

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, May 15, 2023, 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*
Jody Binnix
Kelly Cochrane
Tom Lay

Board Members Excused: Tod Ruthven

Staff Present:
John Weidenborner, Town of Farmington Zoning Officer
Ron Brand, Town of Farmington Director of Development
Dan Delpriore, Code Enforcement Officer, Town of Farmington
Jeff Graff, Town Attorney, Graff Attorney at Law

Applicant’s Present:
James Fowler 6176 Hunters Drive, Farmington on behalf of the Fowler Family Trust
Richard Franco, Davidson/Fink, Rochester - Applicant’s Attorney

Others Present:
Maureen Dispenza, Pheasants Crossing, Farmington
Patrick Dispenza, Pheasants Crossing, Farmington
Peter LeBlond, Pheasants Crossing, Farmington
Maureen Chu, Pheasants Crossing, Farmington
Linh Chu, Pheasants Crossing, Farmington
Greg Coon, Pheasants Crossing, Farmington

Virtually via Zoom:
Others who did not identify themselves

WORKSHOP SESSION

The Workshop Session was called to order at 6:05 p.m. by Mr. Yourch. The following Public Notice was published in the May 10, 2023, edition of the Daily Messenger and posted upon the Town Website and upon the Town Clerk's Bulletin Board:

PLEASE TAKE NOTICE that the Town of Farmington Zoning Board of Appeals will be holding a Training/Workshop Meeting, with the Attorney for the Town and the Director of Planning and Development, on Monday evening, May 15, 2023, commencing at 6:00 p.m. and ending at 6:55 p.m., in the Main Meeting room at the Farmington Town Hall, 1000 County Road 8, Farmington, New York. This meeting of the Zoning Board of Appeals is open to the public.

Mr. Yourch said I would just like to ensure I have this one point right. I will ask the applicant if they have seen the draft resolution and then I will ask them if they are in agreement with it. If they are not, you want them just to say what they are doing and what they would agree with, is that right? But that's all I'm trying to get them to agree to are the number of days they will need to submit to the Planning Board?

Mr. Brand said number one, will they agree to any extension and if so, you are accommodating them by allowing them to have input into how many days, within reason, to submit their application to the Planning Board. Assuming you are going to adopt the resolution today would they need 30/60/90 days to submit to the Planning Board. Theoretically, they could get an application to the Planning board within 30 to 60 days. I do not think that would be an unreasonable amount of time. The other thing is, if you were to grant him this variance, then there is no clock ticking when he would have to submit to the Planning Board. He could hold on to that forever and somebody down the road would have no idea what they are getting in to.

Ms. Cochrane said I know we are in the workshop; can I ask a question on this application? So, we are saying that this is not properly before us, then how did we have two meetings about this prior to tonight if it was not properly before us? I think by the time it got to me for my opinion, I think you would have already processed it.

Mr. Graff said it was too late for me to catch once it reached me. I asked some follow up questions and there was nothing to be appealed from. I asked was there an application referred from the Planning Board and there was nothing there either. So that's when I said, well, you need one of those two things because you are a Board of Appeals, right, so unless the board is giving you original jurisdiction, such as approving a special use permits as an example, then you would have something before you in one of those two ways. It's an appeal from an order, decision or it's slid over from the site plan or subdivision application from the Planning Board.

Ms. Cochrane said I assume that at least, I think, by the time it gets to us, you have already done your due diligence.

Mr. Delpriore said the problem here was there was a code interpretation that was given, he submitted the application, then it was ruled that it wasn't a challenge of my interpretation. That is another thing that could come from you guys. If I have given my interpretation of the code and he doesn't agree with that, he then can come to you guys to make a decision if that is the correct interpretation of the code. So, as we were diving into this, I mean the interpretation of this, it did not meet code, so it had to go to the Zoning Board, and we processed it. That was a mistake in the Building Department. I have learned from this. I think that's where it got muddy is when he requested the code interpretation and then he turned around and went for a variance but not for a variance of interpretation but for an area variance.

Ms. Cochrane said I'm not looking to place blame. I'm just thinking of all the time that we've spent on this and all the neighbors who have showed up and now I'm reading this draft resolution.

Mr. Graff said that is why we are giving some accommodation to him by suggesting that he agrees to an extension and to apply to the Planning Board. The Planning Board can then properly slide the application over to the Zoning Board and now you have it properly before you and you can make your decision at that time. In one of meetings, I think you are the one that asked something about them sticking to a plan. Well, this is the way you get them to stick to a plan by them filing the subdivision application. Now that's the plan, if it's thirty (30) feet that they want or it's 100 feet and they are requesting three (3) variances, but you guys can't have this sliding amorphous request to you. A variance comes because typically a building permit is denied or something like that, right? That's the key piece that we are missing here.

Mr. Brand said a little history behind why they [the State of New York] changed that law [Town Law §274-A (b) 3.] was to avoid the Planning Board actually having to deny a preliminary site plan because there was a variance needed. The other side of that coin, while the state thought they were doing a great thing by amending the state law, they created a situation now that I could come to you and say I want a variance to allow me to have this third lot only be thirty (30) feet wide. The issue here is that there's fifty (50) feet of potential lot width available that could be used. You take the two 125 foot-wide lots [minimum lot width in the RS-25 District] away from [the available 300 foot-wide lot] and that leaves you fifty (50) feet. The question then becomes is it your judgment that it should be thirty (30) feet, or should it be the Planning Board recommending to you that they would prefer fifty (50) feet for the following reasons. That has been my philosophy, when those situations come up, the Planning Board should weigh in and identify. There could be a circumstance that has been brought up by the Planning Board like a drainage issue or maybe there's something else there like more landscaping could go in, whatever it may be. That's something to keep in mind, should the Zoning Board of Appeals decision only be based upon the applicant's request, minus any recommendation from the Planning Board as to what they [the Planning Board] should like the Zoning Board of Appeals to consider.

Mr. Graff said and just on the basis of the questions he was provided for this workshop, Jody [Binnix] had one question, is it the Planning Board's job to subdivide land, therefore, shouldn't this request go back to the Planning Board for coordinated review? Yes, that's what we are looking to do by the resolution now before you, just to get an answer to one of her questions. Then

she also asks is the purpose/intent of this variance is still in question - is this for the applicant's personal use or can it be sold to another party that may not be aware of the uniqueness of the property? By submitting a subdivision map, it's not that they would identify the user, but they would be looking for the creation of another lot within this zoning district. Like any other lot, they would be permitted to use that lot for any allowable use permitted within that zoning district. I don't know off-hand what uses are permitted in this particular district, presuming it's residential in nature, but it would be akin to that. Would they have to notify a potential buyer? Would they have to notify this board whether the subdivider Mr. Fowler intends to keep it or sell it? No, that could be true for any lot. They might keep it. Maybe he's going to keep it for a year or two, so his answer today would be yes, I'm going to keep it, but circumstances change, his health turns bad or whatever, so he sells it. Again, that's not necessarily relevant to the discussion because if it were to be granted, it's good for him and it's good for a future buyer. Just to get that question of Jody's answered as well.

Mr. Brand said that, by the way, was the question that was asked back when this development was originally subdivided years ago. Why are you keeping this large parcel of land with all this frontage? Why aren't you maximizing your income by putting two lots in this area which you could do under zoning? That is what he has now ended up with is two (2) lots which are there right now.

Ms. Cochrane said right, but are we allowed to ask him that? Because every time we asked him a question like that his lawyer kept saying but that's not why we are here. We are here for the variance for the flag. So, I mean, are we allowed to ask him questions like that or is that not relevant or it shouldn't be part of our decision?

Mr. Graff said your decision is the five factors for an area variance. You have to understand that the lot can be used for any allowable use within the district. They don't have to commit to one of the several allowable uses within the district. They may find that because it's within this residential subdivision being hilly to try and use it for one of the other allowed uses other than a single-family residence, but you don't know what that would be, who knows. But you can't take away that possibility of them using it for something other than what you would expect it to be used for out of the equation. I mean, if it were reasonable to exclude something, your board could always attach reasonable condition to it. But what's reasonable? But again, ownership doesn't really come into play either as I have said, because the variance [once granted] does not just go with this owner, but transfers to future owners as well.

Mr. Brand said so one of the other questions that was asked was what is the definition of a neighborhood? There is no definition in the Town Code for neighborhood, under the Zoning Code. If you look at the Town code however, it implies terms not defined are based upon common definitions. The media says the neighborhood, often involves social communities with considerable face to face interaction amongst its members. So, in this particular instance the neighbors have said their neighborhood is not part of anything [development] over on County Road 41. They are not part of anything further north of here on Mertensia Road. They made it clear that their neighborhood is Pheasants Crossing.

Mr. Graff said there was another question which asked if there is a court approved definition of neighborhood and there is not. That's one of many facts specific things that this board is asked to use your local knowledge to define. It varies depending on the circumstance and you can't say that just because of property is next door that it's in the same neighborhood, because they might abut some of the lots to the rear of theirs, but they might socially be in two completely separate worlds. They don't necessarily interact just because the properties abut. In a more rural area of town, where you have larger sized lots, abutting lots could have large areas of open space that's completely outside of that residential subdivision. So, there could be circumstances where you say that the neighborhood is really this that we are looking at. But in other circumstances it might be all of the contiguous properties, but it's fact specific, the courts have said it's fact specific, so we can't give you a hard and fast definition of neighborhood that would apply to every situation. You must judge that for yourself.

Mr. Brand said an example of a neighborhood is Farmbrook, all of nine hundred plus units. Another example of a neighborhood is something that is as small as Pheasants Crossing. It's not based on just acreage or geographic location.

Ms. Binnix said Pleasants Crossing also has a formal name assigned to the track so that is something that helps make our case.

Mr. Graff said I just drove in tonight on Route 96 and there are a scattering of single family homes there and that's one that's before, the neighborhood is country on a busy highway, but there's no subdivision to say it's part of the neighborhood, but there's still some neighborhood in that area you guys would have to define what's the scope of that.

Mr. Brand said one of the other questions we have is, are there other residential districts where 75-foot-wide lot is allowed. Over in Hickory Rise, I believe it is 70 feet.

Mr. Weidenborner said Hickory Rise and Auburn Meadows are smaller because of their incentive zoning.

Mr. Brand said some portions of Auburn Meadows you're down to 55/60 feet in some instances.

Ms. Binnix said I asked that too to just get this sense of what this would look like in this neighborhood if they change the lot width.

Mr. Brand said most of the lots in this neighborhood, if not all, are 125 or greater. To my knowledge there was three area variances approved because of their being located on the corner of Pheasants Crossing and the granting helped meet the design requirements for dedication.

Mr. Weidenborner said [grant the variances] also benefited the Town to allow them to line up Pheasants Crossing with both Antler's Drive and Doe Haven Drive. He also noted that the R-1-10 zoning district allows 10,000 square foot lots with 75-foot of road frontage.

Mr. Brand said Farmbrook is R-7.2 which is less than the R-1-10 district lot width. There is a wide variety of lot widths here in the Town. He also noted another question asked about variances down the road. If you grant a variance for something it should be the minimum necessary. What that means is that, in granting a variance, you always have to think about whether you are

creating another hardship on that property owner. We always need to think about if he/she's going to need other variances. Look at the effect of what you are granting because if you create a situation where you are not allowing the rear portion or the only portion of the rear yard lot that can be developed would it necessitate some other variance being necessary? Maybe it would involve the need for an area variance to allow an accessory structure to be placed in the front yard. We just has one located down the road [County Road 8] here. Remember, the barn down the road from here on County Road 8. The guy ended up putting the accessory structure on his dad's property, thereby avoiding the boards concerns.

Mr. Graff said the particular odd thing about this [application] is again depending on how he files the subdivision application, he's already put forth to you an alternative [to what is pending before you] of three 100 foot-wide-lots. So, what Ron is saying is typically contained to the property itself granting the minimum variance necessary. So, if he applies for a thirty-foot-wide lot, let's say you guys decide, well three lots each having 100-foot-in-width would be more appropriate. That's an instance where that would then be creating the necessity for additional area variances on the existing two lots, which is not part of the application before you, so you can affect those potential area variances. If it only affects the lot in question, for instance if they are coming before you to build a shed five feet from the property line and it's twenty-five feet is the law and you say, well the minimum relief necessary is ten that doesn't affect any other property but the one in question. So, you're OK to have sort of a sliding scale within what they asked for five and what the law allows twenty-five. But this is a situation where if you look to expand the thirty feet, they are in effect asking you to consider additional variances on other properties that they haven't applied for variances upon. That you can't do of your own accord. They would have to in essence submit a new subdivision map and start from scratch. Which is why in the draft resolution, what we said as part of the agreement for an extension is that they submit the subdivision application with exactly the same map they submitted to this board for the variance, which is the thirty-foot-wide opening. If they do want to go with the one-hundred, one-hundred and one-hundred-foot-wide lots then you do have to start it from scratch. I just wanted to point that out because I know that they already attempted to do that. Normally you do have some wiggle room to adjust the requested grant before you by granting the minimum variance necessary as long as it's just affecting the property in question.

Mr. Brand said in this instance to carry this one step further, what he has is 300-feet of frontage with two approved lots each lot 150 feet of width. So, if you go with the requested 30-foot-wide lot width you are changing the lot widths for two approved lots, but you're not creating nonconformity because those other two lots can still have 125 feet of lot width across their frontages. But if you went to three 100 foot-wide-lots, like Jeff said, then you are creating a problem. OK, moving on, we talked about spot zoning, which is singling out a parcel of land for a use that's not consistent with the Comprehensive Plan or with any surrounding land uses, I don't see granting the requested thirty-foot wide area variance to the minimum lot width as being spot zoning.

Mr. Graff said the law is clear, granting of a variance is not spot zoning. It's just more of a legislative act. The Town Board's rezoning a parcel to a use that's not in keeping with the comprehensive plan of the Town, would be considered spot zoning. The Zoning Board granting a variance

by going through the variance process is allowed by law in and of itself is not considered by the courts as spot zoning.

Mr. Brand said the next question that was asked is what is the criteria to table a public hearing during the meeting? If you look at your adopted 2023 Rules of Procedure you will see that what you do is you allow everybody the opportunity to comment, both those in the room and those online. You can then request for any additional comments stressing that the same comment not be stated over and over again. If you start hearing that you can say we understand that point, is there something new now that we need to hear from you about? If there is nothing new, and you have asked everybody in the room and you have asked everybody online and nobody has any new comments, then you are within your rights to close the public hearing. Now once you close the public hearing, it's closed. You can't reopen it. If something is presented to you during the public hearing and you receive it during the open public hearing that night your Rules of Procedure say you shouldn't act on it, you should continue the public hearing. The reason being that allows anybody in the audience or online the opportunity to see or understand what it is that you have just received. Something that wasn't in the public record before the hearing began. That's why the other night you heard some people say why don't we have a chance to comment on what was just received. Technically they didn't have a chance because the public hearing was closed. Keep in mind that when that occurred during the public hearing anyone could have requested an opportunity to see what was being presented. Should we have closed the public hearing? I don't want to prejudge anybody, but I would say probably not. We should have continued it to allow whatever was on that map to be available to anybody in the audience. They could've come back at a continued public hearing with a series of things about what it means to them to look at this design versus what we had before us.

Mr. Graff said there could also be special circumstances. You may have an application before you that is so popular, good or bad, that the hour gets late and you as a Board decide that's enough for tonight. But there's obviously more people that need to speak, so you are going to table the public hearing and continue it tomorrow, next week, at next month's meeting something like that. Because by 11:00 o'clock, nobody has patience anymore, you are not really listening, so it's not really effective. You use your judgment. Another example could be a power failure, you are in the middle of the hearing, and something happens that you can't continue it, so we have to table it. So, there could be a variety of reasons and I'm sure there's more than Ron and I could think of on the spot, but you'd have to use your judgment in those circumstances. It's a matter of fairness because your second question was can you close the public hearing even if people are not getting the chance to speak, no. The idea of a public hearing is for everybody to have their say and that's not to say like what Ron was getting at, if somebody just wants to repeat and repeat and repeat, you are certainly permitted to set forth limitations. Again, if it's a crowded room, ok we are setting a three minute or five-minute limitation on everybody's talk. Everybody gets to speak once before anybody gets to speak again. If somebody just wants to sort of filibuster, somebody just wants to talk, talk, talk to kind of waste your time, again you as the chair have the ability to let them know that enough.

Mr. Yourch said so that's part of the question if someone becomes unruly or keeps going and going and gets derogatory, or something like that, how do you get him to stop?

Mr. Graff said well, again, if you haven't set a time limit, then it's just your judgment. If there is three people in the audience, you are going to let all three people speak. Now one of them is trying to take up an hour, maybe they can make their point in less than that, but you guys have to use your judgment whether they're actually making quality points. If they are going through the five steps of an area variance and they are giving you detailed facts about each one and it just takes a while, that's one thing. But if it's just talking and you said they are being derogatory, or what, there has to be respect. There has to be professionalism. This is a government body, so you have to use your judgment in that regard. But generally speaking, a public hearing is intended to give everybody that wants to speak the opportunity to speak, which is why, if you get to a late hour and there's still more people that want to speak and they're feeling it's not appropriate to keep everybody as late as it's getting, table the public hearing. The board would agree on a date, time and location for the public hearing to be continued and that's when you would gather to reopen the public hearing and finish and let everybody speak. You could be overturned on an Article 78 if you shut the public hearing down when there were still people that weren't given an opportunity to speak. That is getting to a procedural process, and I always advise boards to try and be letter perfect on the procedure because if the board is just left with having to gauge whether your judgment is ok that's something that anybody would be good with. But if it's whether or not the notice was published with enough time, whether you kept the public hearing open, or moved location without telling anybody these are the kind of procedural things that drive municipalities crazy because it's just going to get sent back to you to start over again. So, you try and do those things correct from the beginning.

Mr. Brand said I once was at a Planning Board Meeting in the Town of Chili and this one individual became really, not threatening, but belligerent and kept harping on the same point. The chairman of the Planning Board said I understand your point, let's move on and he kept saying it. Finally, this guy, called him Hitler. The chairman says we are going to take a ten-minute recess. They recessed the public hearing. The Board members got up, walked into their meeting room, they had a room off the side of the main meeting, and called the sheriff. The Sheriff came and escorted the guy out of the room. Don't get confrontational with somebody if they start getting belligerent with you. Your avenue is to just recess the public hearing say you need a break and call for assistance.

Mr. Yourch said so it sounds like if that is going on, I can look at the Board and say "you guys this is what I'm thinking" or if they are thinking it, they can say it to me verbally.

Ms. Cochrane said, and can we say that to him because he's the chairman and he has to say that, or can we ask for break?

Mr. Brand said you can ask for a break.

Mr. Yourch said or if there's something going on, you guys can say maybe we should table this and I may not be thinking that way, but we can openly discuss that too.

Mr. Brand said the one thing that I would want you to do differently in the future, is before you close the public hearing, just take a straw vote or take a look at your board and kind of get a feel for whether they feel that's the right way to go or not. Speak up members. If you feel that it's ok to close fine that's great. If you have some reservations because of whatever it is and you need more time to think about it, continue it. You are not obligated to close the public hearing within one session. You can continue it to give you time to clear your head and the air of what's getting asked of you.

Mr. Graff said, and I've seen chairs or supervisors, they will ask it twice. Is there anybody else that wants to speak for or against the application? I ask again, is there anybody else that wants to speak for or against the application? Sometimes it may be overkill, but I've seen enough supervisors and chairs say it that way because they must have gotten burned once in the past. Or somebody wasn't tuned into what was being said and then they objected five seconds after it was closed because they were on their phone or something like that.

Mr. Yourch said this last instance, in hindsight, I did ask the people online and no one offered anything new.

Mr. Graff said when they are done and you have the sense that they are done and you've asked if anybody has anything else they want to say, you're giving them last opportunity, then you close it. It's a judgment call. But if nobody else is raising their hand or speaking or saying they want to talk, well, that to me and probably everybody else would indicate that the hearing is over everybody said their piece. If they come late, well that's bad on them, there's nothing you can do about that.

Mr. Yourch said maybe next time I would say to the board and to Town staff, do you have any objection to closing the public hearing.

Mr. Brand said that's fine. Get your input from John, Dan, or I, or Jeff, if he's here. We are more than glad to speak up and say, well, we did just get something new tonight and your Rules of Procedure say you don't act on it without giving the public the opportunity to see what it is. We are trying to be as transparent as we can and go forward from there.

Ms. Binnix said so Ron they submitted a variance for a thirty foot, that night they kind of just divide it into three, but would they have to submit a new variance application?

Mr. Graff said we are looking for them to submit the subdivision application, so they commit to whatever variation they want of their subdivision.

Ms. Binnix said Planning Board will say this is ok or not.

Mr. Graff said right and so if they submitted with a 30-foot variance, then they can't come to you and ask you for hundred, hundred, hundred because then they would have to resubmit a subdivision plan for the hundred, hundred, hundred.

Ms. Cochrane said yeah that lawyer is basically saying you guys can make the changes, you guys can approve it based on this.

Mr. Graff said well, because there is no subdivision application to be firm about. They were trying to have their cake and eat it too, to some extent, by trying to get you guys to give them the best option to go back to the Planning Board. They really need to commit to the Planning Board because that's what the law says. It has to be properly before this Board and right now it's not.

Ms. Binnix said so what about another variance then, say we get something totally different like a shed application, we get a lot of those, can they change that variance on the fly? Could they do that too or no?

Mr. Delpriore said if they requested a variance for a shed then they would have a denied building permit and that wouldn't have to go to the Planning Board.

Ms. Binnix said yeah, I know, but can we change their variance on the fly here though?

Mr. Graff said as Ron said earlier you can grant the minimum variance necessary. So, what I was saying before is if they come for a shed variance and they want place it five feet from the property line when twenty-five is the minimum and you can grant 10/15/20, you can grant something in between if you feel that that's necessary. If now on the fly, they are saying well we came with five, but we would actually like two.

Mr. Binnix said yes that's my question how much?

Mr. Cochrane said how much can they change it before it becomes a new application?

Mr. Graff said to me, I think, they'd have to revise their application because now they are asking for something greater. The change that Ron was talking about is to make it less problematic, not more problematic. So if they are applying for a five foot and then they say we had a change of heart and we would like two feet, you can't. Whereas you can grant them five or ten, you can't grant them three or two because they have asked for five.

Mr. Brand said the other thing you need to keep in mind is that you hear people say you can place conditions on variances that are reasonable. That is always a great clouded area as to what is reasonable. Some of the things that have been before you, they have tried to say you can put any condition you want. If you don't want this, if you don't want any accessory structures on this lot, that's fine, put that condition in there. Then they turn around and come to Dan and say I'm entitled to an accessory structure and the Zoning Board denied me.

We have to listen very carefully when we are getting told that you are a superpower and can do whatever you want. Your role here is to defend the code to the greatest extent practical and to grant variances where minimum relief is warranted.

Mr. Delpriore said the minimum relief. Just because somebody comes in and asks for ten feet, but it can be done in five then you should be granting the five for the minimum relief. A lot of times you can also ask, have they worked with the Building Department or the Director of Development and Planning because a lot of times they may come in asking for twenty feet, but we figure out that the deck could be built a different shape or something like that where they now only need ten feet. That might be information that staff can give you and say yes, we worked

with the applicant and the original request was going to be a lot more, now they are coming to you with ten feet, and we don't really have a solution to make that better.

Mr. Brand said the other thing is that there's been examples in the past where neighborhoods have wanted to have accessory structures and then they weren't allowed in that district, and they continued to be issues of concern that would come before the Zoning Board of Appeals and be denied. This resulted in the neighborhood getting together and coming to the Town Board to amend that clause in the code which then allowed accessory structures with restrictions in that specific zoning district. The Zoning Board of Appeals just tries to give that balance of the differences in your role of granting relief and the Town Boards role in establishing the legislative conditions. They turn it over to you and ask you to follow their decisions. Now, can a Town Board file an Article 78 on a decision that you make, yes.

Mr. Graff said you were mentioning legislative changes, for instance, if they created multiple zoning districts that have minimum lot sizes and an applicant came to you in a district with a larger requirement for lot coverage and asked you to approve their lot with a lot size that mirrored one of the other zoning districts that is in essence asking for a change of zoning which is a legislative decision which is not your province. So that would be improper for you to grant something that would affect the legislative decision. We would have to see an application to advise you whether or not that's applicable, but just to follow up on what Ron said.

Mr. Brand said you try not to create a community that results from numerous variances being granted, because that's in essence saying there's something wrong with that code and that code needs to be adjusted. As opposed to the Zoning Board of Appeals feeling compassion because you happen to know the person, great person, but here's the issue we can't take that into consideration. We have to look at what's been written in the law. Those regulations aren't created in response to a single event, they are created as the result of extensive coordinated reviews with other agencies including County Planning. They [the detailed regulations] are put into law following public hearings. Any concerns that anybody had with those regulations should have come out during that public process and not be thrown on to your desk for you to try to find compassion for granting relief which ultimately undermines the purpose and intent of the district's regulations.

Ms. Binnix said, and the variance stays with the property, so it doesn't matter who owns the property. It runs the property once it's in place, right?

Mr. Brand said correct. We have a situation here, in the town four years ago, where the applicant got a special use to have an excavation operation located on property in the southern portion of Town. The variance was granted and the applicant ran a great business. Then he sold the house, moved to the northern portion of Town, and now wants another special use permit up there. But you just can't pick it up from there and take it over here. It has to be reapplied for. But guess what? This still stays, so the next guy who comes in and buys that property, he can continue an excavation operation. So, keep in mind that that process is there. There's going to be, inevitably, situations where someone wants to do something and there is clearly no allowed use for that, but it's a good idea. Maybe it has merit. That's why we have the temporary use permit provisions,

which we have followed and so far, have been successful with and has led to amending the code. In one particular instance to allow a certain type of use in a certain area. You can't always think of everything. Technology is changing so much that over the years we've had to address things like cell towers. We have had to address solar. We have had to address wind farms We have had to address outdoor wood burning stoves. Things of this nature. As soon as you think you have something concrete that you put into the code, someone will come along and have a version of it to change it. That is where you guys come in as the word.

Mr. Delpriore said Ron, it is now 6:55 and we need to wrap up this training so we can get the audio system ready for the 7:00 meeting.

Mr. Brand said works for me. Thank you everyone. That was a good session.

1. MEETING OPENING

The May 15, 2023 meeting of the Zoning Board of Appeals 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 February 27, 2023.

This meeting was held both in person at the Farmington Town Hall and virtually on Zoom.

2. APPROVAL OF MINUTES OF APRIL 24, 2023

■ A motion was made by MS. COCHRANE seconded by MR. LAY, that the minutes of the APRIL 24, 2023, meeting be approved.

Motion carried.

3. LEGAL NOTICE

The following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper on Sunday, March 19, 2023:

ZB #0301-23, FOWLER FAMILY TRUST, 6176 HUNTERS DRIVE, FARMINGTON, NEW YORK 14425: The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Attachment 1, Schedule 1 of the Farmington Town Code. The applicant wishes to create a third lot that would have a minimum lot width of thirty (30) feet. The Town Code requires a minimum lot width of one hundred and twenty-five (125) feet. The proposed lot would be parts of a proposed re-subdivision of the Lot No. R 5-A with tax ID # 29.13-1-5.100, and Lot No. R-5-B with tax ID # 29.13-1-5.200 of the Pheasants Crossing Subdivision. These three (3) proposed lots would be located along the

west side of Pheasants Crossing and within the Pheasants Crossing Subdivision Tract. All lots are zoned RS-25 Residential Suburban.

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. CONTINUED PUBLIC HEARING CLOSED APRIL 24, 2023

ZB #0301-23, FOWLER FAMILY TRUST, 6176 HUNTERS DRIVE, FARMINGTON, NEW YORK 14425:

The applicant is requesting an Area Variance to the provisions contained in Chapter 165, Attachment 1, Schedule 1 of the Farmington Town Code. The applicant wishes to create a third lot that would have a minimum lot width of thirty (30) feet. The Town Code requires a minimum lot width of one hundred and twenty-five (125) feet. The proposed lot would be parts of a proposed re-subdivision of the Lot No. R 5-A with tax ID # 29.13-1-5.100, and Lot No. R-5-B with tax ID # 29.13-1-5.200 of the Pheasants Crossing Subdivision. These three (3) proposed lots would be located along the west side of Pheasants Crossing and within the Pheasants Crossing Subdivision Tract. All lots are zoned RS-25 Residential Suburban.

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #0301-23	Fowler Family Trust 6176 Hunters Drive Farmington, N.Y. 14425	Area Variance
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Mr. Yourch asked the applicant if they have had the opportunity to read the draft resolution and understand it?

Mr. Franco said yes.

Mr. Yourch said are you in agreement with it?

Mr. Franco said yes. I'm from Davidson/Fink and I represent Mr. Fowler in regard to his application for an area variance. Obviously, I'm here to answer any questions or concerns that the Board may have on the application and fill in any gaps that may be missing but we believe it's pretty straight forward.

Mr. Yourch said for the record, how long do you need this tabled for further deliberations and to apply to the Planning Board?

Mr. Franco said we could have that submitted in ten to fifteen days.

Mr. Delpriore said with submittals and everything I would recommend this Board to allow 60 days, so that they can get the submittal in for the Planning Board. Then that will give the Planning Board time to get it on their agenda and to make a decision to either refer back to you guys or what else might be needed at that point.

Mr. Yourch said for the record, so sixty days?

Mr. Franco said that's fine with us.

Mr. Graff said that would be sixty days from today.

Mr. Franco said ok.

Mr. Brand said given the fact that I don't have a calendar in front of me, sixty days from today may necessitate you to have an extension because sixty days from today may not meet your normal fourth Monday of the month scheduling.

Mr. Weidenborner said sixty days would be Friday July 14th.

Mr. Brand said and the next July meeting date should be 24th.

Mr. Delpriore said seventy days may be more appropriate.

****inaudible conversation****

Mr. Brand said just so everybody knows the reason we are meeting tonight is because we were asked by the Town Board to move our May meeting up a week so they could meet next Monday night [May 22, 2023], given that Tuesday [May 24, 2023] is grievance day. OK, so with that, Mr. Chairman, may I ask you add seventy days in that blank.

Mr. Graff said the second to last resolved paragraph can be removed from the draft resolution. That says absent in agreement what the board would do since we have the applicant's agreement to the extension, you can delete that.

Mr. Yourch said ok we can remove that from the resolution.

Ms. Binnix said OK, I will motion to waive the reading of the complete resolution.

Mr. Brand said before you do that, I would recommend you ask anybody in the room has any concerns with it being waived. If there is somebody here that doesn't know it exists, then you are obligated to read it into the record.

Mr. Yourch said people in the audience, and online have you had access to this from the Town website, has everyone seen it?

After discussion amongst themselves in the audience, Ms. Dispenza said we have not seen it.

Mr. Brand said then please read it.

Mr. Graff said somebody should make a motion by putting this into you making the motion.

Mr. Lay said do we have to make a motion to remove that second from the last to make it official and then read it, minus it?

Mr. Graff said since you are reading it, I would suggest whoever is going to make the motion say I move the following resolution and then read it without that paragraph and then it's entered in the form that you just made the motion on.

Ms. Binnix said do we have to do SEQR on this?

Mr. Brand said you have already done SEQR.

Ms. Binnix said ok, so I will motion to accept the resolution and to read it with the addition of the seventy days and minus the second to last section.

Mr. Lay said I will second.

The following resolution was read into the record:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS**

APPLICANT: James Fowler c/o Fowler Family Trust 6176 Hunters Drive Farmington, N.Y. 14425	File: ZB #0301-23 Zoning District: RS-25 Residential Suburban Published Legal Notice on: March 19, 2023 County Planning Action on: April 12, 2023 County Referral #: 58-2023 Public Hearing held on: March 27, 2023, and Continued on April 24, 2023
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Property Location: Lot R-5A and Lot R-5B, Pheasants Crossing Subdivision Tract, Farmington, New York 14425

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

Requirement for Which Variance is Requested: The applicant wishes to further Re-subdivide Lots R-5A and R-5B by creating a third lot to be known as Lot R-5C. Proposed Lot R-5C would have a Lot Width of thirty (30) feet instead of the minimum required Lot Width of One-Hundred Twenty-Five (125) feet.

State Environmental Quality Review Determination: The granting of an Area Variance for a single-family residence, when that is the only action under consideration, is classified as a Type II Action under Part 617.5 (c) (17) 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: County Planning referral # 58-2023, a Class 1 Action, with comment.

BOARD FINDINGS:

WHEREAS, the Zoning Board of Appeals (hereinafter referred to as Board) after reviewing this application and the record thereof, finds that the requested area variance does not involve an appeal of an interpretation, decision or determination provided by the Town Code Enforcement Officer that would enable an application for an area variance to be made to the Board pursuant to section two hundred sixty-seven-b of Article 16 of the New York State Town Law and/or Chapter 165, Article VIII, Administration and Enforcement, Section 97 F. of the Town Code of the Town of Farmington; and

WHEREAS, the Board further finds that there is no pending application before the Town of Farmington Planning Board involving preliminary re-subdivision plat approval for a third lot to be re-subdivided from existing Lots R-5A and R-5B that would enable an application for an area variance to be made to the Board pursuant to section two hundred seventy-seven of Article 16 of the New York State Town Law; and

WHEREAS, the Board has determined that there currently is not a proposed site plan for either Lots R-5A and R-5B that contains one or more features which do not comply with the zoning regulations that would enable an application for an area variance to be made to the Board pursuant to section two hundred seventy-four-a of Article 16 of the New York State Town Law.

BOARD DECISION:

NOW, THEREFORE BE IT RESOLVED that the Board does hereby determine, based upon the above findings, that this application is not properly before the Board and, therefore, the Board is not empowered to make a decision on the application at this time.

BE IT FURTHER RESOLVED that the Board does hereby accept the Applicant's request made tonight and entered into the public record on this application to continue the Board's deliberations and decision and to waive the 62 day provision contained in section two-hundred sixty-seven a. (§267-a. 8) of the New York State Town Law, and agrees to table further deliberations for up to **70** days pending the Town Planning Board's receipt and acceptance of a proposed preliminary re-subdivision plat and preliminary site plan for proposed Lots R-5A, R-5B and R-5C, of the Fowler Family Trust property showing the exact same configuration, layout and dimensions that were included in this application to the Board.

BE IT FURTHER RESOLVED that the Board does hereby require the Applicant, at said time described above herein, to agree to a new public hearing to be held by this Board and that public notice thereof be provided for.

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 applicant's attorney and the applicant's engineer.

The above resolution was offered by MS. BINNIX and seconded by MR. LAY at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, May 15, 2023. Upon Board, the following roll call vote was recorded:

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

Motion carried.

Mr. Delpriore said before we move on, Chairman, are we setting that public hearing for July 24th? I just want to make sure that we post it and advertise that correctly.

Mr. Brand said well just wait a minute now. We are assuming that we have to have something to create a legal notice based on. Since we haven't seen anything in the form of an application to the Planning Board that specified the design that shows that thirty-foot lot width. I think we got to wait and hold on that until we know what we've got and then you can schedule the public hearing. All this resolution says is when we are at that point then we can schedule that or re-advertise that public hearing for this Board to consider acting on. I'd rather do that than say we are going to have a public hearing on July 24th and find that we get to July 15th, or whatever, and we don't have it yet.

Mr. Delpriore said with how the resolution is laid out, I didn't know if they met the conditions above that we could just schedule that public hearing or does the Board have to have another meeting to schedule the public hearing? I don't know if this resolution would take place of the Board having another meeting, that's my question. If everything was submitted through the Planning Board and it was ready to come back here at that July meeting, could we advertise it as a public hearing or do we need the board to meet to set the public hearing?

Mr. Brand said if the Board tonight doesn't continue to July 29th this deliberation, then they would have to have a new public hearing. They are going to have to have a new public hearing anyway because the resolution calls for that.

Mr. Graff said and, on that day, they could agree to a further extension to August.

Mr. Delpriore said I agree, I just didn't know if we needed an extra step in there.

Mr. Graff said I think that can be addressed at whichever meeting. They have said that they might have it filed in fifteen days or whatever, so this board might actually have something in your June meeting for instance then they could schedule in June the public hearing for the July meeting and still meet the seventy days.

Mr. Brand said the point is a new public hearing would be advertised only if it wasn't continued to a specific date.

Mr. Delpriore said ok I just was trying to get clarification on that.

Mr. Lay said so the seventy days just for them to get it, we don't have to have it resolved. We just have to have their stuff done in seventy days.

Mr. Graff said the seventy days is how much time they have to get it to the Planning Board to receive and accept the re-subdivision application.

Mr. Lay said ok I just wanted to clarify.

Mr. Brand said I just want everybody to understand, we are continuing this to July 24th, right? So there won't be another legal notice advertising that July 24th continuation. It will be an agenda item.

Mr. Graff said unless they get everything in June, schedule the public hearing for July, then you have to have a legal notice for that public hearing is everything moves that quick. But otherwise, you'd probably be scheduling in July.

Ms. Binnix said can I ask a question? What if the Planning Board doesn't approve this?

Mr. Graff said well, it's not an approval, it's just for them to submit the application. As with any application that's before two boards, one of you will approve it before the other and if you guys take action on it and say your action is approval, you would want to attach a condition that your approval is subject to the Planning Board approval such that if they denied it then your approval would go away as well and vice versa if they approved it first.

Mr. Delpriore said the Planning Board is going to accept it, review it, and say they can't move it because it needs a variance. That's what triggers the variance.

Mr. Lay said and what will be presented in front of them is the original, not the second map that doesn't show the structure, just the two lots with the thirty foot, correct?

Mr. Graff said we put it in here showing the exact same configuration, layout, and dimensions included in this application which is the thirty foot.

Mr. Brand said the Planning Board in order to accept a preliminary subdivision will require additional information than just lot lines.

Mr. Lay said I just want to make sure we are clear on that.

6. OTHER BOARD MATTERS

None

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

Mr. Yurch said public comments and open forum. We can talk about things, but we can't necessarily have an open discussion to the resolution.

Mr. LeBlond said can someone explain to us in layman's terms what you are all talking about?

Mr. Graff said it's been discovered that, well, New York State law requires a variance to be presented to the Zoning Board of Appeals, either from an appeal from an order of determination of the Code Enforcement Officer or by an application to the Planning Board for subdivision or site plan that the Planning Board is then required to slide over to the Zoning Board. Their application for an area variance was neither an appeal of an actual order of the Code Enforcement Officer, nor have they filed a subdivision or site plan application with the Planning Board such that this could have been slid over from the Planning Board. They filed an area variance application with no preliminary basis to do so and that was just discovered. Because we've had public hearings and we want to preserve those public comments that everybody took the time to make, the Board is agreeing to an extension of the time that they would normally have to decide this to afford them the time to make the subdivision application to the Planning Board so that the Planning Board can properly slide it over. Then this board has proper jurisdiction to make a ruling on the area variance.

Mr. LeBlond said so a procedural snafu?

Mr. Graff said a procedural snafu in layman's terms.

Mr. LeBlond said, and do we have a chance to be a part of the discussion again or not really?

Mr. Graff said twofold, the Planning Board will be required to have a public hearing on the subdivision application, and it was included in the resolution tonight that this board will have another public hearing so that public has an opportunity to comment once more. It may be all the same thing and you may feel you have had your say, but it was written in to give the public one more opportunity here and then also the opportunity at the subdivision.

Mr. Yourch said I strongly recommend you going to the Planning Board and giving your views to them because that would be fresh to them.

Ms. Dispenza said when and where are the Planning Board meetings? Is that on your website as well?

Mr. Yourch said it should be, yes.

Mr. Weidenborner said you will all receive a legal notice for that public hearing as well.

Mr. Delpriore said the Planning Board meets the first and third Wednesday of every month.

Mr. Graff said it depends on when they actually file.

Ms. Dispenza said it depends on when they bring it up for discussion.

Mr. Graff said if they miss it [the established deadline] because it was supposed to be in by Thursday, and they file on Friday well now they have missed the meeting deadline.

Ms. Dispenza said can I ask you just one question, I think we have had four variations of layout for this proposed subdivision, and I hear you talking about the long driveway option again. Are we back to that? I'm just trying to figure out which version.

Mr. Graff said the application was submitted requesting a variance of thirty-foot front lot width. That's what this resolution is saying needs to be submitted for the subdivision application. So, then the Planning Board and the Zoning Board are looking at the exact same map, dimensions and that way everything is the same. Now, he is free to change it, but then he would have to start new and submit whatever he wants to the Planning Board. But to preserve what's been done here it needs to be the thirty-foot lot width because that's what was originally submitted.

Mr. Dispenza said because the last meeting they said, oh, we can change it if you go to three lots and not that width.

Mr. Graff said and if they choose to go that way that's the owner's prerogative.

Mr. Fowler said I did submit those plans with the three equal lots.

Mr. Delpriore said that submittal was after the close of the public hearing. The only application that is in front of this board is the original one.

Mr. Yourch said you can work with the Town on something else if you want too. Any more public comments? Hearing none he moves to the Director of Development update.

8. DIRECTOR OF DEVELOPMENT UPDATE

- We had a public information meeting both live and on YouTube for the sidewalk project that is moving along. There was virtually no opposition to the design.
- Continuing work with the various Boards on their duties and responsibilities to add the Chapter 9 of the Town Code.
- We will be having a re-application of the Power Incentive Zoning Project. They lowered the density by about thirty lots, widened the widths of the lots and provided for larger side setbacks.
- We have been informed that someone has purchased the former waterpark site on Route 332, and we anticipate an incentive rezoning application later this year.

10. ZONING OFFICER UPDATE

- Next Meeting will tentatively be June 26, 2023
- Open Clerk of the Board of Position

CODE ENFORCEMENT OFFICER UPDATE

- This is John's last meeting with the Board. Thank you for your commitment over the last few years to the Zoning Board and all of the zoning issues. He is moving on from us, so I do appreciate his time and efforts he has put in.

11. TRAINING OPPORTUNITIES

■ New York Planning Federation Recorded Webinars:

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

■ **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>

■ **4th Thursday 2023 Monthly Municipal Boot Camp Program
Presented by MRB Group, and Hancock and Estabrook**

<https://register.gotowebinar.com/register/5013248983683015766>

Thursday, May 25, 2023, 6 p.m. to 7 p.m.: Financing Your Future

Thursday, June 22, 2023, 6 p.m. to 7 p.m.: Specialized Zoning Tools

Thursday, July 27, 2023, 6 p.m. to 7 p.m.: Local Regulation of Cannabis

Thursday, September 28, 2023, 6 p.m. to 7 p.m.: Transforming Former Industrial Properties

Thursday, October 26, 2023, 6 p.m. to 7 p.m.: Preventing Sexual Harassment

Thursday, December 14, 2023, 6 p.m. to 7 p.m.: Case Studies: Good and Bad of 2022

12. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will tentatively be held on Monday, June 26, 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 7:30 p.m.

Respectfully submitted,

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