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Brighton Zoning Board of Appeals 3/1/17

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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON MARCH 1ST, 2017  
5 AT APPROXIMATELY 7:15 **P.M.**

6

March 1st, 2017  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

7

8 PRESENT:

9 DENNIS MIETZ, Chairman  
10 JEANNE DALE  
11 CHRISTINE CORRADO  
12 JUDY SCHWARTZ  
DOUGLAS CLAPP  
JENNIFER WATSON

13

14 DAVID DOLLINGER, ESQ.  
15 Town Attorney

16

17 RICK DISTEFANO  
18 Secretary

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REPORTED BY: RHODA COLLINS, Court Reporter  
EDITH E. FORBES COURT REPORTING SERVICE  
21 Woodcrest Drive  
Batavia, New York 14020

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3                   CHAIRPERSON MIETZ: Good evening. I'd like to  
4 call to order the March session of the Brighton Zoning Board  
5 of Appeals.

6

Was the meeting properly advertised?

7

8                   MR. DISTEFANO: Yes, Mr. Chairman, it was  
9 advertised in the Brighton-Pittsford Post of  
February 23, 2017.

10

11                  CHAIRPERSON MIETZ: Okay. Will you please  
call the roll.

12

13                  MR. DISTEFANO: Please let the record reflect  
that Ms. Thompkins Wright is not present.

14

15                  CHAIRPERSON MIETZ: Okay. So we have the  
minutes of the January meeting, is there any additions or  
16 corrections to it?

17

18                  MS. SCHWARTZ: On Page 64, Line 17, the fourth  
word is health, h-e-a-l-t-h. On Page 75, Line 12, the first  
19 word is quality. Page 78, Line 16, the man's name is  
Githler, G-i-t-h-l-e-r. On Page 133, Line 7, I believe you  
20 said should be deleted, and on Line 13, as of right should be  
21 deleted. And at the end, as is as of, and then right now to  
22 14, it's like they were written a couple of times.

23

CHAIRPERSON MIETZ: Okay.

24

25                  MS. SCHWARTZ: And then on Page 144, Line 23,

3 the first word should be amplification, and the same thing is  
4 true on Page 145, Line 6. And 151, Line 16, almost towards  
5 the end the word should be face. And on 153, Line 17, just  
6 change the word removable to livable.

CHAIRPERSON MIETZ: Anyone have anything else?

Going once, twice, sold.

MS. CORRADO: Motion to move.

(Second by Ms. Schwartz.)

12 (Mr. Clapp, yes; Ms. Schwartz, yes;  
13 Ms. Dale, yes; Mr. Mietz, yes; Ms. Watson, yes; Ms. Corrado,  
yes.)

15 (Upon roll call, motion to approve with  
corrections carries.)

17 CHAIRPERSON MIETZ: Okay. Well, Rick, ready.  
APPLICATION 1A-04-17.

19 1A-04-17 Application of Chef's Cater-All LLC,  
contract vendee, and 745 Penfield Road LLC, owner of property  
20 located at 745 Penfield Road seeking appeals of portions of  
the Town Planner's letter dated December 2, 2016, an  
interpretation that intended uses at the property are legal  
21 non-conforming uses, and an appeal from the Town Planner's  
22 Accusation of Violation dated December 7, 2016, all pursuant  
23 to Section 219-2A. All as described on application and plans  
25

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3 on file.

4 MS. ZOGHLIN: Good evening.

5 CHAIRPERSON MIETZ: Good evening.

6 MS. ZOGHLIN: My name is Mindy Zoghlin and I  
7 represent the applicant. Now, I sent over a letter, I  
8 believe, yesterday. Did everybody get a copy of it?

9 CHAIRPERSON MIETZ: Yes. Could you just raise  
10 the mic up a little bit, please?

11 MS. ZOGHLIN: I get louder as the evening goes  
12 on.

13 CHAIRPERSON MIETZ: That's okay. Go for it.

14 MS. ZOGHLIN: We are here in connection with  
15 the appeal from Ramsey Boehner's.

16 Letter dated December 2nd, and an  
17 interpretation as to whether Mike's existing and proposed  
18 uses of 745 Penfield Road are legal pre-existing  
19 non-conforming uses.

20 For starters, Mike would really like to thank  
21 this Board for its patience, and also thank the community for  
22 their comments and their contributions to this proceeding.  
23 Mike has really carefully considered all of the statements  
24 that were made by members of the public during the prior  
25 meetings. And based on the public input, Mike would like to

3 ask this Board to take the following actions.

5 There was some discussion the last time my of  
6 associate, Bridgette, was here about modifying the  
7 application in order to take into consideration some of the  
8 issues that were brought forth by members of the public, so I  
9 wanted to make sure that we're all on the same page as to  
what we're presently asking this Board to do.

11 First, we're asking the Board to affirm  
12 Mr. Boehner's determination that the deli, bakery, carryout,  
13 and food preparation uses of the property are legal  
14 nonconforming uses. The neighbor's appeal letter dated  
15 January 27th, doesn't object to this request with respect to  
16 the deli and bakery, carryout food uses, but it seems to ask  
17 the Board to limit Chef's menu to specific items that were  
18 set forth in our initial request. I would suggest to you  
19 that the request is unworkable as a practical matter. Deli  
20 menus change with the seasons and the times. It's simply not  
feasible for this Board to micromanage the menu the deli has.

22 Let's say that Chef's wanted to add potato  
23 knishes or latkes, you know, range of offerings. Would have  
24 to come back to the Board every time it added a new menu  
item, took one away. That's kind of silly. Moreover, the  
25 request to limit the menu items is simply not legally

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3 defensible. Courts in this state have constantly held that a  
4 mere increase in the volume or intensity of a nonconforming  
5 use isn't a change. So if you change the number of offerings  
6 that a deli has, that is not a change in the intensity of  
7 nonconforming use. And moreover, the courts in this state  
8 that have considered such things have consistently found that  
9 nonconforming uses may improve and they may grow with the  
10 times and a zoning ordinance can't be used to thwart the  
11 natural evolution and growth of a business. And these cases  
12 were cited on as I said Pages 8 through 9 of our initial  
13 appeal, and I'm not going to go through them again. But they  
14 were set forth and we talked about what the cases held and  
15 what the facts were. Unless you guys have questions about  
16 that, in which case I would be happy to answer them.

17

18 And, I guess as a final matter, if there were  
19 some type of problem with the uses expanding or the types of  
20 deli offerings that were made at the business, that that  
would really be a code enforcement issue, and not a ZB issue.

21

22 The second issue is offsite delivery. And  
23 with respect to the offsite delivery issue, Mike has listened  
24 to the Board and the public comments very carefully. And he  
understands that a large part of the neighborhoods'  
25 opposition to his request has to do with the concern that he

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3 would bring his catering business to 745 Penfield Road, or  
4 that he would run the food truck business from this location.  
5 And tonight we're here to tell you that Chef's withdraws that  
6 part of the appeal that seeks a determination that the  
7 regular offsite delivery of prepared food is a legal  
8 nonconforming use.

9                   Chef's also withdraws that part of the appeal  
10 that seeks to deliver food offsite with the food trucks.  We  
11 wish to amend the appeal to make it clear that Chef's would  
12 like to do occasional offsite delivery of food items, like  
13 pizzas, which the prior owners have done, and I think members  
14 of this community are aware of.  He's not going to be hiring  
15 a delivery staff, he doesn't have delivery vehicles, but on  
16 occasion as a convenience to some customers he would like to  
17 be able to bring pizzas to families close by who may want to  
18 order them.

19                   In this regard, I would like to note that  
20 there is ample evidence that the prior deli businesses at  
21 this location historically did casual delivery of pizzas to  
22 customers and occasional offsite delivery of pizzas and other  
23 carryout foods, by employees using their own personal  
24 vehicles.  This is well within pre-existing nonconforming use  
25 of this property.  And again, if he violated this, if he

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3 began to operate some type of restaurant delivery business

4 out of this location then he would be subject to code

5 enforcement action, by your code enforcement officer.

6                   The third thing I wanted to address is that

7 Chef's withdraws the part of its appeal that seeks a

8 determination that occasional overnight parking of a food

9 delivery vehicle on the property is a legal nonconforming

10 use. Chef's does not intend and does not ask you to grant

11 permission to park any delivery vehicles on the property. He

12 does not ask you to grant permission to park the food trucks

13 on the property. We withdraw that part.

14                   One part that we do wish to proceed with and

15 that we ask you to consider reversing is that part of the

16 Mr. Boehner's determination that installing a cooking hood

17 for fire safety purposes violates the prohibition against

18 exterior modification of a nonconforming use structure. I

19 think it's well documented in the matter before this Board

20 that the prior owner used residential flat top griddles and

21 tabletop fryers, and the applicant would like to improve the

22 fire safety features of its food preparation by installing a

23 hood. And we ask you to find that installing the hood for

24 fire safety purposes is both normal replacement or addition

25 of machinery, not affecting the operations pursuant to

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3 Section 225-4F(1). And a normal maintenance repair of the  
4 structural alteration to or enlargement of nonconforming  
5 building as is expressly permitted by Town Code

6 Section 225-14A.

7

8 Moreover, the courts in this state have  
9 consistently held that merely updating the equipment involved  
10 in a nonconforming use with more modern equipment does not  
11 constitute an illegal expansion of the use. And this legal  
12 analysis is set forth at Pages 15 and 16 of our initial  
13 submission. I won't go over that now unless you have  
14 specific questions about it, but the case law in this state  
15 is really quite clear and it's very uniform.

16

17 Moreover as a practical matter, updating the  
18 cooking equipment and installing fire safety equipment will  
19 benefit the public health, safety and welfare by improving  
20 public safety. And this again is explained on Pages 4 and 5  
21 of the memorandum that we submitted to the Board last month  
22 on January 18th. I wouldn't reiterate all that, you have  
23 that stuff.

24

25 A similar issue to the cooking hood is the  
cooking equipment that Chef's would like to use at this  
property. And the neighborhoods have argued that Chef's  
should not be allowed to install a commercial kitchen at this

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3 property.

4                   And again, you know, the courts in this state  
5 have consistently held that updating the equipment involved  
6 in a nonconforming use with more modern equipment is not an  
7 illegal expansion. And it's well within this court's  
8 jurisdiction to say that, yes, it's a good idea to put in  
9 more modern, suitable equipment for an existing deli. And  
10 again, this analysis is set forth on Pages 15 and 16 of our  
11 initial submission. And I won't belabor that point, unless  
12 you have specific questions about it.

13                   The fifth issue that I would like to address  
14 with the Board is to let you know that Chef's withdraws part  
15 of the appeal that seeks a determination to allow them to  
16 relocate the Dumpster. We are not asking to relocate the  
17 Dumpster anymore.

18                   There was some noise and traffic issues that  
19 were raised previously, those are not properly before this  
20 Board for the reasons that are cited on Page 17 of our  
21 initial appeal. Again, you know, the case law is very  
22 consistent, uniformly held, holds that noise and traffic  
23 issues are not pertinent to an analysis of whether a  
24 pre-existing nonconforming use can continue.

25                   There's also been some talk about hours of

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3 operation and the neighborhoods have requested that you limit  
4 the hours of operation of Chef's. We ask you to reject that  
5 request. The hours of operation that we're seeking are  
6 entirely consistent with the prior operations at this  
7 property. And moreover, as a legal matter it is permissible  
8 to increase the volume, the number of employees, the hours of  
9 operation and the gross income of pre-existing nonconforming  
10 uses. The New York State Courts have been, you know, very  
11 consistent in holding that and I just point your attention to  
12 the Tarton Noel case versus ZBA, which is on Page 8 of our  
13 appeal.

14 So I know we've, you know, kind of dumped a  
15 lot of paper on you and I apologize for that. But, if you  
16 have any other questions, I'd be happy to answer them. If  
17 not, I'll sit down.

18 MS. SCHWARTZ: Are you saying that the trucks  
19 will never be at this property?

20 MS. ZOGHLIN: Never, is -- I mean, I never say  
21 never.

22 MS. SCHWARTZ: Will there be a need for them?

23 MS. ZOGHLIN: There will not be a need for the  
24 trucks to be on the property.

25 MS. SCHWARTZ: How will their supplies then be

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3 delivered, because they work with the regional centers?

4 MS. ZOGHLIN: Oh, I thought you were talking  
5 about the food truck trucks.

6 MS. SCHWARTZ: Right, right. I'm just asking  
7 you, they have no reason to be at 745 Penfield?

8 MS. ZOGHLIN: I mean, not unless there was  
9 some type of incidental, you know, somebody was driving by  
10 and wanted to pick up a sandwich there? I mean, no, it's not  
11 part of the business plan to have food trucks at 745 Penfield  
12 Road.

13 MS. SCHWARTZ: So they won't be used for  
14 deliveries of supplies?

15 MS. ZOGHLIN: They will not be used for  
16 deliveries of supplies, they will not be used to take food  
17 that is prepared at 745 Penfield Road, off of that property.  
18 They will not be part of the business that is being operated  
19 at 745 Penfield Road. We are not asking you to approve  
20 anything related to having food trucks at the property.

21 MS. SCHWARTZ: You mentioned occasional pizza  
22 deliveries, how would those be done?

23 MS. ZOGHLIN: The way that they were done in  
24 the past. Which is, you know, employees who have their own  
25 personal vehicles may on occasion -- again, it's not part of

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3 their business plan. They are not advertising for delivery,  
4 they don't intend to have delivery trucks, delivery drivers.  
5 But it would be, you know, it would be disingenuous for me to  
6 suggest to you that a pizza would never be taken from that  
7 property or anything to a home.

8 MS. SCHWARTZ: You said occasional --

9 CHAIRPERSON MIETZ: Let her finish.

10 Are you done?

11 MS. ZOGHLIN: Yes.

12 CHAIRPERSON MIETZ: Okay.

13 MS. DALE: So I just, I think part of why  
14 we've struggled with this over the past several meetings is  
15 because we received these statements about occasionally, and,  
16 you know, I struggle with that. You know, it would certainly  
17 be clearer if we didn't have to think about, well, what does  
18 occasional really mean and how often. And if they're not  
19 going to advertise they deliver pizzas, then . . .

20 MS. ZOGHLIN: And I understand, I  
21 appreciate --

22 MS. DALE: When it used to be that, okay, well  
23 the food trucks will be there parked overnight, sometimes,  
24 you know, the applicant wouldn't say they never would be.  
25 Now it just makes it hard because you're leaving the door

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open.

4 MS. ZOGHLIN: And I apologize, I really truly  
5 apologize for giving you that impression. I'm not saying  
6 this to leave any doors open. The reason for the statement  
7 that we're requesting occasional pizza delivery is because,  
8 you know, as a practical matter, that happened in the past.  
9 You know, I think it's very clear it happened in the past.

10 MS. DALE: The applications, in my opinion, we  
11 gather month after month and have made statements like, we're  
12 not a restaurant but on occasion, you know, and so that's  
13 just a struggle that I --

14 MS. ZOGHLIN: And I guess I've got two things  
15 to say in response to that. One is that, you know, we take  
16 our obligations to be truthful very, very seriously. And I  
17 think that it would be, you know, in an abundance of caution  
18 we can't say never ever.

19 MS. DALE: I don't see why you couldn't. To  
20 be truthful, I don't understand why, you know, last month I  
21 kept saying to the applicant, just tell us you won't park the  
22 trucks there, just tell us they won't be overnight.

23 MS. ZOGHLIN: And tonight we're telling you  
24 they won't park the trucks there.

25 MS. DALE: I just feel the same way, and tell

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3 us there's not going to be deliveries.

4 MS. ZOGHLIN: You know, I can tell you  
5 unequivocally the trucks are not going to be parked there.

6 MS. DALE: I'll let you use that as an  
7 example.

8 MS. ZOGHLIN: I guess my perspective on the  
9 occasional pizza thing, I mean, if you think that it's really  
10 objectionable and you want to say no, it's not part of the  
11 pre-existing nonconforming use then we look at that.

12 MS. DALE: Well, I'm trying to nail this down  
13 to statements that say it's not a restaurant, however. It's  
14 not a, you know -- and I personally don't think that -- I  
15 hear things that makes it sound like, yes, it is a restaurant  
16 because there's a seating section. There was conversation  
17 about picnic tables and people being outside. So, anyway, I  
18 guess I just think that that makes it challenging.

19 MS. ZOGHLIN: No, I understand what you're  
20 saying. I guess from my perspective if, you know, if  
21 something happens every now and then and it's not a big deal,  
22 then it happens now and then, it's not a big deal. If it  
23 happens a lot, if it's a regular part of the business that's  
24 expressly not permitted or illegal expansion of this  
25 pre-existing nonconforming use then that's an issue for your

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3 code enforcement officer. You know, I mean --

4 MS. DALE: Yeah, I don't -- I'm sorry, I have  
5 a problem with, well if you catch us, if you report it --

6 MS. ZOGHLIN: No, and I get that, you know,  
7 it's certainly well within this Board's jurisdiction to say  
8 no, no deliveries. You know, it doesn't matter what  
9 Bernunzio's did, you know, it doesn't matter what the prior  
10 owners did, we're going to draw the line here. Maybe, you  
11 know, there was a little bit of creeping up that occurred  
12 from the time that the code was adopted until now, and it's  
13 time for us to write it in, I get that. I get that.

14 And it's, I guess I just don't see it as a  
15 huge deal. It's well within your jurisdiction to say, no, we  
16 draw the line at delivery. Casual, not, no, it's not going  
17 to happen, it's not part of the business. And, yeah,  
18 that's --

19 MS. DALE: I just want to give a chance. You  
20 want to know what we're worried about, right?

21 MS. ZOGHLIN: Yeah, no, and I do. I do.

22 MR. DOLLINGER: How would you describe what is  
23 going to happen? What is this business going to be? It  
24 seems like we have been going back to the same thing, not to  
25 beat it up. But, you know, it's morphed so many times that

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3 now I'm not sure -- I just need to have some kind of  
4 certainty so -- because you're trying to stretch the end  
5 point, I think.

6 MS. ZOGHLIN: Oh, no.

7 MR. DOLLINGER: And just the question is,  
8 where are we really going with this?

9 CHAIRPERSON MIETZ: If you remember, we  
10 started in September asking that very question because it was  
11 confusing way back in September.

12 MS. ZOGHLIN: I wasn't here.

13 CHAIRPERSON MIETZ: Okay. But understood,  
14 though, this is why we have these problems because we've have  
15 umpteen changes, amendments, applications. I think it's fair  
16 for the neighborhood to understand it and it's fair for the  
17 Board to understand. Just so, realize why it's confusing.

18 MS. ZOGHLIN: Yeah. And, you know, I did have  
19 a chance to review the prior application that was made back  
20 in September, which my understanding was that it specifically  
21 sought a variance to expand the pre-existing nonconforming  
22 use, and it asked for all kinds of stuff like, you know, a  
23 9-by-19-foot cooler.

24 I think that what happened in the beginning,  
25 and there has been a lot of morphing going on, but what

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3 happened in the beginning, you know, Mike was told a lot of  
4 stuff he wanted to do would be okay. And he came in and  
5 asked you for permission to do it, and I think that as it  
6 became increasing clear to him that it's not going to be  
7 okay. It's not okay to have food trucks there, and to run  
8 the food truck business out of there and to do all these  
9 things. And he's, you know, sat down and he's thought about  
10 the whole business plan.

11 And it's not just this parcel. I mean, this  
12 parcel, I think, initially there was some thought, well,  
13 maybe, you know, he would do some overflow catering from  
14 here. But that's not part of the application now.

15 Really, in response to Mr. Dollinger's  
16 question, where are we today and what are we asking for  
17 today. Have you been there?

18 MR. DOLLINGER: Yeah. No, I didn't mean to.

19 MS. ZOGHLIN: No, no.

20 MR. DOLLINGER: The business plan's a good  
21 word for it too, because it's not just -- to me sometimes  
22 it's not just a use, it's like, how are you going to do this,  
23 how are you going to make money, how are you going to support  
24 the business that you're contemplating. Because that makes  
25 us believe, if you can convince me that, you know, this is

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3 how we want to stretch the envelope and here's -- I can make  
4 money doing this, and it's going to work. I don't have to  
5 morph into things that we've talked about.

6 MS. ZOGHLIN: Okay.

7 MR. DOLLINGER: That would be encouraging.

8 MS. ZOGHLIN: I can answer that question, I  
9 can answer that question. And I understand exactly why  
10 you're asking it. The short answer is that the business plan  
11 for 745 Penfield Road is to run a modern, updated, upscale  
12 deli. It has on its menu the things that, you know, I don't  
13 know if any of you have been there. He's got sliders, he's  
14 got sandwiches, he's got salads, he's got, you know, a  
15 carryout place.

16 This building is a really cute little deli and  
17 its got a bakery that does amazing foods. And they're going  
18 to be open for breakfast sandwiches and they're going to  
19 serve what traditionally has been there, but not the same  
20 menu. So there'll be breads and cookies and cakes, there'll  
21 be breakfast sandwiches, there'll be takeout foods, you know,  
22 lunches stuff, salads.

23 And that is the plan and the way that it fits  
24 into the bigger business plan, which is, you know, kind of  
25 what you were asking, is that this is going to be the face of

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3 Mike Zazzaro's business. I mean, right now he has a very  
4 successful catering business that caters large events for,  
5 you know, the U of R, for Strong, and for a lot of, you know,  
6 businesses and corporate events. But there's no face behind  
7 it, you know, there's no place that somebody can go and say,  
8 oh, you know, what's Chef's like? And he's got a food truck  
9 business which has been growing, which is not going to be  
10 operated out of this facility.

11 But, again, it's a kind of place where you got  
12 a truck, you load it up, the food is fabulous. But it's  
13 like, oh, what's this guy all about? You know, and what he  
14 wants to do with 745 Penfield Road and what probably doesn't  
15 come across at all in the papers because, you know, I'm a  
16 legal geek, I think about the legal stuff. But the plan for  
17 this is to have a showcase, upscale, modern deli.

18 MS. DALE: But how's that the face of a  
19 catering business, which is the -- I don't understand how the  
20 two things go together. From a very successful catering  
21 business that's located elsewhere and which is not what this  
22 is, which, as you said, a neighborhood deli, so I don't  
23 understand how this is a showcase for that.

24 MS. ZOGHLIN: Yes. And the short answer is,  
25 for people who have not attended, you know, business

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3 functions, corporate functions, not-for-profit functions at,

4 you know, the Strong Museum or the U of R, or whatever. And

5 they want to go and say, hey, you know, what's it like? How

6 do I find out whether his food's any good? How do I find out

7 what kind of atmosphere is involved in this? I mean, that's

8 the idea. I mean, it's not part of the -- I mean, it's --

9 MR. DOLLINGER: It's like Mise En Place, and

10 I'm not trying to offend you by it, kind of elucidated what

11 you're saying, is I went into Mise En Place, a baking

12 catering --

13 MS. ZOGHLIN: Who?

14 MR. DOLLINGER: Mise En Place, on South

15 Avenue. We do lunches a lot, we have lunch every day at the

16 firm. And I looked around and I said to myself --

17 MS. DALE: Mise En Place.

18 MR. DOLLINGER: Right. And so, not to put it

19 out there, but that's what she's trying to say.

20 MS. ZOGHLIN: Thanks. Yeah --

21 MS. DALE: It seems like two different

22 businesses.

23 MS. ZOGHLIN: They are separate businesses and

24 I agree with it, and the food truck is a separate business

25 and I agree with that too. But there's a certain amount of

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3 synergy that you can develop when you have parallel

4 businesses that have the same type of product that's

5 delivered in different ways. And so all I can say is, and I

6 will admit that at the beginning there was some thought that

7 some of the carry over, you know, the spillover catering

8 would be done. That's not on the table now. That's not what

9 he's seeking to do now. What he really wants to do now is

10 have a showcase, modern, upscale deli.

11 CHAIRPERSON MIETZ: Does Mike want to explain

12 just what is going to happen there in a little more detail

13 than just it's going to be an upscale deli? Can you give

14 more definition on what that means?

15 MS. ZOGHLIN: Is there something specific?

16 CHAIRPERSON MIETZ: Again, I think if you read

17 through all of the stuff that's been done and said, there's

18 certain things, talking about items, talking about maybe

19 this, maybe that. I think it's to your benefit to make it

20 clear.

21 MS. ZOGHLIN: Sure.

22 CHAIRPERSON MIETZ: Not a list that we're

23 writing down, that this is the only list, but just what is

24 the spirit of this business. We understand the bakery and, I

25 mean, broadly we understand.

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3                   MICHAEL ZAZZARO: Everything that we're  
4 selling, our sandwiches, panini, salads, we do specialty  
5 sandwiches, specials, our soups are a big hit, all of our  
6 grab and go meals. We do have all our beverages. As far as  
7 baked goods we have subs, sub rolls, Italian bread, focaccia  
8 bread and all the baked sweets, desserts. Everything, we are  
9 not -- some of those items that we sell in the store are on  
10 our catering menu, so, you know, saying showcases or  
11 whatever. We want to show people.

12

13                   MS. WATSON: How are those things packaged?  
14 So if I were to walk in there, would I have an option of  
15 having it as an eat-in or is it a plate or is it all wrapped  
to go?

16

17                   MICHAEL ZAZZARO: Yeah, so we don't, we're  
18 not -- you come, pick your order, it usually takes five or  
19 six minutes to make a sandwich, sometimes less. Everything  
is packaged to go, we are not a sit-down restaurant.

20

21                   MS. SCHWARTZ: And all of these items that you  
just mentioned prepared on site at 745?

22

23                   MICHAEL ZAZZARO: Yes.

24

25                   MS. SCHWARTZ: Okay. And another question,  
you're saying that you felt that it was not really  
intensifying your lack of deliveries if there were more

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3 employees. How many do you envision having at 745 Penfield  
4 Road?

5 MS. ZOGHLIN: Well, we set that out on the --

6 MICHAEL ZAZZARO: I mapped it all out.

7 MS. ZOGHLIN: Yes, it's in the initial  
8 application that we made.

9 MS. DALE: So it's just going to be a cute  
10 little upscale deli, right? Then I don't know how you can  
11 hire less people than was in the original application, which  
12 was when food was going to be prepared to take with the  
13 catering.

14 CHAIRPERSON MIETZ: Why don't we not assume  
15 it. We can ask them. Why don't you cite it for the record.  
16 What are the employee -- what is the employee configuration  
17 gong to be?

18 MICHAEL ZAZZARO: Yeah, it's generally five to  
19 six. We need a couple part-time people that are a part of  
20 that five or six to get people things. But the original  
21 application was eight to ten, that's my overall business,  
22 both locations.

23 MS. ZOGHLIN: And what kind of -- I'm sorry.

24 CHAIRPERSON MIETZ: When you say five or six,  
25 does that mean there will be five to six working at any given

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3 shift --

4

MICHAEL ZAZZARO: No.

5

6 CHAIRPERSON MIETZ: -- or is that the total  
number of employees that Chef's employs?

7

8 MICHAEL ZAZZARO: That's who's on the

9

10 schedule.

11 CHAIRPERSON MIETZ: Well, what would be a  
12 typical shift during the day? How many people would be  
13 working?

14

15 MICHAEL ZAZZARO: So we have a person that  
16 takes orders, greets people at the door, and then we have a  
17 cook that makes all the food, the sandwiches. And then we  
have a baker on the bakery side, and we have two part-time  
helpers that can help on the kitchen side and on the bakery  
side.

18

19 CHAIRPERSON MIETZ: All right, okay. Just a  
20 couple other questions. You know, in the original -- not the  
original application, but the clarification I believe we got  
21 in maybe December, you listed equipment. You listed the  
22 equipment that was there on the property when you took over  
23 and you listed what the proposed equipment is. Is that still  
24 correct, that list that appears?

25

MICHAEL ZAZZARO: Yes.

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3 CHAIRPERSON MIETZ: Okay. And the same thing  
4 about the hours, or do you want to just for the record  
5 restate them to make sure we understand what they are  
6 correctly?

7

8 MICHAEL ZAZZARO: Yes. We're open, so the  
9 hours that were on the application those were mimicked after  
Bernunzio's just to have an overall.

10

11 CHAIRPERSON MIETZ: Okay. Well, how about you  
just state today what they are.

12

13 MICHAEL ZAZZARO: Right now our winter hours  
14 are 10:00 to 7:00, Monday through Friday, and 10:00 to 6:00  
on Saturday, and we're closed on Sunday.

15

16 MS. ZOGHLIN: Those are your winter hours, so  
what's going to happen during the summer?

17

18 MICHAEL ZAZZARO: During the summertime, we'll  
19 probably be open for another hour during the week and then  
Sunday we'll probably open up for breakfast.

20

21 CHAIRPERSON MIETZ: Okay. So there will be no  
mornings before 10:00; is that what you're saying?

22

23 MICHAEL ZAZZARO: During the week?

24

25 MS. ZOGHLIN: I thought you were serving  
breakfast sandwiches?

MICHAEL ZAZZARO: On Saturdays and Sundays our

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3 hours will probably go to 9:00, or 8:00 in the morning for  
4 breakfast sandwiches.

5 CHAIRPERSON MIETZ: So, again, to make this  
6 clear, so Monday through Friday, whether it's winter or  
7 summer, there will be no hours before 10:00 a.m.; is that  
8 correct?

9 MICHAEL ZAZZARO: Correct, Monday through  
10 Friday, correct.

11 MR. DISTEFANO: Does that include the person  
12 baking on site?

13 MS. ZOGHLIN: Are you talking about when it's  
14 going to be open to the public?

15 CHAIRPERSON MIETZ: Yes, to the public.

16 MS. ZOGHLIN: So Mr. Mietz is asking you when  
17 you're open to the public hours are going to be.

18 MICHAEL ZAZZARO: Yeah, we are always open  
19 10:00 a.m.

20 CHAIRPERSON MIETZ: Okay. So you don't see  
21 that changing, winter or summer?

22 MICHAEL ZAZZARO: No.

23 MS. ZOGHLIN: Except for the weekends.

24 CHAIRPERSON MIETZ: So on the two weekend days  
25 it might be 9:00?

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3 MICHAEL ZAZZARO: Correct, but close earlier.

4 CHAIRPERSON MIETZ: Right, okay. Anybody have  
5 any questions about any of those items?

6 MS. SCHWARTZ: You're opening at 10:00 and  
7 you're going to have breakfast sandwiches?

8 MICHAEL ZAZZARO: Saturday and Sunday is  
9 earlier, yes.

10 CHAIRPERSON MIETZ: Okay. Any of the Board  
11 members have any other questions for these folks?

12 MR. DOLLINGER: I have a couple of questions.

13 CHAIRPERSON MIETZ: Yes.

14 MR. DOLLINGER: I think a bunch of us are  
15 struggling again with the idea of the size of the kitchen,  
16 versus the use of the kitchen. I hear what you're saying  
17 when you say that the enlargement intensities are not  
18 relevant, but it is a -- it can create qualitative changes in  
19 the nature of the use, expanding the products and/or the  
20 equipment that is used in the products.

21 But, and my question is, is there any interim  
22 in the size of the kitchen you're asking for, is there any  
23 interim stage between nothing and that? Because I think that  
24 there's some concern, I have some concern and I think the  
25 Board has some concern. I'm trying to elucidate it. Is, you

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3 know, with the idea that this is a commercial kitchen versus  
4 what was basically a residential kitchen before. My question  
5 is, you might make the Board feel better if it was some  
6 interim step. I mean, the grill is 6 feet wide, the hood is  
7 24 feet long or something, I don't know. But the question is  
8 really, is there any interim area where you would run -- I  
9 mean, you're suggesting to us now that you're not going to  
10 run, really, the original business required and you were  
11 requesting a 6 foot, and I'm not exact, but a 6-foot grill  
12 and a 6-foot char grill and that stuff.

13

Now that it's really just a deli, does it  
14 allow us to say, well, let's reduce all these equipment down  
15 to something that's more, kind of what you're proposing to  
16 actually do for a use.

17

MICHAEL ZAZZARO: Yes, I've actually, from  
18 September, I've reanalyzed and reduced that equipment. I can  
19 go through it again. I know I put it -- I compared what I  
20 wanted to do to what was there, and it's mainly for safety  
21 and for ventilation, that's really what it boils down to.  
22 The hood's not going to make my revenues increase.

23

MR. DOLLINGER: I understand the hood, I mean,  
24 I get the hood. The question really is, is now that you're  
25 not going to be a catering business, do you still need a

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3 6-foot char grill with, you know --

4 MICHAEL ZAZZARO: I don't -- I never had a  
5 6-foot char grill on my application. I have --

6 MS. DALE: I thought it was a char gill.

7 MICHAEL ZAZZARO: It's a 36-inch flat -- or a  
8 36-inch char grill, which is 3 feet.

9 CHAIRPERSON MIETZ: Okay. So what you stated  
10 though, is that the list we have, which is the only list we  
11 ever received. That said, here's the equipment and here's  
12 the equipment we want to put in, has not been modified, that  
13 is the correct list.

14 MS. ZOGHLIN: Mr. Mietz, that's not entirely  
15 accurate. Because the memo that we sent to the Board on  
16 January 18th, on Page 5 -- I misspoke, I'm sorry, that's what  
17 he has at 1700, but Page 4, of that same letter, the  
18 January 2017 letter, we went through the kitchen equipment  
19 that he was proposing. So that's different than what he  
20 initially proposed.

21 CHAIRPERSON MIETZ: Okay. I didn't mean the  
22 September application, that's the only list we've ever seen  
23 about equipment. So is it correct there was none before it  
24 and there's been none after it, so we can presume that's  
25 correct.

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3 MICHAEL ZAZZARO: That's correct.

4 MR. DOLLINGER: So to restate my question  
5 then, given that this is generally, is there any way to -- is  
6 there any interim analysis between these types of equipment  
7 and what you need now that you're just running more of a deli  
8 as opposed to a --

9 MS. DALE: I think we can say the application  
10 has changed and you've withdrawn a bunch of things.

11 MS. ZOGHLIN: Yes.

12 MS. DALE: Now you're saying it's just going  
13 to be a neighborhood deli again.

14 MS. ZOGHLIN: Yes. So why do you need all  
15 this stuff?

16 MS. DALE: So the modification would be scaled  
17 down.

18 MS. ZOGHLIN: I tell you my layperson answer,  
19 and then Mike can probably tell you whether I'm right about  
20 that. We're not dealing with a mom-and-pop guy who's been,  
21 you know, making sandwiches the way his mother and father  
22 made sandwiches and the way his grandmother made sandwiches.  
23 You know, Mike is a professionally trained chef. He likes  
24 the right equipment. He needs the right equipment to produce  
25 the quality of food that he wants to make at his upscale

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3 deli.

4 And if that's not right, you can correct me,  
5 but that's what I got from meeting with you and looking at  
6 your operations.

7 MICHAEL ZAZZARO: That's exactly it.

8 MS. ZOGHLIN: Okay. I got that right.

9 CHAIRPERSON MIETZ: All right. So we're  
10 looking at, we have the January letter and it says this is  
11 the equipment and this is equipment. So as long as we can  
12 base our thoughts on that, then we'll be fine.

13 MS. ZOGHLIN: That would great, thank you.

14 MR. DOLLINGER: My question was, as a  
15 respected attorney in the community, how would you go about  
16 suggesting to us that we -- because our concern obviously, is  
17 that we go do this and how do we prevent you from becoming,  
18 or the next user actually becoming a hamburger flipping  
19 joint?

20 MS. SCHWARTZ: Say that again, Dave?

21 MR. DOLLINGER: How do we prevent, I mean, do  
22 you have any sense of it? Because this is another problem I  
23 have with it, it's always a problem in these kinds of uses.  
24 With this equipment I could become, I mean, I'm just saying  
25 it, I'm not expecting an answer, but I think you could become

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3 a hamburger -- you could start selling hamburgers.

4 MS. ZOGHLIN: With that equipment, you  
5 probably could.

6 MR. DOLLINGER: Right.

7 MS. ZOGHLIN: And then the code enforcement  
8 officer would --

9 MR. DOLLINGER: Do you think there's any way  
10 we can put a collar on this use or somehow circumscribe the  
11 use or in some way. We don't want that. We don't want a  
12 McDonalds to go on here now because they got a grill.

13 MS. ZOGHLIN: Right.

14 MR. DOLLINGER: And so, that's my question.

15 MS. ZOGHLIN: Well, I mean, if the McDonalds  
16 came in and made an application for something, you could deny  
17 it. I mean, a McDonalds is obviously a fast food restaurant.

18 MR. DOLLINGER: Once it is used, you could say  
19 this is the allowed use under the pre-existing use. You're  
20 going to have a hard time doing that because they got a  
21 grill.

22 MS. ZOGHLIN: Well, no, no. Because I think  
23 that the error there is that you are focused on the equipment  
24 and not the use. I mean, the equipment can be used for all  
25 kinds of things. We're talking about the use here and the

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3 fact that we're using modern equipment is really not relevant  
4 to the nature of the use we are proposing. The use that  
5 we're proposing is an upscale modern deli. If somebody came  
6 in and walked in and took the same equipment and made it into  
7 a McDonalds, that's a different use than this. Even if they  
8 use the same equipment, that would be a different use and  
9 that would not be permitted.

10

I don't think that you can stop the, you know, the hamburger joint based upon limiting the type of equipment that is in here. And I don't think that, with all due respect, I don't think that the type of equipment is really the proper subject for the ZBA to think about. I think the ZBA's job here is to focus on the use of the premises and whether it is permissible.

11

MR. CLAPP: My question deals specifically about the proposed use. I do want to say that I was a little surprised at the substantial changes presented to me in a very short time and not really have a chance to review things.

12

MS. ZOGHLIN: I'm sorry --

13

MR. CLAPP: Any material you provided, there's a definition of delicatessen and a definition of restaurant. I went to check out the place, and from my experience there

25

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3 the definition of restaurant fits. What you said is that  
4 this gentleman is not running a mom-and-pop deli, making  
5 sandwiches like that, and I agree with that. He is a  
6 professional chef and a very good one I will note. It was  
7 great. But I was offered food. The eating there question,  
8 was it for here or to go was asked, and I sat and ate. And  
9 there are a minimal number of tables there, but they are  
10 there.

11

MS. ZOGHLIN: Uh-huh.

12

MR. CLAPP: And there are a significant number  
13 of picnic tables outside. So how does that not fit the  
14 definition of a restaurant as compared to the definition of  
15 deli? And I think that is the exact issue that we're looking  
16 at here.

17

MS. ZOGHLIN: Yes. And -- pardon?

18

MS. DALE: I believe Jen's question was, how  
19 is it packaged?

20

MS. ZOGHLIN: Yeah, I mean, it's all -- I'm  
21 sorry.

22

MR. DISTEFANO: No, you can answer it.

23

MS. ZOGHLIN: I was going to say, it's all  
24 packaged to go. The tables are there as a convenience to the  
25 customer. If this Board finds that we can't have tables in a

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3 deli, then he will have to take the tables out of the deli.

4 MR. DOLLINGER: And I guess that's just one of  
5 the biggest thing we're all struggling with is that, you  
6 mentioned creep.

7 MS. ZOGHLIN: Right.

8 MR. DOLLINGER: And that happens,  
9 unfortunately we don't always know of the creep that's  
10 happened. We have a signed agreed upon use of that property,  
11 1985 use of that property. And a funny thing is, is we keep  
12 using the word deli. Well in 1985 they didn't call this a  
13 deli.

14 MS. ZOGHLIN: Right, you're right.

15 MR. DOLLINGER: And so now everything's a  
16 deli, a modernized deli. I am having a real hard time seeing  
17 how this proposed use is consistent with the use that was  
18 approved, the original nonconforming use that was approved in  
19 '85, and amended in '89. I don't see the comparison. I  
20 don't see how a number of things that were spelled out in  
21 this '85 approval fits with what the proposal says. And that  
22 included sale of house cleaning products, canned foods, ice  
23 cream, which makes me more think that the '85 was looking at  
24 a neighborhood grocery store, that also did some sub  
25 sandwiches, did some pizzas, did some baked goods, and that

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3 kind of stuff.

4                   So I'm struggling to say we have a change of  
5 use here. We have a change of use from the '85 approval to  
6 this modern deli. I don't think the '85 use that was  
7 approved ever considered this modern deli. And so, in  
8 essence, there is a change in the nonconforming use.

9                   MS. ZOGHLIN: I would respectfully disagree  
10 with that. I think that what happened in '85 is that there  
11 was an agreement that the prior owner had a business that  
12 consisted of the sale of all goods and products that were now  
13 sold and offered for sale by the Defendant, including milk,  
14 cheese, dairy products, ice cream, food and food products,  
15 that's pretty broad. Including produce, canned goods, frozen  
16 goods, soft drinks, beer, meats including frozen meats,  
17 baking and sale of bread, pies, baked goods, including pizza,  
18 other stuff.

19                   And then, you know, a couple of years later  
20 there was some question, you know, where do you draw the  
21 line? What about subs? Can we do subs? And there was a  
22 letter from the building inspector to the town attorney that  
23 says, yeah, you can do subs, you can do party trays, you  
24 could do any type of conglomeration of snack or lunch fair.  
25 You know, it doesn't matter how you mix it and match it and

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3 put it together, it's still the kind of stuff that  
4 historically has been used at this property. And the idea  
5 was that the -- and they specifically said is, the idea was  
6 not to, you know, the word including meant it was broad, it  
7 was not limiting.

8 You know, one of the basic tenets of the case  
9 law that's involved in the law of nonconforming uses is that  
10 you don't have to have the same use, the exact same stuff  
11 done the exact same way that was done before the code was  
12 adopted. That's not what the law of nonconforming use is  
13 saying. It says that, you know, businesses change, times  
14 change, menus change. At some point there may be an  
15 expansion and it's a very fact specific thing. And what may  
16 happen in the future is different from what he's trying to do  
17 now.

18 MR. DOLLINGER: I understand that. But if you  
19 came back and just said, you know what, of all those things  
20 that we are allowed to do in '85, all we're going to is baked  
21 goods out of there now. Now you're a bakery. I don't see  
22 where that '85 approval would allow you to be a bakery.

23 So --

24 MS. ZOGHLIN: I disagree with that, but okay.

25 MR. DOLLINGER: I don't think you can pick and

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3 choose out of a list of stuff and say, well, we're just going  
4 to do this one and this one and we still maintain our  
5 nonconforming use.

6

MS. ZOGHLIN: Yeah, you can. Yeah, you can.

7

We can disagree on that.

8

MR. DOLLINGER: Yeah, all right.

9

10 CHAIRPERSON MIETZ: Okay. Let's focus on the  
11 questions for the applicant. We can debate this later and we  
12 can allow people to speak. Is there any other questions?  
13 Okay, thank you very much.

14

15 MR. DOLLINGER: One more question. Is it  
16 possible, I guess, I don't know if this is -- well, you'll be  
17 here later, we can talk about it then. Yes, okay.

18

CHAIRPERSON MIETZ: Very good, thank you.

19

MS. ZOGHLIN: Thank you.

20

Did you have another question?

21

MR. DISTEFANO: No, we are all set.

22

MS. ZOGHLIN: Thank you.

23

CHAIRPERSON MIETZ: So we're going to invite  
24 whoever in the audience would like to speak from hearing this  
application. I just have a little guidance for you though.  
As you know, we've discussed this matter for over six months  
now. I ask that if you come up that you would make your

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3 comments as it relates to information we discussed tonight,  
4 new information. We don't really want to go through what we  
5 talked about in September and reiterate all that kind of  
6 stuff. So I would just ask for courtesy, you know, of all of  
7 the people here in the room that you keep your comments a  
8 little succinct of what we're talking about here tonight, or  
9 something that you would like to comment on, clarification of  
10 something you've heard or something that has occurred on the  
11 site, those sorts of things. Okay?

12 SHERRY KRAUS: My name is Sherry Kraus,  
13 K-r-a-u-s and I live at 46 Park Lane. I've lived there for  
14 42 years, so I'm very well acquainted -- actually, all the  
15 way going back to Decastros, so I can speak from personal  
16 knowledge about the evolution of the business at the site  
17 formally known as Bernunzio's. I hope that you had a chance  
18 to refresh or review my awful -- I apologize for the length  
19 of my letter that I submitted at the last meeting, 15 pages.  
20 But I felt in the interest of our two new Board members that  
21 it might be helpful to give a comprehensive review of the  
22 entire long and convoluted history of this, dated back of  
23 course to your actual September 7th determination on the  
24 original application.

25 My comments this evening will be addressed to

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3 both the first and second applications on the agenda tonight.

4 Although, Denise, if you want me to reserve --

5 CHAIRPERSON MIETZ: Hang on one second. Do  
6 you think that we should leave the issues of her discussing  
7 the second part of the application, that basically the  
8 appeal, being separate?

9 MR. DOLLINGER: Is that --

10 CHAIRPERSON MIETZ: It's a separate  
11 application.

12 MR. DOLLINGER: Yeah, I will try to do the  
13 best I can.

14 SHERRY KRAUS: Oh, in other words, I can't go  
15 ahead and discuss it now?

16 MR. DOLLINGER: If we're looking at this  
17 six months from now, it will be easier.

18 CHAIRPERSON MIETZ: It's going to be a little  
19 convoluted.

20 SHERRY KRAUS: Okay. Then I'll reserve my  
21 very brief discussion of the neighbor's appeal to the  
22 standing issue only, which has been challenged by the  
23 applicant. And it will not be a lengthy discussion, but,  
24 David, we obviously -- the testimony that we, the neighbors,  
25 will be bringing forward tonight will be relevant to both

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3 appeals. And hopefully we can just state that we will  
4 incorporate by reference our testimony from this.

5 CHAIRPERSON MIETZ: Yes.

6 SHERRY KRAUS: We hope. We don't want to  
7 burden you with duplicate testimony. So again, but I do want  
8 the primary focus of this presentation will of course be on  
9 the latest modified application as received today. But I do  
10 want to make a brief mention of the neighbor's appeal, if you  
11 don't mind. Again, this only because it's hard to separate  
12 the two on this issue.

13 CHAIRPERSON MIETZ: Let's try it and if it  
14 goes too far, we will stop.

15 SHERRY KRAUS: Right, okay. I wanted to make  
16 it very clear why the nearby neighbors filed this appeal. As  
17 you know, we had the first application and the first adverse  
18 determination to the applicant on September 7th. Shortly, a  
19 few weeks later, there was another application that came  
20 before the Town Planner, Ramsey Boehner, and that application  
21 did include a much more specific description of the foods  
22 that would be produced at the site. And the foods were  
23 broken down into three categories, Miss Zoghlin did describe  
24 them to you, the so-called deli use. And it actually  
25 specifically enumerated deli sandwiches, subs, burgers and

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3       sliders. It didn't say, and general things of this nature,  
4       it had a specific enumeration of the so-called bakery use  
5       foods that would be produced on the site. I won't say them  
6       all, but it included very specific items, cookies, cupcakes,  
7       brownies, and on and on. It's all in my -- this is all more  
8       fully addressed in my January 27th letter.

9                   CHAIRPERSON MIETZ: Right, yes.

10                  SHERRY KRAUS: And then there was this very  
11        general category called the food preparation use, which was  
12        described as the foods needed for delivery offsite and their  
13        catering food truck business. Now, that's all it said, it  
14        was very general. But presumably that would mean potentially  
15        the entire broad menu of cooked entrees, meals, prepared  
16        dishes, listed on the Chef's catering website, and that is an  
17        extensive menu of prepared meals.

18                  The town planner in his December 2nd decision  
19        ruled against at the applicant own most or almost all of the  
20        issues. But on the question of what foods could be produced  
21        at the site, he did state that all of the categories, and by  
22        that he meant including -- he didn't except out the food  
23        preparation use, would be permitted at the site.

24                  Now, we disagreed with only that single part  
25        of the town planner's decision. That was the only part of

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3 his decision on December 2nd that we disagreed with. We felt  
4 that it did not come even close to the limited types of  
5 prepared foods described in the 1985 settlement agreement  
6 that established the pre-existing nonconforming use on the  
7 property. We knew it was in direct conflict with your  
8 September 7th decision.

9 Now, by the way, please remember I keep  
10 referring to that September 7th decision because that has a  
11 res judicata effect, collateral estoppel res judicata, on any  
12 issue on which you have already ruled in this matter, and  
13 September 7th, that would be binding.

14 And thirdly, his ruling would have been  
15 lawfully expanded and/or changed the nonconforming use on the  
16 property. Now here was our concern, this Board has a lot of  
17 power. You can substitute your findings for the town  
18 planner's findings on virtually everything. Our concern was  
19 that we wanted to make absolutely sure that the applicant  
20 would not be able to challenge your ability to rule on the  
21 foods that could be prepared at the site, because they did  
22 not appeal that. That's not under appeal by the applicant.  
23 It wasn't on the appeal because the town planner gave them  
24 everything they wanted there. And we wanted to make sure  
25 that we had an appeal that would give you the authority to

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3 rule that that category of foods was not a proper use of that  
4 site. And again, I will hold the standing argument until the  
5 next appeal.

6 CHAIRPERSON MIETZ: That will be good. Thank  
7 you.

8 SHERRY KRAUS: All right. So that's why we  
9 did it and we kind of wanted to add belt to suspenders.

10 CHAIRPERSON MIETZ: Okay.

11 SHERRY KRAUS: Now I'm going to move now to  
12 the application. Miss Zoghlin has stated to you, enumerated  
13 the latest modifications, so I won't go through those again.

14 CHAIRPERSON MIETZ: Right.

15 SHERRY KRAUS: But what I do want to point out  
16 is what has not changed. What has not changed. What is  
17 still before you. They're still wanting to prepare all three  
18 categories of food, the deli-use food, the bakery food, and  
19 the broad food preparation food. That's still on the table,  
20 they still want no restrictions.

21 Now, we agreed as was pointed out in their  
22 brief, that the deli foods enumerated in their original -- in  
23 their October application and the bakery foods came within  
24 the pre-existing nonconforming use arena from the old, you  
25 know, Decastros in the 1985 agreement.

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3                   However, the food preparation use is the thing  
4 at issue, and we are -- that is still on the table. Although  
5 I must admit we're a little mystified, I think this is  
6 something that's troubling Azale and a few others. Why in  
7 the world if they're not going to do the catering business  
8 and the food truck from there, why do they need to be able to  
9 do a full universe of food preparation from that site?

10

11                   We don't get it. We don't have to get it, the  
12 point is that that is a question in our minds. And, of  
13 course, underlying that question is always the concern that  
14 at some point this site could be legally or illegally used  
15 for catering or food truck, and then leaving it to code  
16 enforcement to say, well, we can't do that.

17

18                   CHAIRPERSON MIETZ: All right.

19

20                   SHERRY KRAUS: So that is an issue. Second  
21 point, what else is still on the table? They still want to  
22 make offsite deliveries of food. Now, Miss Dale really hit  
23 the point and I think Mr. Clapp also hit it in the  
24 previous -- the January meeting. They're saying, oh no, wait  
25 a minute, we don't want to do regular deliveries, we only  
want to do occasional deliveries of food and we only want to  
do it by employee vehicles. That's morphed, you know, from  
first it was employee vehicles and vans, now it's employee

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3 vehicles. So they're still asking for offsite delivery  
4 approval, for pizzas, other carry-out foods, et cetera.

5 The third point, I think we got a  
6 clarification from Miss Zoghlin and Chef Mike today. Their  
7 February 28th letter that you just got does not withdraw  
8 their request to allow food trucks on the site during the  
9 day -- Miss Schwartz, you mentioned that -- for the purpose  
10 of delivering supplies between the site and its East Avenue  
11 business site. That was a part of the modifications  
12 submitted to you in January.

13 Now, I believe they have stated on the record  
14 that that is no longer being requested, but it's not in their  
15 letter, so if you need that in writing, I just say be aware.  
16 There's nothing other than Miss Zoghlin's testimony to tell  
17 you that that request is now off the table.

18 Okay. They still want to install the  
19 commercial kitchen equipment, including the massive 21-foot  
20 hood. But now here's the most important thing that has not  
21 changed in the application, and that is the nature of the  
22 business sought to be conducted at the site. Now, if you  
23 look at their October 13th letter to the Town Planner, Ramsey  
24 Boehner, it was stated that Chef's catering, quote, intends  
25 to open a deli/bakery, carry-out retail and food preparation,

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3 closed quote, business on the site.

4 To date, we've seen no evidence that the  
5 proposed business operations will include a delicatessen  
6 notwithstanding these October representations. And these  
7 points have been made by Mr. DiStefano and by Mr. Dollinger.  
8 This -- the business as it's now being described would be  
9 described under our town code as a takeout delivery  
10 restaurant. It's a restaurant. It would not meet the  
11 definition of a deli even under town code. But, that's not  
12 even the issue. This is a far cry from the deli/grocery  
13 operations approved in the 1985 pre-existing nonconforming  
14 use settlement agreement.

15 I mean, you can call it an upscale modern  
16 deli, you can call it whatever you want, it doesn't matter.  
17 The actual -- Mr. DiStefano pointed this out correctly. If  
18 you look at the '85 agreement, there's no mention of deli or  
19 grocery or anything. It just gives you a description of what  
20 it was. And it was really -- I know, I went there -- it was  
21 a kind of a small grocery store. Kind of, I guess you could  
22 call it a deli, you know, you could get a pound of this or a  
23 pound of that. And it, it -- but in that later letter, which  
24 has been cited by the applicants many times, the letter from  
25 Gary Shirley, January 18, 1989, it says right in that letter

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3 he describes -- he's talking about how they are going to let  
4 them do the subs. And he says -- he describes it as a  
5 grocery or deli operation. So he got those two words in  
6 there, and that's part of the pre-existing use amalgam here.

7 So it was called a deli, it was called a  
8 grocery, but notwithstanding the representations in October  
9 that this would be a deli, believe me, this is not a deli.  
10 At least certainly not a deli circa 1985, or 1989. Just  
11 selling a few deli sandwiches or something described as deli  
12 foods doesn't convert this business into the deli grocery  
13 store operation that fits within that pre-existing  
14 nonconforming use as described in the '85 agreement. You can  
15 not go into that business now and buy a loaf of bread, a  
16 gallon of milk, a pound of butter, a dozen eggs, some canned  
17 foods and vegetables, a pound of salami, a pound of sliced  
18 cheese, prepackaged rolls or bread, or cleaning supplies.  
19 You can't do it.

20 And in the former deli operations, yes, they  
21 could make a limited number of prepared foods, but that was  
22 incidental to the operations not the predominate part of the  
23 operations. And I just ask you, if you would, this is a  
24 very -- this is a mailing that was sent apparently fairly  
25 broadly, we all received it. It was received quite -- well,

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3 we hear of people who have received it on Panorama Trail and  
4 other places. I would like you -- I would like to submit  
5 this into the record. But if you could take one moment to  
6 pass this around and tell me if you think that that looks  
7 like the description of the operations, a deli grocery, as  
8 approved and where the nonconforming use was approved in  
9 1985. And if it does not, this cannot be approved.

10                   The other point I would like to make before I  
11 just move to the next thing, is Miss Zoghlin had talked about  
12 all the case law that talks about how nonconforming use  
13 businesses can evolve and so on, and, of course, you heard  
14 some of my decision about creep. This is not just a  
15 nonconforming -- pre-existing nonconforming use existing  
16 under law. Your only role in struggling through what is the  
17 right answer here is to interrupt the 1985 settlement  
18 agreement. You need to look at that and say, is this  
19 business -- does this come within the limits as set by that  
20 agreement?

21                   The case law cited -- first of all, intensity  
22 does matter. The greater intensity of use matters if there  
23 is also a change in use, and Mr. Dollinger pointed that out.  
24 And we don't have to look to a lot of law throughout New  
25 York, we just have to look at that 1985 agreement because

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3 that gives us our parameters on what can be operated at that  
4 site.

5 How do we want you to rule tonight? Well, let  
6 me give you a summary. First of all, do not allow the  
7 preparation of that broader menu, entrees, meals and foods  
8 described in the food preparation use category. It's totally  
9 unsupportable as a pre-existing nonconforming use.

10 And I want to read you one short quote from  
11 your September 7th decision in which you ruled that the  
12 operations did not meet the pre-existing nonconforming use  
13 requirement. You said, your words, the distinct difference  
14 between the food products sold in the settlement use versus  
15 the proposed use also evidences the expansion and/or change  
16 of use. The settlement use evidences sale of classic deli  
17 items, salads, deli meats, et cetera. The proposed use is  
18 for grilled and baked complete dinners and side dishes. Your  
19 words, in which you ruled it did not satisfy requirements.

20 Second point, sustain the town planner's  
21 determination that all foods produced at the site must be  
22 sold or offered for sale at the premises or over-the-counter.  
23 Do not allow offsite delivery of any foods or other products  
24 produced at the site whether it be described as regular or  
25 occasional. The town planner was correct on this point,

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3 offsite delivery of food is not supported as an allowable  
4 pre-existing nonconforming use of the site.

5 Any allowance of offsite delivery of food by  
6 any means, employee vehicle or anything else, would open the  
7 door to potential violation of restrictions that the site not  
8 be used as a catering business. And please do not approve  
9 anything that cannot be monitored or enforced. You cannot  
10 enforce the distinction between occasional and regular  
11 offsite deliveries. Miss Dale made -- pointed that out in  
12 her questions very well.

13 And basically, if you allow offsite delivery  
14 of the foods, it will be impossible for the neighborhood and  
15 the town to monitor compliance. Any allowance of offsite  
16 delivery will unlawfully expand the nonconforming use and  
17 potentially make the operation indistinguishable from a  
18 catering business. You'd just never be able to draw that  
19 line.

20 Okay, next point, do not allow the presence of  
21 food trucks at the site. I think we are okay on that one.  
22 Do not approve the insulation of the commercial kitchen  
23 appliances, including the 21-foot hood. Now applicants  
24 continue to cite many town code provisions that they argue  
25 allow the installation and relocation, replacements,

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3 maintenance and so on, under the code. And also making the  
4 case that the hood and other things are needed to improve  
5 safety to the nonconforming property. However, what  
6 continues to be left out of those discussions is that the  
7 nonconforming use provisions of our Brighton Town Code  
8 override all of these provisions that they are citing, and  
9 are strictly applied.

10                   And when you're talking about the  
11 nonconforming use provisions restrict or forbid enlargement  
12 or alteration of the nonconforming use, strictly limits  
13 repairs and maintenance to those necessary in the interest of  
14 public safety. Believe me, the case they have made for the  
15 hood and whatever, that is not in the interest of public  
16 safety. It does not rise to that level and it limits  
17 maintenance, repair and structural alterations or  
18 enlargements to those that do not increase the degree of or  
19 create any new nonconformity or noncompliance. Those fail.  
20 It fails that test.

21                   Also, again, I'm going to refer back to your  
22 September 7th decision. In that decision you cited these  
23 structural and infrastructure expansions, including  
24 specifically the 21-foot commercial hood is increasing the  
25 degree of or creating a new nonconformity in violation of our

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3 code. You've already decided that point on September 7th.

4 I'm almost done. Do not approve the proposed  
5 change in business operations at the site because they do not  
6 meet the pre-existing nonconforming use restrictions on the  
7 site. This is a take-out restaurant. I mean, you could  
8 quarrel over whether it's a delivery restaurant as given  
9 under the present. It doesn't matter. This is a very  
10 different operation from the delicatessen/small grocery store  
11 that established the parameters of the allowable  
12 nonconforming use back in 1985 and 1989.

13 If you allow this site to be used as a  
14 restaurant it will increase the intensity of the  
15 nonconforming use, change the nature of the use to make the  
16 site less conforming to the surrounding residential zoning  
17 that's expressly prohibited by our zoning laws. It will  
18 establish a new higher intensity nonconforming use setpoint  
19 that will burden this property and this neighborhood for the  
20 future, and well beyond Chef Michael's likely occupancy at  
21 the property.

22 Just imagine -- I forget which Board member  
23 asked this question a few minutes ago -- imagine the impact  
24 on this neighborhood when and if Chef Michael moves out in a  
25 few years and a take-out delivery restaurant, including

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3 possibly a franchise chain, comes in and says, well, it's  
4 okay, you've approved a restaurant here. We should be able  
5 to legally operate here. There'd be nothing that could stop  
6 you. That has changed the setpoint, changed the  
7 nonconforming use on that property for the future.

8 Now, I would just like to say in concluding,  
9 these are fact. There's something that should not influence  
10 your decision. We are all human beings. Chef Michael is a  
11 very likeable person. He runs a small business. We all know  
12 the struggles of small business in our economy. He's trying  
13 to make it, he's trying to expand a good business. I'm sure  
14 he's a fine chef who makes excellent food. But that's not  
15 what this hearing is about.

16 If Chef Michael cannot operate his business  
17 profitably within the limitations on this site, he should be  
18 working with the town to find a site zoned properly for this  
19 business. That would be in a light, industrial zone where  
20 take-out delivery restaurants, such as his, can be legally  
21 operated. It should not be located in the heart of a low  
22 density residential zone where he is currently seeking to  
23 locate.

24 We ask the Board not to approve this  
25 application for the same reasons that it was denied in your

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3 September 7th decision. The business uses proposed by the  
4 applicant do not come within the ambient of the pre-existing  
5 nonconforming use of the property, your words on  
6 September 7th, and are a prohibited expansion and/or change  
7 of the pre-existing nonconforming use. Thank you.

8 CHAIRPERSON MIETZ: Thank you. Okay, can I  
9 just get some hands on how many people are interested in  
10 speaking, please? Okay, so let's start with the next one.

11 JEFF BARROW: Again, thank you for your  
12 patience over the six-month time --

13 CHAIRPERSON MIETZ: State your name, please.

14 JEFF BARROW: Jeff Barrow, B-a-r-r-o-w, at  
15 One Colonial Village Road. We have been there about 22 years  
16 now.

17 So, again, thank you for your patience over  
18 the last six months. As I step back I just wanted to make  
19 two very quick points for you. The first actually has just  
20 had some discussion there, but as a nonlegal person it seemed  
21 clear to me that it would be difficult for anybody to walk  
22 into the establishment and say it's a deli. Even a modern  
23 deli or an upscale deli, and now it's clearly a  
24 restaurant-type operation, take-out or otherwise. And our  
25 concern with that as was stated by some of the others, is

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3 what happens next? What's to stop a Chipotle's or a Moe's  
4 from coming in there, or one of the ones that are currently  
5 down in Panorama Plaza, All Star Pizza or Aurora the Chinese  
6 take-out restaurant? That puts it in a very difficult  
7 position and that would be a significant erosion for our  
8 neighborhood.

9                   The second point is just, I understand that  
10 desire to reach some sort of compromise, and for those who  
11 have listened to this case for six months now, I did just  
12 want to remind you of how it's been. And, frankly, how  
13 difficult it has been to get straight answers. And so, as we  
14 think about giving people the benefit of the doubt and all of  
15 that, there have been numerous occasions that have left us  
16 scratching our head and really thinking about those sort of  
17 trust issues.

18                   At that September meeting, I think 45 minutes  
19 to an hour was spent just trying to understand the hours of  
20 operation, which, tonight, still were questioned extensively  
21 and further changes. At the last full hearing that we had  
22 the owner of the property went on the record and said that  
23 the area behind the garages had not been paved after I had  
24 just handed a photo to the Board showing the food trucks  
25 sitting on the paved area, with electrical and everything

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3      plugged in.

4 So the pattern of behavior there has been  
5 fairly consistent, that is of concern to us, including signs  
6 that didn't meet code, including early on trucks and things  
7 that after the first decision was made were still there. So  
8 simply, we ask you not to put the neighborhood in the  
9 position of having to police the rules. We don't think  
10 that's what we should be doing when you take this into  
11 account.

12 And so, all we ask for you is please do not  
13 turn a blind eye to the town code. Please don't turn a blind  
14 eye to the pattern of behavior that we have seen so far. We  
15 ask you to uphold your position that you took in September.  
16 Because we firmly believe that getting this wrong changes our  
17 neighborhood for good, and this matters to us, it matters  
18 very deeply. Thank you.

19 CHAIRPERSON MIETZ: Thank you.

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3 mostly a legal one. I just wanted to very briefly, don't  
4 panic, talk about the impact on the residents on the street.  
5 Just recent developments, we now have a big, red clothing box  
6 on the deli's property.

7                   Why am I concerned? Because when the people  
8 come to drop off the clothing in the box where are they going  
9 to park? Our street, if you had a chance to go down it,  
10 you'll realize it's kind of smaller than an average  
11 residential neighborhood street. It's a little bit narrower.  
12 The people are going to stop to put stuff in the box, on the  
13 street. Why? Because the box is right out at the street,  
14 not at the deli. So you're not going to park at the deli and  
15 walk all the way across to drop your clothes in.

16                   Floodlights, we have relatively recent, last  
17 month, month and a half, four huge floodlights on the  
18 building and garage that are very bright. My living room,  
19 which faces the street, and I usually sit out there and read  
20 and watch television, it's very bright in my living room from  
21 the floodlights. Now, I'm exaggerating, but I feel like I'm  
22 sitting across the street from a state penitentiary because  
23 there are just floodlights all around.

24                   Lastly, there is the vehicles on the street.  
25 It's hard to go up Colonial Village anymore and make a left

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3 or a right turn. You can't really see the traffic coming,

4 sometimes there are cars coming out of the deli. The other

5 problem that's starting to grow is cars and very large

6 trucks, one that can't go through the deli, will pull into

7 Colonial Village and stop on the street. When you're coming

8 off Penfield Road and make a right turn onto our street and

9 find out you're right behind a parked, big truck and have

10 nowhere to go because you can't jog to the left because

11 somebody might be coming. So that's becoming an increasing

12 problem.

13                   If their staff is going to start doing

14 deliveries it's going to just build up the backlog going out

15 our street onto Penfield Road.

16                   Just wanted to give you an idea of some of the

17 things that affect the residents that aren't really legal,

18 but impact our lives. Thank you.

19                   CHAIRPERSON MIETZ: Thank you very much.

20                   Okay, next?

21                   KAREN BARROW: Hi my name is Karen Barrow,

22 B-a-r-r-o-w, One Colonial Village Road. I'm here today to

23 talk about the 21-foot hood exhaust system. And I have some

24 concerns because of the potential morphing of the kitchen and

25 the hood into a more commercialized process. The applicant

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3 is asking for a 12-foot exhaust hood system in the kitchen.  
4 I would like to raise some concerns about the length of this  
5 hood, and here's why. If this kitchen is set up for deli  
6 foods only, they don't actually require the number and  
7 variety and amount and size of equipment or appliances that  
8 are required to be covered by a 21-foot hood. There are all  
9 different size hoods that cover different types of  
10 appliances.

11 I did some research on what deli kitchens  
12 typically have in terms of the size of hoods that they  
13 typically have is 12- to 14-foot hoods. The type of  
14 appliances that you would find in a deli that don't require  
15 a hood, obviously, are blenders, juicers, food processors, hot  
16 and cold displays, et cetera. Things that do require a hood  
17 system would be commercial toasters that produce heat,  
18 microwaves, griddles, panini grills, fryers, steamers, and  
19 convection ovens, and soup kettles.

20 I would like to say that -- let me go back  
21 here. So the applicant then is asking for this 21-foot hood  
22 extension exhaust system, all in an effort to improve the  
23 existing location to make sure it's fire safe. You've heard  
24 the word ansul before, a-n-s-u-l, and that's a term used to  
25 describe fire suppressant systems or fire suppressant liquid

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3 that is inserted into piping. And so, that does not describe  
4 the type of hood, so you can have any type of hood as long as  
5 you put the fire suppressant system into it, it alerts any  
6 time that heat rises or anything that takes place, it will  
7 ring a bell or alert the system to go off.

8 So some questions you might want to ask  
9 yourself, then. What type of hood does the applicant call  
10 for? What type of hood? According to the New York State  
11 Fire Code Section 2, there are two types of hood, Type 1 and  
12 Type 2. The second type is not as robust as the first type.  
13 It doesn't require -- it only requires removal of steam and  
14 vapor. It's not required for any countertop, electrically  
15 heated appliances. So it's important to know.

16 And this would be on the application that the  
17 applicant fills out for the Brighton Fire Official. So if  
18 you are to approve the exhaust hood without understanding  
19 what type of appliances are going underneath, the size of  
20 those appliances, and the variety of those appliances. And  
21 if the Town Zoning Board and the fire authority do not speak  
22 to one another, they could very well be installing something  
23 larger than what you would have intended in the first place.

24 Second question is, what rating classification  
25 does the application call for? Under New York State Fire

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3 Code Section 9, appliance duty rating classifications

4 otherwise referred to as SASHRAE, Standard 154, there is

5 extra heavy duty that removes very, very noxious fumes, such

6 as solid fuel charcoals. So if you had a wood oven that

7 cooked pizzas, it would do that. You have heavy duty, that

8 takes care of electric and gas boilers, gas conveyor boilers,

9 gas open burner ranges, medium duty that has electric and gas

10 ranges covered. Light duty, that has steam jacketed kettles,

11 cheese melters and steamers.

12 So you need to understand as well, not just

13 what type of hood but what is the classification that they'll

14 be asking for. That will give you some hints into what the

15 kitchen will turn out to be.

16 Third question and last question is, what is

17 the need for a 21-foot hood? And again, I did some research,

18 I'm not a lawyer, I'm not an engineer, or a restauranteur,

19 but I have made some notes on the sizes of various types of

20 equipment. And I know the applicant has submitted that to

21 you, I have not seen it. But again, if you were to look at

22 what is required in a deli kitchen, 12 to 14 feet would be

23 enough. If you are adding such things as panini makers,

24 sandwich steamers, commercial toaster conveyors, char

25 broilers, full-size counter convection ovens, full-size hot

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3 plate eight burner ovens, commercial waffle irons, stationary

4 steam kettle 60-gallon, commercial gas range six to ten

5 burner, steamer, gas or electric countertop fryer and/or

6 microwave. If you had all that, you might need 21 feet of

7 hooding.

8 So you can see that you need to understand

9 clearly that the type of appliances will dictate the length

10 of the hood and the type of hood. So I just wanted to make

11 that clear and to make that statement this evening for you.

12 Thank you for listening.

13 CHAIRPERSON MIETZ: Thank you.

14 Okay, next, please.

15 BARBARA COTE: Hi, my name is Barbara Cote,

16 C-o-t-e, I live at 40 Colonial Village Road and I've been a

17 resident for almost 25 years. Everything I'm sharing tonight

18 is based on observations made since the last time we met and

19 had this conversation. To summarize, as a close neighbor I'm

20 concerned that the rights of the conforming use residents are

21 constantly being challenged and marginalized by the rights of

22 the nonconforming commercial business.

23 Since we last met, Chef's Kitchen has

24 installed lighting on the roof of the garage and the store,

25 Tom mentioned that. It's so bright at night that when I get

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3 out of bed with my blinds drawn, I was casting a shadow in my  
4 bedroom. I went out and thought, well, maybe it's just the  
5 angle of the light. And I went over and looked at the lights  
6 on Penfield Road, it's brighter than the lights on Penfield  
7 Road, which are town lights.

8 So I went in and asked very nicely if they  
9 could do something, angling the lights, doing something, at  
10 least with the light on the garage and they have modified it  
11 so it doesn't effect me as badly. But I did see that it's  
12 still quite bright on the Barrow's house.

13 Next, they installed the clothing donation bin  
14 right on the corner of the property near the street right  
15 next to the Barrow's house. I don't know how you guys feel  
16 about that, but I don't want a clothing donation center next  
17 to my house. This is what you put in Tops parking lot or a  
18 church parking lot or some place that people don't live. But  
19 you certainly don't install it in a residential neighborhood.

20 This is yet, one more commercialization of our  
21 quite park-like residential neighborhood. The only place I  
22 see with collection bins are not residences. And this makes  
23 me think that our commercial neighbors have no clue how to  
24 make a residential deli less commercial, less visible and  
25 more like a place where people live versus running a

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3 business.

4                   Dennis, or is it Douglas, thank you for  
5 mentioning that you thought this is like a restaurant. I  
6 went and was jogging Monday night and came back down the  
7 street and looked, just glanced over as I was walking by it  
8 and noticed that there were people sitting inside eating, not  
9 -- seven cars in the parking lot, somebody was sitting and  
10 eating here, and there's a highchair there. Which makes me  
11 think that they're expecting people to come in and sit and  
12 eat a meal.

13                   They spoke tonight and said that that was not  
14 the intention of it being a sit-down restaurant. It  
15 appeared, like me, like people were sitting down and eating a  
16 meal there. I went and looked at their website and I looked  
17 at their Facebook page, and on their Facebook page it says:  
18 American restaurant in Rochester, New York. And if you click  
19 on that, they list Chef's Kitchen and Bakery right above the  
20 The Revelry, which is a restaurant.

21                   So I'm confused because I feel like they're  
22 saying it's not a restaurant and yet descriptions on their  
23 website copy and the mention of catering, a one-stop catering  
24 shop on the website for the Kitchen and Bakery are confusing.  
25 And it seems to me like there's enough blurred lines that it

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3 doesn't make us feel very safe in our neighborhood for what  
4 the intentions are. Thank you.

5 CHAIRPERSON MIETZ: Next, please.

6 BRUCE FREEMAN: Hi, my name is Bruce Freeman,  
7 F-r-e-e-m-a-n, and I live at 126 Colonial Village Road. And  
8 we're here in opposition to Chef's Kitchen's application.

9 I submitted a memo to the Board on  
10 February 14th, which outlines the applicable code divisions  
11 and definitions, and I ask that that memo be part of the  
12 record. Can that be done?

13 CHAIRPERSON MIETZ: Yes.

14 BRUCE FREEMAN: Okay. We moved to Colonial  
15 Village Road in 1980. Josephine Decastro owned the business  
16 at the end of the street at the corner at that time and  
17 everyone in the neighborhood called it a little store. The  
18 scope of the operation of Josephine's store was memorialized  
19 in that 1985 stipulation that you mentioned several times.  
20 It was a stipulation between Josephine and the town.

21 If you refer to my memo, the relevant part of  
22 the stipulation is quoted in there, and based on my own  
23 experience having lived there, the stipulation accurately  
24 describes what the business actually was. It was a very  
25 small scale neighborhood grocery store and this point has

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3 already been made twice, but in September 2016, this Board  
4 ruled that it was that 1985 stipulation that describes the  
5 allowed nonconforming use of 745 Penfield Road. And it's  
6 also been mentioned that the doctrines of collateral estoppel  
7 and res judicata apply to zoning board decisions and you're  
8 bound by that September ruling.

9 You know that nonconforming uses are  
10 disfavored. That's why zoning codes put such strict  
11 constraints on them and the restrictions reflect a public  
12 policy aimed at eventually eliminating all nonconforming  
13 uses. That's the policy of the State. Nonconforming uses  
14 are supposed to disappear over time. You don't have to  
15 extend them and you don't expand them.

16 Brighton's nonconforming use code divisions  
17 are particularly strongly worded. Chapter 225-13(a), for  
18 example, flatly prohibits any enlargement of an existing  
19 nonconforming use. And even more strongly it prohibits any  
20 alteration of an existing nonconforming use. That's very  
21 strong language. If this ever has to go before Supreme  
22 Court, the clerk is going to start with those code divisions.

23 The mailer sent out a couple of weeks ago by  
24 Chef's Kitchen is also included in the memo and it's been  
25 passed around. According to the mailer, Chef's Kitchen

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3 specializes nearly exclusively in the sale of individual

4 prepared meals to go. Chapter 205-1 of the Town of Brighton

5 code defines what a restaurant is. It defines a restaurant

6 as a business that, quote, specializes in the preparation of

7 food items in individual portions, which are intended for

8 consumption without the necessity of preparation by the

9 customer.

10

11 Because Chef's Kitchen specializes almost

12 exclusively in the sale of prepared individual meals, it fits

13 the definitions of both of delivery restaurant and a fast

14 food restaurant, as those terms are defined in the Town of

15 Brighton code, and those definitions are reproduced in the

16 memo as well. So as I already mentioned, your

17 September 2016, ruling defines the allowed nonconforming use

18 as a small scale neighborhood grocery store.

19

20 Chef's Kitchen's business is vastly different

21 from the business described in the 1985 stipulation. The

22 business described in the stipulation did not specialize in

23 the preparation of individual meals, as Chef's Kitchen now

24 does almost exclusively.

25

26 Chef's Kitchen has therefore enlarged, altered

27 and changed the allowed nonconforming use from a small scale

28 neighborhood grocery to a full scale restaurant, in violation

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3 of two subdivisions of Chapter 225-13 of the Town Code. The  
4 opening of a full scale restaurant on our residential street  
5 cannot be approved without violating both your September 2016  
6 ruling and two explicit, unambiguous, prohibitions in our  
7 zoning code. Thanks.

8 CHAIRPERSON MIETZ: Thank you very much.

9 Okay. Who else would like to speak from the  
10 audience?

11 KEN GORTON: My name is Ken Gorton, I reside  
12 at 52 Colonial Village Road. This -- my presentation is  
13 intended to enhance some of the correspondence and testimony  
14 submitted from two previous public hearings and an extensive  
15 public record. I don't intend to summarize all of our  
16 arguments, but I do want to bring up several points. To  
17 maybe emphasize a couple and also to bring up three, what I  
18 would consider new or somewhat modified interpretations.

19 I'm a land-use planner. I have made a career  
20 of interpreting, enforcing land use codes. I'm not an  
21 attorney, so I can't take that perspective, but I can provide  
22 you with a perspective of a professional who is in the  
23 business. Just to reiterate, you have a responsibility to  
24 interpret and enforce land development regulations in our  
25 community. This is a legal mandate, and in my opinion a

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3 non-comprising expectation that all citizens of Brighton  
4 should expect.

5 Also, I want to add that they've continually  
6 brought up new portrayals of their business. Rendering most  
7 of the testimony that we've already provided, other than the  
8 legal interpretations, somewhat moot. We haven't had a  
9 chance to modify or to address some of the implications of  
10 these changes, nor can we expect that this isn't a pattern  
11 that is going to continue. They have been very cooperative,  
12 because they have been forced to be cooperative. What  
13 happens when there's not the same level of scrutiny? As  
14 Bruce and other neighbors have said, they have shown very  
15 little respect for our neighborhood and the neighborhood  
16 character.

17 I want to talk about a couple things. First,  
18 is the character of our neighborhood because I think that the  
19 emphasis of prior evidence of conformity and the adverse  
20 impact has been physical changes to the property and  
21 potential nuance activity. In my opinion, as evidence from  
22 excerpts from the code and previous testimony, that  
23 preserving the residential character of the neighborhood is  
24 both an objective of the developed regulations and a specific  
25 code requirement.

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References to adjoining conforming uses in Section 225-13, should not be limited just to individual properties, but based upon the purpose of the district, regulations to areas influenced by the proposed modifications in both physical character and use of the property are relevant.

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You know that the neighborhood in which this property is located has several features that characterize it and distinguish it from other areas. These include a distinct physiography or topography, which is a raised level plateau between two deep valleys on three sides. So the image is one of a neighborhood that's contained. It's not separate areas dissected by major streets or by other land uses. This is a distinct area.

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Most of the houses were built between 1930 and 1960, most of which are a distinctive colonial style. They're a similar size and similar character. The property at 745 Penfield Road, up until now, has operated in concert with and compatible with the neighborhood. The neighbors patronized that business. Because they actually, in my opinion and the opinion of a couple realtors, feel that the location of that type of neighborhood business actually enhances residential property values and character.

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3 I also did some research on what constitutes a  
4 nuisance activity and what kinds of things are adverse to  
5 property values. One of the most interesting things that I  
6 read was that the actual change or diminishment of the  
7 property is not based on physically what happens on the  
8 property, but is based upon the perception of what goes on on  
9 the property.

10 If you perceive something to be out of place,  
11 that's sufficient to render your opinion a diminishment of  
12 value. Some of the other attributes of the area, there's  
13 nearly 15 -- nearly 500 houses that access Penfield Road,  
14 which is the principal collection street for the adjoining  
15 neighborhoods. Several historic designated properties are  
16 located in this vicinity, public parks on two sides,  
17 community involvement to maintain Penfield Road's residential  
18 character.

19 And as I stated, I feel that that business has  
20 been an integral part of the neighborhood since the houses in  
21 the area were first constructed. And as I had mentioned once  
22 before, proximity to Bernunzio's has actually been mentioned  
23 in advertisements or properties for sale within the area.  
24 It's a draw to property buyers. And, likewise, the upkeep  
25 and stability of the neighborhood maintains or helps maintain

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3 property values.

4 Now, adverse effects or potentially adverse  
5 effects on requests for changes in the administrator's  
6 decisions. And again, I state that we are again surprised to  
7 learn that they're changing their intended use, with  
8 virtually no notice, no public notice, no mention to the  
9 neighbors. They didn't have the courtesy to let anybody  
10 know, really, about this significant potential change.

11 From the initial presentation to the town  
12 before they ever got to any board hearings they represented  
13 that they wanted to operate that structure more as a  
14 commissary place to assemble -- to cook and assemble food,  
15 and as a retail restaurant. Now, I realize that they  
16 continue to change and many of the points now are moot that  
17 we've made. But I said that I stated that it's very  
18 troubling and several other people tonight have mentioned a  
19 personal experience with the integrity of the operators.

20 Upholding the desired changes to the  
21 administrator's decision will open the door for more  
22 significant changes in operations and as stated before, reset  
23 the threshold for the use of the property. The actual and  
24 perceived use of the property will change from its historical  
25 character to a use more commonly associated with commercial

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3 areas.

4 I've got a couple kind of lingering questions  
5 many of which you have already opposed to the applicant, but  
6 it's still troubling to me. Why they selected a location for  
7 their business in the middle of a residential area, ignoring  
8 one of the most accepted business strategies of location,  
9 location, location. What advantage does this have over  
10 operating within a commercial area? Or an area that has  
11 many, many more compatibilities than a residential  
12 neighborhood?

13 Why have they selected this location when  
14 within a half mile there's a commercial area with similar  
15 businesses, most of which has been successful. When they are  
16 much more traffic, but yet access from the same road.

17 CHAIRPERSON MIETZ: We need you to really try  
18 to pull this together because, again, the Board has spent  
19 some time on this, we know the neighborhood, we know the  
20 street, we know the business. So, really for everybody else  
21 we need you to pull this together.

22 KEN GORTON: What plans does the applicant  
23 have for the property if curtailment of its original plans  
24 are not successful? What kind of changes can we expect in  
25 the future? Has code enforcement really been successful in

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3 limiting conditions on an application imposed by the Planning  
4 Board, Zoning Board. Again, code enforcement.

5 Why do they continue to seek interpretations  
6 or results as an administrator's decision? Trying to  
7 demonstrate pre-existing nonconforming, when they have the  
8 option of actually making an application for change of use.  
9 Which they did do, and you dismissed that.

10

11 In terms of effect in the neighborhood, what  
12 would you or anyone else feel about living in proximity to a  
13 neighborhood business that serves the community that people  
14 walk to? That school kids, when they get out of school and  
15 off the school bus by items when they, you know, they're --  
it's a place where neighborhood residents congregate.

16

17 Why do they continue to try to modify the  
18 administrator's decision, at the same time wanted to replace  
19 the administrator's decisions with another administrator's  
20 decision? Again, if they could make application, as they  
21 have. You know, I have got other examples, but I think that  
22 you get the essence of it. And I think that you wisely, you  
23 know, picked up on some of the same things. There's --  
something appears to be wrong with the application.

24

CHAIRPERSON MIETZ: Okay, thank you.

25

Any other residents that would like to speak?

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3 Okay, very good. At this point then we'll close the public  
4 hearing.

5 We don't really allow the applicants to come  
6 back.

7 MS. ZOGHLIN: Well, I never got a chance to  
8 respond to the neighbor's appeal.

9 CHAIRPERSON MIETZ: We're going to bring that  
10 up.

11 MR. DISTEFANO: That's the next application.

12 CHAIRPERSON MIETZ: We will call it.

13 So let's conclude the public hearing.

14 APPLICATION 2A-02-17

15 2A-02-17 Application of Geoff and Karen  
16 Barrow, 1 Colonial Village Road, Thomas and Nancy  
17 Christopher, 44 Colonial Village Road, and Charles and  
18 Barbara Cote, 40 Colonial Village Road, with an appeal,  
19 pursuant to Section 219-5, in disagreement of part of the  
20 Town Planner's decision, interpretation and determination,  
21 dated December 2, 2016, responding to the inquiry of Chef's  
22 Cater-All, LLC and Penfield Rd, LLC, as to whether certain  
23 proposed uses were legal and allowable as pre-existing  
24 nonconforming uses at 745 Penfield Road. All as described on  
25 application and plans on file.

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3 CHAIRPERSON MIETZ: Okay. You're up.

4 MS. KRAUSE: My name is Sherry Kraus, I'm the  
5 attorney for the appellants -- I'm sorry, the applicants in  
6 this matter. And I did -- I do want to address -- first of  
7 all, I'd like to ask that the testimony previously given in  
8 the prior application be incorporated by reference to this  
9 application as it goes to the reasons of this appeal as goes  
10 to the impact on the nearby residents making the appeal and  
11 the problems that that would create for them and why they are  
12 aggrieved parties in this proceeding.

13 I will make a specific reference, I do know  
14 that the applicant, that Chef Michael applicant, has  
15 questioned whether the nearby neighbors -- and when I say  
16 nearby neighbors, these are contiguous neighbors, the three  
17 contiguous neighbors --

18 CHAIRPERSON MIETZ: That's who you're  
19 representing, just so it's clear to everybody.

20 MS. KRAUSE: Yes. This is not the general  
21 neighborhood, these are the neighbors most impacted.

22 CHAIRPERSON MIETZ: Okay.

23 MS. KRAUSE: A question as to standing, I  
24 believe that I have submitted on the record, and I can submit  
25 another if necessary, but my letter and my authority to

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3 support the legal standing of the neighbors' appeal under  
4 Section 267A of the New York State Town Law to demonstrate  
5 that they are persons aggrieved. I've also included an  
6 excerpt from a highly respected Zoning Board of Appeals legal  
7 treatise, the James A. Coon, local government technical  
8 series that cites a number of cases. And I would note  
9 particularly one matter of Frank Horan, which basically holds  
10 that neighboring owners and nearby residents and closely  
11 adjacent owners have the state as a person's aggrieved.

12 Now, they were looking at the Village  
13 Law 179B, that is identically worded to the Town Law 267A(4)  
14 that I referenced. It also states, in these cases, that in  
15 determining who are persons aggrieved for purposes of appeals  
16 to a Zoning Board of Appeals, it must be liberally construed  
17 and should not be used to stop adjoining land owners.

18 So if you have all of these cases, legal  
19 treatises and support, that's basically what I have to offer,  
20 unless you have any questions.

21 CHAIRPERSON MIETZ: Is there any other  
22 questions for Sherry?

23 MR. DOLLINGER: What would you suggest would  
24 be, if you were to allege that there was a specific harm. If  
25 there is a body of case and there is a certain area of law,

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3 that said, there has to be something unique. You know,  
4 obviously the whole neighborhood can't appeal every decision  
5 that, you know, happens in their neighborhood. And so the  
6 courts specifically looked at that from the point of view of,  
7 well, you need to have some, some unique basis or something  
8 different about use or just the general public, et cetera,  
9 et cetera. What would you suggest would be the foundation of  
10 jurisdiction in this case based upon that line of thinking?

11 MS. KRAUSE: Well, Mr. Dollinger, if you do  
12 look at the treatise and the cases you will see that there is  
13 basically a presumption, almost rising to a presumption that  
14 a nearby neighbor adjacent or contiguous neighbor. For  
15 example, I'm quoting from the Sun Bright Car Wash case that I  
16 attached. It says it is reasonable to assume that when the  
17 use is changed a person with property located in the  
18 immediate vicinity of the subject property will be adversely  
19 affected in a way different from the community at large.  
20 Loss of value of individual property may be presumed from  
21 depreciation of the character of the immediate neighborhood.  
22 And it does note that close proximity alone doesn't  
23 necessarily give rise to an inference of --

24 MR. DOLLINGER: I'm trying to help you set up  
25 for your, you know, help us.

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3 MR. DISTEFANO: Close proximity compared to  
4 adjacent property. I'm asking Ms. Krause, is that your  
5 presumption that that's what is the determining factor in  
6 your opinion?

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MR. DISTEFANO: Close proximity compared to  
erty. I'm asking Ms. Krause, is that your  
hat that's what is the determining factor in

MS. KRAUSE: Well that's the reason we limited the three, because while the Barrows are the property, in a way there's a continuum -- there's only between the other two, so it's contiguous in

CHAIRPERSON MIETZ: Correct.

MS. KRAUSE: And again, I'm looking at the mean, these are really just very excellent

MR. DOLLINGER: And again, I'm just trying to  
tell. Just give us the information we need to  
are -- because there is a body of cases that  
you need to be. If you, for instance, if  
they were going to build a truck stop here or  
you can come up to us and you can say, well, it  
is that where the trucks are going to be the gas  
is going to come right into my house. Well,  
clearly you have a problem that's different than  
s problem. And under that situation, you

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3 clearly would be an aggrieved party.

4 Do you have any sentence you can give us that  
5 says that one of these people that is the actual problem is  
6 an aggrieved party in the context that they have something  
7 uniquely different? If the answer's no, fine.

8 MS. KRAUSE: No, the answer is absolutely yes.  
9 I mean, you have heard testimony regarding the impact of this  
10 operation, even in its infancy before it's even been  
11 permitted to add other features, the impact, the negative  
12 impact on, for example, the Barrows with noise, with lights,  
13 with all the issues of unauthorized -- you know, the things  
14 that have happened and actually reported to the town in terms  
15 of illegal parking, and illegal activities on the site.

16 And you would certainly have the issue of  
17 disturbance if you're talking about, you know, we're talking  
18 hours of operation. And there's many variances here from the  
19 previous operation of the hours are longer, the activities on  
20 the site are more intense, they've changed again their number  
21 of employees. In January, they said there'd be two to four,  
22 now we're being told five to six. I mean, it keeps morphing.

23 All those cars, all those activities, it's --  
24 and the other neighbors across the street, the floodlights  
25 peering into their -- the now, the illegal clothes drop.

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3 Illegal, correct, Mr. DiStefano?

4

5 MR. DISTEFANO: They were not permitted a

clothes drop box, yes.

6

7 MS. KRAUSE: It is illegal. It doesn't seem  
8 to matter. Basically, we have many, many, many immediate --  
9 if this turns out to be a restaurant, been approved as a  
10 restaurant, this is going to fall clearly within all of these  
11 cases which say, basically, here's one, this is Horan, even  
12 without proof of special injury or damage, the owner of the  
13 property nearby has sufficient interest to enable him to  
14 appeal the determination. And they're talking here about the  
15 broadest possible interpretation. This is not construed  
16 narrowly, this is given a broad interpretation and a great  
17 deal of leniency so as not to foreclose neighbors who  
18 actually can be aggrieved by a town planner's decision.

19

20 And again, the town planner's decision here  
21 that we're talking about is that vast menu that additional  
22 menu that we believe is not authorized and will create a very  
23 different type of business. Perhaps a more intense and  
24 smells, you know, we have Miss Barrow talking about a lot of  
25 that.

26

27 So, anyway, I think I've about helped you as  
28 much as I can. I think the best thing is just simply to read

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3 the cases and to see that we have, we have a number of  
4 presumptions in our favor and a rule of interpretation that  
5 says that it is to be liberally construed as to who is a  
6 party aggrieved. And also, steps as to how this makes it  
7 possible to come not only before a Supreme Court proceeding  
8 and an Article 78, before you as a supplement.

9 CHAIRPERSON MIETZ: Okay. Thank you very  
10 much.

11 MS. KRAUSE: You're welcome.

12 CHAIRPERSON MIETZ: Is there anyone in the  
13 audience who would like to speak?

14 MS. ZOGHLIN: Thanks so much. My name is  
15 Mindy Zoghlin, my office is at 300 State Street, Rochester,  
16 New York. And since there's been so many issues that have  
17 crossed over between both of these appeals, I would just ask  
18 for the same courtesy of having everything that we say for  
19 each of the appeals be incorporated by reference into the  
20 other one.

21 CHAIRPERSON MIETZ: That's fine.

22 MS. ZOGHLIN: A couple of quick points,  
23 there's a lot that's been said about res judicata, issue  
24 preclusion, collateral estoppel doesn't apply here. What you  
25 did in September was here in application to expand a

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3 pre-existing nonconforming use to include catering, on-site

4 parking of food trucks, a commercial construction of a

5 19-by-9-foot cooler. What you did there, you denied the

6 application, you had three distinct sets of reasons why you

7 denied that particular application. One set of reasons had

8 to do with a structural and infrastructure expansion. One

9 had to do with the nature of the food products sold and the

10 other had to do with some legal interruption of the 1985

11 stipulation in that prior lawsuit.

12 Those factors apply to the issues in that

13 lawsuit, they don't carry on to a completely different

14 application that seeks different relief. I just wanted to

15 clarify again in case it was not clear before. There's no

16 intention to use food trucks to deliver food to and from the

17 facility. That's off the table.

18 The Town Code does not override the New York

19 State Court of Appeals case law regarding anything. And the

20 highchair that has been spied at the premises was put there

21 because Mike has a young daughter who he was caring for while

22 he was there.

23 So now, specifically with respect to the

24 neighbors' appeal, they focus on a single issue which is that

25 part of Mr. Boehner's decision as to what specific foods are

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3 permitted as a pre-existing nonconforming use. Again, we

4 have two very basic objections to this appeal. First,

5 notwithstanding Mr. Dollinger's efforts to lead the

6 appellants to establish some factual basis in support of

7 standing, they had alleged not a single fact that shows that

8 they have or will in the future suffer an injury in fact that

9 is different from that to be suffered by the public at large

10 that is within the zone of interest sought to be protected by

11 the Zoning Code.

12                   Very basic zoning stuff, not a shred of

13 evidence, the appeal has to be dismissed for that reason

14 alone. There's excellent case law that Mr. Dollinger was

15 trying to help them with, but apparently was not persuasive.

16                   Second, it is not for this Board to

17 micromanage the deli menu. Deli menus change with the

18 seasons, we've talked about that before. There's been a lot

19 of talk and conjecture about how do you know whether

20 pre-existing use has been expanded, and what happens if the

21 subsequent use or the 2017 use isn't that exactly what

22 happened in 1985, or exactly what happened before the zoning

23 code was adopted.

24                   And the cases, really, I mean, when you get

25 into them they are really interesting. For example, in the

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3 case of the People versus Perkins, you know, there was a nice  
4 guy, Mr. Perkins, who owned and operated a greenhouse and a  
5 farm stand selling flowers and vegetables and fruits. He did  
6 all that before the Zoning Code was adopted. And after the  
7 zoning code was adopted the volume of this business increased  
8 and then he also started selling pottery and wood lawn  
9 ornaments and greenhouse stuff. And the Court held, you  
10 know, that's not an illegal expansion. It doesn't have to be  
11 exactly the same type of business that took place before the  
12 zoning code.

13 The courts reached the same conclusion in the  
14 case of Town of Gardner versus Blue Sky Entertainment. Now,  
15 in that case the owner had an 85-acre parcel that had paved  
16 runways for takeoff and landing of airplanes used for  
17 parachute jumping. And it's undisputed that, you know,  
18 sometimes the skydivers camped overnight at the property.  
19 And over the years the number of tent camping skydiving  
20 enthusiasts increased. And the Court found, do you know  
21 what? It's okay to have camping there because that does to  
22 constitute an illegal expansion of the prior nonconforming  
23 use.

24 And then, earlier this year, much to my dismay  
25 because I was involved in this lawsuit, Genesee County

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3 Supreme Court found that the use of a former campground for  
4 outdoor concerts on a newly constructed professional sound  
5 stage with national acts was not an illegal expansion of a  
6 pre-existing nonconforming camping use because they always  
7 had people playing around the campfire before then. And, you  
8 know, I mean, the cases go on and on. And, you know, I think  
9 that what the courts have shown us in the recent past  
10 particularly, is that times change. And nonconforming uses  
11 change with them, and that's okay.

12

13 So for these reasons I would urge you to  
14 consider Chef's application very seriously and find that the  
15 uses we are requesting as modified by my most recent  
correspondence are permissible. Thank you for your patience.

16

17 CHAIRPERSON MIETZ: Thank you. Is there  
18 anyone else in the audience that would like to speak  
19 regarding this application? There being none, then the  
public hearing is closed.

20

Next application.

21

APPLICATION 3A-01-17.

22

23 3A-01-17 Application of William Haefner, owner  
24 of property located at 1100 Crittenden Road, for 1) an Area  
Variance from Sections 203-2.1B(3) and 203-9A(4) to allow a  
detached garage to be 1,200 square feet in size in lieu of

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3 the maximum 600 square feet allowed by code; and 2) an Area

4 Variance from Section 207-6A(1) to allow said garage to be

5 19.5 feet in height in lieu of the maximum 16 feet allowed by

6 code. All as described on application and plans on file.

7 CHAIRPERSON MIETZ: Okay. Good evening.

8 WILLIAM HAEFNER: Good evening. William

9 Haefner, H-a-e-f-n-e-r.

10 What I'm looking to do is put a cold storage

11 barn, I guess you could say, to fit a 36-foot fifth wheel

12 camper, a couple trailers, and I have a car that I'm

13 restoring. Right now I have it in somebody else's garage

14 because I don't have the room for it at my place and I'm

15 looking to get that over there.

16 And as far as the height, I need a 13-foot

17 door and to get the right pitch on the roof, that's why I

18 need the 19.6. And like I said, with the 36-foot camper I

19 would just squeeze it into a 40-foot barn. And it would be

20 on the northeast corner of my yard, which is surrounded by

21 woods on that side there. I live right next to the Lehigh

22 Valley Trail.

23 You know, during the spring and summer to fall

24 with the foliage, you know, wouldn't be very noticeable back

25 there, being the way the lots are angled. And as far as, you

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3 know, my lot is 182 feet deep too, so it is fairly deep, and  
4 it is off the road quite a ways.

5 And it's going to aesthetically, I want to  
6 kind of -- I know it's probably at the next meeting if this  
7 gets passed, I want to conform to the neighborhood, I want it  
8 to match the house, you know, the dark gray metal structure  
9 with the black architectural shingle roof with white trim on  
10 the doors and everything.

11 So, if you see my house it's similar to that,  
12 you know, landscaped around it and make it look -- it's not  
13 going to be an eyesore.

14 MS. DALE: Have you talked to any of your  
15 neighbors?

16 WILLIAM HAEFNER: Yeah, actually, I talked to  
17 all the neighbor right around me. There's about, I think,  
18 ten houses in our area right there. And they all think it's  
19 great, you know, no one -- everyone knows the meeting's  
20 tonight and I don't think any of them showed up opposed to  
21 it.

22 MS. SCHWARTZ: How long have you lived there?

23 WILLIAM HAEFNER: About 12 years.

24 MS. SCHWARTZ: And the sheds and things are  
25 all coming down on the side over there?

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WILLIAM HAEFNER: There was one little shed over there, yeah, that would have to come down. And there are no trees or anything right there existing that would have to come down either.

7

MS. SCHWARTZ: Okay.

8

9

10

CHAIRPERSON MIETZ: So the purpose is to store the camper and these other trailers and things, are they part of a business?

11

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15

16

WILLIAM HAEFNER: No, it's a dump trailer. I have a huge family. My father's one of 16, so we're always helping each other out. Dad bought a dump trailer because somebody always needs mulch or something delivered. And I have a couple four wheelers that we take down to my wife's grandparent's land. That's why I need the other trailer.

17

18

19

CHAIRPERSON MIETZ: All right. What kind of -- how will the inside of this facility, is it going to be heated, is it going to have any utilities?

20

21

22

23

WILLIAM HAEFNER: No, it's not going to be heated. I'll have electric run out to it, that will be it. It's just going to be a pole barn. I'm not going to have it insulated or anything.

24

CHAIRPERSON MIETZ: No drainage?

25

WILLIAM HAEFNER: Yeah, I will have gutters

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3 and downspouts.

4

5 CHAIRPERSON MIETZ: I'm talking about the

6 inside.

7

8 WILLIAM HAEFNER: No, I'm going to pour a  
9 concrete floor, but I'm not going to bury, no, no. I'm not  
going to have any, there's no reason for any water to be in

there.

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CHAIRPERSON MIETZ: Okay. So you'll just have

water and --

WILLIAM HAEFNER: Yeah, if I make a mess I'll

have a speedy dry or something. There's not going to be --

MR. DISTEFANO: With regards to the height,

are you going to have a loft area in there, mezzanine area,

anything that --

WILLIAM HAEFNER: I was thinking maybe on the  
one side I might do a loft at the very back, possibly. The  
other side I can't because the camper is too tall.

CHAIRPERSON MIETZ: That would be for . . .

WILLIAM HAEFNER: Just storage, decorations,

you know, everything that's in the garage I kinda want to get

out there and turn the garage into a garage-mahal, per se.

CHAIRPERSON MIETZ: Okay. Any other questions  
by the Board? Okay, thank you very much.

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3 WILLIAM HAEFNER: Thank you.

4

5 CHAIRPERSON MIETZ: Is there anyone in the  
6 audience that would like to speak regarding this application?  
7 There being none then the public hearing is closed.

8

APPLICATION 3A-02-17.

9

10 3A-02-17 Application of Antonelli Development,  
11 LLC, contract vendee, and Crittenden Creek Development Corp.,  
12 owner of property located at 1266 Brighton Henrietta Town  
13 Line Road (Tax ID#s 148.190-1-7,-8,-9 and -10) for a Use  
14 Variance from Section 203-93 to allow for a 500 unit self  
storage facility where not allowed by code. All as described  
on application and plans on file.

15

CHAIRPERSON MIETZ: Okay, Mr. Goldman.

16

17 MR. GOLDMAN: Good evening, Mr. Chairman,  
18 Members of the Board, my name is Jerry Goldman, I reside at  
19 59 Branchwood Lane in the Town of Brighton. I have an office  
20 where I conduct business at 700 Crossroads Building, 2 State  
21 Street, Rochester, New York, with the Woods, Ovastat, Gilman  
Law Firm.

22

23 We're hear this evening on behalf of Antonelli  
24 Development, LLC, who is a contract vendee of the property  
which is located on the north side of the Brighton side of  
25 Brighton Henrietta Town Line Road, up near Jefferson Road.

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3 The property is proposed to be used for mini-storage or  
4 mini-warehousing or self-storage, it's got a number of names.  
5 Our code really doesn't address that particular use, and the  
6 reason why we are here is that while this particular zoning  
7 district does allow for wholesale storage and warehousing as  
8 a conditional use, there's no definition of wholesale  
9 storage, there's no definition of warehousing, there's no  
10 definition of mini-storage and no definition of  
11 mini-warehousing. So we are here this evening seeking a use  
12 variance as we did in 2006 and as we did in 2008 for this  
13 particular property.

14 With me on the application this evening is  
15 Craig Antonelli, the principal of Antonelli Development.  
16 Also with us this evening are Gary Fredericos and Karen  
17 Fredericos who are two principals in the current owner of the  
18 property Crittenden Creek Development Corp. The Fredericos  
19 were the applicants in 2006, and at that time we explained  
20 the history from 1997 to 2006, as difficult as it was to try  
21 to market this property for permitted uses, and it hasn't  
22 gotten any easier over the course of time.

23 One of the inhibiting factors that we have is  
24 an adult bookstore across the street, that doesn't help us  
25 very much in terms of trying to market this property at all.

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3 So we have provided in accordance with the Town Code and in  
4 accordance with your application process, the dollars and  
5 cents calculation of the expenses that are related to the  
6 property, which shows that there has been no income, but  
7 there have been carrying costs, substantial carrying costs  
8 over time. One thing that we'd like to put into the record  
9 orally is a little bit of history since 2006, relative to  
10 marketing the property. This property was purchased in 2006,  
11 by the Fredericos for \$710,000. There was an extensive  
12 approval process, as you can see from the plans which you did  
13 receive, there is at the rear of this property some wetlands.  
14 And the wetlands did involve extensive discussions with the  
15 DEC, as well as with the Planning Board, so in a protracted  
16 review process at that time to review.

17 The net result was that we had to reapply,  
18 because variances are good for a year. We had to reapply in  
19 2008, and did get reapproval from this Board at that time.  
20 2008 is also a bit of a watershed, unfortunately it was a  
21 period of economic downturn. And what that cause is some  
22 retrenchment on the part of the Fredericos relative to  
23 pursuing this use. And the owners pursued other interests  
24 since that time. There's been a sign out front on this  
25 property consistently since 2008, the property was -- had

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3 very little activity. I was approached by the Fredericos  
4 saying that there was a potential interest to put student  
5 housing on the site. Which most people would have thought it  
6 would be because of the adult bookstore and other uses and  
7 the like. But the proximity to RIT really made it attractive  
8 for a company out of Texas to pursue that. Obviously, not a  
9 permitted use under the code in the industrial district.

10 We did approach the Town, we did have meetings  
11 with the town supervisor and we did get the word that a  
12 rezoning or incentive zoning application for that use would  
13 not be well received by the Town Board. And for that reason,  
14 that particular purchaser disappeared.

15 That was the only written offer that has been  
16 received on the property. It's most recently been formally  
17 listed with J. Fiorie & Company, who is an industrial and  
18 commercial broker in Rochester, in April of 2016, and was put  
19 under contract with the Antonellis in November of 2016. And  
20 from the point, we have now proceeded and went through the  
21 initial preliminary review with the Planning Board, which is  
22 the favored course for the town, to have us go there and to  
23 talk to the Planning Board on a preliminary basis before  
24 coming here on the use variance.

25 We are here tonight for the use variance

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3 application. As the Board is aware, for a use variance there  
4 are three primary standards to be addressed. One is lack of  
5 reasonable return for a permitted uses. And the marketing  
6 history indicates that we have a lack of reasonable return as  
7 a result of the inability to sell. And, in addition, we have  
8 a substantial amount of carrying costs for the property as  
9 set forth in the income and expense statement, which was  
10 submitted with the application.

11 The second standard for a use variance will --  
12 is this unique as to other properties similarly situated  
13 within the zoning district. This is a unique property, in  
14 many regards. It is generally a narrow and thin property  
15 which is bisected by wetlands, this area way in the back as  
16 well. But also, in addition to the wetlands, are power lines  
17 that are here which really frame and really restrict this  
18 property, unlike a lot of the industrial properties on the  
19 north side of Brighton Henrietta Town Line Road.

20 The third primary standard is whether this  
21 will change the character of the neighborhood. We think that  
22 our use is consistent with the other uses in the neighborhood  
23 in terms of it being essentially analogous to a storage or  
24 warehousing facility, which is a conditional use.

25 The other considerations are that we need to

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3 present and to show that this is not a self-created hardship  
4 and certainly the marketing history indicates that there's no  
5 self-creation of this hardship by the Fredericos, who is the  
6 property owner and that's the standard we have to go with.

7 We know you've had a long evening so far, we  
8 don't want to protract that. So, with that, if you want the  
9 Fredericos to say that everything I said on marketing is  
10 fine, or if you have some questions for Mr. Antonelli or me,  
11 we would be glad to address them at this time.

12 MS. CORRADO: I drive past this everyday, so  
13 I've always been curious what's going to ultimately develop  
14 there. So, with this plan are there -- is there thought  
15 given to additional plantings on the curbing? I know it's  
16 not the loveliest of neighborhoods, but I want to be sure  
17 that this doesn't become less lovely too.

18 MR. GOLDMAN: The plan here shows that we do  
19 have plantings in the front, in front of the building. Let  
20 me just explain that there are a number of buildings which  
21 are the self-storage buildings in the back. There is a  
22 building in the front which is the rental office and sells  
23 supplies that are related to that.

24 In addition, there's an area which is  
25 landscaped in the front, and that's something which is

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3 currently under discussion with the Conservation Board and  
4 the Planning Board.

5

6 MS. CORRADO: Good. Quickly, because I have  
7 several questions. Further on the front, the facade of that  
8 office building, and again not the loveliest of  
neighborhoods, what will it roughly look like?

9

10 The facade of the building was reviewed by the  
11 architectural review board and approved by the architectural  
12 review board last night. I don't have it, I don't know if  
13 Craig wants to step up to the microphone, introduce yourself  
and just generally talk about the nature of the frontage.

14

15 CRAIG ANTONELLI: Yes, Craig Antonelli,  
Antonelli Development, 22 Foxboro Lane, Fairport.

16

17 Well, it's going to have a stucco look on the  
18 front, with some stone on the bottom, and it's going to be a  
parapet wall on the top. So it's going to have a very nice  
19 look. I'd like to think that it's probably one of the nicest  
20 looking buildings on that stretch of Brighton Henrietta Town  
21 Line Road, if not deeper down. So it will definitely make  
22 that part of the neighborhood that much nicer. Thank you.

23

24 MR. DISTEFANO: Just to follow that up as to  
what was the rendering by the architectural board last night,  
25 what was the decision?

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3 CRAIG ANTONELLI: We had two to three calls  
4 into the town and we did not received it yet.

5 MS. CORRADO: In terms of the grounds, are you  
6 planning asphalt or gravel, thinking in terms of  
7 sustainability, drainage?

8 CRAIG ANTONELLI: We plan on having asphalt  
9 throughout the entire project all the way around.

10 MR. DISTEFANO: Yeah, the Town Code kind of  
11 forces him to do that.

12 MR. GOLDMAN: We don't have any choice with  
13 regards to that. Also, that what we have is a substantial  
14 amount of area. The wetland area, normally we would make  
15 this real green, but because it is. But because there's a  
16 storm water management area in this area, there's a lot of  
17 area which is green around the perimeter as well, we are not  
18 seeking a variance obviously for green space. We're fully  
19 compliant with code relative to green space.

20 MS. CORRADO: In terms of operation, tenants  
21 using the storage space, and there's trash and refuse  
22 spilling about, are there plans for Dumpsters or will it  
23 be -- will the renters be required to remove everything? How  
24 will you control that?

25 CRAIG ANTONELLI: There's no Dumpster on site.

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3 We have a facility currently out in Perinton and what we do  
4 is we monitor all trash on move out. If someone leaves  
5 something there, we have people on site that immediately  
6 remove the trash. We want to keep the storage facility clean  
7 and classy and inviting for other people to rent.

8 MS. CORRADO: Thank you. And utilities to the  
9 sheds, are they -- is there electric running to them?

10 CRAIG ANTONELLI: These buildings out back  
11 will be cold storage. So the only thing that will be in  
12 there is a light above the garage as shown on the drawing  
13 itself. We will not have any lights or power inside the  
14 facility. We don't want to encourage people to technically  
15 live there or stay there for a long period of time. We want  
16 them to drop their stuff off and come visit it once a month,  
17 one a year, whenever it is. So we are trying to discourage  
18 people to live there.

19 MS. CORRADO: Thank you.

20 MR. CLAPP: I heard the question: Do you have  
21 experience with other facilities like this? And I think I  
22 heard you say, yes, you do in Perinton.

23 CRAIG ANTONELLI: Yes, we do. We have one  
24 about half to three quarters the size of this one.

25 MS. DALE: Do people typically rent? Do they

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3 pay up front for a year or six months or . . .

4 CRAIG ANTONELLI: We rent monthly. It's a  
5 month-to-month, we give discounts for a six-month period, we  
6 give discounts for a year period. We rent month to month,  
7 and they can stay as long as they like or stay for that month  
8 and then move out. Most of our tenants stay on average at  
9 least a year or longer, believe it or not.

10 MS. SCHWARTZ: Are there any hours?

11 CRAIG ANTONELLI: We have office hours, that  
12 would be from 9:00 to 5:00, Monday through Friday, and right  
13 now, Saturday and Sunday by appointment only. Unless there  
14 is a need for the office to be open. The access in the back  
15 will have a gate right here, and there will be a keypad. And  
16 what we will do, they will have their own key code and we  
17 monitor that and it's 24-hour access, in and out. But the  
18 office itself will only be open from 9:00 to 5:00.

19 MS. SCHWARTZ: Is there fencing or something  
20 there?

21 CRAIG ANTONELLI: There will be fencing all  
22 the way around to here and to here and it will be hemmed in  
23 by the wetlands.

24 CHAIRPERSON MIETZ: Okay. Just a question on  
25 marketing, maybe you or Mr. Frederico maybe could answer it.

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3 We're not interested in what the sale price of the property  
4 was or anything, but when you relisted it with Fiorie in '16,  
5 what was it listed for?

6 MR. GOLDMAN: It was listed for 800, so it was  
7 710 in 2006 to 800 in 2016, so it was incremental.

8 MR. DISTEFANO: I just got a couple things.  
9 One is, do you allow for any type of storage or do you have  
10 restrictions on what can be stored in those units?

11 CRAIG ANTONELLI: We definitely have  
12 restrictions per our contract, no firearms, no hazardous  
13 material.

14 MR. DISTEFANO: Gasoline storage?

15 CRAIG ANTONELLI: Gasoline storage is not  
16 allowed.

17 MR. DISTEFANO: What about a vehicle?

18 CRAIG ANTONELLI: We have permitted vehicles  
19 in the past, yes.

20 MR. DISTEFANO: So the gas in the vehicle  
21 would be okay, but you wouldn't allow any other bulk  
22 gasolines, stuff like that?

23 CRAIG ANTONELLI: Gas tanks, anything like  
24 that, no.

25 MR. DISTEFANO: And no chemicals, of course?

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3 CRAIG ANTONELLI: No chemicals, no hazardous  
4 materials, no illegal substances, anything like that.

5 MR. DISTEFANO: And can you state for the  
6 record the square footage of the project, the number of units  
7 that you're proposing, and the number of units.

8 MR. GOLDMAN: The overall square footage of  
9 the development area is 8.4, 8.5 square feet. The -- I'm  
10 taking a look at the density -- it appears we have 72,725  
11 square feet of space within the buildings, which is all  
12 within code.

13 MR. DISTEFANO: Okay, and what were the number  
14 of units?

15 CRAIG ANTONELLI: The number of units will  
16 vary based on what the market -- it can be 500 units, it  
17 could be 450 units.

18 MR. DISTEFANO: So you can modify the size of  
19 these units?

20 CRAIG ANTONELLI: Correct. When we build  
21 these buildings within that building footprint, we can have a  
22 5-foot wide opening, we can have a 10-foot wide opening. It  
23 could be 20-foot deep, it could be 15-foot deep, all  
24 depending on what will fit within the building footprint  
25 only.

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3 MR. DISTEFANO: But the max would be 500.

4 CRAIG ANTONELLI: The max would be whatever  
5 the building footprint would allow that is shown on the  
6 drawing. So it could be 510, it could be 450, depending on  
7 what the market demands. It could be a lot of small units or  
8 it could be a bunch of big units. It's all about square  
9 footage.

10 MR. DISTEFANO: So the actual number of units  
11 is going to be flexible?

12 CRAIG ANTONELLI: The number of units will be  
13 flexible, the square footage will remain exactly what is  
14 approved.

15 MR. DISTEFANO: Okay.

16 MS. CORRADO: I just want to clarify, so the  
17 units themselves are flexible in their configuration or your  
18 plans for building will depend on the market?

19 CRAIG ANTONELLI: Both. You can adjust the  
20 middle partition one way or another, or you can actually make  
21 them 5-foot wide or 10-foot wide or 15-foot wide garages or  
22 20-foot wide garages. Most likely they will all be 10-foot  
23 wide garages. But if there is a market for 5-foot wide  
24 garages that are 10-foot deep or 15-foot deep, we will build  
25 those to maximize the building.

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3 CHAIRPERSON MIETZ: Very good. Any other  
4 questions?

5 Thank you very much.

6 MR. GOLDMAN: Thank you.

7 CHAIRPERSON MIETZ: Would anyone else like to  
8 speak?

9 BUD KNAPP: Bud Knapp, K-n-a-p-p, 90 Winding  
10 Creek Lane, Penfield. I uniquely have my car in his other  
11 garage over on Winton Road. It's so clean, believe me, it  
12 looks like no one's there all of the time. So it's very  
13 secure and that's why I have it there. The garage is kept  
14 clean. When I leave, they make sure it's kept clean. And  
15 they do a wonderful job. I've done it now two years in a row  
16 and it's worked out very fine. I'm here for another reason,  
17 but this is interesting.

18 CHAIRPERSON MIETZ: Okay. Thank you very  
19 much.

20 Anyone else? Then at this time the public  
21 hearing is closed.

22 APPLICATION 3A-03-17.

23 3A-03-17 Application of Lac De Ville Office  
24 Owners Association, owner of property located at 1944-1996  
25 South Clinton Avenue, for an Area Variance from Section 205-7

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3 to allow impervious lot coverage to increase from 67.7% to  
4 72.2%, after expansion of the parking lot, where a maximum  
5 65% impervious lot coverage is allowed by code. All as  
6 described on application and plans on file.

7 MATT TOMLINSON: Good evening, I'm Matt  
8 Tomlinson from Marathon Engineering. With me tonight is  
9 Mr. Knapp who spoke on that last one, as well as Dr. Lamar  
10 that represents the Lac De Ville owners association, he's got  
11 a couple other folks with him tonight.

12 As Rick mentioned, we are requesting an area  
13 variance for reduction of green space. This property is in  
14 the front of the Tops Plaza along Clinton Avenue on the east  
15 side of the road. And what we're attempting to achieve by  
16 adding some parking spaces is creating a balance between the  
17 green space and the shortage of parking spaces that are  
18 present on the site.

19 Currently there are 69 spaces on the site  
20 proper, which is here (indicating), and then there's  
21 20 spaces in the rear along the lower level of that  
22 association. There's two buildings there. Twenty spaces  
23 that are shared there are under easement with the plaza  
24 owner. Back when this property was built there was an  
25 agreement in place to share some parking spaces with the

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3 plaza. The owner has also explored other offsite parking  
4 arraignments which are now no longer available to them,  
5 including parking across and having their staff walk across  
6 Clinton Avenue, which is a very busy road.

7 So what we're proposing in trying to achieve  
8 that balance is to add 16 spaces within the existing limits  
9 of the parking trying to minimize the amount of green space  
10 that's removed, as well as the impact to the site lines  
11 through the site. Clinton Avenue sits up approximately  
12 six feet from the parking lot along the roadway there. So  
13 the site line from the road really is not going to see a  
14 large impact from this increase in parking, as most eyeline  
15 goes directly over the parking lot to the building.

16 In addition, this site is landscaped. I  
17 attached some photos to the application that shows the  
18 landscaping present on the site. It's very nicely presented  
19 and well kept as a site and that's going to continue as well.

20 The location of the parking spaces are  
21 primarily in three locations. There's a large island in the  
22 front of the two buildings, there's a center landscaped core  
23 and courtyard between the buildings, that we're maintaining a  
24 small landscaped island there. Bringing the handicapped or  
25 reserved parking up to code, which it is not currently in

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3 that central area.

4 That's the main area. We've got an extension  
5 of parking along the north side which carries that natural  
6 ending point at the end of the retaining wall. And then  
7 there's some additional parking spaces centered around an  
8 existing hydrant over on the south side of the parking.

9 We really had try to minimize and fit these  
10 spaces in around the existing utilities, around existing  
11 light poles, that kind of thing, to minimize disturbance.  
12 The construction of this is going to have to happen while  
13 these medical office buildings are in operation. So it's  
14 going to be very small. To try to stage the construction,  
15 maybe do it on weekends when some of them aren't open to try  
16 to make sure that this works well for the owners.

17 With that, I will open up to any questions you  
18 may have and as I mentioned, Dr. Lamar's here to answer any  
19 questions also.

20 CHAIRPERSON MIETZ: Can you just address the  
21 snow storage issue? You've taken a lot of the places that  
22 naturally would be snow storage. How are you planning to  
23 accommodate not only the additional snow that's going to  
24 exist, but what to do with it?

25 MATT TOMLINSON: Sure. So in large storm

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3 events there will be a choice between paying to have it  
4 trucked off or losing a couple of parking spaces to stack it  
5 up on. Smaller storm events for snow, there's a large green  
6 space area here where that gets pushed down the aisle and  
7 that's a lower area.

8 This was a large snow storage area, so they're  
9 going to have to get creative. But again, there are several  
10 locations around here. This front area was not snow storage  
11 area where we're taking away there. And right here in this  
12 area, there was a sidewalk adjacent to that parking space so  
13 that was always kept clear. So there's really only two  
14 spaces and the five spaces in this area that we're taking  
15 away from available snow storage.

16 CHAIRPERSON MIETZ: The concern I think is  
17 really not only volume, but also the fact that you're coming  
18 much closer in parking now on this site, to the entrance road  
19 as well as, you know, but what we don't want to see is a huge  
20 pile up in this corner up here on the right.

21 MATT TOMLINSON: On this side here?

22 CHAIRPERSON MIETZ: No, the opposite side.

23 MR. DISTEFANO: The entrance to the plaza.

24 CHAIRPERSON MIETZ: Yeah. So, again, as I  
25 say, there's lobbying, vision, et cetera. So, you know, it

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3 seems to me to be a little difficult to think that you would  
4 be able to store that much snow on site without that and  
5 that. When you say you might lose a few spaces, well, you're  
6 talking about quite a bit of volume here. We would be very  
7 concerned about that.

8 MATT TOMLINSON: So this area here, there's a  
9 retaining wall and a curve in that area and that slopes up  
10 quite a bit. So this parking lot's quite a bit lower than  
11 Clinton Avenue there. In addition, that stop bar sits up for  
12 the traffic light and it is traffic signal controlled, so  
13 it's not like there will be people turning left out of there  
14 with oncoming traffic coming. So there is some safety  
15 precautions built in.

16 In addition, it would be very difficult to  
17 pile up something high enough where it's going to be up above  
18 that retaining wall where it would start to restrict your  
19 vision.

20 CHAIRPERSON MIETZ: Okay.

21 MS. SCHWARTZ: Did I hear you correct, you're  
22 losing those spaces down below back?

23 MATT TOMLINSON: No, we are just not making  
24 any modifications there. They're shared between the two  
25 properties.

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3 MS. SCHWARTZ: So then what is the reason then  
4 for the need of 16 spaces?

5 MATT TOMLINSON: We are well under the  
6 required parking for a medical office on here. Again, we  
7 only have 69 spaces on the property.

8 MR. DISTEFANO: Just a quick recap. Matt kind  
9 of said this kind of nicely at the beginning. There was an  
10 agreement when this office building was built to share  
11 parking in the plaza. That agreement went to court, the  
12 office tenants lost. So they don't have the right to use any  
13 of the plaza parking spaces. They do have the right to use  
14 those back parking spaces that cross over the lot line. That  
15 are under easement. But the -- and I don't know if it was  
16 more than a handshake agreement or whatever, to use  
17 additional parking spaces that were all on the plaza side.  
18 They don't have the right to do that anymore.

19 So they lost a lot of ability to park there.  
20 Then they had an agreement with the, I believe it was the  
21 church across the street, to do offsite parking, the  
22 tenants -- or the employees, would cross over South Clinton.  
23 Since then, that building has been sold. The people who  
24 bought that building don't want that agreement of parking  
25 there anymore for liability or whatever purpose. So they are

1 Brighton Zoning Board of Appeals 3/1/17  
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3 really in a crunch now, they have nowhere to put those  
4 additional cars.

5 MS. SCHWARTZ: So it's not because there are  
6 more employees that they need the spaces.

7 MATT TOMLINSON: No, just to make spaces for  
8 the existing tenants within the building.

9 MR. DISTEFANO: So it's a real need on their  
10 end.

11 MS. WATSON: I think you've referenced this,  
12 but just to be absolutely clear, the parking spaces that are  
13 on the lot now, are they full 90 percent of the time or are  
14 there vacant spaces?

15 MATT TOMLINSON: Let Dr. Lamar speak to this.

16 DR. LAMAR: My name is Frank Lamar, I'm an  
17 original owner of that complex. A part of the complex, we  
18 have 6 of 15 units, there's a total of 30,000 square feet of  
19 medical space. If it were to be planned correctly, there was  
20 I believe 140 spaces are needed from square footage that we  
21 have. I believe 90, 89 or 90 were present or are present on  
22 the property -- on premises now.

23 With the understanding that we would have  
24 forever use of shared uses of the parking place, well this  
25 was before we built. We bought after the fact. We bought

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3 after the approvals were handled between the town and the  
4 contractor who also owned the plaza then. So I think that  
5 gives you a little better history.

6 And your question again?

7 MS. WATSON: Of the existing parking that is  
8 on the property now, is it pretty much all full all of the  
9 time?

10 DR. LAMAR: Yeah, it's full. On some days we  
11 have an orthodontist and all medical. With the orthodontist  
12 and the opthamologist in the building are there, we're short.  
13 We had 30 people, 20 to 30 people of our staff walking across  
14 Clinton Avenue parking for the last three or four years since  
15 we were prevented.

16 We had a lawsuit that last lasted almost  
17 ten years over our right to park in the plaza. It was proved  
18 by the -- it was offered by the builder, the town approved  
19 the project based on his word. We assumed we were locked in.  
20 Our lawyers never picked up on the fact that we probably  
21 should have had variances -- not variances, easements in our  
22 contracts. It never happened. Must have been six or seven  
23 different attorneys.

24 So it's been a mess. And now, we are really  
25 at a standstill. We have a patient here who would like to

1 Brighton Zoning Board of Appeals 3/1/17  
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3 come up and explain what the problem is.

4 CHAIRPERSON MIETZ: What is happening to those  
5 30 people now? How are you managing this currently?

6 DR. LAMAR: It's terrible. I don't know  
7 where -- some of the patients are just parking in the plaza.  
8 See, the problem isn't so much the patients parked back in  
9 there, but a lot of them are handicapped. They have to walk  
10 across the property, up the hill, up the stairs, and that's  
11 what they usually do. Our staff isn't allowed because they  
12 have somebody stationed out there to tag our cars, the  
13 management is there.

14 It's really a bitter situation. They made the  
15 promise and they reneged on their word and your papers show  
16 what was said at the meeting.

17 CHAIRPERSON MIETZ: Understood.

18 MR. CLAPP: Of the designer, my question is  
19 regarding the fire hydrant and the spaces around the hydrant.  
20 Is there a statutory limit as to how close spaces can be to a  
21 hydrant? I was a firefighter and was concerned there was  
22 adequate access to that hydrant.

23 MATT TOMLINSON: Sure. Technically, no. I  
24 would have to check with the records to see if this was a  
25 private hydrant or dedicated. I believe it's a private

1 Brighton Zoning Board of Appeals 3/1/17  
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3 hydrant.

4                   But our next step is to go through the  
5 Planning Board process, get approvals after we come see you  
6 guys. And we'll be working with the fire marshall to make  
7 sure that he's satisfied with access to that.

8                   CHAIRPERSON MIETZ: If you will like to come  
9 back up, sir.

10                  DR. LAMAR: I'm one of the owners, but in  
11 addition to one of the owners, I have been president of the  
12 association for 30 years. This area here was an area where  
13 snow was put. All we're going to -- the only difference now,  
14 instead of the snow being stacked here, it will be stacked  
15 hear. They will be able to plow right through and dump back  
16 in here.

17                  So there's no change in snow storage.  
18 Actually, it will improve snow storage at this end. At this  
19 end, some snow was packed here. It will now just be a little  
20 further, because there's still green area here. So it's not  
21 going to make much difference in the snow patterns, which is  
22 a lot. This area here is not used for snow storage. It's  
23 really a situation.

24                  CHAIRPERSON MIETZ: Thank you.

25                  Okay, any other questions for this gentleman

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3 from the Board? Okay. Thank you.

4 Is there anyone in the audience that would  
5 like to speak regarding this application?

6 JOHN MARSZALEK: I'm John Marszalek,  
7 M-a-r-s-z-a-l-e-k. I'm from Brooklyn, originally from  
8 Poland. The reason I'm here that I complain during the time  
9 I become patient of a medical group because I have a problem  
10 with my ligaments and tendons. And I was trying to go to  
11 have my treatments done and I couldn't go there because the  
12 parking lot is full. And I have seen quite a few other  
13 people who are trying to go there and they have to park their  
14 car in the parking lot at Tops and walk. And I pray for the  
15 inconvenience. And also recently I have someone here who is  
16 from Poland come over and be treated here. And I had to  
17 bring them several times.

18 Because of my problem with walking, I just  
19 said, you know, what's going on? Why you are not apply for  
20 more parking space and Dr. Lamar is assuring me they trying  
21 to do this in proper way. I am here to raise the  
22 consideration to take this circumstances and help person like  
23 me and some other people. Thank you. If you have any  
24 question, I'm more than happy to answer your questions.

25 CHAIRPERSON MIETZ: Thank you.

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3                   Is there anyone else in the audience that  
4 would like to speak? There being none, this public hearing  
5 is closed. We will take a five minute break and then we will  
6 come back and go over these applications.

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3 REPORTER CERTIFICATE  
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5 I, Rhoda Collins, do hereby certify that I did  
6 report in stenotype machine shorthand the proceedings held in  
7 the above-entitled matter;

8 Further, that the foregoing transcript is a true and  
9 accurate transcription of my said stenographic notes taken at  
10 the time and place hereinbefore set forth.

11  
12 Dated this 1st day of April, 2017.

13 At Rochester, New York  
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17 Rhoda Collins  
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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON MARCH 1ST, 2017  
5 AT APPROXIMATELY 9:35 **P.M.**

6 March 1st, 2017  
7 Brighton Town Hall  
8 2300 Elmwood Avenue  
9 Rochester, New York 14618

10 PRESENT:

11 DENNIS MIETZ, Chairman  
12 JEANNE DALE  
13 CHRISTINE CORRADO  
14 JUDY SCHWARTZ  
15 DOUGLAS CLAPP  
16 JENNIFER WATSON

17 DAVID DOLLINGER, ESQ.  
18 Town Attorney

19 RICK DISTEFANO  
20 Secretary

21  
22  
23  
24 REPORTED BY: RHODA COLLINS, Court Reporter  
25 EDITH E. FORBES COURT REPORTING SERVICE  
21 Woodcrest Drive  
22 Batavia, New York 14020

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3 APPLICATION 1A-04-17.

4 1A-04-17 Application of Chef's Cater-All LLC,  
5 contract vendee, and 745 Penfield Road LLC, owner of property  
6 located at 745 Penfield Road seeking appeals of portions of  
7 the Town Planner's letter dated December 2, 2016, an  
8 interpretation that intended uses at the property are legal  
9 non-conforming uses, and an appeal from the Town Planner's  
10 Accusation of Violation dated December 7, 2016, all pursuant  
11 to Section 219-2A. All as described on application and plans  
12 on file.

13 **FINDINGS OF FACT:**

14 CHAIRPERSON MIETZ: I'll move that we table  
15 application 1A-04-17 for further analysis of the materials  
16 that were given to the Board.

17 (Second by Ms. Schwartz.)

18 (Ms. Corrado, yes; Ms. Watson, yes; Ms. Dale,  
19 yes; Mr. Clapp, yes; Ms. Schwartz, yes, Mr. Mietz, yes.)

20 (Upon roll call, motion to table carries.)

21 CHAIRPERSON MIETZ: This matter will be  
22 discussed at our next meeting in April as old business.  
23 There will be no public hearing.

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3 | APPLICATION 2A-02-17.

4 2A-02-17 Application of Geoff and Karen  
5 Barrow, 1 Colonial Village Road, Thomas and Nancy  
6 Christopher, 44 Colonial Village Road, and Charles and  
7 Barbara Cote, 40 Colonial Village Road, with an appeal,  
8 pursuant to Section 219-5, in disagreement of part of the  
9 Town Planner's decision, interpretation and determination,  
10 dated December 2, 2016, responding to the inquiry of Chef's  
11 Cater-All, LLC and Penfield Rd, LLC, as to whether certain  
12 proposed uses were legal and allowable as pre-existing  
13 nonconforming uses at 745 Penfield Road. All as described on  
14 application and plans on file.

15

## **FINDINGS OF FACT:**

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MR. MIETZ: I'll move that we table application 2A-02-17 for additional analysis of information before the Board.

19

(Second by Ms. Schwartz.)

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(Ms. Corrado, yes; Ms. Watson, yes; Ms. Dale,  
yes; Mr. Clapp, yes; Ms. Schwartz, yes; Mr. Mietz, yes.)

22

(Upon roll call, motion to table carries.)

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1 Brighton Zoning Board of Appeals 3/1/17

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3 APPLICATION 3A-01-17.

12 Motion made by Ms. Schwartz to approve  
13 Application 3A-01-17 based on the following findings and  
14 facts.

## 15 FINDINGS AND FACTS:

16       1. Though this requested variance for a garage to be  
17       1200 square feet and 19-and-a-half-feet high, is substantial  
18       the lot is over one half acre in size and can accommodate the  
19       structure without it looking shorn onto the property. The  
20       height has to accommodate the 13-foot garage door and  
21       therefore the pitch of the roof.

22 2. There are several pieces of equipment and some vehicles  
23 parked outside in various locations on the property. The  
24 construction of this garage would house all of these vehicles  
25 and the equipment in one building allowing the applicant to

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3 improve his property. The garage would also protect them  
4 from the elements.

5 3. There are a few properties in the neighborhood with  
6 buildings that are in excess of the code, thus this garage  
7 will not have a detrimental effect on the area. On the  
8 contrary, the garage will be beneficial for the general  
9 appearance of the neighborhood.

10 4. No other alternative can achieve the desired result for  
11 the applicant.

12 5. The new garage will match the existing home in color and  
13 detail.

14 **CONDITIONS:**

15 1. This variance only applies to the construction of the  
16 garage as presented in testimony and written application.

17 2. All necessary building permits must be obtained.

18 (Second by Ms. Corrado.)

19 (Mr. Clapp, yes; Ms. Dale, yes; Mr. Mietz,  
20 yes; Ms. Watson, yes; Ms. Corrado, yes; Ms. Schwartz, yes.)

21 (Upon roll call, motion to approve the  
22 conditions carries.)

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3 APPLICATION 3A-02-17.

4 3A-02-17 Application of Antonelli Development,  
5 LLC, contract vendee, and Crittenden Creek Development Corp.,  
6 owner of property located at 1266 Brighton Henrietta Town  
7 Line Road (Tax ID#s 148.190-1-7,-8,-9 and -10) for a Use  
8 Variance from Section 203-93 to allow for a 500 unit self  
9 storage facility where not allowed by code. All as described  
10 on application and plans on file.

11 Motion made by Ms. Corrado to approve  
12 Application 3A-02-17 based on the following findings of fact.

13 **FINDINGS AND FACTS:**

14 1. Under applicable zoning regulations the application is  
15 deprived of all economic use or benefit from the property in  
16 question. In fact, Antonelli Development is the only viable  
17 purchaser to come forward in several years. Previous parties  
18 having been discouraged by zoning restrictions and challenges  
19 related to wetlands, environmental concerns and the nature of  
20 the business directly across the street in the neighboring  
21 municipality. The sale is contingent on zoning approvals  
22 that have been granted previously in 2006 and 2008, but not  
23 acted upon by previous owner.

24 2. The alleged hardship is unique and does not apply to a  
25 substantial portion of the district or neighborhood. In

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3 fact, mini-warehousing is not incompatible with neighboring  
4 properties like manufacturers, which are permitted uses in  
5 the district.

6 3. Requested use variance will not alter the essential  
7 character of the neighborhood. The surrounding properties  
8 within Brighton are primarily commercial and light industrial  
9 concerns. The properties directly across the road in  
10 neighboring municipality are of a similar nature. Further  
11 the proposed use is not disruptive.

12 4. The alleged hardship has not been self-created. The  
13 property in question is uniquely configured encumbered by the  
14 wetland buffer bordered by a railroad line, power station and  
15 power lines, all of which are challenging for development.  
16 The plan is proposed to accommodate these limitations will  
17 not require any further variance for these relating to  
18 setbacks, lot coverage, et cetera.

19 **CONDITIONS:**

20 1. The use approved in this variance is only for the  
21 construction and operations of a 500 plus or minus units  
22 self-storage warehouse and office/retail building as  
23 described in the submitted application and testimony.

24 2. The retail operation in the approved office building is  
25 limited to sales of storage materials and supplies as

1 Brighton Zoning Board of Appeals 3/1/17  
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3 described in the application and testimony.

4 3. All necessary town approvals and building permits shall  
5 be obtained.

6 4. Permanent secured access will be maintained 24 hours a  
7 day to the property.

8 (Second by Ms. Schwartz.)

9 (Mr. Mietz, yes; Ms. Watson, yes; Ms.  
10 Schwartz, yes; Mr. Clapp, yes; Ms. Dale, yes; Ms. Corrado,  
11 yes.)

12 (Upon roll call, motion to approve with  
13 conditions carries.)

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3 APPLICATION 3A-03-17.

4 3A-03-17 Application of Lac De Ville Office  
5 Owners Association, owner of property located at 1944-1996  
6 South Clinton Avenue, for an Area Variance from Section 205-7  
7 to allow impervious lot coverage to increase from 67.7% to  
8 72.2%, after expansion of the parking lot, where a maximum  
9 65% impervious lot coverage is allowed by code. All as  
10 described on application and plans on file.

11 Motion made by Ms. Dale to approve Application  
12 3A-03-17 based on the following findings of fact.

13 **FINDINGS AND FACTS:**

- 14 1. The hardship is not self-created. The applicant had an  
15 original agreement with the building developer to share  
16 parking but it is no longer in effect. And the applicant  
17 also lost the ability to do any adjacent offsite parking.
- 18 2. If this project were to be built today there would be  
19 more spaces than existing required.
- 20 3. The request is for 16 additional parking spaces which  
21 would reduce the amount of green space from an already  
22 nonconforming 32.3% to 27.8% versus the required 35%, which  
23 is not significant.
- 24 4. The addition of 16 spaces in three separate areas will  
25 not result in a substantial change in the neighborhood.

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3 5. The difficulty necessitating the variance request cannot  
4 be solved in another manner not require the variance.

5 6. The site was fully landscaped with mature vegetation and  
6 the reduction of green space will not be discernible to the  
7 casual observer. There will be no adverse effect or impact  
8 on the neighborhood.

9 **CONDITIONS:**

10 1. This variance applies only to the plan as presented.

11 2. All necessary Planning Board approval shall be obtained.

12 (Second by Ms. Schwartz.)

13 (Mr. Clapp, yes; Mr. Mietz, yes; Ms. Watson,  
14 yes; Ms. Corrado, yes; Ms. Schwartz, yes; Ms. Dale, yes.)

15 (Upon roll call, motion to approve with  
16 conditions carries.)

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3 APPLICATION 2A-01-17.

4 2A-01-17 Application of John Standing,  
5 property manager, and Westfall Professional Park, owner of  
6 property located at 880 Westfall Road, for relief of  
7 conditions of approval (3A-02-95) requiring the permanent  
8 maintenance of landscape screening and to replace the  
9 landscaping with a solid fence. Also, an Area Variance from  
10 Section 207-2A to allow a portion of the 6 foot high fence to  
11 extend into a front yard where the maximum height of a fence  
12 is 3.5 feet as allowed by code. All as described on  
13 application and plans on file.

14 Motion made by Ms. Schwartz to approve  
15 Application 2A-01-17 based on the following findings of fact.

16 **FINDINGS AND FACTS:**

17 1. The required tree plantings of the original 1995 variance  
18 have died or are in decline due to poor drainage at the site.  
19 Even the new trees that have been planted are dying due to  
20 root lock.

21 2. Replacing a required natural buffer with a tan vinyl  
22 fence will still maintain the integrity of the condition  
23 placed in 1995.

24 3. The proposed fence will be a more permanent solution,  
25 thus removing the issue of the dying trees.



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3 REPORTER CERTIFICATE  
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5 I, Rhoda Collins, do hereby certify that I did  
6 report in stenotype machine shorthand the proceedings held in  
7 the above-entitled matter;

8 Further, that the foregoing transcript is a true and  
9 accurate transcription of my said stenographic notes taken at  
10 the time and place hereinbefore set forth.

11  
12 Dated this 1st day of April, 2017.

13 At Rochester, New York  
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17 Rhoda Collins  
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