

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF  
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK  
On April 5, 2017, COMMENCING AT APPROXIMATELY 7:17  
P.M.

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## 9 PRESENT:

10 DENNIS MIETZ, CHAIRMAN  
CHRISTINE CORRADO  
JUDY SCHWARTZ  
11 ANDREA TOMPKINS WRIGHT  
JENNIFER WATSON  
12 DOUGLAS CLAPP

13 DAVID DOLLINGER, ESQ.  
14 Town Attorney

15 RICK DISTEFANO  
16 Secretary

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Reported By: BRIANA L. JEFFORDS  
Edith Forbes Court Reporting  
21 Woodcrest Drive  
Batavia, New York 14020

## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: [Eforbes@rochester.rr.com](mailto:Eforbes@rochester.rr.com)

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2 MR. MIETZ: So at this point I will call  
3 to order the April 2017 meeting of the Brighton Zoning  
4 Board of Appeals. Rick, was the meeting properly  
5 advertised?

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7       March 30th, 2017, addition of the Brighton-Pittsford  
8       Post.

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MR. MIETZ: Can you please call the roll?

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MR. ARDIETA: Good evening, ladies and  
members of the Board. I am Joe Ardieta  
and Engineering. I am representing the  
Foster in her application --

MR. MIETZ: Can we have an address for the

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1 MR. ARDIETA: Vanguard Engineering  
2 Associates, 241 Castlebar Road, Rochester, NY, 14610

3 —

4 CHAIRPERSON MIETZ: Thank you. Go ahead.

5 MR. ARDIETA: -- right down the road. So  
6 our variance application is to bring the driveway  
7 closer to the northern property line. If you have  
8 been to the site, you will notice that the existing  
9 driveway is gravel. It's very narrow. It was a  
10 residential use. And the house is going to be  
11 converted to a commercial use much like the two former  
12 houses on either side of this building, but it will be  
13 a much smaller parking lot with less of an intensive  
14 use. However, after meeting with town staff, they  
15 requested that we expand the driveway to 14 feet. And  
16 if you look at the geometry of the site, you will  
17 notice the building, itself, is 20 feet off the  
18 property line. So if we expand the driveway, you can  
19 see the dark areas are the -- where we are expanding  
20 from gravel to asphalt pavement and taking up more  
21 area. We come closer to our property line along this  
22 bridge here. The existing driveway is actually  
23 6.02 feet from the property line. We're maintaining  
24 that line because it coincides with the curb cut at  
25 the road. So what's there now is kind of a sinking

1           gravel driveway. We are going to straighten it out,  
2       but in so doing, we require this variance.

3           MS. SCHWARTZ: The first tree has to come  
4       down, I assume.

5           MR. ARDIETA: Correct.

6           MS. SCHWARTZ: Are the others going to  
7       stay?

8           MR. ARDIETA: There are four trees to come  
9       down. The one that is not shown here, the pine tree  
10      up front, because of its proximity to the driveway.

11          MS. SCHWARTZ: Right.

12          MR. ARDIETA: And then there will be three  
13      trees back here: One that's in where the proposed  
14      parking lot will go; one is leaning against the  
15      garage; and then there is another one that is too  
16      close to the pavement.

17          MS. SCHWARTZ: I was more concerned about  
18      maintaining the front vegetation.

19          MR. ARDIETA: Yes, the pine tree in front  
20      is the only tree in the front.

21          MS. SCHWARTZ: And you will protect the  
22      remaining when you go and make the new driveway?

23          MR. ARDIETA: Excuse me?

24          MS. SCHWARTZ: And you will protect the  
25      remaining when you go and make the new driveway?

1 MR. ARDIETA: Correct.

2 MS. TOMPKINS WRIGHT: Just so it's on the  
3 record, the property to the northwest, meaning  
4 adjacent, is commercial?

5 MR. ARDIETA: Correct.

6 MR. MIETZ: Other questions?

7 MR. CLAPP: Is the whole garage, or the  
8 existing garage, coming down or is that going to stay  
9 in place?

10 MR. ARDIETA: No, the existing garage is  
11 going to remain as is. It will actually be the  
12 parking space for the owner and their employee which  
13 will free up the five spaces outside of the structure.

14 MR. MIETZ: Okay. Other questions? Okay.  
15 Thank you very much.

16 MR. ARDIETA: Thank you.

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1 Application 4A-02-17. Application of Helen Blaszak,  
2 owner of property located at 455 Bronx Drive, for an  
3 Area Variance from Section 203-1.1B(3) to allow a  
4 detached garage to be located in a front yard (after  
5 joining two lots into one) in lieu of the side or rear  
6 yard as required by code. All as described on  
7 application and plans on file.

8 MR. LATERE: Good evening, members of the  
9 board. My name is Gerald Latere. I am an attorney  
10 for Ms. Blaszak. I am also kind of an ad hoc family  
11 member. Her sister is married to my brother-in-law.  
12 So after she got this notice that she did something  
13 wrong, she called me on the phone. I said, look, we  
14 will try to fix it if we can. As you all know -- I'm  
15 sure most of you made a personal inspection of the  
16 property. It's at the very end of Bronx Drive  
17 surrounded by parkland, I believe, by the county. She  
18 indicated to me that at the time she was going to  
19 construct the garage, she looked up on your website  
20 concerning the need for a building permit. She  
21 misread it and thought it was only for an attached  
22 garage not a detached garage.

23 Second of all, it is more forward of the  
24 house than it normally would be. I think there were  
25 two things we were really looking for, a variance and

1 area variances to leave the garage there and not tear  
2 it down. It's a beautiful structure. So how do we  
3 remedy that situation as best as possible? She does  
4 own the property. I think I submitted maps with the  
5 application. She originally owned lot number 43 and  
6 then she purchased lot number 29 which is next door to  
7 that. So she does own half an acre of land there.  
8 While that doesn't negate the fact it is built in the  
9 front yard, it is rather attractive and functional the  
10 way it is. So we would ask for an area variance for  
11 that first problem.

12 The second problem is there was no  
13 building permit which we discussed that pretty  
14 heavily. So we are certainly going to make an  
15 application, and pay the necessary fees for the  
16 building permit, and also to get a certificate of  
17 occupancy so we can be cleared up on the record with  
18 the paperwork. We do intend to combine both of those  
19 lots together and make one lot which it should be.  
20 Otherwise, she's got a garage on a separate lot, and  
21 she didn't want that. So we are going to combine  
22 those two properties together to have enough area  
23 there. Certainly, would entertain any questions.  
24 I'll let Ms. Blaszak speak.

25 MR. MIETZ: So was this the desired

1 location all along? Is that it?

2 MS. BLASZAK: Well, I couldn't put the  
3 garage --

4 MR. MIETZ: Can you just give your name?

5 MS. BLASZAK: Helen Blaszak, 455 Bronx  
6 Drive.

7 MR. MIETZ: Okay. Go ahead.

8 MS. BLASZAK: I couldn't put the garage in  
9 the backyard because my septic system and bleach beds  
10 are back there.

11 CHAIRPERSON MIETZ: Okay.

12 MS. BLASZAK: So this was actually the  
13 only place that I could put it because on the other  
14 side of the yard where it looks like mine, but it is  
15 not. It is the parks. I keep it mowed and plant  
16 flowers there on your property.

17 CHAIRPERSON MIETZ: So pretty much was  
18 really the only viable alternative.

19 MS. BLASZAK: Right.

20 MR. LATERE: But she's got bigger  
21 problems. My trees fell on her house during the  
22 windstorm.

23 CHAIRPERSON MIETZ: Okay. Any other  
24 questions? Go ahead.

25 MS. CORRADO: It's a beautiful garage. I

1 see that you got a second level to it. Is that  
2 intended for storage or --

3 MS. BLASZAK: Storage.

4 MS. CORRADO: And what else will you have  
5 running to the garage?

6 MS. BLASZAK: Just electricity.

7 MS. SCHWARTZ: I saw there was some stairs  
8 in the back. Is that how you get up to the storage?

9 MS. BLASZAK: Yes, because of being older,  
10 my son suggested we put the stairway on the outside  
11 instead of one of the pull down ladders on the inside.  
12 So that's why we did that.

13 MS. SCHWARTZ: Okay.

14 MR. LATERE: And Ms. Blaszak did discuss  
15 that with me, and she certainly does not intend to  
16 make any residence up there. Now the next person that  
17 owns the house will have to get a building permit to  
18 do that, and I would suspect that would be denied  
19 based on the structure of the property.

20 MR. MIETZ: Right. Absolutely. Any other  
21 questions? Okay. Thank you very much.

22 MR. LATERE: Thank you.

23 MS. BLASZAK: Thank you.

24 MR. MIETZ: Is there anyone in the  
25 audience that would like to speak regarding this

1 application? Yes, sir -- please, ma'am -- sorry --  
2 you can come up.

3 MS. KUNZER: Hi, Sherry Kunzer, 422 Bronx  
4 Drive.

5 MR. MIETZ: Why don't you just orient us  
6 as to where you are in relation.

7 MS. KUNZER: I am across the street from  
8 Helen and look at her garage, and I don't mind it.

9 MR. MIETZ: Okay. You don't mind?

10 MS. KUNZER: No, not at all. So I just  
11 wanted to say that it is okay with us.

12 CHAIRPERSON MIETZ: Okay. And he is?

13 MS. KUNZER: He is a neighbor on the  
14 street, too.

15 MR. HEAPHY: I live about three houses  
16 down from Helen.

17 MR. MIETZ: Just name and address for us,  
18 please.

19 MR. HEAPHY: Terry Heaphy, 290 Bronx  
20 Drive, and I think it is a beautiful garage. It is  
21 good construction, and I like the garage. She is very  
22 isolated. So I don't see where it can bother any of  
23 the neighbors.

24 MR. MIETZ: Okay. Great. Thank you.  
25 Thank you for coming out. Is there anyone else that

1 would like to speak regarding this application? There  
2 being none, then the public hearing is closed.  
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1 Application 4A-03-17. Application of Gregory and  
2 Karen Moberg, owners of property located at 186  
3 Ashbourne Road, for an Area Variance from Section  
4 207-10A(2) to allow emergency egress window wells to  
5 be 4+/- ft. from a side lot line in lieu of the  
6 minimum 9.6 ft. required by code. All as described on  
7 application and plans on file.

8 MR. MOBERG: Hello, I'm Greg Moberg, 186  
9 Ashbourne Road. And what we would like to do is put  
10 two bedrooms in the basement so when my family comes  
11 to visit, they are not sleeping on the floors. There  
12 are two cellar windows in the location where I want to  
13 put the egress windows already. And the reason I need  
14 the variance is because the egress windows have a  
15 larger window well. The wells there are now  
16 15 inches, and I have to go to 40 and one half inches  
17 in order to meet the building code and provide a  
18 really good escape window. The next house over is  
19 64 feet away. And you got a letter from my neighbor  
20 Paul Ramsey who said that he would not mind. I take  
21 it you have come and drove past the property.

22 MR. MIETZ: Yes.

23 MR. MOBERG: So you can see you can hardly  
24 see the window wells that exist at all. So that is  
25 really the story.

1 MR. MIETZ: Was there -- based on the  
2 configuration of the basement, I presume these are the  
3 openings available to do it. There is no other way to  
4 do it; correct?

5 MR. MOBERG: Well, there are two bedrooms.  
6 One is on the southeast side, and the other is on the  
7 northeast side.

8 MR. MIETZ: Okay.

9 MR. MOBERG: My property is existing  
10 non-conforming. So I couldn't meet the zoning  
11 requirements on either the front side or the east  
12 side. It is possible I could on the north side, but I  
13 would still need a variance for one of the two  
14 windows. If I am going to do that, there is a tree on  
15 the north side I would rather not mess up.

16 MR. MIETZ: Okay. That's good. Any other  
17 questions for Mr. Moberg? Pretty straightforward.  
18 Okay. We are good. Thank you.

19 MR. MOBERG: Thank you.

20 CHAIRPERSON MIETZ: Is there anyone in the  
21 audience that would like to speak regarding this  
22 application? There being none, then the public  
23 hearing is closed.

1 Application 4A-04-17. Application of Adam Frosino,  
2 McFarland Johnson Engineers, and Genesee Reserve  
3 Supply, Inc., owner of property located at 200  
4 Jefferson Road, for 1) an Area Variance from Section  
5 207-6B(1) to allow a 10,000 +/- sf storage facility to  
6 be located in a side yard in lieu of the rear yard as  
7 required by code; and 2) Area Variances from Section  
8 205-8 to allow said storage facility to have a front  
9 setback of 5 ft. in lieu of 100 ft. as required by  
10 code, and a side setback of 10 ft. in lieu of 50 ft.  
11 as required by code. All as described on application  
12 and plans on file.

13 MR. FORSINO: Good evening, my name is  
14 Adam Frosino from McFarland Johnson Engineering which  
15 is 2525 State Road, 32, Canandaigua, New York. I'm  
16 here on behalf of the Genesee Reserve Supplies, and I  
17 just want to note that the vice president is in the  
18 audience if there are any operational related  
19 questions. And also, our architect for the project is  
20 also in the audience. We did go in front of the  
21 Architectural Review Board. There are no comments on  
22 the architecture of the building. I can flip the  
23 board around and go into more detail on that.

24 First of all, if are you not familiar with  
25 the site or someone from the public isn't familiar, we

1 are on Jefferson Road right straight across the street  
2 from RIT, really, across the street from Park Point,  
3 the driveway. It is kind of set back a little bit.  
4 It is not necessarily easy to see from Jefferson Road.  
5 There is an existing main building on the site, and  
6 there is a bunch of auxiliary storage buildings that  
7 they store their supplies that they sell wholesale to  
8 contractors. And one of these buildings is noted in  
9 our application. It is a 22 by 189 foot existing  
10 structure. It is in need of being replaced. It has  
11 served its life, and they are looking to get a little  
12 bit of a larger building and also a more functional  
13 building. So you can see the dark black box is the  
14 existing building, and then the box around it is the  
15 proposed slightly wider building. And that existing  
16 building is not complying with codes as it is. So the  
17 new building, obviously, is also non-compliant with  
18 the setbacks as well as the fact that it is located on  
19 the side of the main building and not in the rear. So  
20 those are the variances we are going -- coming to the  
21 Board with. Technically, it is the front setback  
22 because of the way the property jets out. So there is  
23 a property line right here. So it's a front setback  
24 that we are asking a variance for as well as a side  
25 setback. We did place the building as far off of the

1 front as we could. But based on the fire marshall's  
2 recommendation, we do have a 20 foot separation  
3 between the other storage building on the site. I  
4 will flip this around, and I will just hold it up  
5 because I will put it back the other way. So the  
6 building would have a darker green roof, white siding  
7 with some lighting strips to allow natural light in,  
8 and a garage door style entrance to allow the delivery  
9 trucks and the people to pick up their supplies at a  
10 small door.

11 As far as utilities, the only utility  
12 going into the building would be electric only to  
13 service lighting in there. There is not going to be  
14 any sort of, you know, manufacturing, or laboring, or  
15 anything like that going on here. It is strictly  
16 going to be a storage building for the supplies they  
17 sell.

18 MR. DI STEFANO: Does this building in  
19 your opinion need to be sprinklered?

20 MR. FORSINO: I don't think it needs to be  
21 sprinklered. Can I refer to the architect on that?

22 MR. DI STEFANO: Have you talked to the  
23 fire marshall on that? Let me ask you that question,  
24 too.

25 MR. BATTISTA: Clint Battista, architect,

1       2387 Westside Drive, North Chili, 14514. We did not  
2 provide a sprinkler. It is based on the 2015 IBC.  
3 That facility is under the requirement for square  
4 footage based on increasing with the frontage. So we  
5 are compliant based on the codes.

6                    MR. DI STEFANO: Are you familiar with the  
7 town code?

8                    MR. BATTISTA: I am not.

9                    MR. DI STEFANO: All right. You might  
10 need to take a look at the town code and verify that  
11 you meet those requirements too because we have a  
12 standalone sprinkler ordinance that is more  
13 restrictive than the state code.

14                   MR. BATTISTA: Okay.

15                   MR. DOLLINGER: So you may want to talk to  
16 the fire marshall about that. I just wanted to clear  
17 that up since you said the only utility.

18                   MR. BATTISTA: Correct.

19                   MR. DI STEFANO: So you might be talking  
20 water too.

21                   MR. BATTISTA: Okay. Thank you.

22                   MR. FORSINO: I think that's all I had as  
23 far as a presentation. If there are any questions, I  
24 would be glad to answer them.

25                   CHAIRPERSON MIETZ: Questions? Okay. How

1 did you derive that 10,000 square feet was the  
2 appropriate size for the building?

3 MR. BATTISTA: Basically, the building  
4 that's there now is about half the size of the width.  
5 So when you load the product into the storage  
6 building, you really have to just go in the front. So  
7 now with the door in the middle, you can go into it  
8 with the forklift and you have the opportunity to  
9 store on both sides. So it just makes it more  
10 functional to store the products.

11 MR. MIETZ: And I presume that the  
12 business has grown since that other structure was  
13 constructed. So is that part of it, I would imagine,  
14 as well, you need to store more things than you used  
15 to?

16 MR. BATTISTA: Yes, obviously, it's better  
17 to store product inside because then it lasts longer  
18 so they don't lose inventory. So it is just  
19 beneficial for the operations of the company. They  
20 have been here for a long time. They are not looking  
21 to move. They want to make their site functional, and  
22 it is one of the upgrades they would like to do.

23 MR. MIETZ: Was one of their things being  
24 stored outside in addition to what was stored in the  
25 smaller building?

1 MR. BATTISTA: Yes, there are some  
2 products stored in the front of this building. So we  
3 also are proposing a slight overhang on the one side  
4 just so anything that is outside is also partially  
5 covered with the overhang. Not everything will fit,  
6 but --

7 MR. MIETZ: With the increase of the  
8 building, would the effort be made to try not to store  
9 things outside?

10 MR. BATTISTA: That one, I'm assuming as  
11 much as can go inside will be. They have some racking  
12 outside now that I'm not sure if it will remain  
13 outside or move.

14 MR. MIETZ: Maybe whoever can discuss that  
15 can come up?

16 MR. SANGICOMO: Tom Sangicomo, 4 Wilford  
17 Drive, Fairport, New York, executive vice president of  
18 Genesee Reserve. To answer your question, a lot of  
19 our products, lumber products, plywood products, all  
20 kinds of building materials, a lot of the lumber we do  
21 store outside already. And as Clint had mentioned, a  
22 lot of that stuff will continue to be outside. But in  
23 our main warehouse and in the existing warehouse we  
24 want to replace, there is a lot of products that need  
25 better cover and more protection. So that is what we

1 are looking to store in this new building.

2 MS. SCHWARTZ: So these parts that you  
3 were just mentioning are currently stored outside, and  
4 because are you going to a 10,000 square foot  
5 building, you will be able to bring in?

6 MR. SANGICOMO: Some of them we will be  
7 able to bring inside, yes. A lot of the products that  
8 can be stored outdoors --

9 CHAIRPERSON MIETZ: So would it be fair to  
10 say though that there wouldn't be any more stored  
11 outside?

12 MR. SANGICOMO: No. Correct.

13 MR. MIETZ: Okay. Go ahead.

14 MS. WATSON: The adjacent property,  
15 itself, 218 Jefferson Road, what is the use of that  
16 property and does that owner have an opinion about the  
17 proposal?

18 MR. SANGICOMO: I'm sorry. Does the owner  
19 --

20 MS. WATSON: I wonder the uses of that  
21 property and if they have expressed anything positive  
22 or negative about the approval.

23 MR. SANGICOMO: The last it was used, it  
24 was rented to a recycling company. The parcel that's  
25 adjacent to where we are building is just actually an

1 open field behind the building. Since I have been  
2 with this company 32 years, it has never been  
3 occupied.

4 MR. MIETZ: Right. Thank you. Anything  
5 else? Good? Okay. Thank you.

6 MR. SANGICOMO: Thank you.

7 MR. MIETZ: Is there anyone in the  
8 audience that would like to speak regarding this  
9 application? Okay. There being none, then the public  
10 hearing is closed.

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1 Application 4A-05-17. Application of Adam and  
2 Catherine Towsley, owners of property located at 59  
3 Cheswell Way, for an Area Variance from Section 205-2  
4 to allow a front addition to extend 4 +/- ft. into the  
5 40 ft. front setback required by code. All as  
6 described on application and plans on file.

7 MR. CHAIT: Good evening, my name is Stew  
8 Chait, Chait Studios, Architect, 21 Slate Drive, North  
9 Chili. Along with me tonight is Adam and Cat Towsley,  
10 owners of 59 Cheswell Way.

11 CHAIRPERSON MIETZ: Okay.

12 MR. CHAIT: The purpose of our request  
13 tonight is to ask for a front area variance of  
14 approximately 4 feet. The Towsley's existing house  
15 was built in the early '50s. The front entry when you  
16 open up, you automatically walk right into the dining  
17 room. They have no entry foyer. Everything is very  
18 compressed. The house, itself, is very land locked as  
19 far as the front. Right now the front of the house is  
20 at 40 and a half foot from the street lot line. The  
21 side properties are right at plus or minus 8 feet, and  
22 the rear is backed up to an existing in-ground  
23 swimming pool. So as far as being able to add any  
24 interior space, the house is land locked. To be able  
25 to add on approximately 4 feet to the house would

1 allow us to create an entry mudroom for them and to  
2 add a small breakfast nook into the kitchen so we can  
3 enlarge the kitchen. The kitchen itself is very small  
4 and compact. It also allows us to increase the second  
5 floor. The front dormer on the house is a false  
6 dormer and allows us, in building this, to add a third  
7 bedroom onto the house. It only has two bedrooms now.

8 MR. MIETZ: Okay.

9 MR. CHAIT: That's it. Pretty  
10 straightforward.

11 CHAIRPERSON MIETZ: And then you have the  
12 portico right there?

13 MR. CHAIT: We will add a small little  
14 entry covering to it. Yes, as much as we are allowed  
15 by code.

16 MR. DI STEFANO: Let's modify the variance  
17 request to add that because that wouldn't meet code  
18 since the house does not meet code. If the house met  
19 the 40 foot setback requirement, then you could add up  
20 to 6 feet out with like a portico or something like  
21 that. Since this is going to be under a variance  
22 anyways, you can't have that additional 2 feet without  
23 requesting it.

24 MR. CHAIT: Okay.

25 MR. DI STEFANO: So if you could just

1 modify the variance request for an additional two feet  
2 to cover the entry.

3 MR. CHAIT: Okay.

4 MR. DI STEFANO: I need you to basically  
5 say that.

6 MR. CHAIT: Then we want to modify our  
7 variance request to add the additional two foot entry  
8 covering so it's a total of six feet.

9 CHAIRPERSON MIETZ: Yes, that is correct.  
10 It is two feet, is what you are telling me?

11 MR. CHAIT: Yes, I was under the  
12 impression that we were allowed two foot overhangs  
13 without a variance request. That's why it wasn't in  
14 the original.

15 MR. MIETZ: I'm sorry, no. Any questions?

16 MS. TOMPKINS WRIGHT: So homes in the  
17 neighborhood have done similar modifications and have  
18 gotten closer to their setback non-conformities as  
19 well --

20 MR. CHAIT: Yes.

21 MS. TOMPKINS WRIGHT: -- along the street?

22 MR. MIETZ: Everyone good? Yep, I think  
23 that's it.

24 MR. CHAIT: Thank you.

25 MR. DI STEFANO: Just one quick thing,

1       Stew. Have you gone to the Architectural Review Board  
2       yet?

3                    MR. CHAIT: We will apply for that later  
4       so we can get into this next one. I didn't want to  
5       apply early in case something came from this meeting.

6                    MR. DI STEFANO: Great. Thank you.

7                    MR. MIETZ: Is there anyone in the  
8       audience that would like to speak regarding this  
9       application? Okay. There being none, then the public  
10      hearing is closed.

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1 Application 4A-06-17. Application of Kemal Omeragic,  
2 owner of property located at 154 David Avenue, for an  
3 Area Variance from Section 205-2 to allow for an  
4 enclosed porch to extend 6 +/- ft. into the existing  
5 29.1 ft. front setback where a 40 ft. front setback is  
6 required by code. All as described on application and  
7 plans on file.

8 MR. MIETZ: Good evening.

9 MS. OMERAGIC: Good evening, my name is  
10 Azra Omeragic, and my husband is Kemal Omeragic. We  
11 live on 154 David Avenue.

12 MR. MIETZ: Okay.

13 MS. OMERAGIC: We are here to ask you if  
14 we can build -- actually, if we can enclose a porch.  
15 We already have that porch, but we would like to  
16 enclose it. And we know we are kind of close to our  
17 street, but we have already that porch. And we are  
18 trying to, if we can, to cover it. We already have  
19 similar porch in our backyard. It is going to be  
20 almost the same. Build the same like our house. The  
21 same side and everything the same. And we are going  
22 to make beautiful if we can. And I don't know. This  
23 is our first time here.

24 MR. MIETZ: No worries. You are doing  
25 fine. So what is the real purpose in enclosing it?

1                   MS. OMERAGIC: We have a very small  
2 entrance from basement door. And only one person  
3 can -- our house is kind of small. And we would like  
4 to have a little bit of a bigger entrance. And when  
5 you open the door, it is right there in our living  
6 room. Our house is old. And we spend so much in  
7 energy and gas. And we are not going to have heat in  
8 that space. We are just going to have electricity.  
9 And we are going to keep that space for just an  
10 entrance and save on energy. And my husband has  
11 arthritis. It is very hard for him to every time to  
12 open the door if somebody is coming. And we were  
13 trying to save money and to build that for years. If  
14 we can, we would like to.

15                  MS. SCHWARTZ: So it is just going to stay  
16 a porch. You are not taking the wall down and making  
17 it a part of the inside of the house. It is just  
18 going to be a closed porch onto the front of the  
19 house.

20                  MS. OMERAGIC: Yes, it is going to be  
21 attached to our house. And we are going to have a  
22 door. And we are going to use the entrance to our  
23 living room.

24                  MS. SCHWARTZ: Okay.

25                  MS. OMERAGIC: And we have also the same

1 porch in our backyard of our house. We bought the  
2 house 18 years ago. The same porch is in the back of  
3 the yard. It is pretty much the same size it will be.  
4 And we are not going to change any size. We are just  
5 going to use the existing, what we have right now,  
6 porch. We are just going to make it enclosed.

7 MR. MIETZ: What is it going to be  
8 constructed out of?

9 MS. OMERAGIC: I don't understand the  
10 question.

11 MR. MIETZ: Is it going to be closed with  
12 the same materials that are on the house?

13 MS. OMERAGIC: Yes, it is going to be the  
14 same on the house, same color, and --

15 MR. MIETZ: That's good enough.

16 MS. OMERAGIC: We are going to follow  
17 whatever we have to follow, but we were thinking same  
18 siding, same color, match everything the same.

19 MR. MIETZ: Okay. Very good.

20 MS. CORRADO: On the south side of the  
21 enclosed porch, so as you are facing your home and  
22 looking on the left side, will there be a window on  
23 that wall or will that side be solid?

24 MS. OMERAGIC: Solid from the driveway  
25 side. It will be a door, and window will be covered

1 facing street -- two windows, actually. It will be  
2 very beautiful.

3 MS. CORRADO: And then just to be certain  
4 as I am looking at the sketch, it looks as though the  
5 porch roof may obstruct the window on the second  
6 floor.

7 MS. OMERAGIC: It is going to be under the  
8 window.

9 MS. CORRADO: Okay.

10 MS. OMERAGIC: Yes, and the door -- the  
11 entrance door will be facing our driveway. And  
12 actually, you are going to see still from the street.  
13 The door, you will be able to see from the street  
14 because we are going to kind of stay in the same size  
15 if we come to -- if we have door from our driveway  
16 instead coming from the front.

17 MS. CORRADO: That makes sense. Thank  
18 you.

19 CHAIRPERSON MIETZ: Go ahead.

20 MS. WATSON: She answered one of my  
21 questions. Are you adding any additional foundation  
22 around the structure of the deck or using just the  
23 wood deck?

24 MS. OMERAGIC: No, it is going to be new  
25 everything. Everything will be new like a house.

1                   MS. WATSON: Okay. And my only other  
2 question was have you discussed this proposal with any  
3 of the neighbors?

4                   MS. OMERAGIC: Yes, everybody. Everybody  
5 called me. And my two neighbors called me, and they  
6 were okay with that. My right neighbor, she already  
7 said if I -- if we have to do anything, she will be  
8 here to say something. I mean, we don't have any  
9 problem.

10                  MS. WATSON: Thank you.

11                  MR. MIETZ: Very good. Any other  
12 questions?

13                  MS. SCHWARTZ: Have you been to the  
14 Architectural Review Board or are you going after this  
15 meeting?

16                  MS. OMERAGIC: We are going after this  
17 meeting. This is our first time. We didn't know how  
18 it was going to be actually.

19                  MR. MIETZ: Okay. Well, you are doing  
20 okay.

21                  MS. OMERAGIC: Thank you.

22                  MR. CLAPP: Are you planning to have an  
23 architect to do plans before you construct?

24                  MS. OMERAGIC: Yes. Yes.

25                  MR. CLAPP: I'm learning too.

1 MR. MIETZ: Okay. Any other questions?  
2 Great. Thank you. Is there anyone in the audience  
3 that would like to speak regarding this application?  
4 Okay. There being none, then the public hearing is  
5 closed.

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1 C E R T I F I C A T E O F N

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3 STATE OF NEW YORK:  
COUNTY OF MONROE:

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5 I, BRIANA L. JEFFORDS, do hereby certify  
6 that I reported in machine shorthand the above-styled  
7 cause; and that the foregoing pages were typed by  
8 computer-assisted transcription under my personal  
9 supervision and constitute a true record of the  
0 testimony in this proceeding;

11 I further certify that I am not an  
12 attorney or counsel of any parties, nor a relative or  
13 employee of any attorney or counsel connected with the  
14 action, nor financially interested in the action;

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Bianca L. Jeffords

BRIANA L. JEFFORDS

## **Freelance Court Reporter and**

Notary Public No. 01JE6325111

in and for Genesee County, New York

## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: Eforbes@rochester.rr.com

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF  
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK  
3 On April 5, 2017, COMMENCING AT APPROXIMATELY 7:17  
P.M.

4 April 5, 2017  
5 Brighton Town Hall  
6 2300 Elmwood Avenue  
7 Rochester, New York 14618

8

9 PRESENT:

10 DENNIS MIETZ, CHAIRMAN  
11 CHRISTINE CORRADO  
12 JUDY SCHWARTZ  
13 ANDREA TOMPKINS WRIGHT  
14 JENNIFER WATSON  
15 DOUGLAS CLAPP

16 DAVID DOLLINGER, ESQ.  
17 Town Attorney

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21  
22  
23 RICK DISTEFANO  
24 Secretary

25 Reported By: BRIANA L. JEFFORDS  
Edith Forbes Court Reporting  
21 Woodcrest Drive  
Batavia, New York 14020

**FORBES COURT REPORTING SERVICES, LLC**

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: [Eforbes@rochester.rr.com](mailto:Eforbes@rochester.rr.com)

1 Application 4A-01-17. Application of Rosie Foster,  
2 owner of property located at 1571 Monroe Avenue, for  
3 an Area Variance from Section 205-18A to allow  
4 driveway pavement to expand within 6ft. of a side lot  
5 line where a 10 ft. setback is required by code. All  
6 as described on application and plans on file.

7 Motion made by Mr. Clapp to approve  
8 Application 4A-01-17.

9 FINDINGS OF FACT:

- 10 1. The requested variance is not substantial,  
11 essentially, replacing what is mostly already an  
12 existing driveway and what is required for expanding  
13 for the proposed commercial use.
- 14 2. No other alternative can alleviate the difficulty  
15 and produce the desired result.
- 16 3. No unacceptable changes in the character of the  
17 neighborhood and no substantial detriment to nearby  
18 properties is expected to result from the approval of  
19 this variance because adjacent commercial properties  
20 have similar setbacks.
- 21 4. The alleged hardship was not self-created by the  
22 applicant.
- 23 5. The health, safety, and welfare of the community  
24 will not be adversely effected by the approval of this  
25 variance request.

## 1 | CONDITIONS:

2 1. The variance will apply only to the driveway  
3 expansion as shown on plans submitted and testimony  
4 given.

5       2. All necessary Planning Board approvals shall be  
6       obtained.

7 (Seconded by Ms. Schwartz.)

8 (Ms. Corrado, yes; Ms. Watson, yes;

9 Ms. Tompkins Wright, yes;

10 Mr. Clapp, yes; Ms. Schwartz, yes;

11 Mr. Mietz, yes.)

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

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## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: Eforbes@rochester.rr.com

1 Application 4A-02-17. Application of Helen Blaszak,  
2 owner of property located at 455 Bronx Drive, for an  
3 Area Variance from Section 203-1.1B(3) to allow a  
4 detached garage to be located in a front yard (after  
5 joining two lots into one) in lieu of the side or rear  
6 yard as required by code. All as described on  
7 application and plans on file.

8 Motion made by Ms. Corrado to approve

9 Application 4A-02-17.

10 FINDINGS OF FACT:

- 11 1. The requested variance is not substantial as  
12 citing the new garage on the proposed location on  
13 combined lots does not create an unpleasant esthetic  
14 or encroach on neighbors' views in any negative way.
- 15 2. No other alternative can alleviate the difficulty  
16 and produce the desired result as the code compliant  
17 location at the rear of the property will interfere  
18 with the existing septic system.
- 19 3. No unacceptable change in the character of the  
20 neighborhood and no substantial detriment to nearby  
21 properties is expected to result from the approval as  
22 the neighborhood is not densely developed; the area is  
23 heavily wooded; and the property is surrounded by  
24 county-owned park land.
- 25 4. The alleged hardship was self-created by the

1 applicant. However, in combining two adjacent lots  
2 into one, the impact of the placement of the new  
3 garage on the neighboring property is significantly  
4 mitigated.

5 5. The health, safety, and welfare of the community  
6 will not be adversely effected by the approval of the  
7 variance request. In fact by permitting citing of the  
8 garage in the requested location on the lot, the  
9 property owners will be able to appropriately store  
10 vehicles, lawn equipment, et cetera, out of the view  
11 of neighbors.

12 CONDITIONS:

13 1. This variance will apply only to the structure  
14 that was described in the application and testimony  
15 given. In particular, it will not apply to additional  
16 structures considered in the future that are not  
17 included in the present application.

18 2. No utilities other than electric will be  
19 installed.

20 3. All necessary town approvals and permits shall be  
21 obtained.

22 (Seconded by Ms. Schwartz.)

23 (Ms. Corrado, yes; Ms. Watson, yes;  
24 Ms. Tompkins Wright, yes;  
25 Mr. Clapp, yes; Ms. Schwartz, yes;

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## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: Eforbes@rochester.rr.com

1 Application 4A-03-17. Application of Gregory and  
2 Karen Moberg, owners of property located at 186  
3 Ashbourne Road, for an Area Variance from Section  
4 207-10A(2) to allow emergency egress window wells to  
5 be 4+/- ft. from a side lot line in lieu of the  
6 minimum 9.6 ft. required by code. All as described on  
7 application and plans on file.

8 Motion made by Mr. Mietz to approve

9 Application 4A-03-17.

10 FINDINGS OF FACT:

11 1. In order to meet the building code for egress, the  
12 owner is required to have 40 inch window wells that  
13 protrude from the basement wall.

14 2. The proposed windows will be 4 feet from the side  
15 lot line. The house, as built, was 8 feet from the  
16 lot line and non-conforming.

17 3. No other means can alleviate the difficulty of  
18 installing the window to meet the code.

19 4. No negative effect on the character of the  
20 neighborhood will result since the window wells, as  
21 constructed, will be marginally visible from the road  
22 and the nearest property is approximately 64 feet  
23 away.

24 CONDITIONS:

25 1. All building permits shall be obtained.

2. This variance is based on the drawings as  
submitted and testimony given.

3 (Seconded by Ms. Corrado.)

4 (Ms. Corrado, yes; Ms. Watson, yes;

6 Mr. Clapp, yes; Ms. Schwartz, yes;

7 Mr. Mietz, yes.)

8 (Open roll call, motion to approve  
9 with conditions carried.)

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## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: Eforbes@rochester.rr.com

1 Application 4A-04-17. Application of Adam Frosino,  
2 McFarland Johnson Engineers, and Genesee Reserve  
3 Supply, Inc., owner of property located at 200  
4 Jefferson Road, for 1) an Area Variance from Section  
5 207-6B(1) to allow a 10,000 +/- sf storage facility to  
6 be located in a side yard in lieu of the rear yard as  
7 required by code; and 2) Area Variances from Section  
8 205-8 to allow said storage facility to have a front  
9 setback of 5 ft. in lieu of 100 ft. As required by  
10 code, and a side setback of 10 ft. In lieu of 50 ft.  
11 as required by code. All as described on application  
12 and plans on file.

13 Motion made by Ms. Schwartz to approve  
14 Application 4A-04-17.

15 FINDINGS OF FACT:

16 1. The proposed storage facility is replacing an  
17 existing smaller structure on the same location. The  
18 business is growing and a larger building is needed.  
19 This will allow more product to be stored inside.  
20 2. The proposed structure is located adjacent to  
21 railroad track, faces Jefferson Road to be south, and  
22 is buffered by trees and brush to the east and west.  
23 Therefore, this proposed structure will not adversely  
24 impact the area although it is located in a side yard  
25 rather than a rear yard.

3. Due to the minimum 20 foot separation distance to  
the nearest building per the fire code, this proposed  
structure cannot extend any farther from the property  
line.

5       4. The existing structure infringes on the minimum  
6 setback requirement, but does not negatively impact  
7 the area. This is the only place on the property for  
8 the structure to be placed.

## 9 CONDITIONS:

10 1. This variance only applies to the storage facility  
11 as presented in the application and testimony  
12 presented.

13       2. All necessary permits and approvals must be  
14       obtained.

15 (Seconded by Ms. Tompkins Wright.)

16 (Ms. Corrado, yes; Ms. Watson, yes;

17 Ms. Tompkins Wright, yes;

18 Mr. Clapp, yes; Ms. Schwartz, yes;

19 Mr. Mietz, yes.)

20 (Open roll call, motion to approve  
21 with conditions carries.)

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1 Application 4A-05-17. Application of Adam and  
2 Catherine Towsley, owners of property located at 59  
3 Cheswell Way, for an Area Variance from Section 205-2  
4 to allow a front addition to extend 4 +/- ft. into the  
5 40 ft. front setback required by code. All as  
6 described on application and plans on file.

7 Motion made by Ms. Tompkins Wright to  
8 approve Application 4A-05-17, but for the  
9 area variance as modified per applicant's  
10 request to allow for a front addition to  
11 extend 6 feet into the 40 foot setback.

12 FINDINGS OF FACT:

13 1. The granting of the requested variance will not  
14 produce an undesirable change in the character of the  
15 neighborhood or be a detriment to nearby properties.  
16 Homes in this neighborhood are already inconsistent in  
17 appearance and several houses have made similar  
18 modifications such that this expansion to this home  
19 will not appear inconsistent.

20 2. The requested variance is not substantial. The  
21 encroachment into the setback is less than 6 feet or  
22 15 percent of the required setback.

23 3. The benefit sought by the applicant cannot be  
24 reasonably achieved by any other method. The  
25 applicant testified that the expansion is necessary to

1 create a functional entryway and enlarge the kitchen.  
2 The only location to put such an expansion is in the  
3 front yard.

4 4. There's no evidence that the proposed variance  
5 will have an adverse effect or impact on the physical  
6 or environmental conditions in the neighborhood or  
7 district.

8 5. The difficulty in complying with the code, while  
9 self-created, stems from the physical restraints of  
10 the property and the age of the current home.

11 CONDITIONS:

12 1. The variance granted herein applies only to the  
13 addition described in and in the location as depicted  
14 on the application and in the testimony given.

15 2. All necessary approvals and permits shall be  
16 obtained.

17 3. Two feet of this approved variance shall only  
18 apply to the portico as depicted on the plans.

19 (Seconded by Ms. Schwartz.)

20 (Ms. Corrado, yes; Ms. Watson, yes;

21 Ms. Tompkins Wright, yes;

22 Mr. Clapp, yes; Ms. Schwartz, yes;

23 Mr. Mietz, yes.)

24 (Open roll call, motion to approve  
25 with conditions carries.)

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**FORBES COURT REPORTING SERVICES, LLC**

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: [Eforbes@rochester.rr.com](mailto:Eforbes@rochester.rr.com)

1 Application 4A-06-17. Application of Kemal Omeragic,  
2 owner of property located at 154 David Avenue, for an  
3 Area Variance from Section 205-2 to allow for an  
4 enclosed porch to extend 6 +/- ft. into the existing  
5 29.1 ft. front setback where a 40 ft. front setback is  
6 required by code. All as described on application and  
7 plans on file.

8 Motion made by Ms. Schwartz to approve

9 Application 4A-06-17.

10 FINDINGS OF FACT:

11 1. The requested variance is not substantial because  
12 the owners are enclosing a preexisting porch and not  
13 setting the existing footprint further into the front  
14 setback.

15 2. No other alternative can alleviate the difficulty  
16 and produce the desired result.

17 3. No unacceptable change in the character of the  
18 neighborhood and no substantial detriment to nearby  
19 properties is expected to result from the approval of  
20 this variance because most houses in the neighborhood  
21 have smaller setbacks than that required by code.

22 4. The health, safety, and welfare of the community  
23 shall not be adversely effected by the approval of  
24 this variance requested because other houses in the  
25 neighborhood are also not in current compliance with

1 the code.

2 CONDITIONS:

3 1. This variance will apply only to the enclosure of  
4 the current porch as described on the application and  
5 in testimony given. In particular, it will not apply  
6 to additional structures considered in the future that  
7 are not included in the present application.

8 2. The enclosure will be of a similar and  
9 complimentary style to the rest of the house.

10 3. All necessary town approvals and permits shall be  
11 obtained.

12 (Seconded by Ms. Schwartz.)

13 (Ms. Corrado, yes; Ms. Watson, yes;

14 Ms. Tompkins Wright, yes;

15 Mr. Clapp, yes; Ms. Schwartz, yes;

16 Mr. Mietz, yes.)

17 (Open roll call, motion to approve  
18 with conditions carries.)

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

11 Motion made by Mr. Mietz to affirm a  
12 portion and deny a portion of Application 1A-04-17  
13 as follows:

14 There is insufficient evidence provided  
15 by the Applicant to establish that certain aspects of  
16 Applicant's proposed use are consistent with the  
17 lawful preexisting nonconforming use and, therefore,  
18 certain of those uses proposed in Applicant's proposed  
19 use are not an allowed lawful preexisting  
20 nonconforming use.

21 The proposed expansion of the facility  
22 and the expansion of the mechanical infrastructure in  
23 support of a substantially different qualitative use,  
24 namely, bulk production and delivery of food products,  
25 is an unlawful expansion of the lawful preexisting

1 nonconforming use based on the following findings of  
2 fact:

3 1. That the lawful preexisting nonconforming use of  
4 the property at 745 Penfield Road in the town of  
5 Brighton, New York, is as a small grocery facility  
6 with the sale of various grocery items, food stuffs,  
7 and sundries with the ancillary use of the "baking and  
8 sale of bread" and sale of deli products. (The  
9 "Lawful Use") the lawful use is outlined in the  
10 stipulation dated April 1985 (the "Stipulation") as  
11 supplemented by the letter from Gary Shirley dated  
12 January 18, 1989 (the "Shirley letter").

13 2. That Section 225-18 of the Brighton Town Code  
14 expressly provides that it shall be the responsibility  
15 of the owner of record to prove that the activity or  
16 condition proposed is a lawful preexisting  
17 nonconforming use.

18 3. There is insufficient evidence presented that the  
19 lawful use included off-site delivery of food  
20 products. And therefore to the extent that any aspect  
21 of the proposed use includes off-site delivery of food  
22 products, such use is not an allowed lawful  
23 preexisting nonconforming use. In fact, the Shirley  
24 Letter specifies and discusses the types of goods that  
25 can be sold "over the counter" and the Stipulation

1 states that "all such goods and products as are now  
2 sold are offered for sale at the premises."

3 4. There is insufficient evidence presented that the  
4 lawful use included consumption of food on the  
5 premises. And to the extent that Applicant's proposed  
6 use includes consumption of food or food stuffs at the  
7 premises, that use is not an allowed lawful  
8 preexisting nonconforming use.

9 5. The Applicant's proposed use has morphed through  
10 various iterations. In essence, the most recent  
11 iteration proposes a "deli, bakery, carry-out, and  
12 food preparation use." To the extent that the use  
13 incorporates delivery as noted before, that use is not  
14 a lawful preexisting use. There is evidence  
15 presented, including the Stipulation and the Shirley  
16 Letter, that support a finding that there is an  
17 existing lawful preexisting ancillary use as a bakery.  
18 The primary use was not a bakery. However, there is  
19 evidence that a bakery was an ancillary use and,  
20 therefore, a lawful preexisting use.

21 6. There is evidence presented, including the  
22 Stipulation and Shirley Letter, that support a finding  
23 that there is an existing lawful preexisting ancillary  
24 use as a deli. The primary use was not a deli.  
25 However, there is evidence that a deli was an

1 ancillary use and, therefore, a lawful preexisting  
2 use.

3 7. The Applicant has presented insufficient evidence  
4 that the lawful use included bulk food preparation for  
5 catering, bulk sale, or delivery off the premises.  
6 And therefore to the extent that the proposed use  
7 includes bulk food preparation for catering, sale, or  
8 delivery off the premises, that use is not an allowed  
9 lawful preexisting nonconforming use.

10 8. The Applicant has provided insufficient factual  
11 information or evidence supporting a contention that  
12 the lawful use included seating for consumption of  
13 food on the premises. And therefore to the extent  
14 that seating for consumption of food on the premises  
15 is included in the Applicant's proposed use, that use  
16 is not a lawful preexisting nonconforming use.

17 9. The Applicant's proposal includes a complete  
18 expanded "commercial" kitchen requiring a 24-foot  
19 exhaust hood. The proposed use to the extent that it  
20 requires a "commercial" kitchen is an unlawful  
21 expansion of the preexisting nonconforming use. The  
22 expansion to a commercial kitchen provides a  
23 qualitative change in the ancillary deli use. There  
24 is no evidence that the products and the volumes of  
25 products produced at this location as part of the

1 lawful use required a "commercial" kitchen. A typical  
2 deli use in this community does not require a  
3 "commercial" kitchen, and the installation of a  
4 "commercial" kitchen is not contemplated nor apparent  
5 from analyzing the lawful use as set forth in the  
6 Shirley Letter and the Stipulation and is therefore  
7 not a lawful preexisting nonconforming use.

8 The Board finds that the configuration size of  
9 the existing equipment on the premises including:

- 10 1. Convection oven of the size and  
11 configuration of the existing convection  
12 oven;
- 13 2. One four burner stove the size and  
14 configuration of the existing four burner  
15 stove;
- 16 3. One commercial deep fryer the size and  
17 configuration of the existing deep fryer;
- 18 4. One flat top griddle the size and  
19 configuration of the existing flat top  
20 griddle;
- 21 5. One four-door cooler the size and  
22 configuration of the existing four-door  
23 cooler;
- 24 6. Three two-door coolers the size and  
25 configuration of the existing two-door

1 coolers;

8 does not constitute a commercial kitchen inconsistent  
9 with the lawful use. However, expansion or  
10 enlargement of the kitchen equipment noted above would  
11 constitute an unlawful expansion of the lawful use.

12                   A ventilation hood sufficient to provide  
13 reasonable fire safety to cover the above referenced  
14 items, if appropriately sized, would not be an  
15 expansion of the lawful use.

16       10. A qualitative change in the volume and/or variety  
17       of food stuffs and food sold at the premises may  
18       result in a change in use that is not consistent with  
19       the prior lawful nonconforming use to the extent that  
20       any future use becomes substantially limited in the  
21       variety of products sold and inconsistent with the  
22       multifaceted use of the premises as a combination  
23       grocery, bakery, deli, then such use would constitute  
24       a use inconsistent with the "lawful use."

25 (Seconded by Ms. Tompkins Wright.)

1 (Ms. Watson, yes; Mr. Clapp, yes;  
2 Ms. Dale, yes; Ms. Tompkins Wright, yes;  
3 Ms. Schwartz, no; Mr. Mietz, yes.)  
4 (Open roll call, motion to interpret as  
5 per the findings of fact carries.)

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

13 Motion made by Ms. Tompkins Wright to move  
14 that the Town Planner's decision, interpretation, and  
15 determination dated December 2nd, 2016, is affirmed in  
16 part and overturned in part and modified as follows:

17 The Town Planner's determination in paragraph  
18 three that the foods described in the category of food  
19 preparation use are consistent with prior uses is  
20 modified to state that the Town Planner's  
21 determination in paragraph three that foods described  
22 in the category of food preparation use are consistent  
23 with the prior use so long as the sale of those  
24 products are sold or offered for sale at the premises  
25 or over the counter and so long as those uses are

1 consistent with the "lawful use" as defined in that  
2 certain resolution of application number 1A-04-17  
3 based on the findings of fact in said resolution.

4 (Seconded by Ms. Watson.)

5 (Ms. Watson, yes; Mr. Clapp, yes;

6 Ms. Dale, yes; Ms. Tompkins Wright, yes;

7 Ms. Schwartz, no; Mr. Mietz, yes.)

8 (Open roll call, motion to approve in part,

9 and overturn in part, and modify the

10 Applicant's request carries.)

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1 C E R T I F I C A T E O F N

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3 STATE OF NEW YORK:  
COUNTY OF MONROE:

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5 I, BRIANA L. JEFFORDS, do hereby certify  
6 that I reported in machine shorthand the above-styled  
7 cause; and that the foregoing pages were typed by  
8 computer-assisted transcription under my personal  
9 supervision and constitute a true record of the  
10 testimony in this proceeding;

11 I further certify that I am not an  
12 attorney or counsel of any parties, nor a relative or  
13 employee of any attorney or counsel connected with the  
14 action, nor financially interested in the action;

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Bianca L. Jeffords

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BRIANA L. JEFFORDS

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BRINN E. SEIFORDS  
Freelance Court Reporter and

Notary Public No. 01JE6325111

in and for Genesee County, New York

## FORBES COURT REPORTING SERVICES, LLC

Phone: 585.343.8612 | Fax: 585.345.6068 | Email: Eforbes@rochester.rr.com