

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, November 28, 2022, 7:00 p.m.

MINUTES—Approved

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

Board Members Present: Thomas Yourch, *Chairperson*
Tod Ruthven
Jody Binnix
Kelly Cochrane
Tom Lay

Staff Present:
John Weidenborner, Town of Farmington Zoning Officer
Ron Brand, Town of Farmington Director of Development

Applicant’s Present:
James Russell, 5040 Herendeen Road, Farmington

Others Present:
None

Virtually via Zoom:
None

- 1. MEETING OPENING**
The meeting was called to order at 7:00 p.m. by Mr. Yourch.

The Pledge of Allegiance was recited.

Mr. Yourch said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on March 28, 2022.

This meeting was held both in person at the Farmington Town Hall and virtually on Zoom. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. The names of those attending tonight's meeting is available for public tracing should it be deemed necessary. Hand sanitizers were available throughout the building. Public access was restricted to the lobby, the main meeting room, and the public restrooms.

2. **APPROVAL OF MINUTES OF SEPTEMBER 26, 2022**

■ A motion was made by MS. COCHRANE seconded by MS. BINNIX, that the minutes of the SEPTEMBER 26, 2022, meeting be approved.

Motion carried.

3. **LEGAL NOTICE**

The following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper on Sunday, November 20, 2022:

ZB #1101-22, JAMES RUSSELL, 5040 HERENDEEN ROAD, FARMINGTON, NEW YORK 14425: Request an Area Variance to the provisions contained within Chapter 165, Schedule 1, Attachment 1, of the Farmington Town Code. The applicant has erected a forty (40) foot x fifty-two (52) foot pole barn, in his side yard. Town Code requires all accessory structures to be located in the rear yard portion of any lot. The property is located at 5040 Herendeen Road and is Zoned A-80 Agriculture.

ZB #1102-22, MARATHON ENGINEERING, 39 CASCADE DR, ROCHESTER, NEW YORK 14614: Requesting on behalf of their client an Area Variance to the provisions contained within Chapter 165, Schedule 1, Attachment 1, of the Farmington Town Code. The applicant wishes to erect a 1,570 Sq ft Residence, to replace a 1,360 Sq ft residence that was previously destroyed by fire, with a proposed front setback of twenty-seven (27) feet. The Town Code requires a minimum front setback of sixty (60) feet. The property is located at 191 Ellsworth Road 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 matter.

By order of:
Thomas Yourch, Chairperson
Zoning Board of Appeals
TOWN OF FARMINGTON

4. PUBLIC HEARING

ZB #1101-22, JAMES RUSSELL, 5040 HERENDEEN ROAD, FARMINGTON, NEW YORK 14425:

Request an Area Variance to the provisions contained within Chapter 165, Schedule 1, Attachment 1, of the Farmington Town Code. The applicant has erected a forty (40) foot x fifty-two (52) foot pole barn, in his side yard. Town Code requires all accessory structures to be located in the rear yard portion of any lot. The property is located at 5040 Herendeen Road and is Zoned A-80 Agriculture.

Mr. Yurch opens the public hearing on this application and asks if there is anyone in attendance, either in person or online, that wishes to speak on behalf of this application.

Mr. Russell presented the above application. He said that he applied for a permit and along with his permit application was the location of the barn. The permit was approved and issued to him, and they started construction. The hole (footers) placement for the pole barn was inspected by the Town of Farmington. The framing for the pole barn which was completed at that point in time and was inspected by the Town of Farmington. Then you guys came in and said, “hey you can’t have that barn there.” So, here I am with a completed pole barn on my property and you guys telling me you can’t have it there.

Mr. Weidenborner said Mr. Chairman he is correct. He went through, with good faith, the entire application process. One of the Assistant Code Enforcement Officer’s signed off on it and it actually got approved twice. Through the inspection process another Code Enforcement Officer noticed the pole barn was in the side yard with no zoning variance. At that point it was 95% complete. We had discussions with him about not completing it but there could have been more damage to the unfinished building, so it is complete at this point. There was an error by the Building Department, and we are trying to correct this for the homeowner.

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

Mr. Brand states that two resolutions have been drafted for the boards consideration one is the Type II SEQR resolution and the other is a resolution to approve the area variance as constructed and approved by the Town.

Mr. Yurch then asks if there were any public comments.

Hearing none. He asks for questions or comments from the board.

Hearing none. Mr. Yurch closes the public hearings for ZB #1101-22.

ZB #1102-22, MARATHON ENGINEERING, 39 CASCADE DR, ROCHESTER, NEW YORK 14614:

Requesting on behalf of their client an Area Variance to the provisions contained within Chapter 165, Schedule 1, Attachment 1, of the Farmington Town Code. The applicant wishes to erect a 1,570 Sq ft Residence, to replace a 1,360 Sq ft residence that was previously destroyed by fire, with a proposed front setback of twenty-seven (27) feet. The Town Code requires a minimum front setback of sixty (60) feet. The property is located at 191 Ellsworth Road and is zoned A-80 Agricultural.

Mr. Yurch said the Town received a letter withdrawing this application.

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

**ZB #1101-22 James Russell Area Variance
5040 Herendeen Road
Shortsville, N.Y. 14548**

■ A motion was made by MR. RUTHVEN, seconded by MS. COCHRANE, 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 #1101-22

**APPLICANT: JAMES RUSSELL
5040 HERENDEEN ROAD,
SHORTSVILLE, NEW YORK 14548**

ACTION: Area Variance to erect a 40’ x 52’ Accessory structure (a barn) in the side yard of the residence.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has reviewed the criteria, under Part 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations, for determining the Classification associated with the above referenced Action; and,

WHEREAS, the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (16) of the SEQR Regulations.

NOW, THEREFORE, BE IT RESOLVED THAT the Board does hereby classify the Action as a Type II Action under the SEQR Regulations.

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

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

The above resolution was offered by MR. RUTHVEN and seconded by MS. COCHRANE at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, November 28, 2022. Following discussion, the following roll call vote was recorded:

Kelly Cochrane	Aye
Tom Lay	Aye
Tod Ruthven	Aye
Thomas Yourch	Aye
Jody Binnix	Aye

Motion carried.

■ A motion was made by MR. RUTHVEN, seconded by MS. BINNIX, that the reading of the complete Area Variance Findings and Decision resolution be waived, and that the Chairperson read aloud the Determination of the Zoning Board of Appeals.

Motion carried by voice vote.

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

APPLICANT: James Russell 5040 Herendeen Rd Shortsville, N.Y. 14548	File: ZB #1101-22 Zoning District: A-80 Agricultural Published Legal Notice on: November 20, 2022 County Planning Action on: N/A County Referral #: N/A Public Hearing held on: November 28, 2022
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Property Location: 5040 Herendeen Road, Shortsville, New York 14425

Applicable Section of Town Code: Chapter 165A, Schedule 1, Attachment 1.

Requirement for Which Variances are Requested: The applicant has erected a forty (40) foot x fifty-two (52) foot pole barn, in his side yard. Town Code requires all accessory structures to be located in the rear yard portion of any lot.

State Environmental Quality Review Determination: The granting of an Area Variance for an accessory structure is classified as a Type II Action under Part 617.5 (c) (16) 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 article 8 of the State Environmental Conservation Law (ECL).

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 the character of this neighborhood is predominantly agricultural lands with low density single-family dwellings on large lots. The Board further finds that there are several lots in this neighborhood with similar style accessory structures. The Board further finds that the structure is well separated by several hundred feet from the nearest residential structure to the east. The Board further finds that the structure is well screened by mature pine trees and a wide area of brush along the east property line. The Board further finds that the appearance of the accessory structure (barn) is in keeping with the character of the neighborhood. The Board, based upon these findings, determines that the granting of the requested Area Variance will not create an undesirable change in the character of the neighborhood; or create a detriment to nearby properties.

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

Reasons: The Board finds there are no other economically feasible alternatives available to the applicant other than to allow the structure to remain in the side yard area of the lot by granting the requested variance. The Board further finds that the applicant's Building Permit Application identified the proposed accessory structure being located within the side yard portion of the lot, which was not discovered as part of issuing a Building Permit. The Board further finds that upon a separate inspection, by the Town Fire Marshal, it was noticed that the structure was located in the side yard portion of the lot. The Board, therefore, finds that a hardship was created by the Town Assistant Code Enforcement Officer and not the applicant. The Board, based upon these findings, determines that the benefit to the applicant cannot be achieved by a feasible alternative to the requested variance.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds that the requested encroachment into the front yard setback involves a variance of one hundred percent (100%) from that required by town code. The Board has consistently found that a variance involving fifty percent (50%) or more is a substantial variance.

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes No

Reasons: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQR Regulations. The Board finds that the proposed Action is classified as a Type II Action under Section 617.5 (c) of the New York State Environmental Conservation Law (ECL), Article 8. The Board finds that Type II Actions have been determined not to have a significant adverse impact upon the environment and has thereby satisfied the procedural requirements of the ECL.

5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the Area Variance. Yes No

Reasons: The Board finds, as noted above herein, that in this instance the alleged difficulty was not self-created. The Board finds that the applicant has followed all steps required in building this accessory structure including applying for and receiving an approved Building Permit. The Board, based upon this finding determines that this difficulty was an error made by the Town Assistant Code Enforcement Officer and, therefore, this finding is relevant to the Board's determination below.

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

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

That the benefit to the applicant does outweigh any known detriment to the community or neighborhood; and, therefore, the requested area variance to erect a 40' x 52' accessory structure (a barn) in the side yard area of the lot is **APPROVED with the following conditions:**

1. **The structure shall be constructed in accordance with the approved Building Permit.**
2. **All required construction inspections shall be performed and accepted by Town Code Enforcement Official(s) prior to issuance of the Certificate of Compliance.**

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

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

The above resolution was offered by MR. RUTHVEN and seconded by MS. BINNIX at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, November 28, 2022. Following discussion, the following roll call vote was recorded:

Kelly Cochran	Aye
Tod Ruthven	Aye
Jody Binnix	Aye
Tom Lay	Aye
Thomas Yourch	Aye

Motion carried.

6. OTHER BOARD MATTERS

a. Discussion on the Keeping of Chickens within the Town of Farmington

Mr. Brand said the Town Board had a presentation by a resident over on Clovertrail. The resident wants to have the Town Board consider amending code to allow chickens on residential lots and in a residential neighborhood. He happens to live right on the edge of the Estates at Beaver Creek right next to Auburn Meadows. He provided a presentation to the Town Board which Dan sent on to you and because that had gone on to you, I looked at some of the municipal codes that were cited in the document and provided you a critique of those codes. Today I was asked to provide a draft memo for you to look at, which I did. The draft memo basically asks the Town Board not to take any action at this time. Several reasons, one of which is the only Temporary Use Permit that has been granted to allow chickens on a lot less than 5 acres 2 years ago. She is up for renewal of that Temporary Use Permit. John has acted on that and has given notice to her that she has to come in and reapply for extending the Temporary Use Permit. It gives us a chance to look at that record and the files to see if there's any complaints and concerns from the neighbors. There will be a public hearing where they can come and talk. There are some good ideas in some of the codes. However, the model that is being recommended for the Town to follow is from Perinton. There are several procedural things that I point out to you in that code that really can't or shouldn't happen. One is granting a Special Use Permit, which yeah you can limit the time on a Special Use Permit but there has to be a valid reason for doing it. The courts have said a Special Use Permit is something that once it meets the criteria for that district it's granted, and it runs with the property. So, to have something that comes up every year and have to have John or some other Code Officer go out there and count chickens to make sure that everything is the same as it was originally there is a better use of their time and our time. Some of the codes reviewed don't even have the regulations for chickens in their zoning regulations, they have them in other parts of municipal code. So, basically that's something the Town Board needs to consider as well. My recommendation is that we looked at this and we've seen some issues here that need to be resolved. I think it's important that we also recognize that with the incentive zoning districts we would have to go back to every rezoned incentive zoning district in the Town and change the permitted uses in that district because they were specific to an area. When somebody moves into the neighborhood it's kind of almost like a deed restriction to have

criteria that has been enacted by the Town Board for that district. There has to be some thought given and not just recommending it. What I did is I drafted something for you to consider. I don't know whether you had a chance to review it. If you feel like you need some additional time to think about it. That's fine. What we can do is by voice vote we can pass a voice resolution tonight, directing Tom to receive your comments by a certain date and then have him direct staff to revise and resubmit it to you to make sure your comments have been included, if necessary. Then Tom will sign it and return it to the Town Board. They meet on the 13th of December and the Planning Board doesn't meet until next Wednesday the seventh. Whether they'll be ready to act on it or not I don't think they're going to be overly excited about dealing with a Special Use Permit because that falls under their ability. Something that has to be renewed every year would not be looked upon favorably by the Planning Board since they have a pretty heavy agenda as it is. The thoughts of why this all came about today so late I apologize; I didn't get to it last week given the Town Board and everything that was going on with a few of those matters of public hearings for Farmington Market Center and a couple of other things.

Mr. Yourch said so we can accept it as written or if the Board has comments we can push it off but still give enough time to review.

Ms. Binnix said so you're not recommending any changes to current Town code concerning chickens. This is just in response to the resident's presentation and the Town's response to them.

Mr. Brand said as a matter of fact we are recommending the Town Board not do any thing at this time because of the current Temporary Use Permit coming back before the board. I don't think it would be right [for the Board of Appeals] to recommend some thing that might be contrary to the conditions of approval that you had initially adopted.

Mr. Yourch said that he will set forth a vote to accept the memo as written or do the members want more time to review the memo. Hearing none he calls for a voice vote to accept the recommendation as written and forward to the Town Board. All members voted aye.

Motion carried

b. Review and approval of the 2023 Zoning Board of Appeals submittal deadlines and meeting dates

Mr. Yourch asked if the board members had a chance to review the 2023 Zoning Board of Appeals submittal deadlines and meeting dates and asked if there were any questions or concerns. Hearing none he asked for a roll call vote approving the 2023 Zoning Board of Appeals submittal deadlines and meeting dates:

Kelly Cochrane	Aye
Tod Ruthven	Aye
Jody Binnix	Aye

Tom Lay	Aye
Thomas Yourch	Aye

Motion carried.

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

None

8. DIRECTOR OF DEVELOPMENT UPDATE

- All the easement documents associated with the sidewalk grant project have either been signed or are being signed
- The engineers have the survey crews out to do the survey work for preparing the preliminary plans and should have them early next year. There will be a public meeting to explain where we are at with the projects and to see how many we can do with the monies we have. When the grant application was prepared, we weren't in the crazy state of things we are now.
- Public Hearing coming up on January 10th for a newest incentive zoning project over on State Route 96 for the Power's Property. Two large parcels, 216 homes and a few acres combined of limited industrial/commercial along the northside of 96.
- The public hearing was closed for the Farmington Market Center with no issues with the Fisher report. We have asked Fisher to move one step further and they are looking at the latest costs they have on record for signalized intersections, so we have something meaningful. We have not gotten anything in the last two years from anybody.
- The Town Board approved a new Chapter 74 of the State Uniform Code for Fire Prevention and Building Codes. Part of that now is we have to request the State for relief to the Town to allow more sprinklers to be installed as part of commercial and industrial buildings. There are some buildings in Town that have sprinklers i.e., the Swetman Building and the ice cream and beauty shop on Commercial Drive.
- The solar farm is up and urges the board members to take a ride to see it. They expect by the end of December to be able to start generating electricity.

10. ZONING OFFICER UPDATE

- Next Meeting will tentatively be January 23, 2023
- Open Clerk of the Board of Position
- NYS requires everything 10,000 square feet or larger have a sprinkler system and we are trying to limit it to 5,000 square feet and add in a monitored system. We have a business that was recently built that was 9950 square feet to get around putting in a sprinkler. Its all for the matter of public safety.

11. TRAINING OPPORTUNITIES

■ 2022 Municipal Bootcamp:

Hancock Estabrook and MRB Group are offering a free annual training program to assist local governments, municipal officials, and planning and zoning boards. The program will include 10 hours of remote training designed to provide a comprehensive education that encompasses all aspects of municipal governance. Each program in the series will be provided remotely on the fourth Thursday of each month with subject matter experts from MRB Group and knowledgeable attorneys from Hancock Estabrook LLP. Topics will be lively, useful and—potentially as important—qualify for the education requirements for members of planning boards and zoning boards of appeal.

Remaining sessions in 2022:

Thursday, December 22, 2022, 6:00 p.m. to 7:00 p.m.

Santa’s Nice and Naughty List: The Best and Worst of 2022

Select this link for the 2022 Municipal Bootcamp information page. RSVP and registration tab are at the bottom of the website page.

<https://www.hancocklaw.com/events/the-2022-municipal-bootcamp/>

■ New York Planning Federation Recorded Webinars:

For information: (518) 512-5270 or nypf@nypf.org

The Essentials of Planning and Zoning:

Introduction to Planning, Zoning and Land Use

Everything You’ve Ever Wanted to Know About Preparing a Comprehensive Plan

Understanding and Applying SEQRA (NY State Environmental Quality Review Act)

The What, Why, and How of Site Plan Review

Common Mistakes and Mishaps in Site Plan Review

Meeting Process and Communication:

Enhancing Transparency Effectiveness in Planning Proceedings

Innovations and Best Practices for Planning/Zoning Boards

Engaging Diverse Communities and Dealing with Difficult People

Working with Elected Officials and Understanding Everyone’s Role in Planning

The Open Meetings Law for Zoning and Planning Boards, Part 2

Working with Developers to Foster Investment in the Community

Communication, the Media and Social Media

Open Government and Planning and Zoning Decision Making

■ General Code e-Code

Daily drop-in lunchtime training Q&A sessions plus webinars in several categories.

Information:

<https://www.generalcode.com/training/>

■ Future Training Opportunities Online:

Ontario County Planning Department website now lists upcoming training:

<https://www.co.ontario.ny.us/192/Training>

12. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will tentatively be held on Monday, January 23, 2023, at 7:00 p.m. both in-person at the Farmington Town Hall, 1000 County Road 8, and on ZOOM.

13. ADJOURNMENT

■ A motion was made by MS. COCHRANE, seconded by MS. BINNIX, that the meeting be adjourned.

Motion carried by voice vote. The meeting was adjourned at 7:26 p.m.

Respectfully submitted,

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