canandaigua locations when compared to the 50-60 mph speeds of passing motorists at the Farmington location.

Mr. Malvaso adds that when the Chamber of Commerce was permitted to build the park and there was nothing there and the purpose of the park was for public gathering. He feels that anything that goes on there would be a potential distraction like the flowers, or the fountain, or the clock and those are all existing and in place.

Ann Vu then asks if there are any further questions or comments pertaining to the location of the food cart before moving on to the hours of operation.

Tim DeLucia does not have an issue with the change of location. He explains that the speed limit is 45 mph and he understands that corner, for some reason, has a lot of accidents independent of the food cart being there. He adds that the only concern he recalls from the July meeting was the potential of someone actually stopping on the street to go to the food cart.

Mr. Brand explains that the speed limit along this portion of State Route 96 is 45 miles per hour and the speed limit on State Route 332 is 55 miles per hour.

Ed Hemminger explains his concerns of moving the cart any closer to the road. He adds that there are many distractions already on that corner and anything approved to be placed at that corner puts the town in a potential liable position. He is very cautious about allowing the food cart to move to the proposed requested location.

Ann Vu then moves on to the applicant's request to change the hours of operation.

Mr. Coggi explains that they have changed their business plan for this year. They are offering more local food products from the area and county. He explains that the growing trend is people wanting to know where their food comes from. He feels there may be a market for people wanting breakfast from a place that offers local products

instead of chain restaurants. He adds that they may be offering a promo with the Finger Lakes Coffee Roasters for coffee and a coupon for savings for a breakfast sandwich. It's all about local businesses helping other local businesses.

Ann Vu then asks for questions or comments from Mr. Brand.

Mr. Brand explains that he was asked by the Code Enforcement Officer to enter into the record, that his only complaint is that by moving the food cart forward of the wall, closer to the intersection and moving vehicles, it would subject people to becoming involved with possible motor vehicle accidents as they occur within that intersection.

Ann Vu then asks for questions or comments from the board.

Mr. Hemminger explains that he has no issue with allowing the operational hours to change but he does have an issue with allowing the location to change. He asks the applicant if they could get the hours changed but not the location changed would they still be interested in going through with their requested changes.

Mr. Coggi says absolutely. He would obviously like the board to approve both of their requests but will still be happy with the approval of the change in hours of operation.

Mr. Malvaso adds that the Chamber has petitioned the State Department of Transportation twice for a speed reduction and both times they were turned down.

Mr. Brand explains that the Temporary Use Permit was issued in July 2014 for a two year period with a number of conditions. He explains that they are almost a year in to that two year time period and the board is being asked to make further changes to the conditions that were previously approved. Keep in mind that this Temporary Use Permit is a test, so to speak, to see what works and what doesn't work so that in the future it may affect other food carts operating in the town.

Mr. Brand went on to point out that the Town Code doesn't automatically provide for the board to rehear an application or take action to amend a previous decision but that New York State Town Law, Section 267-a, does. The New York State Town Law states that you can rehear any decision so long as it has not been previously reheard and provided that a board member moves to rehear such a request and that the motion receives a unanimous approval by all the board members present at the public hearing. Then, before the public hearing is closed the board needs to decide, by unanimous vote again of all present, if they have heard enough information that warrants the consideration for changing the conditions that were originally approved. Mr. Brand adds that he has drafted, for the board's consideration, two resolutions. One resolution is if the board agrees to rehear and the second is to deny without prejudice.

Ann Vu then asks for any further questions or comments from the board.

Tim DeLucia questions if the proposed location is more adjacent to Route 96 then to Route 332.

Mr. Coggi says that is correct.

Mr. Brand adds that the food cart would be closer to the two lanes of south bound traffic on Route 332 then it would be to the three traffic lanes on Route 96.

Mr. Malvaso explains that the proposed location of the food cart would be to the west of the fountain.

Mr. Hemminger adds that he has no issue with rehearing the application however he cannot support the change in location of the food cart but can support the change in hours of operation.

Mr. Brand explains that unlike any other resolution if the board decides unanimously to rehear then the conditions that are determined by the board has to be unanimously approved by those present at the meeting.

Mr. Brand adds that he has seen an accident at the intersection of Route 332 and Route 96 and that the cars and the people involved ended up not very far from where the food cart would be located. He would hate for the town to be made party to a lawsuit by a motorist stating they were distracted by the food cart operation so close to the travel lanes.

Ann Vu then asks for any further questions or comments from the Board, staff or the public for the applicant.

With no response Cyril Opett makes a motion to rehear these two requests hearing and it is seconded by Tim DeLucia. A voice vote was taken and the motion was passed with all four (4) board members present voting aye.

**Area Variance and Findings                      ZB 0401-15                      John Malvaso**

Resolution to Rehear ZB 0703-14    Temporary Use Permit

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as Board), has issued with conditions a Temporary Use Permit (File #ZB 0703-14) on July 28, 2014; and

WHEREAS, the Applicant is requesting changes to two of the previously issued conditions of approval for the above cited Temporary Use Permit; and

WHEREAS, Section 267-a of New York State Town Law, paragraph 12, provides for the Board to rehear any decision, so long as it has not previously been reheard, provided further that a Board member moves to rehear and such motion receives a unanimous approval by all members of the Board then present for rehearing to occur.

NOW, THEREFORE, BE IT RESOLVED that Cyril Opett does hereby move and is seconded by Timothy DeLucia to rehear the previous decision that was made upon File #ZB 0703-14.

The above resolution was then voted upon by the following members of the Board:

Edward Hemminger	-	Aye
Timothy DeLucia	-	Aye
Wesley Pettee	-	Excused
Cyril Opett	-	Aye
R. Ann Vu	-	Aye

With the decision to rehear the requests to amend two of the original conditions of approval for the Temporary Use Permit, File #ZB 0703-14, to allow a food cart operation, Edward Hemminger moved and Cyril Opett seconded to closed the public hearing upon Application #ZB 0703-14. By voice vote the public hearing was closed.

**Town of Farmington Zoning Board of Appeals Action Resolution  
Amendments to Temporary Use Permit, File #0401-15, John Malvaso**

**WHEREAS**, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as Board) has conducted a public hearing upon the request from John Malvaso (hereinafter referred to as Applicant) to rehear the conditions of approval that were originally granted for the Temporary Use Permit (File #ZB 0703-14), dated July 28, 2015; and

**WHEREAS**, the Applicant is requesting two amendments to the original conditions of approval one of which is to change the hours of operation from 10:00 a.m. to 7:00 p.m. to 6:00 a.m. to sunset; and

**WHEREAS**, the other proposed amendment is to change the location of the food cart allowing the cart to operate closer to the roadways (State Routes 96 and 332) by moving the location from behind the pillar work that was completed as part of the Chamber of Commerce Gateway Project to in front of the pillar but behind the sidewalks; and

**WHEREAS**, the Board has, by unanimous vote upon a separate resolution, as provided for in Section 267-a of New York State Town Law, paragraph 12, decided to rehear the previous decision that was made upon File #ZB 0703-14; and

**WHEREAS**, the Board, upon a thorough review of the public record upon this Temporary Use Permit does hereby agree to take the following action.

**NOW, THEREFORE, BE IT RESOLVED** that the Action to rehear the original conditions of approval is hereby classified as a Type II Action, under Part 617.5 ( c ), article 8 of the New York State Environmental Conservation Law.

**BE IT FURTHER RESOLVED** that the Board in making this classification has satisfied the requirements for making a determination of significance upon the Action.

**BE IT FURTHER RESOLVED** that the Board does hereby agree to amend the hours of operation for the food cart, the subject Temporary Use Permit, by changing the hours of operation from 6:00 a.m., or sunrise, whichever allows more daylight to sunset during the months of May through October.

**BE IT FURTHER RESOLVED** that the Board does hereby deny the Applicant’s request to relocate the food cart operation closer to the sidewalks at the intersection of State Routes 96 and 332, in front of the Farmington Commons Plaza.

**BE IT FURTHER RESOLVED** that the Board determines that these two decisions shall remain in effect during the remainder of the two year period granted upon File #ZB 0703-14, which Temporary Use Permit shall expire on July 27, 2016.

**BE IT FURTHER RESOLVED** that the Board and the Applicant understand that in order for these amendments to become in effect, the Board is required to cast a unanimous vote of the Board members present at the time action is taken.

**BE IT FINALLY RESOLVED** that the Board, in deciding to rehear this matter the Applicant understands that he has exhausted any further rehearing upon the conditions of this Temporary Use Permit.

The above resolution was offered by Edward Hemminger and seconded by Ann Vu at a public meeting held on Monday, April 27, 2015. The following roll call vote was taken and recorded.

Edward Hemminger	-	Aye
Cyril Opett	-	Aye
Timothy DeLucia	-	Aye
Wesley Pettee	-	Excused
Ann Vu	-	Aye

**NEW BUSINESS:**

**ZB 0402-15**

**William Larsen**

**Area Variance**

Applicant is requesting an area variance to the provisions of Chapter 165, Article IV. Section 18. B. of the Farmington Town Code. The Applicant desires to erect an

Accessory Structure, a pole barn, upon Lot #4 of the proposed “Larsen – Hook Road Subdivision.” At the present there is no Principal Structure located on this parcel of land. The Town Code restricts Accessory Structures to a Lot having a Principal Structure. The property is located on the west side of Hook Road, between Martz Road and Green Road and is zoned Town Law Section 278 District.

Timothy DeLucia made a motion to open the public hearing and Cyril Opett seconded that motion. A voice vote was taken and the motion passed with four (4) ayes.

Ann Vu explains that the applicant requested, by letter, that his application be continued until the May 18, 2015 meeting. The letter is on file in the Town Clerk’s Office.

**ACTION RESOLUTION – CONTINUATION**

**ZB # - 0402-15**

**APPLICANT(S): WILLIAM LARSEN, AREA VARIANCE APPLICATION  
LOT #4 - LARSEN/HOOK ROAD SUBDIVISION TRACT**

**WHEREAS**, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as Board) has opened the public hearing record upon the above referenced application at tonight’s Board meeting; and

**WHEREAS**, the Board has received public comments thereon; and

**WHEREAS**, the Board has received written notification from the Applicant that he would not be able to attend tonight’s public hearing requesting the hearing be continued to the May 18, 2015 meeting; and

**WHEREAS**, the Board understands that the next meeting date will be on Monday, May 18, 2015.

**NOW, THEREFORE, BE IT RESOLVED** that the Board does hereby move to table the application and to continue the public hearing to Monday evening, May 18, 2015 at 7:00 p.m.

The above Resolution was offered by Ed Hemminger and seconded by Cyril Opett, at a regular scheduled meeting of the Town of Farmington Zoning Board of Appeals held on Monday, April 27, 2015. Following discussion, the following roll call vote was recorded:

<b>Edward Hemminger</b>	- Aye
<b>Timothy DeLucia</b>	- Aye
<b>Cyril Opett</b>	- Aye
<b>Wesley Pettee</b>	- Excused
<b>Ann Vu</b>	- Aye



**Public Comments – open forum**

None

**Other Board Matters:**

None

**Director of Development Update:**

Mr. Brand attended the County Industrial Agency Board Meeting tonight. They voted to conduct a public hearing on the funding program for the FedEx Distribution Center here in Farmington. The project is being built to facilitate the over use of the FedEx Distribution Center in Henrietta. The distribution centers operate on zip codes and the distribution center in Farmington will inherit some of those zip codes as well as zip codes from Syracuse. The facility is on target to commence construction in June 2015 with operations to commence in 2016. The land was purchased for \$1.5 Million, the facility is going to be built for \$17 Million and the machinery and equipment that will go in the building will cost \$8 Million. They will have 25 full time employees and 112 part-time employees. Private contractors are hired to drive the trucks.

Mr. Brand then distributed to the board members information he received from the Association of Towns and will conduct a training session for the members in the near future.

**Next Meeting:**

The next Zoning Board of Appeals meeting will be held on May 18, 2015. A motion was made to adjourn the meeting at 7:46 pm and was passed with a voice vote of four (4) Ayes.

Minutes were respectfully submitted by Sarah Mitchell, Clerk of the Board.