

1 Brighton Zoning Board of Appeals 4/4/18
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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON APRIL 4TH, 2018
4 AT APPROXIMATELY 7:15 **P.M.**

5 April 4th, 2018
6 Brighton Town Hall
7 2300 Elmwood Avenue
8 Rochester, New York 14618

9 PRESENT:

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

16 NOT PRESENT:
17 ANDREA TOMPKINS WRIGHT

18 DAVID DOLLINGER, ESQ.
19 Town Attorney

20 RICK DiSTEFANO
21 Secretary

22
23 REPORTED BY: RHODA COLLINS, Court Reporter
24 FORBES COURT REPORTING SERVICES, LLC
25 21 Woodcrest Drive
Batavia, New York 14020

3 through this process we figured we might as well do it for
4 two years so that we wouldn't have to come back before you
5 every time we do this, at least in the next two years.

6 We do not foresee having any music or anything
7 that would affect our neighbors. In the materials you see
8 that this will be going on a parking area and it will be for
9 an event that will not last long into the evening; in each
10 case, both this spring and also in the future when we seek to
11 put up another tent. So any questions?

12 MS. DALE: How many people would you be
13 expecting to be having at the event?

14 JAMES WENTWORTH: I think a few hundred.

15 NORM ROWE: For the reception.

16 CHAIRPERSON MIETZ: Please come up.

17 NORM ROWE: Hi, I'm Norm Rowe. Primarily
18 we're having this tent for the commencement reception as we
19 are using the auditorium within the block of Alumni
20 Advancement Center, and with that we will be expecting around
21 800 people for one of the receptions. The rest of them will
22 be just a few hundred, 200 probably at the most.

23 MS. DALE: Do you feel that you have adequate
24 parking already with the tent for that number of --

25 NORM ROWE: Yes. A lot of the people will be

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3 shuttled over from campus and then taken back. And if our
4 parking isn't enough we do have the laser lab facility right
5 next door and we can allow parking there. We already cleared
6 that with them.

7 MS. DALE: And the laser lab next door, that's
8 also owned by the University?

9 JAMES WENTWORTH: Yes, correct.

10 CHAIRPERSON MIETZ: It's all under the same
11 security and parking management?

12 NORM ROWE: Yes.

13 CHAIRPERSON MIETZ: Just for the record could
14 you speak a little more about -- you've just explained one of
15 the events. What other types of things, a little more
16 specifically, could you share about the other events you
17 might do this year or next year?

18 NORM ROWE: The Alumni Advancement Center
19 often likes to have a picnic and with that they often want a
20 tent. I know for the past few years they had it without the
21 tent and it's been an issue a couple times where they had to
22 cancel it. So they would like to do a smaller tent, maybe a
23 50 x 75 size tent or so in the back of the building so that
24 they could just have their picnics.

25 CHAIRPERSON MIETZ: So, and then I would

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3 presume that the commencement would happen again in 2019?

4

NORM ROWE: Yes.

5

6 CHAIRPERSON MIETZ: That would be two of the

events then.

7

NORM ROWE: Yes, correct.

8

9 MS. SCHWARTZ: And you are not having music at
any of these events so nothing is amplified?

10

11 NORM ROWE: No, we don't provide a sound

system for any of the events.

12

13 MS. SCHWARTZ: And there's no problem cleaning
up with anything afterward?

14

15 NORM ROWE: No. We have grounds, they come in
16 and take care of it. We're kind of like a small
municipality. We have all of our own services.

17

18 JAMES WENTWORTH: And just to point out again,
19 this is sited on the east side of the building. The closest
20 neighbors are to the west of the building across the bike
trails, so it's a good distance away.

21

22 MS. CORRADO: What would the hours of the
events typically be?

23

24 JAMES WENTWORTH: This is Gal Dimambro, she
will be the event manager.

25

GAL DIMAMBRO: I'm Gal Dimambro, G-a-l,

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3 D-i-m-a-m-b-r-o. So we are looking at three receptions, back
4 to back. The first one would be on Saturday, May 19th, it
5 would be at 1:00 p.m. and lasting an hour long. That will be
6 one of the smaller ones at 200 people or so.

7

8 The next one would be the following day, that
9 would be a reception as well, same layout and everything. It
10 starts at 12:30, also runs for an hour and this will be one
11 of the largest ones. I estimate about 600 at most, we're
12 saying 800 because we've had kind of a little bit of
13 fluctuation there depending on how many folks are attending
commencement.

14

15 And the third one is also on Sunday the 20th,
16 3:00 p.m. to 4:00 p.m. and that one will be smaller as well.

17

18 CHAIRPERSON MIETZ: Okay.
19 MS. DALE: So will they put the tent up the
20 day before?

21

22 GAL DIMAMBRO: Yes. We'll plan on putting the
tent up on Friday, we rent it through Nolan's and it would
remain for the weekend and be taken down either Sunday or the
Monday following the day of events.

23

24 CHAIRPERSON MIETZ: Okay. Other questions?
25 Thank you very much.

26

27 Is there anyone in the audience that would

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3 like to speak regarding this application? There being none,
4 then the Public Hearing is closed.

5 APPLICATION 4A-02-18

6 4A-02-18 Application of Christopher Petrosino,
7 owner of property located at 264 Oakdale Drive, for an Area
8 Variance from Section 205-2 to allow an entryway roof to
9 extend 4 ft. into the existing 35 ft. front setback where a
10 40 ft. setback is required by code. All as described on
11 application and plans on file.

12 CHRISTOPHER PETROSINO: Good evening, I'm
13 Christopher Petrosino, 264 Oakdale Drive. I'm the property
14 owner, I'm here tonight to request a variance with respect to
15 the required 40-foot setback for any construction. Our house
16 built circa 1917/1918 predates the existing zoning. We would
17 like to construct a roof over the front steps to extend
18 approximately 4 foot from the end of the house, which
19 necessitates the variance. I've already been before the
20 Architectural Review Board, received their approval and this
21 is the second step.

22 CHAIRPERSON MIETZ: Great. Just a couple
23 questions. So you look around the neighborhood, this is
24 somewhat of a common occurrence, would you say that?

25 CHRISTOPHER PETROSINO: We've seen other

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3 examples, yes.

4

5 CHAIRPERSON MIETZ: Okay. And you have no

6

7 CHRISTOPHER PETROSINO: Oh, no. There will be
8 no post extending into the ground, it will be held up with a
couple structural brackets, as in the drawings.

9

10 CHAIRPERSON MIETZ: That's very good. Any
other questions? Okay, thank you.

11

12 Is there anyone in the audience that would
13 like to speak regarding this application? There being none,
then the Public Hearing is closed.

14

APPLICATION 4A-03-18

15

16 4A-03-18 Application of First Baptist Church
17 and Society, owner of property located at 175 Allens Creek
18 Road, for a Temporary and Revocable Use Permit pursuant to
19 Section 219-4 to hold a one day (6/9/18) outdoor event/picnic
20 which will include a tent, music, food trucks and a barbecue
in a RLB Residential District. All as described on
21 application and plans on file.

22

23 RICHARD WEAN: Good evening, I'm Richard Wean,
24 I'm chairman of the Board of Trustees, First Baptist Church
of Rochester. This year is our 200th anniversary and this
25 event is meant to be a neighborhood event celebrating

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3 200 years. I think on file we show the diagram, et cetera.
4 All of this the tent, et cetera, is going to be at the back
5 of the property and there are no homes. That's basically our
6 boundary bounds the commercially zoned district of Monroe
7 Avenue.

8 So the tent and the food trucks will be
9 adjacent to the commercial property and not adjacent to any
10 homes, several hundred feet actually from any house.

11 So I'd be glad -- and it's going to be from
12 4:00 to 8:00, we've submitted plans, et cetera. We expect
13 between 2- and 400 people.

14 CHAIRPERSON MIETZ: Now, is it something
15 that's advertised to the public or obviously it's an
16 invitation to all the parishioners. But if somebody goes:
17 Oh, I wonder what's going on? Look at all those food trucks.
18 I mean, what --

19 SCOTT MCCLELLAN: My name is Scott McClellan
20 I'm a member of the First Baptist Church. We're thinking of
21 doing a direct mailing to the neighborhood within about a
22 quarter of a mile and there will also be some other forms of
23 advertising but we haven't figured out what yet.

24 CHAIRPERSON MIETZ: Is there a charge?

25 RICHARD WEAN: No, it's free to the public.

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3 MS. SCHWARTZ: On the application you said
4 there would be some food also that I assume will be prepared
5 by members of the church or whatever? Are you still planning
6 on that in addition to the food trucks, and if so where would
7 that be?

8 SCOTT MCCLELLAN: We like to keep that option
9 open, although we have not made a final determination. It
10 would be supervised by a professional cook.

11 MS. SCHWARTZ: Oh, I'm not worried about that,
12 just will it be near the food trucks?

13 RICHARD WEAN: It would be in the same area.

14 SCOTT MCCLELLAN: We also have a kitchen
15 facility which would be used for that.

16 MS. SCHWARTZ: And is the music going to be
17 playing all day long?

18 SCOTT MCCLELLAN: Yes, probably, but most of
19 the music will be of a fairly quiet nature. For instance, we
20 have an ongoing tradition of a jazz and jeans thing we do
21 every few weeks. And a lot of it would be jazz and not rock
22 and roll.

23 RICHARD WEAN: We don't plan a heavy metal
24 band.

25 MS. SCHWARTZ: One last question, in your

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3 written testimony it said 12:00 noon to 8:00, are you using
4 the first portion to set up?

5 RICHARD WEAN: Yes, that's right.

6 MS. SCHWARTZ: The activity won't be starting
7 then?

8 RICHARD WEAN: No, that's 4:00 to 8:00.

9 CHAIRPERSON MIETZ: So things will be shut
10 down, the food trucks will leave --

11 RICHARD WEAN: Yes, everything will be shut
12 down before dark.

13 CHAIRPERSON MIETZ: So you'll have an hour to
14 clean up and the tent would probably not be removed until
15 Monday?

16 SCOTT MCCLELLAN: Probably Sunday or Monday.

17 RICHARD WEAN: It's up to the people we rent
18 it from.

19 MS. SCHWARTZ: Do you see a need for directing
20 traffic at all? Have you thought about that?

21 SCOTT MCCLELLAN: We're hoping that the people
22 that we invite from within the immediate area will walk to
23 the event.

24 RICHARD WEAN: And I don't know if you've been
25 to our facility, we have a lot of parking.

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3 MS. SCHWARTZ: No, but I'm talking about --

4 RICHARD WEAN: Yeah, I understand. We don't
5 anticipate that, but we have two entrances, one off Clover
6 and one off Allens Creek Road. So there's not an issue about
7 people having access.

8 CHAIRPERSON MIETZ: Because it is again
9 only --

10 RICHARD WEAN: We will have people there in
11 the parking lot directing traffic.

12 CHAIRPERSON MIETZ: I think that's what Judy's
13 asking.

14 MS. SCHWARTZ: I see more coming in off of the
15 street.

16 RICHARD WEAN: We don't anticipate that. We
17 anticipate people coming and leaving throughout the whole
18 time. Doubtful that somebody's going to be there the whole
19 time, other than the people working.

20 MS. SCHWARTZ: Thank you.

21 MS. WATSON: Can you talk a little bit about
22 security or access to an ambulance or anything like that?

23 RICHARD WEAN: We don't see a need for
24 security beyond what we normally have. We have a direct line
25 to the fire department. So if there's an issue, you know, we

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3 have a solid line and people respond pretty quickly any time
4 we've ever had that. The station is just down Allens Creek
5 there.

6 BILL PENGENT: I'm Bill Pengent, also a member
7 of the church. We have seven nurses as part of the
8 congregation, so we have always felt very well covered as a
9 congregation, so they'll be there too. But EMTs, certainly
10 we'll have if we needed that we have access to them.

11 CHAIRPERSON MIETZ: Okay.

12 MR. CLAPP: I will note that it does say on
13 the application the hours will be from 12:00 noon to 8:00.
14 So that depending on what we do, you may note that some of
15 that is for set up and --

16 RICHARD WEAN: Yes. We were told that we
17 should put down a total time, from set up to --

18 CHAIRPERSON MIETZ: It seems clear, good.
19 Thank you, gentlemen.

20 Is there anyone in the audience that would
21 like to speak regarding this application? There being none,
22 then the Public Hearing is closed.

23 APPLICATION 4A-04-18

24 4A-04-18 Application of Design Works
25 Architecture, agent, and Ilya and Isanna Voloshin, owners of

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3 property located at 2700 East Avenue, for interpretation on
4 what constitutes substantial demolition as that term is
5 defined in Sections 73-54 and 201-5 and applied to
6 Section 73-55. All as described on application and plans on
7 file.

8 CHUCK SMITH: Good evening, Board members. We
9 are back. So we saw you in November --

10 CHAIRPERSON MIETZ: Could you state your name?

11 CHUCK SMITH: I'm sorry, Chuck Smith with
12 Design Works Architecture.

13 SERGE TSVASMAN: Serge T-s-v-a-s-m-a-n.

14 CHUCK SMITH: So we are continuing to try and
15 renovate a house on the same footprint that we showed you in
16 November. And we had gone through Architectural Review and
17 we've come to the Town to take out a permit in the beginning
18 of March, and there's seems to be a confusion as to what
19 determines a demolition of a house, which caught us by
20 surprise as we were ready to build.

21 So, but the way the process works is good
22 because we are able to come to you as citizens of -- and
23 members of the Board, to help us with this decision, help us
24 move on. And the confusion is, is that we've always planned
25 on using -- are using an existing foundation, existing first

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3 floor deck, and the building is not moving. So we're really
4 meeting the intent of the law that was passed in 2006, that
5 was meant to not completely demo a building, move it, make it
6 bigger, change the character of the neighborhood, potentially
7 impacting the value of the neighboring properties.

8 So the issue comes in the wording of the law
9 that is, what is considered demolition. And it's in front of
10 you and you've read it and it has to do with ground coverage.
11 So we look at our existing footprint that we're using, we're
12 not changing the ground coverage by more than 50 percent.

13 So that's really the question we have in front
14 of us tonight is, could you please give us consideration for
15 proceeding to build this building? There would be some
16 financial hardship if we have to wait another two months.
17 There are approximately another \$3,000 in fees in front of us
18 if we have to, if this is considered a demolition, we have to
19 go in front of the Planning Board for a set plan review for a
20 building that's not changing, for a driveway that's barely
21 changing, all landscaping's in place.

22 We have to go back in front of the Historic
23 Preservation Commission to determine if this building is a
24 historic -- is worthy of local designation. By the way,
25 we've already been in front of them asking for permission to

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3 demolish the carriage house in back. They determined it has
4 no consideration for local designation, so they are allowing
5 us to do that. So I would assume that that would be the same
6 with this 1950's house, which replaced a 1928 Colonial.

7 SERGE TSVASMAN: And just to add, we'd have to
8 come back to this Board once again and request that the
9 existing foundation be allowed to remain because currently
10 the existing foundation is considered a rear -- in the rear
11 yard. And so to complicate matters further, would we have to
12 remove an existing foundation in order to build a home, if we
13 want to reuse an existing foundation?

14 CHUCK SMITH: Yeah. So it's a little bit of a
15 quandary because if this is considered a demolition we
16 actually then have to demo, to demolish the building in order
17 to meet zoning codes. So I think that the Town may consider,
18 you know, giving you a better definition -- given the Town
19 administrative a better definition of what is considered
20 demolition.

21 But we're stuck here in the middle thinking we
22 are remodeling a house. We are not changing the footprint
23 and yet we can't move forward. So I'd like to answer any
24 questions you might have.

25 CHAIRPERSON MIETZ: Maybe you can shed a

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3 little light on this.

4 MR. DISTEFANO: Yes. The demolition portion
5 of this review process started back when we developed the
6 McMansion ordinance. Basically, the reason was that people
7 were coming in and buying houses in the middle of
8 neighborhoods, tearing them down and building substantially
9 larger houses not in character at all with the surrounding
10 community. Also, it wasn't giving us any ability to review a
11 house that might be worthy of historical preservation
12 designation.

13 So the substantial demolition portion of the
14 code was enacted to provide that ability to look at houses
15 that are earmarked for demolition prior to those houses being
16 demolished, to go in front of the Historical Preservation
17 Commission for a possible designation.

18 Our definition of not perfect is truly an
19 interpretation-type of definition in which we, as Town staff,
20 have to look at each case as it comes in and make an honest
21 determination on whether or not we feel that this house is
22 being substantially demolished.

23 The applicants mentioned ground coverage and a
24 foundation. Well, in that regard you could basically tear
25 down an existing house to the floor deck and what they want

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3 us to say is that's not a substantial demolition. There's no
4 more building there. You have a foundation, you have a floor
5 deck, there is no building there. I don't know how you can
6 see that as not being a demolished house. Keeping a
7 foundation everything bellow grade, you know, what are you
8 going to review? If it is a historically designated house,
9 we're not demolishing it we're just taking all four walls and
10 the roof down.

11 So we had to come up with some form of ability
12 to define what substantial demolition is. And when you
13 remove a roof and you take down more than 50 percent of the
14 wall area, I think everybody thinks, well more than
15 50 percent of that house has been demolished.

16 Therefore, even if the foundation is there you
17 have demolished more than 50 percent of the house being
18 substantially demolished. Forcing it to go through the
19 process of historical preservation review, site plan review
20 by the Town Board, demolition review by the Planning Board.
21 And if variances are necessary then you come back and have to
22 get those variances.

23 Now, I've known this Board in the past has
24 been pretty lenient on if you're demolishing a house and
25 rebuilding in the same place or your house burns down because

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3 of a fire and you're going to replace it in the same place
4 and you already had a pre-existing nonconforming setback that
5 for the most part we understand that and pretty much respect
6 that. But yes, they have to go through that process.

7 CHAIRPERSON MIETZ: A couple things. Can you
8 talk a little bit about the review process? Because, again,
9 the comment was made, I don't know the exact word, but this
10 wasn't clear. Can you talk about -- because obviously we see
11 the history, we remember the application when it came in for
12 the previous variance. So maybe you can talk about that
13 process a little bit.

14 MR. DiSTEFANO: When it came to us I don't
15 think this Board, certainly I didn't realize as much of the
16 house is coming down and supposed to come down when it came
17 in front of us. I know it's been through a number of
18 iterations, I know it's gone back to the Architectural Review
19 Board a few times. I don't think and I don't want to -- I
20 don't know how clear it was every time on exactly how much of
21 the house was coming down.

22 The last time it went before the Architectural
23 Review Board you said, well, the entire back section which
24 includes an enclosed pool and an addition that was attached
25 to that is coming down, being demolished, it's gone. And

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3 then there's a certain -- and then the roof and I'm not sure
4 if the total roof is coming off or exactly what's happening
5 with the roof. But then there's all these wall sections that
6 are being taken down, maybe not taken down all the way to the
7 ground but are maintained at a certain 3-foot height or
8 something like that.

9 Which, again, you know, in our opinion when
10 this did come in for the building permit and really got a
11 better understanding of exactly what was being proposed, we
12 made a call that in stats, this house is being substantially
13 demolished. Therefore, you need to go to the Historical
14 Preservation Commission because they have to review it under
15 the demolition review which also requires Planning Board
16 approval.

17 Once a house is substantially demolished it
18 does need site plan review approval. So, yes, they're right.
19 There are additional boards that are going to be required in
20 this regard. And back to that setback, since the house is
21 already preexisting nonconforming, you know, will they be
22 able to be allowed to reestablish that nonconformance with a
23 variance? So that would be coming back to us also.

24 Like I said, we already kind of granted them a
25 variance, you know, I don't want to presume, but I think that

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3 they wouldn't have a tough time reestablishing that setback
4 request. But it is a time, it is a -- as the applicant said,
5 a process that needs to be undertaken.

6 CHAIRPERSON MIETZ: Okay.

7 MS. SCHWARTZ: Does it matter whether ordered,
8 Historic Preservation --

9 MR. DiSTEFANO: Well, usually with the
10 Historic Preservation Commission, once they make the
11 application to the Planning Board that is automatically
12 forwarded to the Historical Preservation Commission usually
13 within a week's time. So they make the application for a
14 cutoff for the Planning Board, let's say they made the
15 application in April, it would be probably be seen by the
16 Historical Preservation Commission in April, and then to the
17 Planning Board in May. And then somewhere in-between they
18 would have to hit the Zoning Board, and they'd probably have
19 to go back to the Architectural Review Board, I'm not
20 positive on that. They might be fine with what they got
21 approved from the Architectural Review Board, so I don't want
22 to --

23 MS. SCHWARTZ: My question is should they
24 appear before the Historic first before us?

25 MR. DiSTEFANO: No, it doesn't matter, because

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3 they need the determination before the Planning Board is

4 going to grant them demolition approval. It's not a Public

5 Hearing or anything in front of the Historical Preservation

6 Commission. These are just forwarded, and then the

7 Historical Preservation Commission makes a determination on

8 whether or not they need to require a Public Hearing for

9 designation. It doesn't mean they're going to designate even

10 if they call the Public Hearing, but that's what the

11 Historical Preservation Commission will look at and

12 determine.

13 CHAIRPERSON MIETZ: Okay.

14 MS. SCHWARTZ: So it doesn't matter whether

15 they get the decision first before coming to us?

16 MR. DiSTEFANO: No. A lot of times with the

17 Planning Board when we have similar types of things, and we

18 had one over on Cheswell, 88 Cheswell, where last year during

19 the windstorm a tree fell into that house. They had to go

20 through the same process even though they're going to

21 basically build the same foundation, the house is destroyed,

22 they were taking it down to the foundation. They rebuilt

23 basically on that same foundation, but they needed variances

24 from us.

25 And the Planning Board tried to get them

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3 through as easily as possible just doing a preliminary final
4 all-in-one, and basically saying wherever it fits in get your
5 variances before us or after us, that's fine. We don't want
6 to hold the process up any more than it needs to be held up.

7 CHAIRPERSON MIETZ: Okay.

8 CHUCK SMITH: Mr. Chair, can I make a comment?

9 CHAIRPERSON MIETZ: Yes, You certainly may.

10 CHUCK SMITH: I think that the Zoning Board
11 has the opportunity to allow us to pass based on a vague
12 definition that's codified and allow us to move forward
13 because we are meeting the letter of the law in this
14 situation, as far as the McMansion Law is concerned. And let
15 the Town know that they need to clarify this law so that
16 we're not sitting here another time, with another application
17 saying, well we didn't, we're not changing more than
18 50 percent of the ground coverage on this lot.

19 So your staff right now is making, you know,
20 making a law up at this point. They're putting words into
21 law because they don't have a definition, and that's hurt us.
22 Now it's going to cost us. Yes, certainly we can go in front
23 of the Planning Board. I'm sure you as a Board and the
24 Planning Board will help us along but, you know, \$6,000 later
25 with fees, and architectural fees, and Town fees by the way,

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3 and two months more into a good building season we're waiting
4 because of a poor definition in a law that should be much
5 clearer. It could reference the State Building Code, that's
6 very clear as to what 50 percent demolition is, very clear.
7 It refers to walls, it refers to a percentage of the value of
8 the building. This says ground area covered by any roof
9 building, we're clearly complying. Sorry.

10 MS. SCHWARTZ: I have a question. You're
11 keeping the foundation as is, so you can't change the shape
12 of the house because you have to follow the existing
13 foundation.

14 CHUCK SMITH: Well, we're demolishing that
15 whole back pool structure. We're actually making the
16 building smaller, so I can't say we are --

17 MS. SCHWARTZ: Okay, but my question is, the
18 reason for taking down the walls is, I assume you want to
19 change the exterior dramatically and that's the reason for
20 taking it down?

21 CHUCK SMITH: Two things, one is it allows us
22 to save about \$30,000 in selected demolition. We first were
23 looking at leaving the exterior walls, which Mr. DiStefano
24 mentioned, we've have various applications in front of the
25 Boards. We discovered that selected demolition in other

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3 words, saving this wall, keeping that wall, building a new

4 wall here, costs a lot more than taking it right down to the

5 deck, rebuilding with proper 2 x 6 construction and proper

6 walls.

7 So what we thought might have been a savings

8 actually is costing the clients money. So, yes, we are

9 taking it down in order to both build a better building, but

10 the architecture was very similar to what we've been showing

11 you all along. It's changed ever so slightly, whether we

12 leave it or take it down it's still the same architecture we

13 want.

14 SERGE TSVASMAN: Which has been approved by

15 the Architectural Review Board.

16 CHAIRPERSON MIETZ: I think we've got that

17 established. Again, to kind of summarize the history here, I

18 want to make sure we are all clear and representing it

19 correctly. By the comments you just made there's been an

20 evolution in the construction, we'll call it the engineering

21 of how you were going to accomplish what you originally tried

22 to accomplish. So that meaning architecturally it hasn't

23 changed, it's just what's changed is the construction

24 methodology. What was worth keeping, what isn't, what's the

25 economics of taking something down, rebuilding it, versus, is

1 Brighton Zoning Board of Appeals 4/4/18
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3 that fair?

4 So when you met the staff early on, when you
5 were discussing it, you weren't at that point. That's
6 happened somewhat recently, not yesterday but in the last few
7 months.

8 CHUCK SMITH: Right, you're correct. It has
9 been a progression of value engineering and --

10 CHAIRPERSON MIETZ: Okay, good.

11 MR. DOLLINGER: So how much of the wall is
12 actually coming down? Just give me a paragraph of what
13 you're doing with the structure prior to actually
14 constructing. To reconstruct -- we're deconstructing it,
15 then we're going to reconstruct it. How would you describe
16 the deconstruction at this time? I mean, you're going to go
17 in and take out how many -- are you taking all the walls
18 down?

19 CHUCK SMITH: Correct, at this point, yes.

20 CHAIRPERSON MIETZ: I think that has been
21 testified to that it's now all coming down.

22 MR. DISTEFANO: So there's basically no house.

23 MS. SCHWARTZ: Just a foundation.

24 CHAIRPERSON MIETZ: Right to the deck
25 foundation.

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3 CHUCK SMITH: Yes, so the first floor deck
4 remains. It's platform frame so you build new walls on top
5 of the plywood.

6

CHAIRPERSON MIETZ: Okay.

7

8 MR. CLAPP: So I'm a little surprised to hear
9 that. I had no concept of that. So literally all of the
walls of the house are coming down?

10

CHUCK SMITH: At this point, yes.

11

12 MR. CLAPP: That's real different from the
13 last time we approved minor adjustments. So we talk about
the specifics of the legal definition.

14

15 CHAIRPERSON MIETZ: Yes. I just want to make
sure you're clear on what happened.

16

MR. CLAPP: It's a big change.

17

CHAIRPERSON MIETZ: Agreed, okay.

18

19 MS. WATSON: My questions and comments are not
pertaining to that, I will save them.

20

21 CHAIRPERSON MIETZ: Okay. Do you have any
other questions for the applicant then? So we are clear
22 about what they're doing?

23

24 MS. CORRADO: I'm just curious to know how --
a little more succinctly how you got from the point of let's
25 modify the existing building to completely starting from

1 Brighton Zoning Board of Appeals 4/4/18

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3 scratch, with the exception of the foundation? Is the
4 building itself, is the integrity compromised in some way?
5 Is it just not habitable completely?

6 SERGE TSVASMAN: So to answer your question,
7 the actual plates for the new roof are two feet taller than
8 the existing walls. So to reuse the existing wall you would
9 have to cut the top plate, extend basically sister up the
10 studs and extend. So it's not only selective demolition, it
11 also complicates construction and the integrity of that wall
12 is going to be in jeopardy.

13 MS. CORRADO: So the aesthetics additions have
14 led to structural decisions that then lead to the need to
15 start all over from the beginning.

16 SERGE TSVASMAN: Right. So cost, integrity of
17 the new construction --

18 MS. CORRADO: But the house existing as it is,
19 the roof itself is fine, the walls are fine.

20 SERGE TSVASMAN: The roof leaks, which needs
21 repair. But the bottom line, the initial motivation was a
22 renovation of the house. When we presented to you in
23 September the house was dramatically transformed, so it's
24 proceeding to be transformed since then. I just wanted to
25 say though, that whether it's two months from now, the end

1 Brighton Zoning Board of Appeals 4/4/18

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3 result would most likely be the same. So, you know, we've
4 been transparent, gone through the Architectural Review
5 Board, been through the Town staff a number of times. Last
6 time we went to the Architectural Review Board everybody
7 there understood that the house was going to be demolished to
8 the deck when we got there from the previous time we had been
9 there -- was that in December?

10

CHUCK SMITH: Uh-huh.

11

12 SERGE TSVASMAN: It was a big surprise to us
13 when we show up with the permit set in hand, and said that,
14 no, you're not meeting the Town Code, which obviously wasn't
clear to us.

15

16 CHAIRPERSON MIETZ: I think we're clear on
17 that sort of progression. I think that's been cleared up.
So, do you have any other questions?

18

19 ISANNA VOLOSHIN: I just wanted to introduce
20 myself, Isanna Voloshin, I'm one of the owners. My husband
is sitting over there.

21

22 You asked a question, Christine, about the
23 integrity of the house. And the original house, like Chuck
24 mentioned, was a 1920s colonial. In 1957 it was torn down
and a structure was recently put up. It was neglected
25 beyond, like, it was just -- when you talk about structural

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3 integrity, I guess you'd have to see it or just to really
4 just to be shocked at how poor and under maintained
5 everything was. So our initial intent was to, you know, when
6 Chuck and Surge first came in, like, let's salvage as much as
7 we can. When we got the number from the builder it blew us
8 away. So we took this other route and we were advised that
9 by not trying to piecemeal this house, save the foundation.

10 So from East Avenue it's setback exactly the
11 same way, it's just going to be a more beautiful, up-to-date
12 structure. We actually, we're saving an immense amount of
13 money. When we sat down with the builder that's when we
14 said, why are we doing this? You know, why are we taking
15 this out, putting this in when structurally it's not going to
16 be as solid, as good, when we can save money by doing it this
17 way.

18 CHAIRPERSON MIETZ: Okay.

19 ISANNA VOLOSHIN: And I just wanted to answer
20 that question.

21 MS. CORRADO: That's helpful to know, thank
22 you.

23 CHAIRPERSON MIETZ: Very good. Do any of the
24 other Board members have any questions? Thank you.

25 Is there anyone in the audience that would

1 Brighton Zoning Board of Appeals 4/4/18
2

3 like to speak regarding this application? There being none,
4 then the Public Hearing is closed.

5 APPLICATION 4A-05-18

6 4A-05-18 Application of Andrew and Sara
7 Gordon, owners of property located at 165 Pelham Road, for an
8 Area Variance from Section 207-2A to allow a portion of a
9 front yard fence to be 6 ft. in height in lieu of the maximum
10 3.5 ft. allowed by code. All as described on application and
11 plans on file.

12 ANDREW GORDON: Good evening, Andrew Gordon
13 homeowner of 165 Pelham Road. If you are not familiar with
14 the property it's on the corner of Pelham and Highland
15 Avenue, we moved into the house in December of this year and
16 we have a three-year old and one-year old so we're looking to
17 build a fence that runs parallel with Pelham, on the side of
18 my house towards Highland, down Highland towards Grosvenor,
19 and then it would run parallel between Pelham/Grosvenor to
20 the back end of my lot. So it's zoned -- it's really my side
21 and backyard, it's zoned as a front yard based on being a
22 corner lot.

23 We've received a permit for a portion of the
24 fence that runs -- it's going to be an ornamental alluminum
25 fence that runs from my house to Highland, along Highland.

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3 And then there's, what we're looking for the variance for is
4 we're going to build a wood portion which would be the
5 backyard, to tie the corner of the ornamental aluminum to an
6 existing wood fence that ends currently halfway in the middle
7 of my backyard.

8 CHAIRPERSON MIETZ: Okay. What is that fence
9 going to be constructed of?

10 ANDREW GORDON: Wood.

11 CHAIRPERSON MIETZ: What type of style, sir?

12 ANDREW GORDON: It will be a 6-foot, it's
13 called scalloped, to tie into -- I can show you a picture if
14 you'd like, on my phone -- to the existing wood fence that
15 ends halfway through my backyard.

16 CHAIRPERSON MIETZ: So is it solid?

17 ANDREW GORDON: Solid wood, 6 feet. The, I
18 guess the finished portion would be out towards my neighbors.
19 So parallel, yeah, wood beams would be inward.

20 CHAIRPERSON MIETZ: So just for the record I'm
21 standing, you're on the inside or the outside I'm not going
22 to say, you will see nothing, right? I'm in your backyard
23 looking out towards the street, or towards the neighbors or
24 towards anyone, it's a solid fence.

25 ANDREW GORDON: The back portion, the side

1 Brighton Zoning Board of Appeals 4/4/18
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3 that's running along Highland and my front yard would be
4 ornamental alluminum see through. The wood portion, a 6-foot
5 wood fence you'd see in a residential property today.

6 CHAIRPERSON MIETZ: And could you just explain
7 what the motivation is of transitioning like that? I
8 understand the existing fence on the side of --

9 ANDREW GORDON: Yeah, sure. Wood is
10 considerably less expensive than ornamental alluminum, so
11 probably close to \$1,500 in savings. And then we also have a
12 wood fence that's going halfway through our backyard that's
13 6-feet tall. So aesthetically it will continue the whole way
14 between the backyard would be wood and it would transition to
15 the ornamental alluminum.

16 MS. SCHWARTZ: What about trees and bushes you
17 have there?

18 ANDREW GORDON: Nothing would be altered. It
19 will be inside of the structure, no trees will be taken down,
20 no bushes.

21 MR. CLAPP: So the new alluminum fence will be
22 behind those plantings that are already there, so you really
23 won't see them from the street.

24 ANDREW GORDON: Yes. I have a permit for that
25 because it fits under the 3' 6" height. So you really

1 Brighton Zoning Board of Appeals 4/4/18

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3 wouldn't see it, it would go to the back corner of the
4 property where the wood fence would start.

5

6 Also, the sidewalk is not on that side of
7 Highland, it's on the other side so there's no impact to
pedestrians walking.

8

9 MR. CLAPP: Two other questions. One of my
10 favorites is, any comments from the neighbor where that wood
fence --

11

12 ANDREW GORDON: Yeah, it's a great question.
13 The house is abandon, so couldn't give you any insight on
14 that one. The second house on Grosvenor is where, kind of
15 where my house positions on that one, and actually two other
16 things that's come to point. So the house that it would be
17 backing up to, his driveway's on Highland. So it actually
18 would be considered a backyard and wouldn't need a variance
19 for the same fence, because it's considered their backyard
but on a side lot because of Pelham.

20

21 MR. CLAPP: The other is the existing wood
22 fence looks like it needs some repair or replacing the whole
thing.

23

24 ANDREW GORDON: It's not mine, that's my
neighbors'.

25

MS. SCHWARTZ: And it was put up before the

1 Brighton Zoning Board of Appeals 4/4/18

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3 code, so . . .

4

5

CHAIRPERSON MIETZ: So that wood fence that's existing it's not --

6

7

8

9

ANDREW GORDON: It's my neighbors. Similar to I have the finished side on my side, where they've got it built in towards theirs which would be almost the opposite on the wood portion we're going to build.

10

11

12

13

MR. DOLLINGER: How far is the fence -- this diagram here, it looks like the fence doesn't run along the property line. Is the fence going to run along the property line?

14

15

ANDREW GORDON: It's in the property line, but I'm not going to take out any trees or bushes that are there.

16

17

18

19

MR. DOLLINGER: So it runs inside the treeline. And then how far back is the, I presume, how far back from the property line is the wood fence going to end as it goes towards Highland, do you know?

20

21

22

23

24

25

ANDREW GORDON: I don't have the exact measurements. It's at least probably 12 to 14 feet. There's those big trestle bushes, it's going to be inside that. And then even those bushes are not right on Highland. There's probably a four/five foot buffer between those bushes.

MS. WATSON: It is fair to say that those

1 Brighton Zoning Board of Appeals 4/4/18

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3 bushes screen the six-foot fence.

4 ANDREW GORDON: Well, so, because it's going
5 to run perpendicular to Highland, you wouldn't really see it
6 if you're driving down Highland, right. That's why partially
7 we decided not to go wood for the entire thing which would
8 have been less expense. We thought it would be aesthetically
9 better if we had the ornamental alluminum running along
10 Highland and then just tying the wood portion into the back
11 corner.

12 MR. DiSTEFANO: And you're saying according to
13 the Empire fence code, it's approximately 56 feet in length
14 along that side of the property.

15 ANDREW GORDON: Correct.

16 CHAIRPERSON MIETZ: Okay. So everybody is
17 clear what's happening? Any other questions from the Board?
18 Thank you.

19 Is there anyone in the audience that would
20 like to speak regarding this application? There being none,
21 then the Public Hearing is closed.

22

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1 Brighton Zoning Board of Appeals 4/4/18
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4 REPORTER CERTIFICATE
5

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

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

12

13 Dated this 25th day of April, 2018.

14 At Rochester, New York

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18 Rhoda Collins

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Brighton Zoning Board of Appeals 4/4/18

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON APRIL 4TH, 2018
AT APPROXIMATELY 8:05 P.M.

April 4th, 2018
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON
DOUGLAS CLAPP
CHRISTINE CORRADO
JEANNE DALE
JUDY SCHWARTZ
JENNIFER WATSON

NOT PRESENT:
ANDREA TOMPKINS WRIGHT

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DISTEFANO
Secretary

(The Board having considered the information presented by the Applicant in each of the following cases and having completed the required review pursuant to SEQRA, the following decisions were made:)

REPORTED BY: RHODA COLLINS, Court Reporter
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, New York 14020

1 Brighton Zoning Board of Appeals 4/4/18

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3 APPLICATION 4A-02-18

4

5 4A-02-18 Application of Christopher Petrosino,
6 owner of property located at 264 Oakdale Drive, for an Area
7 Variance from Section 205-two to allow an entryway roof to
8 extend 4 ft. into the existing 35 ft. front setback where a
9 40 ft. setback is required by code. All as described on
application and plans on file.

10

11 Motion made by Chairperson Mietz to approve
12 Application 4A-02-18 based on the following findings and
facts.

13

FINDINGS AND FACTS:

14

15 1. The variance request is not substantial. It's only the
16 covered portion of the proposed canopy protrudes into the
front setback.

17

18 2. The installation of a covered portion over the existing
stoop is the only solution to alleviate the current
19 condition.

20

21 3. No negative effect on the character of the neighborhood
22 will likely result from the approval of this variance since
similar structures exist in the subject neighborhood.

23

CONDITIONS:

24

25 1. This application is based on the testimony given and
drawings submitted as to the size and dimensional location of

1 Brighton Zoning Board of Appeals 4/4/18

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3 the covered portion.

4 2. The proposed covered area shall remain open.

5 3. All necessary building permits shall be obtained.

6 (Second by Ms. Corrado.)

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

9 (Upon roll call, motion to approve with
10 conditions carries.)

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1 Brighton Zoning Board of Appeals 4/4/18
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3 APPLICATION 4A-03-18

4 4A-03-18 Application of First Baptist Church
5 and Society, owner of property located at 175 Allens Creek
6 Road, for a Temporary and Revocable Use Permit pursuant to
7 Section 219-4 to hold a one day (6/9/18) outdoor event/picnic
8 which will include a tent, music, food trucks and a barbecue
9 in a RLB Residential District. All as described on
10 application and plans on file.

11 Motion made by Ms. Schwartz to approve
12 Application 4A-03-18 based on the following findings and
13 facts.

14 **FINDINGS AND FACTS:**

15 1. This outdoor celebration is only for four hours in one
16 day.

17 2. Provisions for overflow parking have been delineated on
18 the plan to eliminate on-street parking.

19 3. Temporary barricades separate activities for children in
20 the parking lot are also shown on the plan creating a safe
21 area for them.

22 4. To be a good neighbor the church will extend invitations
23 to all neighbors within one quarter mile of the event.

24 **CONDITIONS:**

25 1. There will be no more than seven food trucks at the site

1 Brighton Zoning Board of Appeals 4/4/18
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3 at one time.

4 2. The event will run from 4:00 p.m. to 8:00 p.m.

5 3. All trash shall be removed within 24 hours of the end of
6 the event.

7 4. All necessary fire marshall permits shall be obtained.

8 5. This variance is only for the one-day event as presented
9 in testimony and written application.10 6. Any food truck/food vendor carts shall display a current
11 operational sticker indicating completion of a recent annual
12 City of Rochester Fire Department fire safety inspection.

13 (Second by Ms. Watson.)

14 (Ms. Corrado, yes; Mr. Mietz, yes; Ms. Dale,
15 yes; Mr. Clapp, yes; Ms. Watson, yes; Ms. Schwartz, yes.)16 (Upon roll call, motion to approve with
17 conditions carries.)

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1 Brighton Zoning Board of Appeals 4/4/18

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3 APPLICATION 4A-04-18

4

4A-04-18 Application of Design Works

5

Architecture, agent, and Ilya and Isanna Voloshin, owners of
6 property located at 2700 East Avenue, for interpretation on
7 what constitutes substantial demolition as that term is
8 defined in sections 73-54 and 201-5 and applied to
9 Section 73-55. All as described on application and plans on
10 file.

11

Motion made by Mr. Clapp for Application
12 4A-04-18. I move that we interpret the statute in a manner
13 that supports the Town staff's interpretation of
14 Section 73-54 and 201-5 and that they determined that on the
15 factual situation presented by the applicant it constitutes
16 substantial demolition under the code.

17

(Second by Ms. Schwartz.)

18

(Ms. Dale, yes; Mr. Mietz, yes; Ms. Watson,

19

no; Ms. Corrado, yes; Ms. Schwartz, yes; Mr. Clapp, yes.)

20

21

(Upon roll call, motion as presented is

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1 Brighton Zoning Board of Appeals 4/4/18

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3 APPLICATION 4A-05-18

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5 4A-05-18 Application of Andrew and Sara
6 Gordon, owners of property located at 165 Pelham Road, for an
7 Area Variance from Section 207-2A to allow a portion of a
8 front yard fence to be 6 ft. in height in lieu of the maximum
9 3.5 ft. allowed by code. All as described on application and
plans on file.

10

11 Motion made by Ms. Watson to approve
12 Application 4A-05-18 based on the following findings and
facts.

13

FINDINGS AND FACTS:

14

15 1. The applicant's home is on a corner lot which therefore
16 has two yards which are considered front yards. The
17 requested location of the 6-foot high fence is from the back
18 rear corner of a neighbor's existing fence along the back lot
19 line while viewing the house from its front. The rest of the
20 ornamental alluminum fence will comply with the maximum
21 3.5 foot height as required by coded.

22

23 2. The parcel adjacent to the requested fence is a backyard
24 which would not require a variance for the exact same fence.

25

3. There is an existing row of landscaping that lines the
yard and would shield the fence from the view from Highland
Avenue.

Brighton Zoning Board of Appeals 4/4/18

4. Granting of the request will not produce an undesirable change in the character of the neighborhood, or a detriment to nearby properties, nor will it have an adverse effect or impact on the physical or environmental conditions of the neighborhood.

CONDITIONS :

- 9 1. The fence will be located as per the application and
- 10 testimony given, it will be as described by the applicant.
- 11 2. Landscaping shall be maintained to provide screening of
- 12 the fence from Highland Avenue.
- 13 3. All necessary building permits shall be obtained.

(Second by Ms. Corrado.)

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

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

1 Brighton Zoning Board of Appeals 4/4/18

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3 Application 4A-01-18

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5 4A-01-18 Application of the University of
6 Rochester, owner of property located at 250/300 East River
7 Road, for a Temporary and Revocable Use Permit pursuant to
8 Section 219-four to erect a tent(s) and hold up to three (per
9 year) outdoor special events for the years 2018 and 2019.

10

11 All as described on application and plans on file.

12

13 Motion made by Ms. Dale to approve Application
14 4A-01-18 based on the following findings and facts.

15

FINDINGS AND FACTS:

16

17 1. Granting of the permit will not negatively impact the
18 health, safety, or general welfare of the community and that
19 will have a positive impact as they are desiring to provide
20 protection from inclement weather.

21

22 2. There will no effect on available facilities from the
23 increased population in attendance of the events. If the
24 permit is granted, as the events are usually less than one
25 day, and the events for which the tents will be used will not
include music or lighting, and the applicant has stated that
there's ample parking to support it.

26

27 3. Granting of the request will not result in a change in
28 character of the neighborhood or be detrimental to
29 surrounding properties as the location of the proposed tents

1 Brighton Zoning Board of Appeals 4/4/18
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3 is the within the University's campus.

4 **CONDITIONS:**

5 1. The application is granted as per the application
6 submitted and testimony given for specifically the remainder
7 of 2018, and all of 2019, and to hold up to three events per
8 year.

9 2. All necessary fire marshall permits shall be obtained.

10 (Second by Ms. Schwartz.)

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

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

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1 Brighton Zoning Board of Appeals 4/4/18
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4 REPORTER CERTIFICATE
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6 I, Rhoda Collins, do hereby certify that I did
7 report in stenotype machine shorthand the proceedings held in
8 the above-entitled matter;

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

12

13 Dated this 25th day of April, 2018.

14 At Rochester, New York

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Rhoda Collins

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