

Town of Pomfret
Zoning Board of Appeals
Pomfret Town Hall
9 Day Street
Fredonia, NY 14063

MINUTES

**February 3, 2026
Hearing # 1-26
6:30 PM**

APPLICANT/OWNER:

Lisa A Boardman
9395 Fredonia Stockton Rd
Fredonia, NY 14063
SBL: 130.00-3-16
Area Variance

PRESENT: David Fridmann (Chairman), Raymond Lewandowski, Michaelene Comerford, Ruth Eckstrom, Jonathan Townsend (Alternate)

ABSENT: Alexander Moon

OTHERS: Nicole Waite (Zoning & Planning Clerk), Warren Kelly (Code Enforcement Officer), David Penharlow (Zoning Enforcement Officer)

PUBLIC PRESENT: Lisa Boardman (Applicant), Rita Boardman, William E. Rickard, David DeJoe, Kyle Kawski, John Penharlow

1. **CALL TO ORDER:** Chairman Fridmann called the meeting to order at 6:30 PM.
2. **ACCEPTANCE OF MEETING MINUTES:** A motion was made by Michaelene Comerford to accept the minutes of Public Hearing #4-25 John E. Kowal, Public Meeting 12/2/25, and Public Meeting 1/6/26. The motion was seconded by Raymond Lewandowski and carried unanimously.
3. **NOTIFICATION OF MEETING:** Chairman Fridmann read the published Public Hearing Notice aloud.
4. **CORRESPONDENCE:** A response was received from the Chautauqua County Department of Planning and Development regarding the 239 Mandatory Referral, which states: “the proposal would be a matter of local concern.”

Letters were also received from Courtney Bailen, Penelope Bailen, Heather Barnet, and Michael Griffin. Copies of these letters were provided to the Board.

5. **SEQR PART 1 REVIEW:** The Board discussed whether this type of project is a Type II SEQR action, as it falls under the definition “replacement, repair, or rehabilitation of structures/facilities, in-kind, on the same site, including upgrades to meet building, energy, or fire codes.” (Section 617.5(c)2 SEQR) If the Board classifies it as such, no further SEQR review is required per Section 617.5(a) SEQR.
6. **PROJECT DISCUSSION:** Chairman Fridmann asked the representative to introduce themselves and describe the project. Ms. Boardman explained that she is seeking an area variance for her pole barn, which would amount to ~1 ft on the side yard, and ~6 ft on the rear yard. She testified that the new pole barn was built on the foundation of a previous structure that had been removed. According to her, she had the location staked out prior to construction, showed it to her next-door neighbor, David DeJoe, and that he verbally approved of it. She then got a building permit from Warren Kelly (CEO), hired a contractor, and had it built in March of 2023.

Ms. Boardman was asked to clarify if the new barn was built exactly on the existing concrete pad, to which she replied yes. It was noted that the existing pad would've likely preceded zoning, making it pre-existing non-compliant.

The Board looked at a survey map, dated July 7, 2025, that had been provided by Mr. DeJoe. Based on this survey the variance would be 1ft on the side yard and 7ft on the rear yard. The applicant was asked if she knew when the previous structure had been constructed, what the new barn is being used for, and what utilities are connected to it. She responded that the previous building was already gone when she purchased the property in 2022, she is using the pole barn for storage, and the only utility it has is electricity.

7. **PUBLIC COMMENTS:** Chairman Fridmann opened the public comment portion of the hearing and instructed all speakers to state their name and address.
 - William Rickard: (9419 Fredonia Stockton Rd) Doesn't have a problem with his neighbors' construction if they follow the proper channels.
 - David DeJoe: (9395 ½ Fredonia Stockton Rd) Stated that he is Ms. Boardman's neighbor to the south. Believes the new building isn't in the original spot, and reports working with Brian Ellis (Chautauqua County Senior Map Technician) to research both barns in GIS. Has retained counsel for Article 78 proceedings.

Contested Ms. Boardman's claim that he gave approval of the barn's location and brought up another storage building in the northwest portion of Ms. Boardman's property that he believes is also in violation of setback requirements. Indicated Warren Kelly (CEO) should have copies of complaints he has filed. Mentioned the building permit packet executed for this project, which makes note of the 10ft side yard and 25ft rear yard setback requirements.

Claims that Ms. Boardman has, in the past, erected a fence that blocked access to the easement which connects to rear lots, and that a complaint was filed with the Code Enforcement Officer. Wanted to file a complaint with the Town about the new pole barn but claims Mr. Kelly (CEO) told him a new survey was needed to measure the setbacks. Paid for a property survey in 2025, which was provided to the Board. Does not believe the Zoning Board should retroactively grant an area variance as he believes the situation is self-created and would violate the Town's Zoning Code.

Mr. DeJoe asked if the official meeting record is kept by recording or meeting minutes. He was informed that meeting minutes are created and posted to the Town of Pomfret website.

- Kyle Kawski: (9360 Fredonia Stockton Rd) Believes that when you get a building permit you sign a document saying you will be in compliance with specific codes. Owns property behind Mr. DeJoe and claims the easement they all share has been blocked in the past by Ms. Boardman.
- John Penharlow: (8292 Fredonia Stockton Rd) Believes retroactively granting this variance would set a dangerous precedent for the newly adopted Town Zoning Code.
- David DeJoe: (9395 ½ Fredonia Stockton Rd) Agrees with Mr. Penharlow that this sets a precedent. He believes it's important to have laws with teeth that are enforced.
- Rita Boardman: (9395 Fredonia Stockton Rd) Claims that Mr. DeJoe and Mr. Kawski were flying in and out of the easement driveway at high rates of speed causing a dangerous situation for her family when using their yard.

8. **SEQR DECLARATION:** The Board agreed that a SEQR declaration was unnecessary based on SEQR 617.5(a).

A member of the audience asked for an explanation of what a Type II action is. Chairman Fridmann explained they are a list of actions the New York State Department of Environmental Conservation (NYS DEC) has determined do not significantly impact the environment and therefore do not require further review.

The Board moved to classify the action as a Type II by roll call vote.

ROLL CALL:

1. Raymond Lewandowski – AYE
2. Alexander Moon – ABSENT
3. Ruth Eckstrom – AYE
4. Michaelene Comerford – AYE
5. Jonathan Townsend (Alternate) – AYE
6. David Fridmann – AYE

9. **ADJOURNMENT:** The Board agreed that a lot of information had been gathered during this meeting and that they would need to work with the Town Attorney to review everything and come to a decision next month. A member of the audience asked if any more public comments would be necessary at the next session. They were instructed that the public comment portion was closed for this hearing.

At 7:05 PM Ruth Eckstrom made a motion to reserve decision and adjourn the meeting until March 3, 2026. The motion was seconded by Michaelene Comerford and carried unanimously by roll call vote.

ROLL CALL:

1. Raymond Lewandowski – AYE
2. Alexander Moon – ABSENT
3. Ruth Eckstrom – AYE
4. Michaelene Comerford – AYE
5. Jonathan Townsend (Alternate) – AYE
6. David Fridmann – AYE

March 3, 2026
Hearing # 1-26
6:30 PM

PRESENT: David Fridmann (Chairman), Raymond Lewandowski, Michaelene Comerford, Ruth Eckstrom, Alexander Moon

ABSENT: Jonathan Townsend (Alternate)

OTHERS: Nicole Waite (Zoning & Planning Clerk), Jeff Passafaro (Town Attorney)

PUBLIC PRESENT: Frank P. Zellner, Lisa Boardman (Applicant), Rita Boardman, David DeJoe

1. **CALL TO ORDER:** Chairman Fridmann reconvened the meeting at 6:35 PM.
2. **PROJECT DISCUSSION:** The Board reviewed Stipulated Order Index # EK12025000912 from Chautauqua County Supreme Court in the matter of DeJoe vs Boardman, which states: “in the event that a garage, situate on Defendant’s property is ever demolished, that it shall not be reconstructed in such a way that encroaches into the easement area.”

A deed dated December 7, 2022, which transferred 9395 Fredonia Stockton Rd, Fredonia (SBL: 130.00-3-16) to Lisa A. Boardman and Rita L. Boardman,

describes the easement in this way: “Together with and subject to an easement along the aforesaid gravel driveway to be exercised in common with others.” A member of the audience asked for the date of the order being discussed and mentioned that it states the easement area is 10 feet.

The Board read the section of the Stipulated Order that was referenced, which states: “the Plaintiff and Defendant shall share equally in the cost of a surveyor created legal description of an easement area, which, to the greatest extent possible shall be ten feet (10’) from the Defendant’s southerly property boundary”. The Board had not been provided with a copy of the survey ordered prior to tonight’s meeting. Frank P. Zellner, a Licensed Real Estate Salesperson representing a potential buyer for 9395 Fredonia Stockton Rd then produced a survey, completed by GPI Engineering, Landscape Architecture and Surveying, LLP dated February 12, 2026, which shows the easement boundaries.

Based on Assessor’s Office property records, Chautauqua County GIS, and Google Streetview, the Board determined that the new pole barn is not on the pre-existing foundation. Instead, it has a new foundation and is roughly twice the size of the previous building. The applicant was asked her reasoning for needing a bigger barn. Ms. Boardman stated that she needed enough space to store a lawn tractor, side by side vehicle, tool chest, and lawn/gardening equipment.

Ms. Boardman was also asked if the two smaller storage buildings on her property had been discussed when she applied for Building Permit #23-009. She explained that one is a small metal shed from Home Depot, and the other one was built by a previous owner. She reportedly told the Code Enforcement Officer at the time of her building permit application that she would put the second one on skids and move it out of the pole barn’s location.

It was brought up that while the building permit issued to Ms. Boardman states the structure must comply with setback requirements, it was in fine print towards the end of the Code Enforcement Officer’s letter, dated February 14, 2025, and could have been missed by the applicant.

The Board then read Pomfret Code Chapter 300-7-5(D) which stipulates what the Zoning Board of Appeals must take into consideration when reviewing an area variance request. Each factor described in Chapter 300-7-5(D)(2) was discussed.

a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by granting an area variance.

The pole barn, which encroaches on the setback area, and an easement noted in the litigated court case, does not prevent the use of said easement. The type and size of building is similar to others in the neighborhood.

b. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

Based on the testified storage needs of the applicant, the type and size of building is necessary and sufficient. An enclosed barn also provides more security than a carport. The parcel's smaller dimensions limit where a storage structure of this size could be placed to meet setback requirements. Construction of the pole barn was completed in 2023.

c. Whether the requested area variance is substantial.

A survey conducted by GPI Engineering, Landscape Architecture and Surveying, LLP dated February 12, 2026, measures the required rear yard setback variance at 10.7 ft. The same survey measures the required side yard setback variance at 1.9 ft. This represents a 42.8% variance from the required 25 ft rear yard setback and is significant.

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board determined this request is a Type II SEQR action, as defined in Section 617.5(c)2 SEQR. New York State Department of Environmental Conservation has determined Type II actions have no significant impact on the environment. The physical impact is minimal as it does not prevent the use of the easement.

e. Whether the alleged difficulty was self-created which consideration shall be relevant to the to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

The alleged difficulty is partially self-created. The applicant secured Building Permit #23-009, dated February 14, 2023, from Town of Pomfret's Code Enforcement Officer for the purpose of constructing a 24x32x12 wood framed storage building. The applicant failed to ensure the final location of said building was compliant with the setback requirements of the property's zoning district.

The Board entered Executive Session at 7:05 PM to discuss legal matters with Town Attorney Passafaro. The session concluded at 7:20 PM. No formal action was taken.

Another factor that was heavily considered is that a variance is normally issued prior to construction. Even though the Board doesn't believe the applicant had any ill intent, this building increases the lot coverage and non-compliance.

DECISION: A discussion regarding potential conditions occurred. Suggestions included addressing the two smaller storage buildings on the property, and requiring compliance with the Stipulated Order. The Board asked if it could require any future building permits to be reviewed by the Zoning Board of Appeals, but was instructed by Attorney Passafaro that the ZBA cannot maintain blanket jurisdiction.

A motion was made by Ruth Eckstrom and seconded by Michaelene Comerford, to grant an Area Variance to Lisa Boardman for 9395 Fredonia Stockton Rd, Fredonia, NY 14063 (SBL: 130.00-3-16) to construct a 24x32x12 wood framed pole barn with the following conditions:

- The two smaller storage buildings on the property must be brought into compliance with Zoning Code Section 300-3-1(B); and
- The applicant must abide by the Stipulated Order, Supreme Court, Chautauqua County, Index # EK12025000912 in the matter of DeJoe vs Boardman, dated November 20, 2025.

The motion carried by roll call vote.

ROLL CALL VOTE:

1. Ruth Eckstrom – AYE
2. Michaelene Comerford – AYE
3. Ray Lewandowski – AYE
4. David Fridmann – NAY

Alternate member Jonathan Townsend was absent for today's session. Regular member Alexander Moon was absent from the first session and therefore did not participate or vote on tonight's business.

3. **ADJOURNMENT:** At 7:40 PM Michaelene Comerford made a motion to adjourn the meeting. The motion was seconded by Ruth Eckstrom and carried unanimously.

Respectfully Submitted,

Nicole Waite
Planning & Zoning Clerk, Town of Pomfret