

**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 June 28, 2010.

Zoning Board of Appeals Members

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

Board Officers

Floyd Kofahl	--Code Enforcement Officer
Ron Brand	--Director of Development

Also Present

Peter & Nancy Ferstead	--1257 Holland Drive, Farmington, N.Y. 14425
George DeRue	--Home Leasing, 630 Clinton Square, Rochester, N.Y. 14604
Jason & Jessica Clark	--1304 County Road 8, Farmington, N.Y. 14425
Don & Christine Hamblin	--62 Farmbrook Drive, Farmington, N.Y. 14425
Ronald Figler	--150 Church Avenue, Farmington, N.Y. 14425
John Jay Riley	--12 Heritage Circle, Farmington, N.Y. 14425
Kris Rogers	--Edgemere, Farmington, N.Y. 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

Chris Dunfey made a motion to accept the May 24, 2010 meeting minutes and the motion was seconded by Leslie O'Malley. A voice vote was taken and the motion was passed with three (3) Ayes.

BOARD BUSINESS:

**Mr. & Mrs. Peter Ferstead
1257 Holland Drive
Farmington, N.Y. 14425**

#ZB 0501-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article IV, Section 21. G. of the Farmington Town Code. The applicant wishes to construct a deck 20 feet from the rear property line. The Town Code specifies that a structure must be set back a minimum of 30 feet from

the rear property line. The property is located at 1257 Holland Drive and is zoned R-7.2 Planned Subdivision District.

Edward Hemminger read the legal notice for #ZB 0501-10 that was published in the Daily Messenger on May 17, 2010 requesting the area variance.

Ron Brand stated that this is a continued Public Hearing from the May 24 meeting. Floyd did find out that it is a seventeen (17) foot setback and not a twenty (20) foot setback. Therefore the new application was prepared and was advertized because the seventeen (17) feet is a greater variance than the twenty (20) feet. The original application could not be used.

Pete Ferstead stated that Floyd Kofahl came out and determined it was seventeen (17) feet to the property line for the new deck. My neighbors have not objected to the seventeen (17) feet.

Nancy Ferstead told the Board she is disabled and the two (2) feet being added to the deck may be critical when she is trying to get a wheelchair on the deck. She is asking that the Board take that into consideration as well.

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 Leslie O'Malley and seconded by Chris Dunfey to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:07 pm.

**Mr. & Mrs. Peter Ferstead
1257 Holland Drive
Farmington, N.Y. 14425**

#ZB 0501-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article IV, Section 21. G. of the Farmington Town Code. The applicant wishes to construct a deck 17 feet from the rear property line. The Town Code specifies that a structure must be set back a minimum of 30 feet from the rear property line. The property is located at 1257 Holland Drive and is zoned R-7.2 Planned Subdivision District.

Edward Hemminger read the legal notice for #ZB 0501-10 that was published in the Daily Messenger on June 21, 2010 requesting the area variance.

Ron Brand stated that the Board is now officially opening the Public Hearing on this seventeen (17) foot setback amended application.

Pete Ferstead said they are just expanding the 8X10 foot deck we have on the back of our house. We just want two (2) feet more to the width and to the length of the deck.

Nancy Ferstead said because she is disabled and down the road there will be a wheelchair and two (2) more feet would definitely help.

Floyd Kofahl said he did go out and measure and there is a slight angle of the property line but ultimately it is seventeen (17) feet. The other thing for the Board's information is when those houses were built that corner lot where the deck is was actually a side yard. Because of the change in the Code addressing thru lots and corner lots it is now their back yard and that is why there is such a difference in what the existing deck was and what they are after now. If the Code hadn't changed they would not even be here because they would still be able to meet the original design of that subdivision.

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 Chris Dunfey

and seconded by Leslie O'Malley to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:40 pm.

AREA VARIANCE FINDINGS & DECISION

Chris Dunfey made a motion to waive the reading of the SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye.

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

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 not substantial, that 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 with the following conditions:

1. The proposed deck addition shall be located a distance of seventeen (17) feet from the north property line of the subject property.
2. There shall be no outdoor lighting of the deck that is not in compliance with the Town's Lighting Regulations.

Chris Dunfey made a motion to approve the application and Leslie O'Malley seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

**Ronald Figler
150 Church Ave.
Farmington, N.Y. 14425**

#ZB 0502-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article IV, Section 35. of the Farmington Town Code. The applicant wishes to erect an addition to his private garage that will be located 12.4 feet from the south side property line. The Town Code specifies that such a structure must be set back a minimum of 30 from the side property line. The property is located at 150 Church Avenue and is zoned NB Neighborhood Business.

Edward Hemminger read the legal notice for #ZB 0502-10 that was published in the Daily Messenger on May 17, 2010 requesting the area variance.

Ron Brand stated that Ronald Figler was asked last month to give the Board some measurements and to submit them at this meeting. He has submitted drawings to show the distances from the existing structure to the proposed structure and to the closest structure on the adjacent property. The distances are in excess of one hundred (100) feet.

Edward Hemminger stated that we are now at less than fifty (50) percent 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 Chris Dunfey and seconded by Edward Hemminger to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 8:02 pm.

AREA VARIANCE FINDINGS & DECISION

Chris Dunfey made a motion to waive the reading of the SEQR Resolution and Edward Hemminger seconded the motion. All present voted Aye.

Edward Hemminger made a motion to accept the SEQR Resolution and Chris Dunfey seconded the motion. All present voted Aye.

After discussion of the factors to be considered the Board made findings that there would not be an undesirable change of the neighborhood or detriment to nearby properties, that the relief sought could be achieved by a feasible alternative, that the requested variance is not substantial, that 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 with the following condition:

The proposed garage addition shall be located a distance of 15 feet, 3 inches from the south property line of the subject property. There shall be no outdoor lighting on the south side of the proposed building addition that is not in compliance with the Town's Lighting Regulations.

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.

George DeRue
Home Leasing
630 Clinton Square
Rochester, N.Y. 14604

#ZB 0503-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article V, Section 43. B. 1. (a) of the Farmington Town Code. The applicant wishes to erect two commercial speech ground signs on his property (Lot #2 of the George Mercier Subdivision). The Town Code allows only one ground sign on a parcel of land. The property is located at 6000 Mercier Boulevard and is zoned IZ Incentive Zoning District.

Edward Hemminger read the legal notice for #ZB 0503-10 that was published in the Daily Messenger on May 17, 2010 requesting the area variance.

Ron Brand stated that this Public Hearing was continued by the Planning Board with the applicant requested to look at the merits of applying for a Temporary Use Permit as the applicant has identified the purpose of the second sign out by Route 332 is merely to identify the availability of dwelling within the building under construction and that the Temporary Use Permit would allow a maximum period of time for

them. The Town Zoning Board of Appeals had some reservations of granting an Area Variance which would have run with the property and would have allowed the owner of Lot 2 to change that sign message anytime. It was decided the applicant would make a determination to withdraw the Area Variance and make a new application for a Temporary Use Permit. The applicant did withdraw the Area Variance application and made a new application for a Temporary Use Permit.

George DeRue said he withdrew this Area Variance application and wishes to close the Public Hearing on this application.

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 Chris Dunfey and seconded by Leslie O'Malley to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:10 pm.

Public Comments:

There were no Public Comments.

James Dayton
1304 County Road 8
Farmington, N.Y. 14425

#ZB 0601-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article V, Section 62 of the Farmington Town Code. The applicant wishes to locate a hot tub in the side yard portion of a lot. The Town Code requires hot tubs to be located in the rear yard portion of a lot. The property is located at 1304 County Road 8 and is zoned GB General Business.

Edward Hemminger read the legal notice for #ZB 0601-10 that was published in the Daily Messenger on June 21, 2010 requesting the area variance.

Jessica Clark told the Board that her dad is James Dayton and she gave the Board a notarized letter giving Jessica and Jason Clark the right to act as representatives for James Dayton. Jessica stated that the area is a business district but it is also their residence as well. They want to put the hot tub in the side yard next to their house. She gave the Board pictures of the area.

Floyd Kofahl stated that if you look at the pictures you can see the concrete already existed out there on the pad and to try and make that work in the back pad doesn't feasibly work without having two additional concrete pads placed in the back. The side is plenty large enough for the hot tub and there are buffers from the trees and other things to the back.

Ron Brand told the Board the property around this dwelling is a mix of professional office buildings, a towing service, an industrial parcel of land which is now vacant, and a horse barn. So there is no other residential dwellings close by and the impact of the proposed variance upon the character of the neighborhood is insignificant. Normally our conditions of approval would include any lighting that would be installed for the hot tub would have to comply with the Town Code.

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 Chris Dunfey and seconded by Leslie O'Malley to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:20 pm.

AREA VARIANCE FINDINGS & DECISION

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

Edward Hemminger made a motion to accept the SEQR Resolution and Chris Dunfey seconded the motion. All present voted Aye.

After discussion of the factors to be considered the Board made findings that 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, that 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. Leslie O'Malley made a motion to approve the application and Edward Hemminger seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

**Donald & Christine Hamblin
62 Farmbrook Drive
Farmington, N.Y. 14425**

#ZB 0602-10

AREA VARIANCE

The applicant is requesting an area variance to the provisions of Chapter 165, Article IV, Section 35 of the Farmington Town Code. The applicant wishes to erect a garage addition one foot from the side yard property line. The Town Code requires a minimum side yard setback of 7.5 feet. The property is located at 62 Farmbrook Drive and is zoned R-7.2 Planned Subdivision District.

Edward Hemminger read the legal notice for #ZB 0602-10 that was published in the Daily Messenger on June 21, 2010 requesting the area variance.

Christine Hamblin told the Board that we just want to add twelve (12) feet onto our garage which brings us one (1) foot from our lot line. I don't think it will change the character of the neighborhood. We have pictures of our house and the neighboring house. We have signatures from our neighbors also.

Ron Brand told the Board the issue here is based on the benefit of granting the variance outweighing the detriment to the neighborhood. The concern is if you leave one (1) foot between the edge of the building and the property line the neighbor could put a fence right on the property line and getting any fire fighting or other equipment through there is extremely difficult. The applicant should also be asked to identify why a twelve (12) foot wide garage addition is needed instead of something smaller than twelve (12) feet wide. Most garage additions would be somewhere between eight (8) to ten (10) feet wide. Perhaps the Board could ask for clarification of that issue.

Floyd Kofahl stated he did not find anything in the neighborhood that was close to one (1) foot from the property line. Going to one (1) foot exceeds this Board's normal consideration of 50 %. The requirement is seven and a half (7 1/2) feet so this is a substantial reduction. An area variance does go with the property so the Board needs to consider that also. We have considered other options such as building off the back but this was not feasible.

Christine Hamblin said access to the back of our house could be accessed on the other side of the house where there is seventeen (17) feet accessible for fire, etc. There is a house behind us that has a garage that is three and a half (3 ½) feet from their lot line.

Don Hamblin said the garage door itself is eight (8) feet wide.

John J. Riley stated that he shares a back property line with the Hamblins and has the exact same layout of house and with the garage cannot put one of his larger cars in it and open the door and get out with another vehicle in the garage. There is very little storage now and he would not want to lose them as neighbors because they wouldn't have the storage they need for their business. They have to park their trailer outside when they are home and not at the site working. For him it would look better being enclosed in the garage.

Leslie O'Malley asked if we are talking about extending it twelve (12) feet on the side but also further back and if so how far back?

Ron Hamblin replied it would be fourteen (14) feet back.

Ron Brand stated there was a statement made about losing their neighbors because of their business. What business do they have?

Ron Hamblin told the Board that we refurbish houses. We purchase a home, fix it up, and put it back on the market. We do not have customers that come to the house.

Edward Hemminger told Mr. Hamblin that you need to be careful about that. I think you need to talk to staff about it. You may need a Home Occupation Special Use Permit.

Ron Brand said what I understand is that the size of the garage you are asking for is to allow you to park your vehicles inside that you use in your business.

Ron Hamblin stated it was the vehicles I use all the time. The trailer would be put inside also.

Edward Hemminger said to let him go on record that going more than 50% on a variance is very rare for us to do especially to the point of one (1) foot.

Chris Dunfey asked if he had thought about making it a double with size garage door so he wouldn't need two separate doors and then he may be able to go eight (8) or nine (9) feet and still be under the 50%?

Ron Hamblin said that is a possibility.

Edward Hemminger asked if he could work with staff over the next month on alternatives such as the double wide door and see if there is some possibility to get it back to where it is under 50%? We would be much happier if you could keep it 3 to 4 feet from the lot line. Part of our responsibility is to give you the minimum variance possible to solve what you are trying to do.

Christine Hamblin said we will be willing to size down to three (3) feet nine (9) inches from the east lot line which would be a 50% variance.

Ron Brand said it is less than the variance advertised so the Board does not have to re-advertise.

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 Chris Dunfey and seconded by Leslie O'Malley to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:50 pm.

AREA VARIANCE FINDINGS & DECISION

Chris Dunfey made a motion to waive the reading of the SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye.

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

After discussion of the factors to be considered the Board made findings that 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, that the requested variance is substantial, that 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 with the following conditions:

1. The proposed garage addition shall not be located closer than three (3) feet nine (9) inches from the east property line.
2. Prior to start of construction the Code Enforcement Officer shall locate the garage addition foundation and wall.
3. There shall be no lighting allowed that does not comply with the Town Code.

Leslie O'Malley made a motion to approve the application and Edward Hemminger seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

**Home Leasing, LLC
George DeRue
630 Clinton Square
Rochester, N.Y. 14604**

#ZB 0603-10

TEMPORARY USE PERMIT

The applicant is requesting a Temporary Use Permit as provided for under Chapter 165, Article VII, Section 91 of the Farmington Town Code. The applicant wishes to place a freestanding commercial speech sign advertising available space within a senior housing project located on Lot #2 of the George A. Mercier Incentive Zoning Site. The Town Code allows for a Temporary Use Permit to be granted for such a temporary purpose for a maximum period of time of up to two years. The temporary sign is to be placed on Lot #1 which is located at the north west corner of New York State Route 332 and Mercier Boulevard and is zoned IZ Incentive Zoning.

Edward Hemminger read the legal notice for #ZB 0603-10 that was published in the Daily Messenger on June 21, 2010 requesting the area variance.

George DeRue stated that the whole idea of this sign is solely just for marketing purposes. We have a funding package that is tied to making sure that we fill this place up in a certain time frame which is two years. At the end of two years we would be comfortable with taking this sign down where it is located on Route 332 on George Mercer's parcel. The Temporary Use Permit gives us what we need and we have no issue with taking his sign down in two years.

Ron Brand said what we need to understand here is that the Board can issue a Temporary Use Permit for this proposed sign for a maximum period of two years. That maximum period needs to have a beginning and an ending date so we know when it is going up and when it is coming down.

Christine Rogers, engineer for Home Leasing, stated that the dates would be July 12, 2010 to July 11, 2011.

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 Chris Dunfey and seconded by Leslie O'Malley to close the Public Hearing at the June 28, 2010 meeting. There were three (3) Ayes. The Public Hearing was closed at 7:40 pm.

AREA VARIANCE FINDINGS & DECISION

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

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

After discussion of the factors to be considered the Board made findings that the temporary use will be in harmony with the general purposes and intent of Chapter 165, Section 38 of the Farmington Town Code, the proposed temporary use will not tend to depreciate the value of adjacent properties, and the proposed temporary use will not create a hazard to health, safety or general welfare.

After discussing the temporary use, the Board approved the Temporary Use Permit with the following conditions:

1. The Temporary Use Permit is hereby granted for a period of two (2) years that is to commence on July 12, 2010 and terminate on July 11, 2012.
2. The Temporary Use Permit is hereby granted with the understanding that the applicant will obtain Site Plan Approval and Sign Site Plan Approval from the Town Planning Board.
3. The Temporary Use Permit is hereby granted with the condition that the Sign meet all other requirements of the Town Code (i.e. Setback, size, lighting, etc.).
4. The Temporary Use Permit is hereby granted to the applicant for the sole purpose of advertising the availability of rental units located within the Farmington 332 LLC Senior Housing Project.
5. There is to be no other use of the freestanding commercial speech sign allowed with this Temporary Use Permit.
6. All landscaping required by the Town Planning Board is to be installed prior to the Code Enforcement Officer issuing a Certificate of Compliance for the Temporary Use Permit.
7. The freestanding commercial speech sign shall be maintained in good condition during the two year period specified above. At the end of the two year period, the commercial speech sign shall be removed unless another Temporary Use Permit has been issued

Leslie O'Malley made a motion to approve the application and Edward Hemminger seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

Other Board Matters:

None

Director of Development Update:

None

Code Enforcement Officer Update:

None

Next Meeting:

The next Zoning Board of Appeals meeting will be held on July 26, 2010. Edward Hemminger made a motion to adjourn the meeting at 8:30 pm. Chris Dunfey seconded the motion. The motion was passed with a voice vote of three (3) ayes.

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