

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, March 27, 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

Staff virtually via Zoom:
Dan Delpriore, Code Enforcement Officer, Town of Farmington

Applicant’s Present:
James Fowler 6176 Hunters Drive, Farmington
Daniel Brennan, Davidson/Fink, Rochester
Christopher Kamar, APD Engineering, Victor

Others Present:
Maureen Dispenza, Pheasants Crossing, Farmington
Patrick Dispenza, Pheasants Crossing, Farmington
Barbara DiFrancesco, Pheasants Crossing, Farmington
Lou DiFrancesco, Pheasants Crossing, Farmington
Peter LeBlond, Pheasants Crossing, Farmington
Maureen Chu, Pheasants Crossing, Farmington
Linh Chu, Pheasants Crossing, Farmington

Amy Kane, Pheasants Crossing, Farmington
Greg Coon, Pheasants Crossing, Farmington

Virtually via Zoom:

Pam Schlierf, Pheasants Crossing, Farmington
Heather Critchlow, Pheasants Crossing, Farmington
Andrew Moyer, Pheasants Crossing, Farmington

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. by Mr. Yourch.

The Pledge of Allegiance was recited.

Mr. Yourch said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on February 27, 2023.

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

2. APPROVAL OF MINUTES OF FEBRUARY 27, 2023

■ A motion was made by MS. COCHRANE seconded by MS. BINNIX, that the minutes of the FEBRUARY 27, 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. PUBLIC HEARING

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.

Mr. Yourch said tonight's Public Hearing and deliberations by the Zoning Board of Appeals will be continued to the April 24, 2023, meeting to provide for the Ontario County Planning Board's review of the referral made under the provisions of the New York State General Municipal Law (Sections 239-1 and -m). The County Planning Board will meet on this referral at their April meeting, held on Wednesday, April 12, 2023, commencing at 7:00 p.m. Their meeting is open to the public. Please go to the County Planning Board website for meeting time and location. Two draft resolutions were prepared, distributed to the Board, the Applicant and the Applicant's Attorney and then posted on the Town's website in accordance with the Zoning Board of Appeals Rules of Procedure prior to tonight's public meeting. With this said, Mr. Yourch opened tonight's public hearing and asked for a presentation by the Applicant, or his Attorney.

Thank you, Mr. Chairman. My name is Daniel Brennan. I'm from the law firm Davison/Fink. I am here on behalf of the applicant tonight the Fowler Family Trust. Together with me Chris Kamar, the engineer from APD, as well as Mr. Fowler, who is the trustee for the app. I trust that everybody got a copy of our submission and attached exhibits. Mr. Kamar also prepared a blow up of the subdivision concept drawing and we have some additional copies in 11x17, if any members would like to take a look. I'm just going to give a brief overview and then Mr. Kamar is going to discuss the plan with you. We are seeking area variance relief today. The plan is to subdivide an existing two lots into three lots. Basically, what we are seeking is a reduction in the minimum lot size. We are seeking to create a flag lot on this property or three flag lots on this property, which is, while not necessarily expressly allowed under the code it is something that is certainly

contemplated under the code. There's a definition of flag lot which we have described in our papers. The lots that we are proposing comply or conform generally with that definition of flag lot. At the Town's direction, we are seeking a variance relief to allow this project to move forward in subdivision approval. In addition to the plans that we provided, we've gone through the area variance standards, after Mr. Kamar is done describing the map for you, I'll go through in a little more detail. The area variance standards are in my letter as well as some of the proof that we have provided to the board in the form of some research we've done on the existing other flag lots in the Town of Farmington, that were either approved or currently exist in residential districts and agricultural districts that are nearby to this property. We will explain how that meets the standards that this Board will need to consider for the area variance. With that I will turn it over to Chris.

Good evening, I am Chris Kamar with APD Engineering and Architecture, 615 Fishers Run in Victor. Currently there are two lots split down the middle. This area is the property in question, and it is twelve plus acres. It is a rather large piece of property and what Mr. Fowler would like to do is subdivide the property up into three lots rather than two. What we have put on here for visualization purposes only is the potential housing structures that could go into these three lots. The reason we shared the visualization is that we felt it was necessary to show the Board that it is possible to put three houses on this lot and still have plenty of room, and the lots would still be rather large. The smallest lot is just over two acres and that's the one in the center. Actually, there is 300 foot of frontage, and we are breaking that up into two lots with a 125 foot of frontage and one lot with 30 foot of frontage to allow a driveway back to the third lot. We received a survey, so we are comfortable with the location of the house and location of the steep slope. We do have mapped out some flood plains down below. The structures that are on the property do meet the setback, fifty foot from the front and fifteen from the side. I will let Daniel speak to as far as what we are actually asking relief about.

Mr. Brennan said before I get into the variance standards, I just wanted to provide some additional information to the Board. I have copies of some letters of support and each of these are identical packets. I'll just give a copy to the Board members as well as the Clerk and Staff. These are letters of support that we've received from some of the neighbors. Mr. Fowler provided his neighbors with a copy of our proposed subdivision map and asked for their opinions. We have some of those opinions in these letters and they should be considered by the Board. Certainly, you know the opinions of the neighbors are not just positive on this issue. We are asking for an area variance from the minimum lot width. While we'll get through all of the individual legal standards. What the courts have held the test the general overall test for an area variance is whether the benefit to the applicant outweighs any possible harm or detriment to the nearby neighbors or to the neighborhood in general. Looking at the letters of support that we've received from the neighbors, I think that is clear that there will be no harm to the nearby neighbors. This proposed subdivision is in keeping with the existing character of the area. The proposed lot width, while it is technically under the definition of the code, which is that the minimum lot width essentially has to be measured along both of the side lot lines the entire length of the of the property. While we don't technically comply with that definition, most of the property is going to be wider than what is required under the minimum and it will be wider than what is required

by code. Because of that factor there is no detriment to the nearby neighbors or the neighborhood itself. Furthermore, another thing to consider is the fact that there are already existing flag lots in the neighborhood and in the Town of Farmington in general. In doing a little bit of background research and I will admit that this is fairly rudimentary we obtained copies of tax maps for the Town. We were able to identify at least twenty-seven flag lots in the Town that appears to meet the definition of flag lots under the code. We've provided a list of those lots that we have identified as flag lots and attached them as Exhibit E. As you will see from Exhibit E many of the lots we identified as flag lots are in the RS-25 District and in the R-1-15 Residential District, and others are in the Residential and Agricultural Districts. They are not in commercial districts they are not in industrial districts. They are in other residential districts. The fact that there are already existing flag lots, many in the Town, including a development that is directly adjacent to the Pheasants Crossing Subdivision proves that there will be no harm to the neighbors or to the neighborhood, because it is already in keeping with the existing character of the neighborhood. I think the other thing that this Board should consider, is again, while the definition of a flag lot under the code is not necessarily just positive on this issue and we've been advised by the Town that we need to apply for an area variance for this proposed subdivision. What we are doing conforms exactly with the definition of the flag lot under the code, and I've quoted the definition of flag lot on page two of my letter. There are basically four standards or components of a flag lot. One, that there would be a lot frontage of at least twenty feet for the access area. Two, the interior portion contains the minimal lot area in the district. Three, the access area cannot be built on or won't be built on. Four, the access area cannot be used in calculating the minimum lot area or setback. We meet all of those. We have the lot frontage of at least twenty feet in the access area. The interior portion of the lots will be larger than the minimum lot size in the district, in fact, substantially larger. The access area will not be built on. The access area will go solely for an access driveway. The access area cannot be used in calculating the minimal lot area or setback and we will comply with that as well. We basically comply with the definition of a flag lot. The only thing that the code asks us to do is it asks that it be an approved subdivision. That's why we are here tonight. The lot that is the most difficult lot in this proposed subdivision is this parcel the one that is sandwiched in the middle. That is the one that has the whole area or the narrow access way. That lot, while it is clearly a flag lot, it's not going to cause any harm to neighbors. It's not going to cause any detriment to the neighborhood. In fact, the house that would be built on that lot, which we are not actually, you know, proposing for approval here. We are just requesting approval of the subdivision of the land. Any houses built on parcel B would be set back significantly more than it is required by code from the stream. Therefore you are not going to have a situation where there is going to be three houses crammed together closely where there is going to be narrow setbacks in between the house that is going to look different from what's already there. You are going to have a single house that's going to be set back significantly from the street, and therefore won't have any impact on the street or the aesthetics of the neighborhood. The next legal standard for the Board's consideration is whether the benefit sought by the applicant can be achieved by some other method other than the variance. As this Board may be aware, prior to my involvement with this project, Mr. Fowler and Mr. Kamar did come to the Town with multiple different variations. We have looked very closely at different ways to configure this property to allow subdivision into three lots, and

without seeking area variances it's just physically not possible according to the Town's interpretation of the code. There is no engineering solution around this due to the steep slope and the conditions in the rear portion of the property. It is not buildable back there. There are no feasible engineering solutions to get us around this problem other than the variance. The next factor to be considered, is whether the requested area variance is substantial. I would argue that it is not at all substantial. We actually exceed many of the dimensional requirements under the code for lots in this zone district, most importantly, the minimum lot size. We could add significantly more lots under the whole lot area that we have. By my calculations these two properties together can fit approximately twenty-one lots of 25,000 square feet each, which meets the minimum in the district. We are only proposing three. The property is 1,200 feet long at its widest point, which is wide enough under the width requirements for nine consecutive lots. While there is a small portion of this lot where we cannot comply with the minimal lot dimensions for the majority or the larger piece of this property, not only can we comply with the code standards we can exceed them. The other consideration is that we comply with the definition, those standards of what constitutes a flag lot under the zoning code definition. The fact that we comply with that it makes the request for variance relief insubstantial. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district, I would argue that there will be no negative environmental impacts on the conditions in the neighborhood, because this is an existing subdivision. There are existing flag lots in the area, there are existing flag lots in the Town, and this is a residential subdivision so it will not have any adverse effect or impact. The final backer, which... ***inaudible***... hardship was not self-created. I didn't need that standard anyways. The problem with this property is that it has a very steep slope and some other engineering concerns on a portion of it, and it's due to shape of the lot and that necessitates this variance. So, those factors were not paused by the application. I've gone on for quite a while now. I love to hear myself talk, but I think it would be beneficial to hear some questions or feedback from the Board. We are happy to answer any questions you have, or from members of the public as well.

Mr. Yurch then asks for staff comments.

Mr. Brand, Director of Development, said I have prepared two draft resolutions for your consideration. They were sent last week to the members of the Board, the applicant, and the applicant's attorney. They were also posted on the Town's website in accordance with the State's Open Meetings Law and the Rules of Procedure for the Zoning Board of Appeals. First one is a classification under SEQR of the action, the second one is a continuation which is necessitated by the timing of the submission of the referral package from the applicants and missing the County Planning Board meeting for the month of March. It is on the agenda for the April meeting on the second Wednesday of the month the 12th. I honestly don't remember where they hold their meetings. They used to be at the County office building but sometimes they have been out on County Road 46. I'm here tonight to listen. I have just one question for the engineer. If I heard you correctly, you said there were two lots of 125 feet in width, and then you have this one lot here of 30 feet in width?

Mr. Kamar said that would be 150 feet and 300 altogether.

Mr. Brand: Said so you have 330 feet of frontage?

Mr. Kamar said no, the total frontage is 300 feet from edge of property to edge of property. I was saying, there are two lots that are 125 and one is 30. Sorry they are 135 and 135 and the other is 30.

Mr. Brand said that's what I was asking, what happened to the other 20 feet?

Mr. Kamar said there's 2 that are 135 and one 30 foot.

Mr. Brand said that is all I have at this time.

Mr. Weidenborner said we did do some research in the Zoning Department of the Building Department. The flag lots that were presented in his presentation all appear to have been created prior to the 2000 flag lot definition that he is quoting, so we are not sure. The flag lot definition starts with "unapproved lot" so Dan's interpretation for the code is on there and Dan is online if you'd like to ask any questions of that interpretation. It's not necessarily saying that you can't create them, but for what we're seeing is that since the definition came about there has been no lots created since that definition came about. I see they are requesting that variance. We provided all that information you had in your packets, as well as everything that's been sent to us by the applicants and by the community of residents have all been forwarded on you guys with your application.

Mr. Yurch then asks for public comments.

Amy Kane from 6250 Pheasant Crossing said so one of those properties would be my direct neighbor. I am concerned that the way the houses will be set on the lot it will change the conformity on the street. Right now, if you go down the street the houses are set in the center of their lots and there is a long space between where the houses are set to the edges of a lot. I realize that the zoning may allow for the houses to be set closer, but my concern is that it changes the whole conformity of the neighborhood.

Greg Coon from 6250 Pheasant Crossing said I have a couple of questions about the flag lots because apparently the law changed in 2005 before this subdivision was developed.

Mr. Weidenborner said 2000 is what I have for flag lots.

Mr. Coon said and no new flag lots have been added in the Town?

Mr. Weidenborner said not that I could see, it appears the only approved flag lots were created prior to this code adoption.

Mr. Coon said and how many are in our neighborhood the Pheasants Crossing neighborhood?

Mr. Brennan said I can answer that question of the Board.

Mr. Weidenborner said that is up to the Board. All of your questions have to be directed to the Board and if they'd like to ask the applicant they can.

Mr. Coon said then yes, I am curious how many flag lots are in the Pheasants Crossing neighborhood.

Mr. Yourch said I don't believe there is any.

Mr. Brennan said if I could just add to that. I neglected to mention that in Exhibit D it shows there are 1, 2, 3, 4, 5, adjacent flag lots just to the north. They are actually touching each other and then sharing a boundary line with lot 5.1. There are existing flag lots in the neighborhood, in fact, the access drive on those flag lots that you can see on the tax map is substantially longer than what we're proposing. Although they do meet that definition under the code that says the access area has to be at least thirty feet wide. There are existing flag lots in the neighborhood. I can get you a copy of that tax map Sir so you can see what I am talking about.

Mr. Coon said in my neighborhood? My neighborhood is Pheasants Crossing.

Mr. Brennan said they are not across the street they are actually sharing a boundary line of one of the two parcels that is in question tonight. They are not on the Pheasants Crossing Street, but they are directly adjacent to the north, sharing the boundary line.

Mr. Coon said my other question was it was mentioned there is room for twenty-something lots in there somewhere and I'm curious where you can fit twenty something lots since all of that is not buildable.

Mr. Weidenborner said I can probably address that. So, what he was referencing was the lot size. For the lot size you could fit that in there, but he wouldn't have the road frontage, which is why he's here today for his variance. Based on lot size he could break that up, but he wouldn't have the road frontage and they would never be an approved lot without a variance.

Someone from the audience said so you could build those lots anyway, correct?

Mr. Weidenborner said I don't know. I'm not an engineer. I can't tell you where you can and can't build.

****in audible conversations from the audience****

Lou DiFrancesco from 6256 Pheasants Crossing said I just need clarification. The center lot, thirty feet that is the driveway, that leads to the rear where the house will be? Originally Mr. Fowler had nineteen lots, and he sold eighteenth to Mr. Lopez. The idea, my understanding, is that he would have a homestead for himself built on the remaining center lot. Suddenly that remaining lot becomes three lots. In my opinion, it's much too much for the area and it seems like a financial decision rather than a just decision for the neighborhood. I think there are two good size lots there,

meeting zoning qualifications, but to make it into three lots, originally started with one big lot, I don't think that would serve the neighborhood.

Pete LeBlond from 6262 Pheasants Crossing said I have to agree with what some of the others have said here today. Behind this proposed third lot structure there is quite a grade here. We talked about this, all this property, it might as well be a lake, essentially, because this is not buildable. You cannot put X amount of lots here. We are really just talking about this rectangle. This is a curious thing; I don't know why we're talking about splitting one lot to three lots. I don't even understand the point of it and that is why I am here today. Why can't you just build on the one?

Mr. Yurch said it was proposed two lots.

Mr. Brennan said may I clarify this for the Board. Just because I've heard this said a couple of times. There are actually already two legally existing parcels. What we are proposing, essentially, is to turn two lots into three. It's subdivision and potentially subdivision ****inaudible****. There are two existing legal lots there now and we are seeking to have a third.

Someone from the audience said it was originally one that got divided into two sometime ago, is that correct?

****inaudible conversation in the audience****

Mr. LeBlond said when I originally, I heard about this, I was kind of indifferent, but the more I look at it, it just doesn't seem to fit in with the neighborhood. It's like you are trying to jam three homes where you would put two homes. The increased traffic, the extra driving way, I just don't see a real reason for it. Like I said, this is all not an area where you would build any homes, so I don't understand the discussion of how many lots you could put it there.

Patrick Dispenza from 6237 Pheasants Crossing which is directly across the street. I bought the house six years ago. Daniel said that by doing this it won't have any effect on the value. So, I bought my house six years ago. When I bought my house, I looked at the neighborhood, I looked at all the cosmetics and how the houses were set and how big the lots were. That is when I decided to spend the amount of money I spent on my house. Now it was one lot when I bought my house it just got changed to two. That's fine. I think that's probably okay by the size of those lots. But you put this across the street from my house and that's going to lower the value of my property. We have talked to realtors, and they have all said that doesn't make any sense. You talked about the lots that are flag lots back here, but those homes are way off the road. They have their own street. They have wooded lots. They are all big lots. There is nothing like this over here. It's not an equal comparison. The other ones that you mentioned are on County Road 41. They sit back off the road there. You can't tell me that those houses have the same value as my house does. I'm sure all my neighbors will agree with that. To say that it isn't going to have an effect on our neighborhood and the value of our houses and some of us are getting older and we are going to need to sell our houses at some point and let some younger families come in.

Linh Chu from 6249 Pheasants Crossing said they have said everything that needs to be said. My concerns are the same concerns as far as property value and the aesthetics of the neighborhood.

When we moved in everyone said that it was set up for a certain amount of houses and all of a sudden it changed. My fear is that if we let one, what's to say that something else on that same property is going to have an effect on someone else's property. So that is my main concern property values going down and the aesthetics of the neighborhood.

Maureen Dispenza from 6237 Pheasants Crossing read a letter dated March 27, 2023, in its entirety into the public record. That letter will be filed with the minutes.

Mr. Yurch then asks for comments from the public online.

Pamela Schlierf from 6218 Pheasants Crossing said I appreciate being invited to this meeting. As many of my neighbors have mentioned, I do not have any reservations about the Fowler's personally coming to build a home in our neighborhood, and I'm sure we'd welcome them with open arms. However, to follow up with some of the other comments that have been made in reference to dividing the property, my husband and I purchased our home about seven years ago, and with that we took a hard look as to where we would want to be. I grew up directly across the street in the Doehaven Subdivision and at the time growing up this was Mr. Keyes property. I have watched over the years how this particular development came to be. As I speak on behalf of my husband, who is employed out of Boston and is not able to be here in person, I'm speaking on behalf of both of us, that we strongly feel that dividing that property into three separate parcels would be grossly negligent in a way that it does in fact, change the landscape of our neighborhood. As many also have mentioned, our opinions are that the houses, are centered on these lots. They are reasonably sized for each of the homeowners there. I do know a couple of our acquaintances that have gone to try to purchase the different properties that the two divided, and never really got any feedback, or and so perhaps the lack of communication on willing to sell those lots could have been that this particular property was already in this zoning variance sort of thought process. So, our main concerns again, is that having three homes on that lot, that parcel, I can't imagine with the wetlands and the way that that is that you can get three houses to look like the neighborhood has been carefully designed and built. The way that I saw the drawings is the driveway would go down through the middle, and they would have a home set more towards the back along the creek line. Then you've got the one property off to the topography map here, provided that I can't imagine you could even build on that sort of sloped triangle to meet the look of again the neighborhood. Maybe the other one can. But I also worry about the neighbors on either side and again Maureen and Pat Dispenza across the street, who predominantly right, have the most frontage of these three homes and what this would do to the property values. Again, my husband and I fully support the development of the property, but we do not support it being divided into three parcels. I think you're trying to put too much into that space. We appreciate being heard and again, I hope that you'll hear us, and if we could lobby for the two lots, and not to be divided into a third, thank you.

Heather LeBlond from 6262 Pheasants Crossing said I really just wanted to echo everything people said here today. I bought this house with my husband in 2006 and we were so excited, and really, we were twenty-five miles from work. So, it wasn't convenient, but what we loved about it was the fact that these houses were in a community, but they weren't on top of each other, and that's what we loved. That's why we bought and that's why we came to Farmington. So, the idea now to smush three houses into where one was planned, and now where two were planned, and now three are being asked for really just doesn't make sense. It makes me want to leave and I don't

want to have to feel like I want to leave my home. So, I appreciate your consideration and absolutely support two homes on this property but not three. Thank you.

Andrew Moyer of 6226 Pheasants Crossing I was there two and a half years ago during the original request to divide this lot from one to three. There was a lot of questions, and it was obviously rejected to the point where it was then subdivided into two lots. I don't see why we would further hey say now, two and a half years later let's divide it back into three lots with the fact that the main concern two and a half years ago was the flood plain. It just seems like we're in the same exact spot, and that the reason behind this is again, not for the aesthetics of the neighborhood, but it's more for the financial purpose of building this home. But that being said thank you for your consideration.

Mr. Weidenborner said I just want to clarify that the original plan wasn't rejected by any board of the Town. After discussion the applicant changed his three lots to a two-lot submission from the Planning Board so there's no official rejection. It was just when he was presented with that, he would need a variance, and everything else, he adjusted his application.

Mr. Dispenza said was the original application for the flag lot or was it for a lot behind some other houses?

Mr. Weidenborner said I can't remember the original layout.

Mr. Moyer said it was behind 6226 and 6232.

Mr. Yurch then asks for questions from the Board members.

Ms. Binnix said this subdivision originally got approved in 1998, according to your letter, is that correct?

Mr. Brennan said correct.

Ms. Binnix said and this was just one parcel, and this proposed for questioning tonight it was one lot at the time.

Mr. Brennan said my understanding, the sequence, the Pheasants Crossing Subdivision, was altogether this entire neighborhood, essentially was approved back in 1998. Prior to that there was nothing.

Ms. Binnix said and then three years ago, in 2020, it was divided into two lots. What has changed in the last three years, that now you are in need the third lot.

Mr. Brennan said the third lot would allow Mr. Fowler to build his home on the third lot and I appreciate the question there hasn't necessarily been anything that has changed since the last time it was subdivided. That's not part of our application, but the benefit to the applicant I think it's pretty clear that the applicant will be able to have three lots and instead of two. He will be able to sell two lots and then be able keep one for himself. That's the benefit to the applicant and there isn't really any other benefit. We don't have to establish that anything has changed since the last

time that this property was subdivided. In fact, if Mr. Fowler sold the two existing lots to another applicant to another owner, that new owner come and make the same application made here today so wouldn't make their sequence of subdivision, doesn't actually matter for the purposes of the area variance. I can understand why members of the public are concerned and have asked questions about that. But I don't think that's a proper consideration when evaluating whether we've met the legal standards for the area variance.

Mr. Yurch then asks if there are any further questions from the Board.

Ms. Binnix said if we do approve the third lot, there is not going to be anymore more variances requested, that is my question to the engineer. If this gets approved, are we just going to be approving more variances given the topography and steep slopes? Can building be done on the third lot?

Mr. Kamar said as I tell anyone when they build anything as long as you have enough money that's engineering. How they situate their houses on the lot as long as it meets the setbacks, and it is allowable then they can get a building permit. They can put a deep foundation in the back, I mean, it really comes down to engineering and geotechnical engineering. There is a lot of technical evaluation that would go in to where you can put that. We haven't done the full gamut of technical evaluation. But again, we are not actually proposing houses we are proposing a subdivision. As far as what meets code and what doesn't I will refer to the Code Officer.

Mr. Binnix said so you are not clear if you will need additional variances at this time.

Mr. Brennan said I think we know that we don't. These lots otherwise comply with the code. Certainly, the Town Attorney or the Code Enforcement Officer is able to verify that. One of the things that we haven't discussed is the option this board has; is you can impose any reasonable conditions on this approval that you want. One of the reasonable conditions might be is that the applicant shall not seek or apply for any further variances so that everything else has to be to code. We would absolutely agree with that. We would not object to that in anyway, because we know that we can build code compliant houses on these lots. I would just add that we are not actually seeking the approval of any homes, in order to build a house, we will need to get other approvals from the Town. It will be reviewed by the Town, and we will go through the appropriate process. All we are seeking now is to subdivide these lots so that they can simply be sold to other owners. It's not about a house on a property. Its' really about whether we create a separate lot.

Mr. Yurch said that third lot in the back, considering all the setback, would you be able to have an accessory structure that would meet Town code?

Mr. Brennan said is the question whether we would be able to build an accessory structure on that?

Mr. Yurch said yes, with all setback requirements for the house considering how far back the house will be and close to where it drops off drastically you wouldn't be able to put an accessory.

Mr. Binnix said if the house is built right on the edge of a cliff, then really, you're limiting what the other two can do, or what the property owner can do without a variance.

Mr. Brennan said I think you are right you would need a variance to build anything further so nothing else other than that this home can be built as of right. Again, I would say if that is a concern the Board can opt for a reasonable condition of approval saying no accessory structure shall be built behind the house. That would be a reasonable condition well within your jurisdiction.

Mr. Yourch said ***inaudible*** to the person that might consider to build there.

Mr. Brennan said yes that will actually be binding or applicable to any future owner because the variance that you would approve runs with the land so it would be good forever. No one would be able to violate that.

Mr. Kamar said I would like to add, that property does go much further back. So, even though it may not be convenient to add an accessory structure it wouldn't be impossible the way the house is located right now. It could potentially, if it's feasible, to put in accessory structure at the bottom of the slope. That could be a shed or something down there. It is possible that they could have a walking path and an accessory structure.

inaudible conversation from the audience

Mr. Yourch then asks for any further questions from the Board.

Mr. Lay said I just have a couple

***Power was lost during the meeting and Mr. Weidenborner advised those online that we lost power at the Town Hall, so our internet connection is down.*

Mr. Brand said we could still continue the meeting in person because the Chairman asked for online comments already. The fact of the matter is the meeting has to be continued anyway and those online tonight were given the opportunity to comment so we are not depriving them of anything.

Mr. Lay said question to the neighborhood and the concerns, the houses as I've learned are centered on their properties and decent sized lots. Were there any limitations or restrictions set forth when this subdivision and houses were built? Were there any requirements to place their homes in a certain manner or a specific size of house required?

Mr. Brennan said it's only the zoning code of where the houses were built. This variance is not about where things can be built or what can be built on the lot but whether or not this particular lot, we are seeking to create is appropriate. One way to look at it if we wanted too, we could propose to change the existing two lots and say we want just two lots, but we want one of them, for instance, to be a flag lot, and then you could have just the second one be a code compliant lot. We could come to you and say, can we just create one single flag lot that would take up half of the property and it wouldn't be about density. It wouldn't be about where the houses are. It would just be about configuration of the lot itself and whether we can say this one-dimensional regulation, and the way that the Town interprets that dimensional regulation the lot width, whether we have

to strictly comply with that, or whether the benefit to us outweighs any detriment from getting a variance of that requirement. Remember all three of these lots actually exceed the minimum lot. It's only that they are measured at the street that lot "B" doesn't comply with the minimum lot width. It's not about density. We are certainly allowed to build at this density. It's not about the placement of the house it is simply about whether this configuration of parcels is appropriate and whether we should be entitled to it.

Mr. Lay said I understand that, but we are here for a variance, so we are trying to figure out how your request for variance is going to impact and we have to decide whether or not it conforms, and if it doesn't, make an exception. We then have to consider other factors, so that is what we are trying to come to here.

Mr. Brennan said I can appreciate that. The other thing you mentioned is that we are looking at the appearance of the house. These two lots, parcels A and C, I would argue, look essentially the same as all the other, or will look essentially the same as all the other existing lots in the neighborhood. The only thing that will look different is Parcel B, but this house is going to be set back from the street in such a way that it actually won't be visible from the street, and so this configuration probably won't change how the neighborhood looks at all. In fact, we can talk about reasonable conditions, if you wanted to impose a condition about screening in front of this house so that you couldn't see the house from the street, it would be within your jurisdiction. We probably wouldn't object to it anyway. I spoke to my client, and he would absolutely agree to limit that to say that there would be no accessory structures built behind the house even ones they call code compliant. So, that's a condition that you can impose on us, and we wouldn't object to that at all. We are willing to work with the Town and want to work with the Town and find a configuration or any condition that could work. Honestly we want to work with the neighbors, as well. Mr. Fowler intends to live here and be neighbors with all these people, so our intention is not to hurt anybody.

Mr. Fowler said I just want to add that everyone in this room has deed restriction, everyone, because I put the deed restrictions on it to keep the neighborhood clean. These lots will have the same deed restrictions plus two or three more. So, we will meet the same deed restrictions they have.

Mr. Lay said I guess my last comment would be to what you just said, the way you are positioning the houses to make this work does change the appearance of that street because the houses on that street are set back and centered and these will not be.

Mr. Brennan said that may be the case, but one thing I would add is that we will be compliant with the code requirements for setback and so while the houses on these lots exceed the setback requirements they don't have too. I would actually argue that that's probably not a consideration in approving or denying this variance because we haven't asked for a variance from the setback. It's really just about this right here.

Mr. Lay said isn't that what creates having to move the houses off center and moving them all the way up to the fifteen feet?

Mr. Brennan said Chris can we move the houses more towards the center of the parcel and still be compliant with the code.

Mr. Kamar said so if they were going to get a building permit, those houses would have to comply with the setbacks. Those houses could be anywhere on the lot as long as they comply with the setbacks. Again, we have just shown these houses as a visualization. They're not actually being built in this location or in this size. This is just to give you an idea that houses this size and the same size as the other houses in the neighborhood could be built on these lots.

Mr. Brennan said what the Board could do, if you want to create more uniformity, is to put in a condition that says, okay, we are going to increase, for instance, the setback requirement from parcel A to its neighbor to the north and a setback for parcel C from its neighbor to the south here. You could impose that as a condition to make sure that what's built here is going to look substantially the same as all the other houses in the neighborhood. That would be a condition that you could impose, and I don't think we would object to it anyways.

Mr. Yourch said the two houses that are up at the street those can be constructed and located on the lot similar to the rest of the neighborhood.

Mr. Brennan: Said absolutely yes.

Mr. Yourch said and still comply with the back lot setback.

Mr. Brennan said yes, they can.

Ms. Binnix said I have a general question, the purpose of the variance, what makes this property unique to where you need this variance. Why is this such a unique situation where this variance is needed?

Mr. Brennan said well, to be fair, that's actually not the question in adopting an area variance unlike in a use variance we don't need to prove that the code creates some sort of financial hardship. All we need to establish is that the benefit to the applicant outweighs harm to the neighbors. The benefit to the applicant is simply that we get a third lot. There really is no other way to configure this property, to get three without a variance. We would be happy to move the lines around as long as we can get three. The only thing we are doing here, I'll be perfectly honest about that, is getting a third lot where there are currently two. But in an area variance because it's just a dimensional standard we don't need to prove that there's some sort of financial hardship to Mr. Fowler created by the code. I know that doesn't directly answer the question. I'd be happy to answer if you had a follow up question.

Ms. Binnix said could you make the lot wider at that the access point?

Mr. Brennan said absolutely.

Ms. Binnix said and still keeping in code with the other two lots?

Mr. Yurch said and staying within the characteristic of the neighborhood?

Mr. Brennan said we absolutely could make this, we will call this the pole on the flag lot, we can make this wider. The reason that we are proposing this configuration now is because this thirty-foot width allows us to have “A” and “C” are currently code compliant. We don't actually need variances for “A” and “C” we only need a variance for “B” that's why we proposed it this way. If the board would prefer to see the pole portion, the access portion wider, we can absolutely do that. We don't even have to go back and reapply you can make that a condition of your approval that the access portion be fifty feet wide. We can make all three the same width. We could make them all 100 feet wide.

Ms. Binnix said why is this going to County Planning again? Can you explain that?

Mr. Brand said the property is within 500 feet of the Town of Victor. The Town of Victor has been notified of this variance as well.

Mr. Lay said that property that is wet, is it designated any type of wetland or flood zone? Is it wetland that can later be developed or not?

Mr. Brand said there is a flood zone that goes along Mud Creek which is subject to permits from the Town. I doubt that you would be able to put a structure down at the bottom of that hill because you would be in the floodplains. If you want to elevate something to allow for flood proofing, as the engineers said, you want to spend the money, we can design it.

Mr. Brennan said yeah, we can build anything with the help of engineering, unless this Board made it a condition that the rear portion of the property can never be developed.

Mr. Weidenborner said Mr. Chairman, I just have one thing I want to clarify in her question. I have a feeling this is going to come from you guys if you'd like to ask the applicant. So, she asked a question about what makes this unique. I guess the question would be, what makes this not spot zoning, which you guys are not allowed to do. What is the difference between this property versus the property across the street if the neighbor across the street wanted to do the same thing and create a flag lot as long as he met twenty foot and the minimum sizes? I think that's kind of where she was going with that. I think that's going to be a question you guys are going to ask me next week that you might want to ask the applicant or his representation while they are here.

Mr. Brennan said spot zoning is the legislative act of essentially rezoning one parcel of property just for one purpose. It's generally considered to be illegal. You're not supposed to just rezone one person's property. The legislator is not supposed to take an action just to benefit one person, so you couldn't say let's make this parcel industrial. This isn't spot zoning, in fact, the zoning code provides for area variances. I wouldn't even say that what we're doing here is trying to circumvent or get an exception from the code. The variance procedure is part of the zoning code. This complies with the zoning code. If this Board approves the variance, if you find the benefit to the owner outweighs any harm to the community, you approve this variance then we comply with the code. So, this is not spot zoning. That's a different concept, and also that would generally apply to uses and this is keeping what the uses are permitted.

Mr. Yurch then asks if there are any more comments from the public.

Mr. Dispenza said I just wanted to point one thing out for you. I don't know if you have ever been in our neighborhood and seen it. When I sit on my front porch, and I look left or right I don't see a house in front of me. This lot is owned by the Fafone's, and they are building a house on it right now. The house is a 100 feet where the garage starts from the road. If these houses are consistent, they have to be way further back then where they are tentatively put in there now. So, he is going to look out his front yard and he is going to see a house right there fifteen feet off the property line. I don't know if they are listening online or not but that would lower my property value. It would certainly lower what I thought about the neighborhood. His argument that it doesn't affect us, how many thousands of dollars do each of us feel we lose by having something like that on the street. I live across the street, how are you going to prevent me from seeing that house back there?

Mr. Brennan said we'd be happy to put in screening.

Mr. Dispenza said what is screening?

Mr. Brennan said we could do vegetative screening. We could do trees, we could do shrubs, we could do anything that this board feels appropriate in order to prevent any harm to the neighbors. You can do that without our consent, but we would consent to it anyways because we want to build a project that is good for the neighborhood. I'll just touch on the issue of property values. That may be a valid consideration of what effect this could have on property values, but I would actually say there is really no proof in front of this Board that this specific area variance whether or not we can have a lot that doesn't fully comply just with the minimum lot width whether that would somehow lower the values of the neighborhood. I don't think that that's a fact that's on the record that this Board should consider in not making a determination. Not that that's not a valid point but I don't think that's something that should be considered.

Mr. Yurch said if there are any other comments they must be directed to the Board.

Mr. Coon said is the storm drain depicted here anywhere? The storm drain runs on this side of the street. There is also the pipe that drains the storm drain runs somewhere back here and empties out back here. That might be considered a seasonal waterfall by some not by me, but my question here is that going to dictate where they can put these houses? So, they are going to be right back here asking for another variance, because they can't build on top of the storm drain and they can't put a basement in without rerouting the storm drain, which is more costs to you which ultimately is more cost to us. I believe that is something that should be considered before there is approval for this change. I think originally, and I'm just guessing, the storm drain was put in based off ***in audible*** so that is something someone has to look at.

Mr. Yurch said that would definitely be something the Planning Board would look at.

Mr. Weidenborner said as the engineer said you can do anything with the right amount of money.

Mr. Kamar said I believe the drainage that he is referring to is this line right here. What I'd like to say is that we're not proposing houses we are proposing a lot split. We are not proposing site

plan approval. This is a variance, and we are not asking can this be done except for can this be done with regards to the lot split. Engineering wants houses, drainage, infrastructure that can all be handled with an obligation that comes in for a building permit when we are building on these lots. We are not asking to build on these lots.

Mr. Yourch said tonight is all about the variance they are asking for and nothing about the Planning Board. It's just dividing two to three.

Mr. LeBlond said I just don't understand why there can't be one home built on the two lots. If tonight, this is all about, is it more of a benefit for you if you could sell the other two lots. How much money did that bring in? I don't know.

Mr. Yourch said please direct your questions to us and we are only dealing with turning two into three.

Mr. LeBlond said turning two into three, do we have a map here tonight that shows the other existing buildings in Pheasants Crossing? I think you would see if you imagine these three lots, it doesn't fit in with all the other buildings in Pheasants Crossing. Is there a satellite view of all the homes and how these three lots, any of these proposed structures, even though we are not talking about proposed structures, would look in Pheasants Crossing? Do we have that here?

Mr. Yourch said that doesn't impact us from going two to three. I understand what you are saying, I truly do.

Ms. Binnix said we have a map of all of the current lot configurations.

Mr. LeBlond said okay, but the homes on the lots?

Ms. Binnix said no.

Mr. LeBlond said and how this is proposed even though we aren't talking about structures.

Mr. Yourch said we understand. Any other comments from anyone? Ok then I will leave the public hearing open and move on to the continuation.

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #0301-23

**Fowler Family Trust
6176 Hunters Drive
Farmington, N.Y. 14425**

Area Variance

■ A motion was made by MS. BINNIX, seconded by MS. COCHRANE, that the reading of the following State Environmental Quality Review (SEQR) resolution be waived, and that the resolution be approved as submitted by the Town staff:

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
SEQR RESOLUTION—TYPE II ACTION**

ZB #0301-23

APPLICANT: Fowler Family Trust, 6176 Hunters Drive, Farmington, N.Y. 14425

ACTION: Requesting an area variance to the provisions contained in Chapter 165a, Attachment 1, Schedule 1 of the Farmington Town Code.

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

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (21) of the SEQR Regulations.

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

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

The above resolution was offered by MS. BINNIX and seconded by MS. COCHRANE at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, March 27, 2023. Following discussion, the following roll call vote was recorded:

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

Motion carried.

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

Motion carried by voice vote.

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
CONTINUATION**

ZB #0301-23

APPLICANT: **Fowler Family Trust
6176 Hunters Drive
Farmington, NY 14425**

ACTION: **Request an Area Variance to the provisions contained within Chapter 165a, Attachment 1, Schedule 1 of the Town of Farmington Code. The Applicant wishes to create a third lot, from two previously re-subdivided lots, 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 within the RS-25 Residential Suburban Zoning District.**

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has tonight opened a public hearing upon the above referenced Action; and

WHEREAS, a referral was submitted by Town Staff to the Ontario County Planning Board for its review and recommendation under the provisions of Section 239-l and -m of the New York State General Municipal Law (hereinafter referred to as GML) to be acted upon by said County Board at its’ April 12, 2023 meeting; and

WHEREAS, the Board, in accordance with the provisions contained within Section 239-m of the GML, may not act upon an application when the County Planning Agency has not first acted upon the referral sent to it, and within the time period provided for such county review.

NOW THEREFORE BE IT RESOLVED that the Board does hereby table further deliberation upon the above referenced Action to its’ next scheduled meeting on Monday, April 24, 2023, commencing at 7:00 p.m.

BE IT FINALLY RESOLVED that copies of this resolution are to be provided to the Applicant and the Applicant’s Attorney.

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, March 27, 2023. Following discussion, the following roll call vote was recorded:

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

Motion carried.

6. OTHER BOARD MATTERS

Mr. Brand said that due to grievance day the Town Board is asking the Zoning Board to change their May 22, 2023, meeting date if applications are received.

Mr. Yourch asked the Board members if moving the meeting date to May 15, 2023, worked for all present Board members.

All present members agreed to the change.

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

None

8. DIRECTOR OF DEVELOPMENT UPDATE

- Happy to announce that our Planning Board Chairman, Ed Hemminger, will be awarded next month Planning Board Chairman of New York State. It reflects twenty-five years of volunteer work with the community and various boards.
- Tomorrow night's Town Board meeting they will be acting on SEQR for the Power's Property Incentive Zoning Project.
- Waiting to hear from the GLN project to be able to move forward.

10. ZONING OFFICER UPDATE

- Next Meeting will be April 24, 2023
- Open Clerk of the Board of Position

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, April 27, 2023, 6 p.m. to 7 p.m.: State Environmental Quality Review—SEQR

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 be held on Monday, April 24, 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 8:23 p.m.

Respectfully submitted,

L.S.

Sarah Mitchell

Clerk *Pro Tem* of the Zoning Board of Appeals