

**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 May 18, 2009.

**Zoning Board of Appeals Members**

Edward Hemminger--Chairman  
Leslie O'Malley  
Raymond Ward  
Chris Dunfey  
Gary Scribner

**Also Present**

Floyd Kofahl	-Code Enforcement Officer
Ron Brand	-Director of Development
John Holton	-5230 Maxwell Road, Farmington, NY 14425
Mr. & Mrs. Mark Porretta	-4414 Latting Road, Canandaigua, NY 14424
Mr. & Mrs. Pat Raymond	-4428 Latting Road, Canandaigua, NY 14424
Earl Johnson	-226 Vienna Street, Palmyra, NY 14522
Kevin Morgan	-1170 Pittsford Victor Road, Pittsford, NY 14534
Karl Essler	-295 Woodcliff Drive, Fairport, NY 14450
Jim Davis	-5881 Allen Padgham Road, Farmington, NY 14425
Mary Kendall	-165 Honeysuckle Lane, Farmington, NY 14425
William Thompson	-164 Honeysuckle Lane, Farmington, NY 14425
Vance Kannapel	-159 Honeysuckle Lane, Farmington, NY 14425

**Open Meeting**

Edward Hemminger called the meeting to order at 7:00 pm. He explained the emergency evacuation procedures and rules of procedures of the meeting and stated that copies of the evening's agenda and legal notices were available on the table by the door. He then asked those present to sign in if they had not already done so.

**Approval of Minutes**

Leslie O'Malley made a motion to accept the April 27, 2009 meeting minutes and the motion was seconded by Gary Scribner. A voice vote was taken and the motion was passed with five (5) Ayes.

**BOARD BUSINESS:**

**John Holton  
5230 Maxwell Road  
Farmington, NY 14425**

**#ZB 0401-09**

**Area Variance**

**The applicant is requesting an area variance to Chapter 165, Article V, Section 62 of the Farmington Town Code. The applicant wishes to locate a hot tub and pool in the side yard. The Town Code allows swimming pools/hot tubs in only the rear yard portion of a Lot. The property is located at 5230 Maxwell road and is zoned A-80 Agricultural District.**

Edward Hemminger read the legal notice for #ZB 0401-09 that was published in the Daily Messenger on April 20, 2009 requesting an area variance.

John Holton stated that it is only feasible to put the hot tub in the side yard. It would be an eye sore if it was in the rear yard and it would not be seen from Maxwell Road if it was put in the side yard because of the woods and privacy fence.

Floyd Kofahl told the Board that as the house sits on the property, where they want to put the hot tub is the back side of the house, however, by town definition with the access being on Maxwell Road that is now considered the side yard. The back yard is directly to the back of the house from Maxwell Road and the back yard does come all the way over to the front setback on Rossiter Road which is a sizeable area, but in putting it in the back yard it would be quite visible. The problem is that the hot tub would be in the side yard. It is a Town code issue.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Gary Scribner and seconded by Raymond Ward to close the Public Hearing at the May 18, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 7:09 pm.

Edward Hemminger made a motion to waive the reading of the Type II SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye.

Leslie O'Malley made a motion to accept the Type II SEQR Resolution and Edward Hemminger seconded the motion. All present voted Aye.

#### **AREA VARIANCE FINDINGS & DECISION**

After discussion of the factors to be considered the Board felt there would not be an undesirable change of the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, the requested variance is substantial, the requested variance would not have an adverse impact upon the physical or environmental conditions in the neighborhood, that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Edward Hemminger made a motion to approve the application and Chris Dunfey seconded the motion. All present voted Aye.

#### **Public Comments:**

There were no Public Comments.

**Farmington Storage LLC.  
45 East Avenue  
Rochester, NY 14604**

**#ZB 0501-09**

**Area Variance**

**The applicant is requesting an area variance to Chapter 165, Article IV, Section 35 of the Farmington Town Code. The applicant wishes to construct a 1420 square foot addition with a front setback of 75.3 feet. The Town Code requires a minimum front setback of 100 feet. The property is located at 6229 State Route 96 and is zoned GB General Business and further regulated by the MTOD Major Thoroughfare Overlay District.**

Edward Hemminger read the legal notice for #ZB 0501-09 that was published in the Daily Messenger on May 11, 2009 requesting an area variance.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Edward Hemminger and seconded by Gary Scribner at 8:30 pm. to keep the Public Hearing open until the June 22, 2009 meeting. There were five (5) Ayes.

**Mark Poretta  
4414 Latting Road  
Canandaigua, NY 14424**

**#ZB 0502-09**

**Area Variance**

**The applicant is requesting an area variance to Chapter 165, Article V, Section 65.1, Subsections A., E., F., G., H. and K. of the Farmington Town Code. The applicant wishes to place an outdoor furnace unit on a parcel of land located within the A-80 Agricultural District [Sub-section A]. The applicant wishes to place an outdoor furnace in the front yard portion of the lot. The Town Code requires outdoor furnaces to be located in the rear or side yard portion of a lot [Sub-section E]. The Town Code also prohibits the placement of outdoor furnaces in the front yard portion of a lot [Sub-section F]. The applicant wishes to place an outdoor furnace 24 feet from the nearest lot line. The Town code requires a minimum set back of 300 feet from the nearest lot line [Sub-section G]. The applicant wishes to place an outdoor furnace 194.91 feet from the nearest neighboring dwelling. The Town Code requires outdoor furnaces to be placed not closet than 300 feet to the nearest neighboring dwelling [Sub-section H]. The applicant desires to install an outdoor furnace 154 feet from the Canandaigua/Farmington Town Line. The Town Code requires a minimum set back of 500 feet from the municipal boundary [Sub-section K]. The property is located at 4414 Latting Road and is zoned A-80 Agricultural District.**

Edward Hemminger read the legal notice for #ZB 0502-09 that was published in the Daily Messenger on May 11, 2009 requesting an area variance.

Mark Poretta stated the reason it has to be in the front yard is because my house is 400 feet off the road. It would be too hard to have it in the back yard of the property. The furnace and shed would be behind the pole barn I have in the front yard.

Edward Hemminger asked if there are any alternatives to move it further and decrease the variances required. These are serious variance required changes.

Mark Poretta replied that where it sits on the site plan it is right in the tree line and not visible. If I put it in the front yard then you would see it driving by.

Edward Hemminger stated that it is only used in the winter obviously.

Floyd Kofahl stated that the location for the wood furnace is in violation with many aspects of the code. The Town Board in reviewing placement in allowance of wood burning furnaces went through quite a process. There was actually a moratorium on the furnaces for awhile. The reason for the dimensions is health concerns. When you are burning these wood burning furnaces, the emissions from these wood burning furnaces is like having over 25 diesel trucks running, and in conjunction with other health concerns from the EPA, is why the Town Board came up with these dimensions. We also looked at other municipalities and came to this conclusion for health and safety reasons. There are other ways to heat the buildings.

Edward Hemminger asked Mark if he put it up without prior approval.

Mark Poretta replied that the dealer said he wasn't sure he needed a permit. "I called the town after I was using it. I don't see where it is any different than a wood stove in the house."

Floyd Kofahl replied that the health concern is the way these furnaces burn. They burn at a much slower rate than in a fireplace. That is why the EPA has classified them differently than household fireplaces.

Pat Raymond stated he and his wife don't have a problem with it. "I would be most affected by the emissions and I am not affected by them."

Mrs. Poretta said she submitted with the application a statement signed by all their neighbors that they would have no problem with it.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Edward Hemminger and seconded by Gary Scribner to close the Public Hearing at the May 18, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 7:30 pm.

Edward Hemminger made a motion to waive the reading of the Type II SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye.

Leslie O'Malley made a motion to accept the Type II SEQR Resolution and Edward Hemminger seconded the motion. All present voted Aye.

#### **AREA VARIANCE FINDINGS & DECISION**

After discussion of the factors to be considered the Board felt there would be an undesirable change of the neighborhood or detriment to nearby properties, that the relief sought could be achieved by a feasible alternative, the requested variance is substantial, the requested variance would not have an adverse impact upon the physical or environmental conditions in the neighborhood, that the alleged difficulty was self-created.

After discussing the variance, the Board denied the Area Variance Findings and Decision. Leslie O'Malley made a motion to deny the application and Raymond Ward seconded the motion. Four present voted Aye to Deny and Gary Scribner Abstained.

#### **Public Comments:**

There were no Public Comments.

**Mark Poretta  
4414 Latting Road  
Canandaigua, NY 14424**

**#ZB 0503-09**

**Area Variance**

**The applicant is requesting an area variance to Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to locate a single story storage shed (8 feet by 12 feet in area) in the front yard portion of a Lot. The Town Code allows accessory structures only in the rear yard portion of a Lot. The property is located at 4414 Latting Road and is zoned A-80 Agricultural District.**

Edward Hemminger read the legal notice for #ZB 0503-09 that was published in the Daily Messenger on May 11, 2009 requesting an area variance.

Mark Poretta stated he is using the shed for storage of tools and household things and as a work shop.

Floyd Kofahl said there wasn't a permit issued or variance granted when it was installed. It is located behind the barn.

Al Raymond stated that Mark's property is always neat, clean, and orderly so we have no issues.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Gary Scribner and seconded by Raymond Ward to close the Public Hearing at the May 18, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 7:32 pm.

Gary Scribner made a motion to waive the reading of the Type II SEQR Resolution and Raymond Ward seconded the motion. All present voted Aye.

Edward Hemminger made a motion to accept the Type II SEQR Resolution and Gary Scribner seconded the motion. All present voted Aye.

### AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change of the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, that the requested variance is substantial, the requested variance would not have an adverse impact upon the physical or environmental conditions in the neighborhood, that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Gary Scribner made a motion to approve the application and Chris Dunfey seconded the motion. All present voted Aye.

#### Public Comments:

There were no Public Comments.

**Earl Johnson**  
**226 Vienna Street**  
**Palmyra, NY 14522**

**#ZB 0504-09**

**Use Variance**

**The applicant is requesting a use variance to Chapter 165, Article IV, Section 18 B of the Farmington Town Code. The Applicant wishes to construct a pavilion (24 feet by 24 feet in size and 13 feet in height) to be located on a vacant parcel of land. A pavilion is considered to be an accessory structure. The town Code does not allow an accessory structure to be placed on a lot where a principal structure does not exist. The property is located on the north side of Rushmore Road, west of #4650 Rushmore Road and zoned A-80 District.**

Edward Hemminger read the legal notice for #ZB 0504-09 that was published in the Daily Messenger on May 11, 2009 requesting a use variance.

Earl Johnson stated that the pavilion they wish to construct would be about 600 feet from the road and you won't be able to see it from the road.

Edward Hemminger read the use variance 4 criteria. Ed explained that if he had a primary structure on the lot this wouldn't be an issue.

Floyd Kofahl stated that what they are putting up is classified as an accessory structure and is also a recreational structure. The Town Code does not allow an accessory structure without a primary structure on the lot. He could build an agricultural structure on the property such as a barn for farming or raising animals.

Edward Hemminger stated that we will keep the Public Hearing open so you can work with the staff to address the issues of a use variance.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Gary Scribner and seconded by Leslie O'Malley at 7:40 pm. to keep the Public Hearing open until the June 22, 2009 meeting. There were five (5) Ayes.

**Morgan Plastermill, LLC. #ZB 0306-09 through #ZB 0334-09 Area Variance**  
**Kevin Morgan**  
**1170 Pittsford Victor Road**  
**Pittsford, NY 14534**

**The applicant is requesting 28 area variances to Chapter 165, Article VI, Section 79.G. (2) of the Farmington Town Codes. The applicant wishes to construct several multi-family dwellings less than the required number of feet from a side property line, or a rear property line. The Town Code requires a minimum rear or side line setback of 40 feet. The applicant is also requesting a density variance to Chapter 165, Article VI, Section 79. B. of the Farmington Town Codes. The applicant wishes to construct multi-family dwelling units, on Lot #2, at a density of 10.12 dwelling units per acre. The Town Code requires a maximum density of 8 dwelling units per acre. The property is located at the northwest corner of Plastermill Road and Gateway Drive and is zoned RMF Residential Multi-Family District.**

Chairman Hemminger announced that the Board had asked staff to create the resolutions to basically approve all of the variance requests.

Edward Hemminger made a motion to waive the reading of the Type II SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye.

Chris Dunfey made a motion to accept the Type II SEQR Resolution and Amendments to said Resolutions and Leslie O'Malley seconded the motion. All present voted Aye.

#### **AREA VARIANCE FINDINGS & DECISION**

After discussion of the factors to be considered the Board felt there would not be an undesirable change of the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, that the requested variances are not substantial, the requested variances would not have an adverse impact upon the physical or environmental conditions in the neighborhood, that the alleged difficulty was not self-created.

After discussing the variances, the Board approved the Area Variances Findings and Decisions. Various Board members made a motion to approve the applications and various Board members seconded the motions. All present voted Aye.

#### **Public Comments:**

There were no Public Comments.

**Mary Jaehn Dushenko**  
**106 Hook Road**  
**Farmington, NY 14425**

**#ZB 0403-09**

**Use Variance**

**The applicant is requesting a use variance to Article 4, Chapter 165-29 B (2) to the Town of Farmington Codes. The applicant wishes to use her property with existing barns for the purpose of keeping animals. The property is located in the RS-25 Residential-Suburban District. The keeping of animals, (breeding and raising of animals) in the RS-25 District is not allowed.**

Chairman Hemminger read a letter sent to the Board by Mary Jaehn Dushenko stating that she was withdrawing her request for a use variance.

**Other Board Matters:**

None

**Director of Development Update:**

None.

**Code Enforcement Officer Update:**

Floyd Kofahl said the Park Place restaurant is to be torn down and rebuilt larger. Also, Aldi's is to be built in the CVS Plaza.

**Next Meeting:**

The next Zoning Board of Appeals meeting will be held on June 22, 2009. Chris Dunfey made a motion to adjourn the meeting at 9:10 pm. Leslie O'Malley seconded the motion. The motion was passed with a voice vote of five (5) ayes.

Minutes were respectfully submitted by Patricia Eddy, Clerk of the Board.