

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS
Monday, January 23, 2017, 7:00 p.m.

APPROVED MINUTES

The following minutes are written as a summary of the main points that were made and the actions taken at the Town of Farmington Zoning Board of Appeals meeting.

Board Members Present: Timothy DeLucia, *Chairperson*
Cyril Opett
Nancy Purdy
James Russell
Thomas Yourch

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning
James Morse, Town of Farmington Code Enforcement Officer

Applicants Present:
Brennan Marks, P.E., Marks Engineering, 42 Beeman Street, Canandaigua, N.Y. 14424
Michael Pignato, D.D.S., 32 Crest View Drive, Rochester, N.Y. 14625
Joel Shenton, 1119 Payne Road, Farmington, N.Y. 14425
One person with Mr. Shenton who did not sign in

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After everyone recited the Pledge of Allegiance, Mr. DeLucia noted that copies of the evening’s agenda were available on the table at the door.

Mr. DeLucia said that the meeting would be conducted in accordance with the adopted Zoning Board of Appeals Rules of Procedures for all public meetings.

2. APPROVAL OF MINUTES OF DECEMBER 19, 2016

■ A motion was made by MS. PURDY, seconded by MR. OPETT, that the minutes of the December 19, 2016, meeting be approved.

Motion carried by voice vote.

3. LEGAL NOTICE

Mr. DeLucia attested that the following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper (the Town's official newspaper) on January 15, 2017, that it was posted upon the Town of Farmington website (www.townoffarmingtonny.com), and that it was posted upon the Town Clerk's bulletin board in the foyer of the Town Hall:

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 23rd day of January, 2017, commencing at 7:00 p.m. at the Farmington Town Hall, 1000 County Road #8 in the Town of Farmington, Ontario County, New York to consider the following applications:

ZB #0101-17: JOEL SHENTON, 1119 PAYNE ROAD, SHORTSVILLE, N.Y. 14548: Request an area variance to Article IV, Chapter 165-35A to the Town of Farmington Codes. The applicant wishes to locate an accessory structure 14 feet from the front property line (a minimum of 60 feet front setback is required). The property is located at 1119 Payne Road and zoned A-80 District.

ZB #0102-17: JOEL SHENTON, 1119 PAYNE ROAD, SHORTSVILLE, N.Y. 14548: Request an area variance to Article V, Chapter 165-58A to the Town of Farmington Codes. The applicant wishes to locate an accessory structure in the front yard (accessory structures are to be located in the rear yard). The property is located at 1119 Payne Road and zoned A-80 District.

ZB #0103-17: MICHAEL PIGNATO, 32 CREST VIEW DRIVE, ROCHESTER, N.Y. 14518: Request an area variance to Article IV, Chapter 165-35A of the Town of Farmington Codes. The applicant wishes to create Lot #1, Michael C. Pignato Preliminary Subdivision Plan consisting of 36,058 square feet (a minimum lot size of 40,000 square feet is required). The property is located at the northeast corner of Perez and Hathaway Drive intersection and zoned General Business/Major Thoroughfare Overlay District.

ZB #0105-17: MICHAEL PIGNATO, 32 CREST VIEW DRIVE, ROCHESTER, N.Y. 14518: Request an area variance to Article IV, Chapter 165-35A to the Town of Farmington Codes. The applicant wishes to create Lot #2, Michael C. Pignato Preliminary Subdivision Plan consisting of 31,024 square feet (a minimum lot size of 40,000 square feet is required). The property is located at the northeast corner of Perez and Hathaway Drive intersection and zoned General Business/Major Thoroughfare Overlay District.

ZB #0105-17: MICHAEL PIGNATO, 32 CREST VIEW DRIVE, ROCHESTER, N.Y. 14518: Request an area variance to Article IV, Chapter 165-34 of the Town of Farmington Codes. The applicant wishes to locate an office building with a 41.3 front setback from the NYS Route 332 property line (a minimum of 100 feet is required). The

property is located at the northeast corner of Perez and Hathaway Drive intersection and zoned General Business/Major Thoroughfare Overlay District.

SAID BOARD OF APPEALS WILL MEET at said time and place to hear all persons in support of such matters or any objections.

Tim DeLucia, Chairperson
Zoning Board of Appeals
Town of Farmington

4. CONTINUED BUSINESS

None

5. PUBLIC HEARINGS

ZB #0101-17	Joel Shenton 1119 Payne Road Farmington, N.Y. 14425	Area Variance
--------------------	--	----------------------

The applicant is requesting an Area Variance to Chapter 165, Article IV, Section 35. A. of the Town of Farmington Codes. The applicant wishes to locate an accessory structure—a pole barn with an attached lean-to—14 feet from the front property line. The Town Code requires a minimum setback of 60 feet from the front property line for an accessory structure. The property is located at 1119 Payne Road and is zoned A-80 Agricultural District.

Mr. DeLucia declared the Public Hearing open.

Mr. Shenton presented his application.

He explained that because of the contours and existing features of the property there is not an alternate location on the site to fit the proposed pole barn without removing mature trees and affecting the horse pasture. He said that there is very little space behind his home for the pole barn and that the existing gravel driveway is in an excellent position to provide access to the barn at the proposed location as depicted upon the plan.

Mr. Shenton said that the barn would have no impact on the surrounding agricultural area. He noted that there are no nearby neighboring residences and that he owns the property with road frontage on both sides of Payne Road. He said that the pole barn would not be detrimental to others.

Mr. Brand discussed proposed conditions of approval of the variance that had been included in a draft resolution for consideration by the members of the Zoning Board of Ap-

peals (ZBA). These included the distance of the pole barn from Payne Road, landscaping on the south and west sides of the pole barn, and site lighting which must comply with the Town’s Lighting Standards. Mr. Shenton said that he had no objections to these proposed conditions. Mr. Brand asked him to work with Mr. Morse—the Town Code Enforcement Officer—on the specific details. Mr. Shenton said that he would do so.

Mr. Shenton explained that an existing tree line and landscaping could also be used to provide landscaping around the pole barn.

Mr. Brand asked that rough grading around the pole barn be finished to provide a more attractive installation of the pole barn. Mr. Shenton agreed.

Mr. Morse asked that the exterior color scheme of the pole barn match the color scheme of the house. Mr. Shenton agreed.

Mr. Shenton asked about the next steps in the process. Mr. DeLucia explained that the board would deliberate on the application following the close of the Public Hearing. Mr. Morse said that Mr. Shenton or his contractor should come to the Building Department to obtain a Building Permit if the ZBA grants the variances.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

Mr. DeLucia then closed the Public Hearing on this application.

ZB #0102-17	Joel Shenton 1119 Payne Road Farmington, N.Y. 14425	Area Variance
--------------------	--	----------------------

The applicant is requesting an Area Variance to Chapter 165, Article V, Section 58. A. of the Town of Farmington Codes. The applicant wishes to locate an accessory structure—a pole barn with an attached lean-to—in the front yard portion of the lot. The Town Code requires accessory structures to be located in the rear yard portion of the lot. The property is located at 1119 Payne Road and is zoned A-80 Agricultural District.

Mr. DeLucia declared the Public Hearing open.

Mr. Shenton and Mr. Brand said that their comments as discussed in the previous application apply to this application, as well.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

Mr. DeLucia then closed the Public Hearing on this application.

ZB #0103-17 Michael C. Pignato Area Variance
32 Crest View Drive
Rochester, N.Y. 14625

The applicant is requesting an Area Variance to Chapter 165, Article IV, Section 35. A. of the Town of Farmington Codes. The applicant wishes to create Lot #1 of the Michael C. Pignato Preliminary Subdivision Plat, containing a total of 36,058 square feet. The Town Code requires a minimum lot size of 40,000 square feet in this zoning district. The property is located at the northeast corner of Hathaway Drive and Perez Drive and is zoned GB General Business District and MTOD Major Thoroughfare Overlay District.

ZB #0104-17 Michael C. Pignato Area Variance
32 Crest View Drive
Rochester, N.Y. 14625

The applicant is requesting an Area Variance to Chapter 165, Article IV, Section 35. A. of the Town of Farmington Codes. The applicant wishes to create Lot #2 of the Michael C. Pignato Preliminary Subdivision Plat, containing a total of 31,024 square feet. The Town Code requires a minimum lot size of 40,000 square feet in this zoning district. The property is located at the northeast corner of Hathaway Drive and Perez Drive and is zoned GB General Business District and MTOD Major Thoroughfare Overlay District.

ZB #0105-17 Michael C. Pignato Area Variance
32 Crest View Drive
Rochester, N.Y. 14625

The applicant is requesting an Area Variance to Chapter 165, Article IV, Section 34. of the Town of Farmington Codes. The applicant wishes to locate an office building with a 41.3-foot front setback from New York State Route 332 on proposed Lot #1 of the Michael C. Pignato Preliminary Subdivision Plat. The Town Code requires a minimum front setback of 100 feet from the right-of-way line for State Route 332. The property is located at the northeast corner of Hathaway Drive and Perez Drive and is zoned GB General Business District and MTOD Major Thoroughfare Overlay District.

Mr. DeLucia declared the Public Hearings open on ZB #103-17, ZB #104-17 and ZB #105-17 and explained that the hearings on these three applications would be held concurrently as they pertain to the same project.

Mr. Marks presented this application. Dr. Pignato also attended the meeting.

Mr. Marks explained that three Area Variances are being sought for the subdivision of a parcel of land to create two lots at the northeast corner of Hathaway Drive and Perez Drive, i.e.:

- Lot #1 to contain 36,058 square feet (a minimum of 40,000 square feet required by the Town Code)
- Lot #2 to contain 31,024 square feet (a minimum of 40,000 square feet required by the Town Code)
- A front setback of 41.3 feet from the right-of-way line of State Route 332 for a proposed office building (a minimum of 100 feet required from the right-of-way line by the Town Code)

Mr. Marks said that an existing medical office building would remain and that a new office building is planned on the proposed new lot. He said that the applicant seeks to subdivide the existing property to provide flexibility for further expansion.

Mr. Marks said that the proposed office building would align with the front setback of the existing structure. He also noted that the proposed building would be 20 feet farther back off Hathaway Drive than the nearby dental office building of Dr. Mattiaccio.

Mr. Russell asked if Dr. Pignato has a tenant for the proposed new building. Mr. Marks said that the tenant in the existing building may wish to relocate to the new building which would then provide available space in the existing structure.

Mr. Brand explained that the subdivision application was presented to the Planning Board on January 18, 2017, and that the Planning Board continued the application pending the decision of the ZBA on the three variance applications. He advised Mr. Marks to revise the Preliminary Subdivision Plat to reflect the variances if the ZBA approves the applications.

Mr. Brand explained that the existing structure was constructed prior to the acquisition of additional land by New York State for the expansion and improvements to State Route 332. He said that the existing structure did not require a setback variance at the time of its construction.

Mr. Brand said that the applicant's plan is consistent with the existing structures on Hathaway Drive. He noted that the ZBA granted variances to allow a shorter setback from State Route 332 for Dr. Mattiaccio's office building and for the proposed dental office of Dr. DiMartino.

Mr. Brand said that the applicant's proposal to combine the driveways of both the existing and proposed structures to provide only one access point off Hathaway Drive is a positive aspect of the application.

Mr. Brand also noted that the applicant understands that he must prepare a Site Plan for Planning Board review and approval prior to the issuance of a Building Permit. He also reported that the Ontario County Planning Board had no issues or concerns with the Area Variance applications because there would be no access from State Route 332.

Mr. Brand said that topics for discussion by the Planning Board at the Site Plan stage include landscaping along the future sidewalks to be installed along Hathaway Drive by the developer of the proposed Farmington Gardens Phase 2 project, and the location and treatment of the dumpster enclosure between the two office buildings.

Ms. Purdy asked to confirm that there would be no access onto State Route 332. Mr. Brand confirmed this.

Mr. Morse had no comments on the application at this time. He said that he would have comments at the Site Plan stage.

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application or had questions or comments. There were no further questions or comments from those in attendance.

Mr. DeLucia then closed the concurrent Public Hearings on these applications.

6. BOARD BUSINESS—DELIBERATIONS AND DECISIONS

ZB #0101-17 Joel Shenton Area Variance Findings and Decision

■ A motion was made MR. OPETT, seconded by MR. RUSSELL, that the reading of the SEQR resolution on this application be waived.

Motion carried by voice vote. The reading of the SEQR resolution on this application was waived.

■ A motion was made by MS. PURDY, seconded by RUSSELL, that the following resolution be approved:

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

ZB #0101-17

APPLICANT: Joel Shenton, 1119 Payne Road, Shortsville, N.Y. 14548

**ACTION: Area Variance to locate an accessory structure, a pole barn
with an attached lean-to, 14 feet from the Front Lot Line and**

within the Front Yard Area of the Lot. The property is located at 1119 Payne Road.

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 associated with the above referenced Action; and,

WHEREAS, the Action involves the granting of a single area variance for an individual setback for locating an Accessory Residential Structure within the Front Yard portion of an existing residential Lot.

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (12) 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.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the reading of the Area Variance Findings and Decision resolution on this application be waived.

Motion carried by voice vote. The reading of the Area Variance Findings and Decision resolution on this application was waived.

Mr. DeLucia reviewed the board’s determination and conditions of approval with the applicant. Mr. Shenton said that he agreed with the conditions of approval.

■ A motion was made by MR. OPETT, seconded by MR. RUSSELL, that the following resolution be approved:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

Applicant: JOEL SHENTON
1119 Payne Road
Farmington, New York 14425

File: ZB #0101-17
Zoning District: A-80 Agricultural
Published Legal Notice on: 1/15/17
County Planning Action on: N.A.
County Referral #: N.A.
Public Hearing held on: 1/23/17

Property Location: 1119 Payne Road, Farmington, New York 14425

Applicable Section of Town Code: Chapter 165, Article V, Section 35. A.

Requirement for which Variance is requested: The applicant wishes to locate an accessory structure, a pole barn with an attached lean-to, fourteen feet (14 ft.) from the front property line. The Town Code requires a minimum front setback of sixty 60 feet for a structure in this zoning district.

State Environmental Quality Review Determination: The granting of an area variance to enable the placement of an Accessory Structure upon an approved Lot is classified as a Type II Action under Part 617.5 (c) (12) 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 Environmental Conservation Law, article 8.

County Planning Referral Recommendation: A referral to the Ontario County Planning Board is not required for this application under the provisions of Sections 239-l & -m of the New York State General Municipal Law.

FACTORS CONSIDERED and BOARD FINDINGS

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. ___ Yes X No**

Reason: The Board finds that the character of the neighborhood is primarily open agricultural lands with single-family dwellings fronting along Payne Road. The Board also finds that this portion of Payne Road is very sparsely developed and that there are no residential dwellings located within several hundred feet of the subject site. The Board further finds that there is a pre-existing non-conforming structure, a barn, that is located in the Front Yard portion of the Lot. The Board further finds that the barn structure is located such that it screens the view of the existing dwelling and the proposed location of the accessory structure from the closest nearby properties to the south. The Board further finds that site topography and natural wooded land north of the proposed accessory structure location effectively screens the proposed location for the accessory structure from the only other nearby dwelling located north of the subject site. The Board further finds that across Payne Road from the site there are no residential dwellings. The Board further finds that the proposed setback of the accessory structure is similar to the setback

of the pre-existing non-conforming structure located on the site. The Board further finds that there are other Lots located in the neighborhood that have accessory structures, one of which is located in the Front Yard Area of the Lot. The Board, based upon these findings, determines that there will not be an undesirable change in the character of the neighborhood or a detriment to nearby properties resulting from the granting of the requested area variance.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance. Yes X No

Reason: The Board finds that the proposed location for the accessory structure will permit the property owner to use the existing driveway, thereby not resulting in the need for an additional curb cut along Payne Road. The Board further finds that the proposed location does not necessitate the removal of mature trees that are located elsewhere upon the Lot. The Board further finds, that the proposed location results in the least disturbance of earth on the Lot, given the topography of the Lot. The Board further finds that the proposed setback of the accessory structure complements another pre-existing non-conforming structure that is located on the Lot. The Board, based upon these findings, concludes that there does not appear to be a feasible alternative that would ultimately result in the elimination of a non-conformity with the Town's setback regulations when applied to this Lot.

3. Whether the requested variance is substantial. X Yes No

Reason: The Board finds that the requested area variance, to allow an Accessory Structure to remain within the Front Yard Setback portion of this Lot, is substantial. The Board finds that the proposed Accessory Structure located in the Front Yard portion of the Lot involves a variance of seventy-seven percent (+77%) greater from what the Town Code requires. The Board has consistently found that an area variance request that is fifty percent (50%) or greater of what is otherwise required by the Code is a substantial variance request. The Board finds that the applicant's request for a Front Yard Setback of 14 feet from the right-of-way line of Payne Road, does not increase the non-conformity that exists with the other pre-existing non-conforming accessory structure, the barn, that is located upon this Lot.

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes X No

Reason: The Board has given consideration to the criteria for determining significance, as set forth in Part 617.7 of the State SEQR Regulations, the information contained on Part I of the Short Environmental Assessment Form and has determined that the proposed Action is classified as a Type II Action. The Board, in making this Determination, in accordance with the provisions of Part 617, of article 8 of the New York State Environmental Conservation Law, has merely determined that the action of granting a single area

variance has been determined by the State of New York to not have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

- 5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. X Yes No**

Reason: The Board finds that the proposed placement of the subject Accessory Structure would be a self-created difficulty. The Board further finds, however, that it is relevant to the decision to approve the granting of the requested area variance with conditions that are deemed to protect the character of the neighborhood and not be detrimental to nearby properties.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs and making findings, determines that granting the requested area variance, to allow the Accessory Structure to be placed in the location identified, would be granting the minimum relief necessary and, therefore, approves the requested area variance subject to the following conditions:

1. The Front Setback of the nearest corner of the proposed Accessory Structure shall not be closer than 14 feet to the Front Lot Line (the right-of-way line for Payne Road).
2. The proposed new Accessory Structure shall be designed to complement the exterior treatment of the existing Principal Structure on the Lot.
3. There shall be a landscaping planting along the west and south sides of the new Accessory Structure to further reduce any potential adverse effect upon adjacent properties. Said landscaping plan to be reviewed by the Town Code Enforcement Officer and installed prior to the issuance of the Certificate of Compliance for the proposed new Accessory Structure.
4. All site lighting that is to be located upon the Accessory Structure is to comply with the Town's Lighting Standards contained in Chapter 165 of the Town Code.

The Board finds that granting the requested area variance would comply with the requirements in Section 267-b. 3. (c) of New York State Town Law, which states . . . “The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

BE IT FURTHER RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of

Farmington Town Code by finding justification for granting the minimum relief necessary.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action and that a copy thereof be provided to the Applicant.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0102-17 Joel Shenton Area Variance Findings and Decision

■ A motion was made MR. YOURCH, seconded by MR. OPETT, that the reading of the SEQR resolution on this application be waived.

Motion carried by voice vote. The reading of the SEQR resolution on this application was waived.

■ A motion was made by MR. RUSSELL, seconded by MS. PURDY, that the following resolution be approved:

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

ZB #0102-17

APPLICANT: Joel Shenton, 1119 Payne Road, Shortsville, N.Y. 14548

ACTION: Area Variance to locate an accessory structure, a pole barn with an attached lean-to, within the Front Yard Area of the Lot. The property is located at 1119 Payne Road.

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 associated with the above referenced Action; and,

WHEREAS, the Action involves the granting of a single area variance for an individual setback for locating an Accessory Residential Structure within the Front Yard portion of an existing residential Lot.

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Section 617.5 (c) (12) 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.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

■ A motion was made by MS. PURDY, seconded by MR. YOURCH, that the reading of the Area Variance Findings and Decision resolution on this application be waived.

Motion carried by voice vote. The reading of the Area Variance Findings and Decision resolution on this application was waived.

Mr. DeLucia reviewed the board’s determination and conditions of approval with the applicant. Mr. Shenton said that he agreed with the conditions of approval.

■ A motion was made by MR. OPETT, seconded by MR. RUSSELL, that the following resolution be approved:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

Applicant: JOEL SHENTON
1119 Payne Road
Farmington, New York 14425

File: ZB #0102-17
Zoning District: A-80 Agricultural
Published Legal Notice on: 1/15/17
County Planning Action on: N.A.
County Referral #: N.A.
Public Hearing held on: 1/23/17

Property Location: 1119 Payne Road, Farmington, New York 14425

Applicable Section of Town Code: Chapter 165, Article V, Section 58. A.

Requirement for which Variance is requested: The applicant wishes to locate an accessory structure, a pole barn with an attached lean-to, in the Front Yard portion of the Lot. The Town Code requires accessory structures to be located in the Rear Yard portion of the Lot.

State Environmental Quality Review Determination: The granting of an area variance to enable the placement of an Accessory Structure upon an approved Lot is classified as a Type II Action under Part 617.5 (c) (12) 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 Environmental Conservation Law, article 8.

County Planning Referral Recommendation: A referral to the Ontario County Planning Board is not required for this application under the provisions of Sections 239-l & -m of the New York State General Municipal Law.

FACTORS CONSIDERED and BOARD FINDINGS

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.** Yes No

Reason: The Board finds that the character of the neighborhood is primarily open agricultural lands with single-family dwellings fronting along Payne Road. The Board also finds that this portion of Payne Road is very sparsely developed and that there are no residential dwellings located within several hundred feet of the subject site. The Board further finds that there is a pre-existing non-conforming structure, a barn, that is located in the Front Yard portion of the Lot. The Board further finds that the barn structure is located such that it screens the view of the existing dwelling and the proposed location of the accessory structure from the closest nearby properties to the south. The Board further finds that site topography and natural wooded land north of the proposed accessory structure location effectively screens the proposed location for the accessory structure from the only other nearby dwelling located north of the subject site. The Board further finds that across Payne Road from the site there are no residential dwellings. The Board further finds that the proposed setback of the accessory structure is similar to the setback of the pre-existing non-conforming structure located on the site. The Board further finds that there are other Lots located in the neighborhood that have accessory structures, one of which is located in the Front Yard Area of the Lot. The Board, based upon these findings, determines that there will not be an undesirable change in the character of the neighborhood or a detriment to nearby properties resulting from the granting of the requested area variance.

2. **Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance.** Yes No

Reason: The Board finds that the proposed location for the accessory structure will permit the property owner to use the existing driveway, thereby not resulting in the need for an additional curb cut along Payne Road. The Board further finds that the proposed location does not necessitate the removal of mature trees that are located elsewhere upon the Lot. The Board further finds, that the proposed location results in the least disturbance of earth on the Lot, given the topography of the Lot. The Board further finds that the proposed setback of the accessory structure complements another pre-existing non-conforming structure that is located on the Lot. The Board, based upon these findings, concludes that there does not appear to be a feasible alternative that would ultimately result in the elimination of a non-conformity with the Town's setback regulations when applied to this Lot.

3. **Whether the requested variance is substantial.** X Yes No

Reason: The Board finds that the requested area variance, to allow an Accessory Structure to be placed within the Front Yard Setback portion of the Lot, is substantial. The Board finds that the proposed Accessory Structure located in the Front Yard portion of the Lot involves a variance of one hundred percent (+100%) greater from what the Town Code requires. The Board has consistently found that an area variance request that is fifty percent (50%) or greater of what is otherwise required by the Code is a substantial variance request.

4. **Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.**
Yes X No

Reason: The Board has given consideration to the criteria for determining significance, as set forth in Part 617.7 of the State SEQRA Regulations, the information contained on Part I of the Short Environmental Assessment Form and has determined that the proposed Action is classified as a Type II Action. The Board, in making this Determination, in accordance with the provisions of Part 617, of article 8 of the New York State Environmental Conservation Law, has merely determined that the action of granting a single area variance has been determined by the State of New York to not have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

5. **Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.** X Yes No

Reason: The Board finds that the proposed placement of the subject Accessory Structure would be a self-created difficulty. The Board further finds, however, that it is relevant to the decision to approve the granting of the requested area variance with conditions that are deemed to protect the character of the neighborhood and not be detrimental to nearby properties.

**DETERMINATION OF THE ZONING BOARD OF APPEALS
BASED UPON THE ABOVE FACTORS**

The Zoning Board of Appeals, after reviewing the above five proofs and making findings, determines that granting the requested area variance, to allow the Accessory Structure to be placed in the location identified, would be granting the minimum relief necessary and, therefore, approves the requested area variance subject to the following conditions:

1. The Front Setback of the nearest corner of the proposed Accessory Structure shall not be closer than 14 feet to the Front Lot Line (the right-of-way line for Payne Road).
2. The proposed new Accessory Structure shall be designed to complement the exterior treatment of the existing Principal Structure on the Lot.
3. There shall be a landscaping planting along the west and south sides of the new Accessory Structure to further reduce any potential adverse effect upon adjacent properties. Said landscaping plan to be reviewed by the Town Code Enforcement Officer and installed prior to the issuance of the Certificate of Compliance for the proposed new Accessory Structure.
4. All site lighting that is to be located upon the Accessory Structure is to comply with the Town’s Lighting Standards contained in Chapter 165 of the Town Code.

The Board finds that granting the requested area variance would comply with the requirements in Section 267-b. 3. (c) of New York State Town Law, which states . . . “The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

BE IT FURTHER RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code by finding justification for granting the minimum relief necessary.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action and that a copy thereof be provided to the Applicant.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0103-17 Michael C. Pignato Area Variance Findings and Decision
ZB #0104-17 Michael C. Pignato Area Variance Findings and Decision
ZB #0105-17 Michael C. Pignato Area Variance Findings and Decision

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the reading of the three SEQR resolutions for ZB #0103-17, ZB #0104-17 and ZB #0105-17 be waived and that the resolutions be blocked for concurrent approval.

Motion carried by voice vote. The reading of the three SEQR resolutions for ZB #0103-17, ZB #0104-17 and ZB #0105-17 was waived and the resolutions were blocked for concurrent approval.

■ A motion was made by MR. OPETT, seconded by MR. RUSSELL, that the following resolutions be approved:

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

ZB #0103-17

APPLICANT: Michael Pignato, 32 Crest View Drive, Rochester, N.Y. 14625

ACTION: Area Variance to subdivide a Lot by creating Lot #1 of the Michael Pignato Subdivision having less than the minimum Lot Area required for a Lot in the GB General Business Zoning District. The property is located at northeast corner of Perez Drive and Hathaway Drive.

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 associated with the above referenced Action; and,

WHEREAS, the Action involves the granting of a single area variance for creating a non-conforming Lot as part of an approved subdivision plat.

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

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

ZB #0104-17

APPLICANT: Michael Pignato, 32 Crest View Drive, Rochester, N.Y. 14625

ACTION: Area Variance to subdivide a Lot by creating Lot #2 of the Michael Pignato Subdivision having less than the minimum Lot Area required for a Lot in the GB General Business Zoning District. The property is located at northeast corner of Perez Drive and Hathaway Drive.

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 associated with the above referenced Action; and,

WHEREAS, the Action involves the granting of a single area variance for creating a non-conforming Lot as part of an approved subdivision plat.

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

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

ZB # 0105-17

APPLICANT: Michael Pignato, 32 Crest View Drive, Rochester, N.Y. 14625

ACTION: Area Variance to locate a proposed office building on Lot #1 of the Michael Pignato Subdivision having a smaller Front Setback from the right-of-way line for State Route 332. The proposed Lot #1 is located at the northeast corner of Perez Drive and Hathaway Drive.

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 associated with the above referenced Action; and,

WHEREAS, the Action involves the granting of a single area variance for creating a non-conforming Lot as part of an approved subdivision plat.

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

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0103-17 Michael C. Pignato Area Variance Findings and Decision

■ A motion was made by MR. YOURCH, seconded by MR. OPETT, that the reading of the Area Variance Findings and Decision resolution for this application be waived.

Motion carried by voice vote. The reading of the Area Variance Findings and Decision resolution for this application was waived.

Mr. DeLucia reviewed the board’s determination and conditions of approval with the applicant. Mr. Marks said that he agreed with the conditions of approval.

■ A motion was made by MR. RUSSELL, seconded by MR. YOURCH, that the following resolution be approved:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

Applicant: Michael Pignato **File:** ZB #0103-17

32 Crestview Drive
Rochester, New York 14625

Zoning District: GB General Business
and MTOD Major Thoroughfare Overlay
District
Published Legal Notice on: 1/15/17
County Planning Action on: 1/11/17
County Referral #: 6-2017
Public Hearing held on: 1/23/2017

Property Location: East side of Hathaway Drive, northeast corner of Perez Drive.

Applicable Section of Town Code: Chapter 165, Article V, Section 35. A.

Requirement for which Variance is requested: The applicant wishes to create Lot #1 of the Michael C. Pignato Preliminary Subdivision Plat, containing a total of 36,058 square feet. The Town Code requires a minimum of 40,000 square feet for a Lot in the GB General Business District.

State Environmental Quality Review Determination: The granting of an area variance to enable the subdivision of land to create an approved Building Lot is classified as a Type II Action under Part 617.5 (c) (12) 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 Environmental Conservation Law, article 8.

County Planning Referral Recommendation: A referral to the Ontario County Planning Board is required under the provisions of Sections 239-l & -m of the New York State General Municipal Law. The County, in referral #6-2017, makes no specific recommendation other than to grant the minimum relief necessary.

FACTORS CONSIDERED and BOARD FINDINGS

- 1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.** **Yes** **X** **No**

Reason: The Board finds that the character of the developing neighborhood is commercial office buildings fronting along the east side of Hathaway Drive and the west side of State Route 332, from Perez Drive north. The Board also finds that the character of the neighborhood along the west side of Hathaway Drive is both townhouse dwellings and undeveloped land. The Board further finds that the property to the north of the proposed site has recently been approved for development of a professional office building. The Board further finds that there is an existing office building on the Lot which, if this area variance is approved and the Town Planning Board grants subdivision plat approval, will result in a two lot Pignato Subdivision (Lots #1 and #2). The Board also finds that Hathaway Drive is to be extended north connecting with Mercier Boulevard in accordance with the

Town’s Official Corridor Plan Map and the Mercier Incentive Zoning Project, as has been recently amended. The Board further finds that the adopted Town of Farmington Comprehensive Plan Future Land Use Plan Map recommends professional office development along the strip of land located between Hathaway Drive and State Route 332. The Board, based upon these findings determines that there will not be an undesirable change in the character of the neighborhood or that the proposed subdivision of land, with a lot having less than the minimum lot size requirement will not be a detriment to nearby properties.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance. Yes X No

Reason: The Board finds that the proposed subdivision of land would enable the eventual development of the site that is constrained by the presence of Beaver Creek to the north and State Route 332 to the east. The Board further finds that the eventual development of a proposed medical office building on Lot #1 will eventually contribute to future traffic calming effects for motorists using Hathaway Drive. The Board also finds that having a subdivision of land with two similar sized buildings associated with the proposed commercial site development for Lots #1 and #2 creates a condition where there is a sense of neighborhood and not just another commercial strip development along the highway. Finally, the Board, based upon its review of the proposed preliminary site plan drawing finds that the applicant is proposing to share a driveway between what will be two buildings that will eventually be located upon this original Lot. The Board, based upon these findings, concludes that it would not be feasible to create another sized lot on the property for a medical office building, that would not ultimately result in yet another non-conformity with the Town’s minimum lot area requirements when applied to this site.

The Board, based upon these findings determines that granting the requested area variance, to subdivide the property as proposed on the drawings submitted with this Application, would be granting the minimum relief necessary.

3. Whether the requested variance is substantial. __Yes X No

Reason: The Board finds that the requested Area Variance is to allow the creation of a non-conforming Lot having a total of 36,058 square feet in area instead of a Lot having a minimum of 40,000 square feet in area involves a variance of nine percent (-9%) from the Town Code requirement. The Board has consistently found that a variance request that is fifty percent (50%) or greater of what is otherwise required by the Code is a substantial variance request.

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes X No

Reason: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQ Regulations, the information contained on Part I of the Short Environmental Assessment Form and has determined that the proposed Action is a Type II Action. The Board, in making this Determination, in accordance with the provisions of the New York State Environmental Conservation Law, article 8, has determined granting an area variance will not have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

- 5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Yes X No**

Reason: The Board finds that the subject site is an irregular shaped parcel of land, subject to additional zoning overlay regulations and that subdivision of any land on this site would most likely be subject to the need for area variance(s). The Board finds that maintaining as much as possible of the minimum Lot Area requirements in the Code for the proposed two proposed Lots fronting along Hathaway Drive is being proposed and that relief should be granted in the interests of the public.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs, finds:

- X** That the benefit to the applicant DOES outweigh the detriment to the health, safety and welfare of the Neighborhood or Community and, therefore, the requested Area Variance is GRANTED WITH THE FOLLOWING CONDITIONS:
1. The Zoning Board of Appeals does hereby grant an Area Variance from the Town Code requirements for the proposed creation of Lot #1 to have a total square foot Lot Area of 36,058 square feet.
 2. The approval is subject further to the Planning Board review and approval of proposed Lot #1 to have a minimum Lot Area of 36,058 square feet. A note to this effect is to be added to the proposed Preliminary Subdivision Plat drawing, including the File Number and date of approval with conditions.
 3. The approval is subject to the proposed access for Lot #1 being shared with the access for proposed Lot #2 of the Michael Pignato 2 Lot Subdivision.
 4. There shall be no Building Permit issued for proposed Lot #1 until a final subdivision plat map has been filed in the Ontario County Clerk's Office.

- 5. There shall be no Building Permit issued for proposed Lot #1 until the Town Planning Board has granted Final Site Plan Approval, all easements have been filed with the Ontario County Clerk’s Office, a copy thereof provided to the Town Clerk, and an acceptable form of surety has been filed with the Town Clerk.
- 6. The Final Site Plan drawing is to contain a note that references this File Number, date and conditions of approval by the Zoning Board of Appeals.
- 7. Any lighting of the proposed building or Lot #1 site development shall comply with the lighting standards contained in Chapter 165 of the Town Code. No lighting shall be permitted to extend beyond the property line onto adjacent properties, or the public highways.

NOW, THEREFORE, BE IT RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code by granting the minimum relief necessary.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

ZB #0104-17 Michael C. Pignato Area Variance Findings and Decision

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the reading of the Area Variance Findings and Decision resolution on this application be waived.

Motion carried by voice vote. The reading of the Area Variance Findings and Decision resolution on this application was waived.

Mr. DeLucia reviewed the board’s determination and conditions of approval with the applicant. Mr. Marks said that he agreed with the conditions of approval.

■ A motion was made by MR. OPETT, seconded by MS. PURDY, that the following resolution be approved:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

Applicant: Michael Pignato
32 Crestview Drive
Rochester, New York 14625

File: ZB #0104-17
Zoning District: GB General Business
and MTOD Major Thoroughfare Overlay
District
Published Legal Notice on: 1/15/17
County Planning Action on: 1/11/17
County Referral #: 6-2017
Public Hearing held on: 1/23/2017

Property Location: East side of Hathaway Drive, northeast corner of Perez Drive.

Applicable Section of Town Code: Chapter 165, Article V, Section 35. A.

Requirement for which Variance is requested: The applicant wishes to create Lot #2 of the Michael C. Pignato Preliminary Subdivision Plat, containing a total of 31,024 square feet. The Town Code requires a minimum of 40,000 square feet for a Lot in the GB General Business District.

State Environmental Quality Review Determination: The granting of an area variance to enable the subdivision of land to create an approved Building Lot is classified as a Type II Action under Part 617.5 (c) (12) 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 Environmental Conservation Law, article 8.

County Planning Referral Recommendation: A referral to the Ontario County Planning Board is required under the provisions of Sections 239-l & -m of the New York State General Municipal Law. The County, in referral #6-2017, makes no specific recommendation other than to grant the minimum relief necessary.

FACTORS CONSIDERED and BOARD FINDINGS

- 1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Yes X No**

Reason: The Board finds that the character of the developing neighborhood is commercial office buildings fronting along the east side of Hathaway Drive and the west side of State Route 332, from Perez Drive north. The Board also finds that the character of the neighborhood along the west side of Hathaway Drive is both townhouse dwellings and undeveloped land. The Board further finds that the property to the north of the proposed site has recently been approved for development of a professional office building. The Board further finds that there is an existing office building on the proposed Lot #2 which, if this area variance is approved and the Town Planning Board grants subdivision plat approval, will result in a two lot Pignato Subdivision (Lots #1 and #2) and the eventual develop-

ment of two buildings on this site. The Board also finds that Hathaway Drive is to be extended north connecting with Mercier Boulevard in accordance with the Town's Official Corridor Plan Map and the Mercier Incentive Zoning Project, as has been recently amended. The Board further finds that the adopted Town of Farmington Comprehensive Plan Future Land Use Plan Map recommends professional office development along the strip of land located between Hathaway Drive and State Route 332. The Board, based upon these findings determines that there will not be an undesirable change in the character of the neighborhood or that the proposed subdivision of land, with a lot having less than the minimum lot size requirement will not be a detriment to nearby properties.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance. Yes No

Reason: The Board finds that the proposed subdivision of land would enable the eventual development of the site that is constrained by the presence of Beaver Creek to the north and State Route 332 to the east. The Board further finds that the eventual development of a proposed medical office building on Lot #1 when combined with the existing office building on Lot #2 will eventually contribute to future traffic calming effects for motorists using Hathaway Drive. The Board also finds that having a subdivision of land with two similar sized buildings associated with the proposed commercial site development for Lots #1 and #2 creates a condition where there is a sense of neighborhood and not just another commercial strip development along the highway. Finally, the Board, based upon its' review of the proposed preliminary site plan drawing finds that the applicant is proposing to share a driveway between what will be two buildings that will eventually be located upon this original Lot. The Board, based upon these findings, concludes that it would not be feasible to create another sized lot on the property for a medical office building, that would not ultimately result in yet another non-conformity with the Town's minimum lot area requirements when applied to this site.

The Board, based upon these findings determines that granting the requested area variance, to subdivide the property as proposed on the drawings submitted with this Application, would be granting the minimum relief necessary.

3. Whether the requested variance is substantial. Yes No

Reason: The Board finds that the requested Area Variance is to allow the creation of a non-conforming Lot having a total of 31,024 square feet in area instead of a Lot having a minimum of 40,000 square feet in area involves a variance of twenty-two and one-half percent (-22.5%) from the Town Code requirement. The Board has consistently found that a variance request that is fifty percent (50%) or greater of what is otherwise required by the Code is a substantial variance request.

- 4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes X No**

Reason: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQR Regulations, the information contained on Part I of the Short Environmental Assessment Form and has determined that the proposed Action is a Type II Action. The Board, in making this Determination, in accordance with the provisions of the New York State Environmental Conservation Law, article 8, has determined granting an area variance will not have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

- 5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Yes X No**

Reason: The Board finds that the subject site is an irregular shaped parcel of land, subject to additional zoning overlay regulations and that subdivision of any land on this site would most likely be subject to the need for area variance(s). The Board finds that maintaining as much as possible of the minimum Lot Area requirements in the Code for the proposed two proposed Lots fronting along Hathaway Drive is being proposed and that relief should be granted in the interests of the public.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs, finds:

- X That the benefit to the applicant DOES outweigh the detriment to the health, safety and welfare of the Neighborhood or Community and, therefore, the requested Area Variance is GRANTED WITH THE FOLLOWING CONDITIONS:
1. The Zoning Board of Appeals does hereby grant an Area Variance from the Town Code requirements for the proposed creation of Lot #2 to have a total square foot Lot Area of 31,024 square feet.
 2. The approval is subject further to the Planning Board review and approval of proposed Lot #1 to have a minimum Lot Area of 36,058 square feet. A note to this effect is to be added to the proposed Preliminary Subdivision Plat drawing, including the File Number and date of approval with conditions.
 3. The approval is subject to the proposed access for Lot #2 being shared with the access for proposed Lot #1 of the Michael Pignato 2 Lot Subdivision.

- 4. There shall be no Building Permit issued for proposed Lot #2 until a final subdivision plat map has been filed in the Ontario County Clerk’s Office.
- 5. There shall be no Building Permit issued for proposed Lot #2 until the Town Planning Board has granted Final Site Plan Approval, all easements have been filed with the Ontario County Clerk’s Office, a copy thereof provided to the Town Clerk, and an acceptable form of surety has been filed with the Town Clerk.
- 6. The Final Site Plan drawing is to contain a note that references this File Number, date and conditions of approval by the Zoning Board of Appeals.
- 7. Any lighting of the proposed building or Lot #2 site development shall comply with the lighting standards contained in Chapter 165 of the Town Code. No lighting shall be permitted to extend beyond the property line onto adjacent properties, or the public highways.

NOW, THEREFORE, BE IT RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code by granting the minimum relief necessary.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried

ZB #0105-17 Michael C. Pignato Area Variance Findings and Decision

■ A motion was made by MR. RUSSELL, seconded by MS. PURDY, that the reading of the Area Variance Findings and Decision resolution on this application be waived.

Motion carried by voice vote. The reading of the Area Variance Findings and Decision resolution on this application was waived.

Mr. DeLucia reviewed the board’s determination and conditions of approval with the applicant. Mr. Marks said that he agreed with the conditions of approval.

■ A motion was made by MR. OPETT, seconded by MR. YOURCH, that the following resolution be approved:

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS AND DECISION**

Applicant: Michael Pignato
32 Crestview Drive
Rochester, New York 14625

File: ZB #0105-17
Zoning District: GB General Business
and MTOD Major Thoroughfare Overlay
District
Published Legal Notice on: 1/15/17
County Planning Action on: 1/11/17
County Referral #: 6.1-2017
Public Hearing held on: 1/23/2017

Property Location: East side of Hathaway Drive, northeast corner of Perez Drive.

Applicable Section of Town Code: Chapter 165, Article V, Section 34.

Requirement for which Variance is requested: The applicant wishes to locate an office building with a forty-one and three-tenths foot (41.3 feet) Front Setback from the right-of-way line for State Route 332, on proposed Lot #1 of the Michael C. Pignato Subdivision Plat. The Town Code requires a minimum Front Setback of one hundred feet (100 ft.) from the right-of-way line for State Route 332. The property is located at the northeast corner of Hathaway Drive and Perez Drive and is zoned GB General Business District and MTOD Major Thoroughfare Overlay District.

State Environmental Quality Review Determination: The granting of an area variance to enable the placement of a structure on an approved Lot is classified as a Type II Action under Part 617.5 (c) (12) 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 Environmental Conservation Law, article 8.

County Planning Referral Recommendation: A referral to the Ontario County Planning Board is required under the provisions of Sections 239-l & -m of the New York State General Municipal Law. The County, in referral #6.1-2017, makes no specific recommendation other than to grant the minimum relief necessary.

FACTORS CONSIDERED and BOARD FINDINGS

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Yes X No**

Reason: The Board finds that the character of the developing neighborhood is commercial office buildings fronting along the east side of Hathaway Drive and the west side of State Route 332, from Perez Drive north. The Board also finds

that the character of the neighborhood along the west side of Hathaway Drive is both townhouse dwellings and undeveloped land. The Board further finds that the property to the north of the proposed site has recently been approved for development of a professional office building. The Board further finds that there is an existing office building on the proposed Lot #2 which, if this area variance is approved and the Town Planning Board grants subdivision plat and site plan approval, will result in two office buildings having the same setback from the right-of-way of State Route 332. The Board further finds that the adopted Town of Farmington Comprehensive Plan Future Land Use Plan Map recommends professional office development along the strip of land located between Hathaway Drive and State Route 332. The Board, based upon these findings determines that there will not be an undesirable change in the character of the neighborhood resulting from a variance being granted to the Front Setback from the right-of-way line for State Route 332.

2. **Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance.** Yes No

Reason: The Board finds that the proposed office building location has been designed to be identical to the existing office building which will be located on Lot #2 of the Michael Pignato Subdivision. The Board further finds that the eventual development of a proposed medical office building on Lot #1 when combined with the existing office building on Lot #2 will eventually contribute to future traffic calming effects for motorists using Hathaway Drive. The Board also finds that having a project with two similar sized buildings associated with the proposed commercial site development for Lots #1 and #2 creates a condition where there is a sense of neighborhood and not just another commercial strip development along the highway. Finally, the Board, based upon its' review of the proposed preliminary site plan drawing finds that the applicant is proposing to share a driveway between what will be two buildings with identical setbacks from Hathaway Drive that will eventually be located upon this original Lot. The Board, based upon these findings, concludes that it would not be feasible to create another building design for the new building upon the property that would not ultimately result in yet another non-conformity with the Town's minimum Front Setback requirements when applied to this site.

The Board, based upon these findings determines that granting the requested area variance, to allow an additional structure to be placed upon the Lot that will be similar in design to the existing structure would be granting the minimum relief necessary.

3. **Whether the requested variance is substantial.** Yes ___ No

Reason: The Board finds that the requested Area Variance is to allow the creation of a non-conforming Lot having a Front Setback of 41.3 feet instead of the minimum 100 feet as required by the MTOD. This proposed Front Setback is 58.7%

greater than what is otherwise required by the Town Code. The Board has consistently found that a variance request that is fifty percent (50%) or greater of what is otherwise required by the Town Code is a substantial variance request.

4. **Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.**
Yes No

Reason: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQRA Regulations, the information contained on Part I of the Short Environmental Assessment Form and has determined that the proposed Action is a Type II Action. The Board, in making this Determination, in accordance with the provisions of the New York State Environmental Conservation Law, article 8, has determined granting an area variance will not have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district.

5. **Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.** Yes No

Reason: The Board finds that the subject site is an irregular shaped parcel of land, subject to additional zoning overlay regulations and that the placement of any structure on this site would most likely be subject to the need for area variance(s). The Board finds that maintaining as much as possible of the Front Setback requirements in the Code, from along Hathaway Drive, is more important to protecting the health, safety and general welfare of the neighborhood than it is to the setback from along State Route 332 given the site's topography and partial development. The Board, therefore, finds that relief should be granted in the interests of the public.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs, finds:

- X That the benefit to the applicant DOES outweigh the detriment to the health, safety and welfare of the Neighborhood or Community and, therefore, the requested Area Variance is GRANTED WITH THE FOLLOWING CONDITIONS:
1. The Zoning Board of Appeals does hereby grant an Area Variance from the Town Code requirements for the placement of a proposed structure on Lot #1 to have a Front Setback from the right-of-way line for State Route 33 of 41.3 feet.
 2. The approval is subject further to the Planning Board review and approval of proposed Lot #1 to have a minimum Lot Area of 36,058 square feet. A note to this

effect is to be added to the proposed Preliminary Subdivision Plat drawing, including the File Number and date of approval with conditions.

3. The approval is subject to the proposed access for Lot #1 being shared with the access for existing Lot #2 of the Michael Pignato 2 Lot Subdivision.
4. The approval is subject to the proposed building on Lot #1 maintaining the same setbacks of the existing building which will remain on Lot #2 of the Michael Pignato Subdivision and Site Plan.
5. There shall be no Building Permit issued for proposed building on Lot #1 until the Town Planning Board has granted Final Site Plan Approval, all easements have been filed with the Ontario County Clerk’s Office, a copy thereof provided to the Town Clerk, and an acceptable form of surety has been filed with the Town Clerk.
6. The Final Site Plan drawing is to contain a note that references this File Number, date and conditions of approval by the Zoning Board of Appeals for this Front Setback area variance.
7. Any lighting of the proposed building or Lot #2 site development shall comply with the lighting standards contained in Chapter 165 of the Town Code. No lighting shall be permitted to extend beyond the property line onto adjacent properties, or the public highways.

NOW, THEREFORE, BE IT RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code by granting the minimum relief necessary.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action.

Timothy DeLucia	Aye
Cyril Opett	Aye
Nancy Purdy	Aye
James Russell	Aye
Thomas Yourch	Aye

Motion carried.

7. OTHER BOARD BUSINESS

Board Members:

Mr. DeLucia commented on the following topics:

- An e-mail from Supervisor Ingalsbe regarding his request for participation on a several advisory committees will be forwarded to ZBA members to determine their interest in serving on one or more of these committees.
- Mr. DeLucia will send to ZBA members his comments and suggestions compiled to date for updates to Town Code Chapter 165. He asked board members to also prepare their comments in advance of the Town committee that will begin the Chapter 165 updates later this year.
- Mr. DeLucia and Mr. Brand discussed alternate meeting locations and dates beginning in March when the Town Hall meeting room will be closed for renovations. The first and third Tuesdays of the month are possible alternate days. Board members were asked to provide their schedule information to Mr. DeLucia. Mr. Brand and Mr. Morse will keep the ZBA members advised of upcoming applications and the dates of their referrals to the Ontario County Planning Board and ZBA meetings.

8. EXECUTIVE SESSION

■ A motion was made MR. OPETT, seconded by MR. RUSSELL, that the board enter into Executive Session for the purpose of discussing pending litigation.

Motion carried by voice vote.

The board entered into Executive Session at 7:40 p.m.

■ A motion was made MS. PURDY, seconded by MR. OPETT, that the Executive Session be closed and the public meeting be reopened.

Motion carried by voice vote.

The meeting reopened to the public at 7:50 p.m.

9. OTHER BOARD BUSINESS, Continued

Mr. Brand discussed the status of the Town Hall expansion and renovation project.

Mr. Morse reported that no applications have been received to date for the ZBA February agenda. He said several possible sign variance applications may be received, including one from United Rental which has purchased the Crescent Moon company on Loomis Road.

10. NEXT MEETING DATE

The next regular meeting of the Zoning Board of Appeals will be held at the Town Hall on Monday, February 27, 2017, at 7:00 p.m. (if needed).

11. ADJOURNMENT

A motion was made by MR. YOURCH, seconded by MR. OPETT, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 7:55 p.m.

Following the meeting, the Conservation Board meeting was still in session. The building was not secured by the clerk.

Respectfully submitted,

John M. Robortella L.S.
Clerk of the Zoning Board of Appeals