

MINUTES
Town of Vienna (TOV)
Zoning Board of Appeals (ZBA)
Special Meeting
April 29, 2026

Call to order: ZBA Interim Chairman John Pavelock called the meeting to order at 6:31 pm with the Pledge. Interim Chairman Pavelock relinquished the chair to Chairman Mike Taylor.

Attendance:

ZBA Members: Michael Taylor, John Pavelock, Joshua O'Kay, and Amanda Hewitt. Nathan Juby was unable to attend. Others: ZBA Secretary Kathy Pavelock, Town Attorney Evan Rossi, Liaison Darrin Smith, Supervisor Jason Spellicy, and several applicants/residents. Codes/Zoning Officer Reay Walker was unable to attend.

Minutes Approval:

John Pavelock made a **motion to approve the minutes for March 23, 2026, ZBA Special Meeting**, seconded by Josh O'Kay. Secretary Pavelock noted that two typos were corrected.

Poll Vote: Josh O'Kay – Aye, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Abstain, Nate Juby - Absent. **Motion Carried 3 to 2.**

Correspondence: Secretary Pavelock summarized the correspondence since the last ZBA meeting:

- Prepared and distributed a decision document for the interpretation application, Var2026-03 (Payne Mining).
- Forwarded information received related to interpretation application Var2026-01 (Taylor-Sak).
- Submitted legal notice for interpretation application Var2026-02 Public Hearing.
- Received a new interpretation application Var2026-04.
- Town Clerk Carol Huber requested signed Ethics Law acknowledgements. Forms were distributed to the board.

Public Hearings:

While waiting for the scheduled time of the public hearing, Chairman Mike Taylor explained the process for those wishing to speak. Anyone who wishes to comment is asked to sign-in with the secretary. Each speaker will be allowed 5 minutes to comment. Everyone is reminded of the TOV Code of Conduct which is printed on the back of the agenda. Secretary Pavelock stated that she received no written comments.

The board discussed the tentative agenda, moving the discussion of Var2026-02 from the bottom of the Unfinished Business list to the top so that the discussion can immediately follow the public hearing.

6:40 pm Var2026-02 The Farms of ADL (Brian Kirsch); 2040 NYS Rte 49 (North Bay Fire Dept. is owner of the property); 217.000-1-77.2; Zone HR. The applicant applied for a Special Use Permit SUP2026-02 with the Planning Board on March 19, 2026. The Planning Board referred the applicant to the ZBA, since “Retail Sales and Service, Small” is not an allowed use in the HR Zone. John Pavelock made the **motion to open the Public Hearing for Var2026-02**, seconded by Amanda Hewitt. No discussion. Poll vote: Josh O'Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Aye. **Motion Carried 4 to 1 at 6:40pm.** Chairman Taylor proceeded to call on speakers who signed up to speak.

Brian Kirsch is the applicant and is **for** granting the use variance. He understands that a use variance is needed for daily operation of a Small Retail Sales & Service farmstand on the North Bay Fireman's field. Mr. Kirsch represents Farms of ADL (Alliance of Divine Love), a 501(c) organization not affiliated with the North Bay Fire Department (Nbfd). He pointed out that the field has been used in the past for sales at the weekly Vienna Market. The daily operation will fill a special need of the community including EBT/SNAP. The weekly market brings in people to the community. He asks area farms and other vendors to participate. Mr. Kirsch stated that granting the variance will clean up the current situation with the Vienna Market.

John Pavelock explained the process for a use variance. Hamlet Residential does not allow commercial businesses.

Public Hearing Var2026-02 (cont.)

Rich Schuler is a local bee keeper from Kirkville, is a vendor at the Vienna Market and is **for** granting the variance.

Jessica Johnson Travers was the previous manager of the Vienna Market and is **for** granting the variance.

Mark Migon is President of the North Bay Fire Department (NBFD). There is no contract for this event currently. He does not believe that the NBFD will allow daily operation. He is **against** granting the variance. The board asked if the applicant had permission from the NBFD to apply for the use variance. Mr. Migon stated that he has not signed anything. The NBFD voted on it, but they have not received anything from Mr. Kirsch such as contract or insurance. The board asked for a copy of the minutes. Mr. Migon will research and provide to the ZBA Secretary. Attorney Rossi explained that the owners of properties must approve the application before the ZBA can continue discussions.

Katie Juby a local resident, asked about the public hearing given that the applicant needs owner approval. The board stated that they would keep the public hearing open. Ms. Juby is **against** granting the use variance since there are several farmstands around the town and this additional farmstand will hurt the town farmstands financially. The local farmstands are residents of the town and pay taxes here where the Farms of ADL is not from the town. Ms. Juby has no problem with the weekly Vienna Market that has been in the town for several years. Daily operation could be a poor reflection on NBFD if there are incidents during the daily operations.

Tracey Chalupa is a town resident and owner of Edge of Glory Farms. She is **against** granting the variance. She submitted a Freedom of Information Law (FOIL) request for the variance application. After reviewing the application, she believes that much of the financial hardship justification is not accurate nor is it detailed. She also believes this is a self-created hardship. In researching case law, Ms. Chalupa found 2 cases (DeFeo vs Town of Bedford and Vomeo vs NYC) where courts reviewed residential to commercial use variances. For both cases the use variance was not approved due to unreasonable bias.

Christine Ostrowski from Bernhards Bay and sister to applicant Brian Kirsch is **for** granting the variance. She has been a vendor for Vienna Market for five years. Contends that there is a need for daily farmstand.

Brian Kirsch stated that local farms have been invited to participate in the Vienna Market. He believes that they could benefit from the advertising.

The board discussed keeping the hearing open. No motion was necessary to keep it open.

Katie Juby asked about the Thursday Vienna Market and if that was in question with the variance. The variance is for daily operation.

Heather Williams is a town resident and owner of the Prest Farmstand just south of McConnellsville on Route 13. She is **against** granting the variance. She is not able to participate in the Vienna Market however she does refer her customers to the Vienna Market on Thursdays.

Tracey Chalupa is the owner of Edge of Glory Farms which is about ½ mile south of the Prest Farmstand. Tracey and Heather refer customers to each other's farmstands. All the farms of the town give back to residents and those in need.

Christine Ostrowski stated that Brian gets products from farmstands that are not able to come to Vienna Market. Five food pantries get the leftovers.

This public hearing is still open.

Unfinished Business:

Var2026-02 The Farms of ADL (Brian Kirsch); 2040 NYS Rte 49 (North Bay Fire Dept. is owner of the property); 217.000-1-77.2; Zone HR. The applicant applied for a Special Use Permit SUP2026-02 with the Planning Board on March 19, 2026. The Planning Board referred the applicant to the ZBA, since “Retail Sales and Service, Small” is not an allowed use in the HR Zone. The board discussed tabling this application until proof of Nbfd permission is obtained. John Pavelock made a **motion to table Var2026-02 until we receive proof of Nbfd permission to apply for a use variance**, seconded by Amanda Hewitt. No discussion. Poll vote: Josh O’Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Aye. **Motion Carried 4 to 1.** Secretary Pavelock provided her contact information to Nbfd. The board advised Mr. Kirsch to revise the use variance justification.

Var2025-02 Justin Hansen; 199.000-1-6.17; 8131 Dixon Rd; Zone RR2; 0.2 acre.

Applicant is requesting a use variance based on the Codes Officer denial of a building permit for an Auto Repair business which is not an allowed use in zone RR2 (Zoning Law section 430B).

This application is tabled until the applicant contacts the secretary when he has the necessary justifications for a Use Variance. We will keep the application open until June 30, 2026.

Secretary Pavelock stated that she has not heard anything from the applicant.

Prior to continuing the unfinished business, **Mike Taylor recused himself** from the meeting since he is the spouse of Edith Taylor-Sak. Amanda Hewitt made a **motion to appoint John Pavelock as Interim Chairman**, seconded by Josh O’Kay. No Discussion. Poll vote: Josh O’Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Recused.

Motion Carried 3 to 2.

Var2026-01 Edith Taylor-Sak; 235.006-4-18.1; 1572 NYS Route 49. Applicant is requesting an interpretation of the Codes Officer issuing Certificate of Occupancy (COO) for permit B2025-52. COO was issued at the end of December 2025. Owner of the property is Frederick Sadallah. Parcel 235.006-4-16 was merged into 235.006-4-18. The Public Hearing was held 3/23/2026. ZBA must take final action by 5/24/2026. The three remaining members of the ZBA discussed the draft decision that was distributed last week. John Pavelock stated that he researched over 70 years of town roads looking for creation or abandonment of MacFarland Road. He also consulted Local Government Conference attendees. Based on this research, he contends that it is a private right of way which the ZBA has no authority to modify. As stated before, this is a civil matter. Furthermore, the Codes Officer did nothing wrong in issuing a Certificate of Authority. Amanda Hewitt also consulted with Matt Johnson of the Tug Hill Commission and Local Government Conference attendees. She agrees that it is a civil issue.

Amanda Hewitt made a **motion to adopt the draft decision as written**, seconded by Josh O’Kay. No Discussion. Poll vote: Josh O’Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Recused. **Motion Carried 3 to 2.**

The board discussed the proper protocol for the final action. John Pavelock made the **motion to deny the application, Var2026-01 for several reasons. First, the original application was denied as untimely, which renders the current application invalid pursuant to administrative “res judicata” which generally translates to, “this issue has already been decided.” Second, based upon the town and county highway maps, google maps, and in person photograph on the date of the public hearing, the 10-foot-wide easement the applicant claims she has does not appear to be a public or private road, with any alleged rights of way being distinguished or disused. Third, the establishment of a right of way should have been litigated in a civil dispute, an avenue which the ZBA has recommended to the applicant for almost one year. Fourth, the application is barred by laches, in that the applicant knew about the building permit and the construction throughout yet did not file this application until after the certificate of occupancy was granted, construction was complete. The case Clarke v. Sand Lake conclusively invalidates the application.** The motion was seconded by Amanda Hewitt. No Discussion. Poll vote: Mike Taylor – Recused, John Pavelock – Aye, Amanda Hewitt – Aye, Nathan Juby – Absent, Joshua O’Kay – Aye. **Motion carried 3 to 2.** The decision will be prepared, signed by Interim Chairman John Pavelock, filed with the Town Clerk, and sent to the applicant.

Prior to continuing to New Business, John Pavelock made a **motion to reinstate Mike Taylor as Chairman**, seconded by Josh O'Kay. No Discussion. Poll vote: Josh O'Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Aye. **Motion Carried 4 to 1.**

New Business:

Var2026-04 John Zakris; 7592 Vienna Rd; 218.000-1-94; Zone WR. Applicant is requesting an interpretation to be allowed to park five (5) campers on the property (without a special use permit) based on Zoning Law Section 1920 (A/B/C/D).

Mr. Zakris provided some history on the property. He would like to continue to park 5 campers which they have done for several years. In 2015, the then Codes Officer stated that it was okay and this prompted him and other family members to purchase the property. In 2021, Joe Benedict as Building Inspector approached them and stated that they needed a special use permit. Mr. Zakris applied to the Planning Board and the Planning Board sent him to the ZBA. Mr. Zakris did not apply to the ZBA at that time. When he was invited to information meetings related to possible changes in the Zoning Law for campgrounds, he then realized that he needed to act. He does not want to run a campground; he simply wants to continue to use it with his family.

The ZBA asked questions about water and sewer. They have public water and use a 1000-gallon septic tank. The ZBA explained that to grandfather the property, they would have to evaluate the situation in 1991 when the Zoning Law was first adopted. Realizing that this may not be possible, the board suggested that the family make do with 4 campers.

John Pavelock made a **motion to keep this application open for 1 year pending further information**, seconded by Amanda Hewitt. No discussion. Poll vote: Josh O'Kay – Aye, Amanda Hewitt – Aye, Nate Juby – Absent, John Pavelock – Aye, Mike Taylor – Aye.

Motion Carried 4 to 1. Mr. Zakris will research the property history and the ZBA will research Zoning Laws.

Other: Certificates for the Local Government Conference need to be sent to Secretary Pavelock.

Amanda Hewitt **made the motion to adjourn**, seconded by John Pavelock. **Motion Carried 8:05 pm.**

Minutes Prepared by:
Kathy M. Pavelock /s/
ZBA Secretary