

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, April 24, 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*
Tod Ruthven
Jody Binnix
Kelly Cochran
Tom Lay

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

Staff Present via Zoom:

Peter Ingalsbe, Town Supervisor

Applicant’s Present:

James Fowler 6176 Hunters Drive, Farmington on behalf of the Fowler Family Trust
Daniel Brennan Esquire, Davidson/Fink, Rochester Applicant’s Attorney

Others Present:

Maureen Dispenza, Pheasants Crossing, Farmington
Patrick Dispenza, Pheasants Crossing, Farmington
Lou DiFrancesco, Pheasants Crossing, Farmington
Peter LeBlond, Pheasants Crossing, Farmington
Heather LeBlond, Pheasants Crossing, Farmington
Maureen Chu, Pheasants Crossing, Farmington
Linh Chu, Pheasants Crossing, Farmington
Greg Coon, Pheasants Crossing, Farmington

Virtually via Zoom:

Bonnie Fowler 6176 Hunters Drive, Farmington
 Andrew Moyer, Pheasants Crossing, Farmington
 Stephanie Constantino, Pheasants Crossing, Farmington
 Others who did not identify themselves

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 MARCH 27, 2023

■ A motion was made by MS. COCHRANE seconded by MS. BINNIX, that the minutes of the MARCH 27, 2023, meeting be approved with MR. RUTHVEN abstaining.

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

**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 does the applicant have any new information for tonight.

Daniel Brennan with Davidson/Fink on behalf of the applicant said yes. We have provided the Town with some additional documentation. (Items were distributed to the Board Members.) There is actually one other piece of information. It is not a substantive change, but I know there was some confusion about what exactly we were proposing since our prior renderings of the proposed subdivision showed the outlines of buildings. This current application we are not proposing that any new single-family homes being built on the property. We are not, in fact, proposing that anything would be built at all. We are simply proposing an area variance to allow the subdivision of land which would allow the property to be sold. What I would like to submit to the Board for clarification is the proposed subdivision plan. It's just slightly modified for clarification and does not show any proposed houses or buildings on any of the properties because none, in fact, are proposed. I have some extra copies for the members of the public as well. The first document that I handed out is a copy of our supplemental letter and there are two documents attached to that letter and they have been labeled exhibit F and exhibit G. Exhibit F is a letter to the Board from a licensed real estate broker apprising on the impact of the proposed subdivision would have on property values in the neighborhood. Exhibit F is the letter from Mr. Cretekos and in this letter, he provides the opinion that the additional lot, the third lot, the middle lot that requires the area variance, is in keeping with the character of the neighborhood and would not likely have an adverse impact on the neighborhood including on the property values in the neighborhood. Labeled exhibit G is a letter from Mr. LeGrett from Midland Appraisal Associates. Mr. LeGrett is a licensed appraiser, and he has provided the determination based on his thirty-nine years of appraisal experience in the area that the proposed subdivision would not negatively impact the marketability or value of the other lots, the existing homes in the neighborhood at all. We have provided this proof in response to some of the comments that we heard from members of the public

and the Board at the last public hearing. We think these two exhibits address those concerns. Finally, I'd like to go through some of the issues we have with the proposed draft resolution. I think for the record we need to address some of the factual inaccuracies that are contained in the draft resolution. I know the Board hasn't voted on it yet, but I think some of these issues are important to address whether or not you plan to adopt this resolution or not. The first thing to clarify is that the Fowler Family Trust is the applicant today. Jim Fowler is not an applicant before the Board. He is not proposing or requesting any area variances from the Board. Jim Fowler does not own the property and the Fowler Family Trust, the applicant in today's application, did not own the property in 1998 when the property was originally subdivided into the existing lots that we have in the neighborhood today. In fact, the Fowler Family Trust did not even exist in 1998. Any discussion about whether or not the applicant failed to comply with conditions of a variance that was approved in 1998 would be completely irrelevant. In fact, I would say that would be both arbitrary and capricious to consider whether or not the applicant failed to comply with the conditions since the applicant was not legally in existence at the time those variances may or may not have been approved. I don't have any direct knowledge of that. The other issue that I wanted to address is that we've provided that revised subdivision plan and again there is discussion in this proposed draft resolution about the location of homes, about the location of accessory structures. No structures are being proposed. No structures are part of this application. It would be improper for this Board to consider where any of those structures might be. We are entitled to subdivide the land to sell it to someone that can decide to sit on it and not build on it in perpetuity or until the Town Board decides to amend the zoning code. It is not proper for this Board to consider whether or not any structures that might be built in the future would comply with the code since we haven't proposed them yet. One other issue that I wanted to address was the fact that with our initial application we provided you with some examples of some other flag lots or lots that meet the definition of a flag lot under the code that are already existing in the Town. We provided you with evidence of those flag lots to meet the first legal standard which is whether or not the proposed variance is in keeping with the existing character of the neighborhood or whether it is likely to create an undesirable change. We are not saying that the existence of these other flag lots creates a precedence that this Board needs to adhere to. We are only saying that there are other existing flag lots, not just in the Town of Farmington, but in this particular neighborhood and so by creating a new flag lot we are not changing anything. I would argue that we are certainly not creating an undesirable change in the neighborhood but because there are already numerous flag lots there is no change at all. This is already a neighborhood characterized by flag lots. I think that's an important distinction to make because I know that this draft resolution brings up the fact that no new flag lots have been created since the new definition of flag lot was inserted into the code. While we appreciate that fact it doesn't go to prove whether or not it would have an undesirable change in the condition of the neighborhood. Under the third legal standard whether or not the requested variance is substantial it notes the percentage of change from the minimal lot width that we are requesting while I don't argue with that I think we stated on the record at the last hearing that the applicant is more than happy to reconfigure the proposed subdivision to move those lot lines around. We have 300 feet of lot frontage and so what we could do is make all of the lots equal and have a 100-foot lot frontage on all three lots instead of the proposed configuration. This Board could

adopt a condition that the applicant changed the proposed subdivision to provide 100 feet of lot width for each of the three proposed lots. We wouldn't object to that, and I believe that would be a reasonable condition. If the concern of the Board that what we are proposing is substantial because the center lot has a too narrow of a lot frontage we are able to change that. You are able to change that and so I don't think that would be a reason to deny the application. We certainly would consent to a condition to change the configuration. With that I think I have addressed all the issues that we wanted to raise tonight. I would like to take questions from the Board or members of the public if anyone has any.

Mr. Yourch then asks for questions from the Board.

Mr. Ruthven said you are talking about 100 feet, are you going to provide us with those drawings?

Mr. Brennan said we absolutely could if you'd like. Actually, our engineer has already created them. I don't have them here with me. There was some discussion internally before we made this application of which configuration would be more amendable to the Board. The applicant doesn't care what the configuration was. This was the one we initially proposed because we thought it would be the best configuration that was most likely to meet the area variance standards, but we are more than happy to provide you with an alternative that you could adopt if you chose to do so.

Mr. Ruthven said then they would all be side by side with nothing behind.

Mr. Brennan yes.

Mr. Yourch said but right now we are looking at what was presented to us as it stands today.

Mr. Brennan said I would agree but the application in front of you is for an area variance to basically get a variance from the minimal lot width right and so you could say as a condition of your approval all three of these the most you are able to grant is 100-foot minimal lot width for each of the three lots. We would not object to that. It would be a reasonable condition that we could comply with. I certainly understand your point you saying they'd be separate applications, but I don't think we need to look at it that way given the relief we are requesting. We are not saying that we want a specific subdivision, right, we still have to go to the Planning Board for subdivision approval. We are just asking for your permission to get a variance from the minimal lot width requirement under code. You can approve that however you'd like.

Mr. Ruthven said John would that application have to change because it's specific to the thirty feet?

Mr. Weidenborner said they applied for minimum lot width based on their site plan. They could submit a new site plan with different lot widths, obviously we would tie this to a specific lot. We wouldn't just say this is as small as you could go because then they

could do that with every lot in there. Normally we would tie it to this site plan, since this is the only site plan that we have.

Mr. Lay said the current minimum is 125 feet, so then there would be three lots that would be under twenty-five feet.

Mr. Yourch said any other board comments. Hearing none he then asked for comments from the public.

Maureen Dispenza of 6237 Pheasants Crossing said I just have a few questions. They are saying that they are not proposing any building or anything like that and they are simply looking for three lots right now instead of two. If they are not proposing homes, I guess my question is, what else can be built there? Why else would you subdivide? Mr. Fowler sent all of us a letter asking for our input when this was all starting wanting to know what our thoughts were on going from two lots to three lots to a neighbor, I don't know if he is online tonight, he had responded that with that third lot he and his wife were going to build a 1400 square foot home. I think I gave that to Sarah, which is far below the rest of the neighborhood. I think most of the homes are about 2000 square feet or more. That would be a concern for us residents because we want, again it's all about maintain the value and integrity of the neighborhood. My second question is, did any of you folks get to drive by our neighborhood since the meeting?

The Board members all responded yes.

Mr. Dispenza said so you can see why we have a few concerns. I know the attorney keeps saying that we have flag lots in our neighborhood, but I thought at the last meeting it had been established there aren't flag lots in our neighborhood. There is some crazy side street behind the neighborhood that maybe by definition, I'm not a zoning person, is that what they are considering flag lots?

Mr. Weidenborner said I am going to assume that's what they are doing but I don't know.

Ms. Dispenza said that is not in our neighborhood, not when you look at the Pheasant's Crossing development as a whole. On a final note, you guys were so good to me last time I don't want to gobble up your whole night here, but I read your conditions for variances, and I don't see how this application qualifies. They have to meet so many conditions and my biggest one goes back to the hardship clause and maybe Mr. Fowler wasn't the owner of this specific land, but his family was. When you are claiming hardship, it is hard for our neighborhood to swallow the fact that there isn't some ownership in this because it is still family owned. Someone in their family owned this land and consciously made the decision to keep that lot for whatever the reason and now we potentially are going to suffer the consequences. They could have had absolutely any lot in that neighborhood. I wish I could come up with more. I've done the best I could do. I hope you will consider the impact on my people here before you make a decision. Thanks for your time I appreciate it.

Mr. Yurch said anyone else from the audience here have comments.

Greg Coon of 6250 Pheasants Crossing said, and I am next door to this lot. Maureen touched on a few points I wanted to cover but just some of the stuff his lawyer brought up that I wanted to ask about. Wouldn't the variances that were originally part of the conditions of dividing up the neighborhood even though the land has switched to the Fowler Trust wouldn't those variances convey with the switching of land? I don't know, I'm not a lawyer.

Mr. Yurch said I would have to ask the Town to answer that.

Mr. Brand said the variance runs with the land.

Mr. Coon right so the variances are all in place. It sounded to me like they were saying the variances don't really apply because the land has changed from an individual member to the Family Trust, or something like that, and it's not Mr. Fowler who is asking for it specifically, but the variances are still in place. It somewhat sounded like they were saying they weren't. I'm not a lawyer so I don't know. Now they are also trying to be very specific. They are trying to divide the land, that's fine, and they are not tying it to building structures which as Maureen pointed out and we all saw the letter, you've seen the letter I believe, that was part of the letter to plop two houses on the big lots and their house on the back lot. Now they are back peddling. What would be if we moved forward and allowed them to divide the land? It's just property, it's just land. Somebody is going to buy that land. What if they put a house up? How do we continue to be able to protect our neighborhood in the way the neighborhood has been built and the way it was originally structured to be built. In the future, is there a process for that, we would be able to preview the houses that are going to be built and make sure they are being built the proper way. I'm going to have to worry about standoff on the edge of my property. If you divide the lots with 100-foot widths that takes a lot of land away from the edge of my property where they are going to possibly want a variance or approval to put their house closer to my house. We bought a house, it's a nice house, a large house on a very large lot. That's why we bought it. Several people talked about that at the last meeting. We see these houses; these neighborhoods go up and people want big houses on small lots. That's fine if that's what you want. That is not what our neighborhood was established for. It was established as a decent house on a big lot. My neighbors all know I have three dogs. If you drove by you may have heard my dogs barking at you when you drive by. I apologize if you did. That's what we want. We want to be able to have that big lot. We want space out back. We want to have space next door. That's how the neighborhood was planned out. This is going to change that aspect of the neighborhood. While the realtor might say it won't change the value, I think it would. If you want to put up a trust fund of money and after ten years, the value hasn't gone down cause of the impact of dividing those lots and building houses in the future and if it does bring the value down the trust fund of money comes to us, I'm fine with that. Otherwise put your money where your mouth is. I have to question a realtor who is saying the value isn't going to go down when you are dividing one lot into three lots. It is going to have an impact on the value of our houses. That pretty much covers everything because Maureen covered a

lot of it. A. they stated they were going to build their house B. they stated the plan was to build houses on all three lots. I believe the variance carried over and I'm very concerned about the process if you do divide it, if you choose to divide it, of how we will make sure those houses stay in compliance with the rest of the neighborhood and how our houses have been built.

Mr. Yurch said any other comments from the audience here?

Mr. Ruthven said what is the road frontage of your house?

Mr. Coon said I couldn't tell you off the top of my head. I do know that it is much wider in the back than it is in the front. We have sort of a pie shaped lot.

Mr. Yurch then asks for comments from the people attending online. Hearing none he then closed the public hearing and moved on to the deliberations and decisions.

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 MR. RUTHVEN makes a motion to waive the reading of the complete Area Variance Findings and Decision resolution be waived, and that the Chairperson read aloud the Determination of the Zoning Board of Appeals.

Mr. Yurch asks if anyone in the audience objects to that. Hearing none he asks if anyone online objects to that. Hearing none he moves to the determination.

Mr. Brand said I would just like to make a clarification of a point. You have closed the public hearing tonight. You have sixty-two days to make a decision. If you feel you received new information tonight whether it's a map that was submitted or whether it was the applicant telling you he would provide you an alternative map that he wanted you to consider, do you really think you should be acting on this tonight? Should you wait to get that information, consider it, and then make a decision?

Ms. Binnix said are you talking about if they just want to divide the land into three lots with the equal frontage, is that the map we should have had?

Mr. Brand said that was one of the alternatives that we discussed here tonight. I don't know if you have that map, even if you do have a map, your Rules and Procedures say don't consider acting on something you receive the night of a public hearing. There is a reason right there to not act on this tonight. You may also want to review the public hearing record now that you have had the additional comments from both parties and take that into consideration in your decision.

Mr. Yourch said I will take a motion the continue this.

Mr. Ruthven makes a motion to continue the deliberations and it is seconded by Ms. Cochrane.

Mr. Brand said and to continue it until your next meeting which is

Mr. Yourch said May 15th.

Mr. Brand said that is because you were asked to switch with the Town Board because that Tuesday is Grievance Day. I just want everyone to understand why it's a different date than what our normal date would be.

Mr. Weidenborner said so you did close the public hearing, correct?

Mr. Brand said yes, he moved to close the public hearing. So you have sixty two days from tonight. You can make a decision at the next meeting, or you can make a decision following that because you would still be within the sixty-two days, if my math is right.

Mr. Yourch said maybe the applicant can come up with the drawings, work with the Town and go from there.

Mr. Delpriore said Tod you made a motion to waive the reading and approve the resolution as written but it sounds like you are going to go a different direction, but that motion needs to be dealt with first.

Mr. Yourch said no one seconds it.

Mr. Delpriore said I don't know if it was seconded it or not.

Mr. Yourch said no.

Mr. Ruthven said no one seconded my motion to waive the reading.

Mr. Yourch said the motion was carried to continuation the deliberations within the next sixty-two days allowing the other information to get to us.

**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 Board at tonight’s meeting, has received additional information from the applicant’s attorney during the public hearing upon the above referenced application, for the Board’s consideration; and

WHEREAS, the Board’s adopted 2023 Rules of Procedure, requires such additional information to be accepted and any deliberations thereon continued to the next scheduled public meeting.

NOW THEREFORE BE IT RESOLVED that the Board moves to tables further deliberations upon the above referenced Action; and

BE IT FURTHER RESOLVED that the deliberations upon the proposed area variance are hereby continued to the Board’s scheduled meeting on Monday, May 15, 2023.

The above resolution was offered by MR. RUTHVEN and seconded by MS. COCHRANE at a regularly scheduled meeting of the Zoning Board of Appeals held on Monday, April 24, 2023. Following discussion, the following vote was recorded:

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

Motion carried.

6. OTHER BOARD MATTERS

None

7. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

Ms. Dispenza said I have never gone through this before. Based on the new information, it’s been closed for public comment, but we just got it like you just got it so now the public doesn’t have a chance to do their due diligence, like you folks are going to do, and have the opportunity to respond. Am I right? So let’s say for whatever reason you folks choose to approve this request then we would have to appeal and go on the defense. I’m just trying to understand the process.

Mr. Brand said unfortunately the public meeting was closed tonight and we can’t take anymore testimony on the application.

Ms. Dispenza said so we just have to wait for the outcome but then we could appeal it?

Mr. Brand said absolutely.

Mr. Weidenborner said that's the same thing for them too. It's not just you, they can't give anymore input either. The Board will make their decision.

Mr. Brand said we are not going to get anymore letters from any realtors. We are not going to get anymore letters from any appraisers. We are going to get one map that shows how three lots with 100-foot frontage each. Then that gives us, staff, the opportunity to review and compare it to what the setbacks would be and what the maximum size homes that would be allowed.

Ms. Binnix said but we as the Board could ask the staff of the Town questions.

Mr. Brand said yes.

Ms. Dispenza said thank you for all your time.

8. DIRECTOR OF DEVELOPMENT UPDATE

- Working on updating Chapter 9 of the Town Code entitled Boards, Committees, and Commissions. There are some Boards that haven't been identified in the chapter and the Zoning Board is one of them. We will be drafting up another article to the chapter and presenting it to you. It is just formatting that you are one of the Boards within the Town and these are your duties.
- May 4, 2023, in this room and online is the public information meeting on the Transportation and Alternatives Program on the sidewalk project. It is a \$2.2M project. It's a two-phase project.
- I have not had any movement from the developers for the two projects on State Route 96 for the Farmington Market Center Project and the GLN Project.
- Conservation Board did an adopt-a-highway project on State Route 332.

10. ZONING OFFICER UPDATE

- Next Meeting will be May 15, 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, May 15, 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 MR. LAY, that the meeting be adjourned.

Motion carried by voice vote. The meeting was adjourned at 7:39 p.m.

Respectfully submitted,

_____ L.S.

Sarah Mitchell

Clerk *Pro Tem* of the Zoning Board of Appeals