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3 minutes, right?

4

CHAIRPERSON MIETZ: No.

5

6 MR. DISTEFANO: So we've just got the November

minutes.

7

8 MS. SCHWARTZ: On Page 5, Line 20, insert the
word Light after the word Congregation.

9

10 On Page 8, Line 8, the third word should be
mason.

11

12 Page 11, Line 16, delete the word well and put
the word good instead.

13

14 Page 12, Line 20, the fourth word should be
the, the house.

15

16 On Page 21, Line 6, delete from recently
17 through previously and start that line as reading, last year
we went, and through the, the rest of the way is fine.

18

19 On Page 24, Line 16, just invert the two last
words, we want to.

20

21 On Page 34, Line 20, I believe we should
change minimum to maximum.

22

23 On Page 44, Line 16, and then thereafter the
24 word in the middle should be pachysandra, any time you see
Pakistan.

25

On Page 62, Line 4, delete the word it's, so

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3 it reads which is not.

4 On Page 82, Line 13, the third-to-the-last
5 word is hard.

6 Page 83, Line 7, insert the word plan after
7 your.

8 Page 91, Line 23, findings of fact, the second
9 word should be Sylvan.

10 Page 94, Line 22, the last word should be
11 position.

12 Page 102, Line 15, after the word owner put a
13 period and then started a second sentence with, by orienting
14 the steps.

15 Page 117, Line 23, insert the word in after
16 is. That's it.

17 CHAIRPERSON MIETZ: Anybody have anything
18 else?

19 MS. TOMPKINS WRIGHT: Page 90, Line 19, the
20 application number 11A-19-18 was inadvertently inserted into
21 the line so just take that out.

22 CHAIRPERSON MIETZ: A motion for the amended
23 minutes.

24 MS. TOMPKINS WRIGHT: So moved.

25 (Second by Ms. Schwartz.)

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3 (Mr. Clapp, yes; Ms. Schwartz, yes;
4 Ms. Tomkins Wright, yes; Ms. Dale, yes; Mr. Mietz, yes;
5 Ms. Watson, yes.)

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

8 CHAIRPERSON MIETZ: When you're ready then,
9 Rick.

10 APPLICATION 11A-10-18

11 11A-10-18 Application of Susan O'Toole, owner
12 of property located at 71 Astor Drive, for 1) an Area
13 Variance from Section 207-10E(2) to allow front yard pavement
14 coverage to be 46% in lieu of the minimum 30% allowed by
15 code; 2) an Area Variance from Section 207-10E(3) to allow
16 rear yard pavement coverage to be 60% in lieu of the maximum
17 35% allowed by code; and 3) an Area Variance from Section
18 207-10E(5) to allow pavement throughout the site to extend up
19 to property lines where a minimum 4 ft. setback is required
20 by code. All as described on application and plans on file.

21 MR. HOWE: Good evening, members of the Board.
22 David Howe, from the law firm Boylan Code, here for
23 Ms. O'Toole who is also here with me. If it's okay with you,
24 she would prefer to sit down, she's having trouble standing
25 for long periods of time. She's certainly happy to answer

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3 your questions.

4 The last time we were in here in November we
5 presented the bulk of our case and since then we responded to
6 some additional questions that the ZBA had. And hopefully
7 our response was clarifying as opposed to further confusing,
8 but in any case we're happy to answer any additional
9 questions you may have here.

10 I think that the bulk of your concerns dealt
11 with, even though there are technically I think three
12 variance requests at hand, I think the bulk of your request
13 dealt with two of them dealing with the stone mulch as
14 opposed to the side setback issue. So we're happy to answer
15 any questions you may have that I can answer or Ms. O'Toole
16 will be happy to answer any as well.

17 CHAIRPERSON MIETZ: Okay. Does anyone need
18 this clarified? It is a little confusing, is everyone
19 comfortable with understanding the response?

20 MS. DALE: Well, I just have a question. The
21 calculations that were provided to us it says are excluding
22 the stone mulch.

23 MS. TOMPKINS WRIGHT: We asked them to do
24 calculations excluding the stone mulch and also calculations
25 including it so we could see what the difference was.

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3 MS. DALE: Right. So my question is, should I
4 go back to the original application? Were the calculations
5 included in it? Because this new information is excluding
6 it, isn't it? I see 32 percent of the front excluding stone
7 mulch, and 26-and-a-half percent in the rear excluding the
8 stone mulch. So my question is, I'm trying to recall if we
9 got a second calculation also asked for or I'm not seeing
10 that in the original application?

11

12 MS. TOMPKINS WRIGHT: I think the original

13 calculation was 46 and 60, including all of the stone mulch.

14

15 MR. DISTEFANO: Yes. The question was, I
16 think maybe they can clarify that, that was as of
17 November 1st. Was the second calculation regarding the
18 mulch? Now, if none of the mulch was there as of
19 November 1st, then we go back to the original numbers that
20 were shown on the request; am I correct?

21

22 MR. HOWE: Yes, that's essentially correct.
23 The first question of the supplemental information we
24 provided, the first question was: If you don't include the
stone mulch what is the percentage above or below? Our
answer to that was, not including the stone mulch, the front
yard is 32, which is just the extent of the new driveway and
walkway area. So it's just a little bit more than what she

3 has currently.

4 And again, the rear without including the
5 stone mulch, she actually doesn't need to have a variance at
6 all. And again, this is presupposing one of the issues that
7 maybe which is, our argument has been that we don't think
8 that stone mulch should be included because it's not
9 impervious surface as if you were putting down gravel or a
10 driveway or even paver blocks for example. This is pervious
11 landscaping material, the water hits it as it would grass.
12 And some grass you have kind of larger stones, and the water
13 goes through, so it doesn't have any impact in the way an
14 impervious surface would. So that's why we put forth to you
15 the question, or our position that maybe you shouldn't
16 consider it.

17 Now, as of November 1st, of last year you
18 asked for what is the calculations as of that date. And
19 other than the one, I think it's the left side of her
20 property where she did put in the stone mulch, it's probably
21 single digit percentage I believe. Other than that, she's
22 laid out -- her landscapers actually laid out the areas, but
23 nothing has been put in.

24 Their work was focused previously on putting
25 in the patio area in the back and then the walkway area in

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3 the front. So actually the bulk of the numbers we're talking
4 about hasn't been installed yet. Which is why our answer was
5 pretty succinct in the second question.

6 MR. DISTEFANO: I think one of the issues was
7 there was a picture that kind of showed some stone mulching.
8 And if that was in the side yard, that's fine. Although you
9 still need a 4-foot setback from the side yards when it's
10 considered pavement, that's where that 4-foot setback comes
11 in. But the calculation isn't necessary because you can pave
12 basically all of your side yard provided that you've got the
13 4-foot setback.

14 MR. HOWE: Yes, that is correct.

15 MS. TOMPKINS WRIGHT: I don't have the code in
16 front of me, but you're basing your calculations on useable
17 square footage. Is that the same calculation -- I should say
18 what did you mean by useable square footage in your letter
19 and do we use a useable square footage?

20 MR. DISTEFANO: No, we don't. We us total
21 square footage of your front yard, total square footage of
22 your backyard.

23 MS. TOMPKINS WRIGHT: So what does that
24 useable square footage mean? What was excluded as not being
25 useable in your calculations?

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3 MR. HOWE: I believe we included everything in
4 our numbers. It's just a descriptor, I don't think it was
5 intended to specifically exclude anything.

6 MS. TOMPKINS WRIGHT: Okay.

7 MR. DISTEFANO: The interesting thing about
8 the code and that it also addresses green space in a
9 roundabout way. Because although, you know, stone mulch is
10 what they're referring it to really does take away from the
11 green. I mean, you can say: Well, it's not having an
12 impact. But if your whole front yard was stone mulch you
13 would have no grass. Basically, it would be like a property
14 in Arizona, or something like that. So I think that's one
15 thing that the code doesn't directly say it, the intent of
16 the code is to maintain some greenery.

17 MR. HOWE: Yeah, I mean, our position is that
18 while we do not disagree with that, one of the reasons for
19 this request is that Ms. O'Toole's property does have a
20 significant amount of shading. This time of year is probably
21 not a good time to look at it anyway. But in the summertime
22 if you were to go by her property there's significant
23 portions of it that are shaded. Therefore, if there's no
24 stone mulch there and she were to just leave it as is for
25 example, it would just be sort of part scrapple, weeds, and

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3 things like that. Which is why she is trying to avoid having
4 to care for, and mow, and care for those types of areas which
5 it has led to this request.

6 CHAIRPERSON MIETZ: Okay. Any other questions
7 that the Board members have?

8 MS. WATSON: This question may have been asked
9 back in November, but has there been any conversation with
10 neighbors in any support or otherwise for neighbors near the
11 property?

12 MR. HOWE: I believe that, and I will let the
13 client chip in here, but I believe she's spoken to most if
14 not all of her neighbors who either have been supportive.
15 Certainly I know for sure there have been at least some
16 supportive and I don't think she's spoken to anybody against
17 it.

18 SUSAN O'TOOLE: There's nobody that's had any
19 issues with it. They've all been, even people that live
20 pretty far up the hill from me and stuff like that, everybody
21 has commented about how much they liked it in the front.
22 They didn't go in my backyard necessarily, but from what they
23 could see from the street.

24 A lot of people, it's a very dog oriented
25 neighborhood, so people are out walking quite a bit in the

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3 neighborhood. So that's why so many of them would have seen
4 it even though they lived up the hill.

5 MR. DISTEFANO: I just have a question and we
6 may have talked about this a little bit in November, but I
7 don't know if it was real clear. In the portion of the front
8 yard which is actually Town right of way, what is proposed?
9 Are you proposing to gravel that? I don't think you used
10 that number in your calculations. I hope you didn't, because
11 you don't need to include the right of way. You can't
12 include the right of way for your front yard area.

13 But it appears that there's no grass now in
14 the right of way, and has there been any discussions with the
15 highway department on whether or not they would even issue a
16 permit for those improve -- again, this Board is not going to
17 make a decision on the right of way because we can't. It
18 really comes down to: Will the Town allow you to put this
19 stone mulch in the Town right of way.

20 MR. HOWE: So I think that -- and you can
21 certainly correct me if I'm wrong -- but I believe that our
22 calculations actually do include to the property boundaries,
23 so it includes the right of way.

24 MR. DISTEFANO: To the street front, to the
25 actual pavement front?

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3 SUSAN O'TOOLE: No, I don't think we did. I
4 think that was excluded. But the landscaper did talk with
5 the Highway Department personally and was told that the stone
6 mulch was absolutely okay, very acceptable, along with the
7 shrubby that was going to be mixed in. So, you know, you're
8 putting down this stone mulch, but what you forget is that
9 the shrubs they are going to grow and they provide green, so.

10 MR. DISTEFANO: But that's the other thing
11 too, when you do plantings in the Town right of way there's a
12 number of things that with the proper permits are okay to do,
13 but you have to make sure you get the proper permits in order
14 to do improvements to the Town's right of way. So I just
15 wanted to make sure the Board understands that, if you don't
16 get that permit, you might still have that larger area or a
17 portion of the front yard that appears to be property owner's
18 but isn't, would have to be maintaining grass or something
19 like that.

20 SUSAN O'TOOLE: It doesn't grow grass, it's
21 too shady.

22 CHAIRPERSON MIETZ: That's kind of
23 negotiations with the Highway Department.

24 MR. DISTEFANO: I just wanted the Board to
25 realize there could be a strip of this that you look at it

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3 and say, okay, it's going all the way out to the street.
4 But, no, it might not, it might stop, if you look at the
5 landscaper's diagram where the red line to the street side is
6 actually located.

7 CHAIRPERSON MIETZ: Yes, there's quite a bit
8 of it there.

9 MR. DISTEFANO: It's a pretty big right of way
10 there. Probably 50- to 60-foot right of way in front.

11 CHAIRPERSON MIETZ: Okay. Anything else?

12 MS. TOMPKINS WRIGHT: I know your letter
13 includes the stone mulch but does not include the brown
14 decorative garden mulch.

15 MR. HOWE: No, because that is just a
16 landscaping element.

17 MS. TOMPKINS WRIGHT: Okay. That's not
18 considered impervious?

19 MR. HOWE: No.

20 MS. TOMPKINS WRIGHT: Okay.

21 MR. DISTEFANO: If it's regular mulch, not
22 stone mulch but regular mulch.

23 MR. HOWE: This is to show you what the
24 property is supposed to --

25 MS. TOMPKINS WRIGHT: Yeah, I'm just making

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3 sure all of the numbers were adding up.

4 CHAIRPERSON MIETZ: Are we set? Thank you.

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

8 APPLICATION 1A-01-19

9 1A-01-19 Application of Tom and Deborah Dimeo,
10 owners of property located at 160 Norman Road, for an Area
11 Variance from Sections 203-2.1B(6) and 203-9A(4) to allow a
12 standby emergency generator to be located in a side yard in
13 lieu of the rear yard behind the house as required by code.
14 All as described on application and plans on file.

15 MIKE BRANNON: Hi everybody, happy new year.
16 My name is Mike Brannon, I'm a project manager with Isaac
17 Heating. I'm hear to assist Tom and Deborah, they would like
18 the piece of mind of having a standby generator for emergency
19 purposes. And the problem we had is the only spot that we're
20 able to place the unit is on the side yard of the house,
21 which is against the rules.

22 The reason why it has to go on the side yard
23 is two fold. One, it's the only spot that's mechanically
24 conducive for the install because that side of the home the
25 gas meter is located and the electrical service is located as

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3 well, which the generator ties into.

4 The second reason why it has to go on the side
5 of the yard is all of the other sides of the house, the
6 generator would not be able to meet the safety clearances
7 such as being 5 foot away from windows and corners and things
8 like that. The good news is though, that this generator is
9 very quiet. It's 64 decibels, a standard air conditioner is
10 about 75 decibels to 80 decibels, so it's a very quiet unit.

11 Also the amount of lot that they have between
12 that side of the home and their neighbor's house is almost
13 80 feet. So it's a pretty good amount of distance which
14 helps circumvent, you know, noise issues, vibrations off
15 homes, things like that. So that's about it, that's about
16 the whole ball of wax.

17 DEBORAH DIMEO: Also, the back side of the
18 house.

19 CHAIRPERSON MIETZ: Could you just state your
20 name and address?

21 DEBORAH DIMEO: I'm the homeowner, Deborah
22 Dimeo. The back side of my house also has my septic system,
23 so that kind of could create a problem if I tried to located
24 it back there.

25 MS. TOMPKINS WRIGHT: I wasn't able to make it

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3 out to this site. Is this generator being placed near the
4 HVAC or other equipment?

5 MIKE BRANNON: Yes.

6 DEBORAH DIMEO: The HVAC is closer to where
7 the meters are, and this is how many feet back?

8 MIKE BRANNON: It's five foot off from the
9 house and it's five feet away from the --

10 CHAIRPERSON MIETZ: From the condenser?

11 MIKE BRANNON: Yes.

12 CHAIRPERSON MIETZ: Can you tell us how far
13 away is the next house from the property line? The house on
14 that side?

15 MIKE BRANNON: 120 feet.

16 DEBORAH DIMEO: Yeah, I own up to six feet
17 from where the next person's garage is. If you go off the
18 side of his garage six feet, that's where my property starts
19 and then there's another, I don't know --

20 MR. DISTEFANO: Well, it's 77 and 6, so that's
21 how I'm reading it. It's 83 feet.

22 CHAIRPERSON MIETZ: I know the garage, the
23 house is on the other side of the garage.

24 MR. DISTEFANO: So you've got the garage and
25 then you've got the distance of the garage to the actual

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3 living area.

4 CHAIRPERSON MIETZ: So maybe it's 85 feet.

5 Other questions for these folks? Thank you.

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

9 APPLICATION 1A-02-19

10 1A-02-19 Application of Carlton and Lisa
11 Wilson, owners of property located at 330 Rhinecliff Drive,
12 for an Area Variance from Section 205-2 to allow a front
13 porch addition to extend 4.5 ft. (roof edge) into the 40 ft.
14 front setback required by code. All as described on
15 application and plans on file.

16 CARLTON WILSON: Good evening, Carlton Wilson
17 owner of 330 Rhinecliff. We are looking to convert an
18 existing stoop into a covered front porch. We're looking to
19 put two rocking chairs out and talk to the neighbors as they
20 walk by. The roof will extend about a foot further than the
21 existing stoop does, which is already four feet. The house
22 has the 40-foot setback, the stoop is already four feet into
23 that. We need another foot or foot and a half for the edge
24 of the roof.

25 CHAIRPERSON MIETZ: A couple questions --

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3 anything else?

4 CARLTON WILSON: Nope.

5 CHAIRPERSON MIETZ: Number one, your intention
6 is to leave it open? There's no thought of enclosing it in
7 any way?

8 CARLTON WILSON: No. I see he's got the copy
9 of the print.

10 CHAIRPERSON MIETZ: Yes, we saw the print.

11 CARLTON WILSON: No intention to enclose it.

12 CHAIRPERSON MIETZ: Okay. And the second
13 thing is, could you comment at all about the neighborhood and
14 for the record, are there any similar structures that one
15 would find?

16 CARLTON WILSON: We got the idea from across
17 the street.

18 CHAIRPERSON MIETZ: For the record, it's
19 interesting to -- so it's worked functionally well for them
20 and you think having a covered front and to go back to the
21 1950s and talk to people that go up and down the sidewalk.

22 CARLTON WILSON: We've been enjoying it.

23 CHAIRPERSON MIETZ: Thank you.

24 Is there anyone in the audience that would
25 like to speak regarding this application? There being none,

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3 then the Public Hearing is closed.

4 APPLICATION 1A-03-19

5 1A-03-19 Application of David Cohen, owner of
6 property located at 485 Warren Avenue, for an Area Variance
7 from Section 205-2 to allow a deck to extend 12.5 ft into the
8 18 ft. side setback required by code. All as described on
9 application and plans on file.

10 DAVID COHEN: Good evening, my name is David
11 Cohen, I live at 485 Warren Avenue. We built the deck, and
12 basically not deck, it was a patio. If you see on the
13 picture one side is less than 18 inches, because when they
14 built the house, we have the slope for the water to go down
15 to the Clover side.

16 So on the other side of the deck we are almost
17 22 or 23 inches high, so because of concern of somebody
18 falling down there we put a railing around there. Now
19 because we put the railing in it is considered like a
20 decking, so we are required now to have a permit for the
21 decking. And also because we get out 12-and-a-half feet from
22 the house, we have 18 feet, but we own the lot next door, so
23 it doesn't affect nobody.

24 CHAIRPERSON MIETZ: When you say the lot next
25 door, are you talking about the one that is sort of behind

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3 you, in a sense?

4 DAVID COHEN: Yes, behind me, 2033 Clover. So
5 we own basically the whole --

6 CHAIRPERSON MIETZ: I saw it, but I wanted to
7 make sure.

8 DAVID COHEN: Also, when you drive from
9 Clover, you don't see the deck because it's usually under the
10 ground, you can't see it higher. It's only one side from
11 Clover you can see it because we sloped it.

12 CHAIRPERSON MIETZ: Okay, does everybody
13 understand?

14 MS. TOMPKINS WRIGHT: I just have a question
15 for you, Rick, if this were considered a rear yard what would
16 the setback requirement be?

17 MR. DISTEFANO: In this district, it is a
18 residential A district, so it would be a 60-foot setback if
19 it was a rear yard. But the way this lot lays itself out, is
20 that really is the side yard because it's a corner lot. So
21 the rear yard is actually that lot that runs parallel to the
22 Warrens behind the garage going up that. That's the true
23 rear yard of this particular lot, but that's the way they
24 could only put the house on it because of it's shape. You
25 don't have the distance to do it sideways or face Clover, so

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3 this really is their rear yard in all practical sense, a side
4 yard by code.

5 MS. SCHWARTZ: How long ago did you put the
6 deck up?

7 DAVID COHEN: Last year -- not last year, we
8 finished this year.

9 CHAIRPERSON MIETZ: This season?

10 DAVID COHEN: Yes.

11 CHAIRPERSON MIETZ: Okay, any other questions?
12 Thank you.

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

16 APPLICATION 1A-05-19

17 1A-05-19 Application of Alicia Davis, owner of
18 property located at 296 Ashbourne Road, for an Area Variance
19 from Section 205-2 to allow a roof overhang to extend 1 ft.
20 into the existing 30.1 ft. front setback where a 40 ft. front
21 setback is required by code. All as described on application
22 and plans on file.

23 ALICIA DAVIS: Hello, my name is Alicia Davis,
24 I'm the own of 296 Ashbourne Road. We're asking for a
25 variance for one foot for the roof, the overhang, so it's

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3 consistent with the other overhangs in our new design.

4 CHAIRPERSON MIETZ: Okay.

5 MR. DISTEFANO: You guys remember we saw this
6 last month, or two months ago and unfortunately the overhang
7 wasn't presented on the plan. However, it was shown on the
8 elevation but it wasn't shown on the survey. So it was
9 picked up when it went through ARB and unfortunately we had
10 to bring it back for this one foot. Unfortunately we didn't
11 catch it with the original, but --

12 CHAIRPERSON MIETZ: Okay. So for the record,
13 there was no way to mitigate this. It would have compromised
14 the whole thing.

15 ALICIA DAVIS: Correct.

16 MS. WATSON: The elevations haven't changed
17 from last month?

18 ALICIA DAVIS: No.

19 CHAIRPERSON MIETZ: Thank you.

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 1A-06-19

24 1A-06-19 Application of St. John's Home for
25 the Aging, owner of property located at 1 Johnsarbor Drive

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3 West, for an Area Variance from Section 203-30A(1) and 203-
4 2.1B(6) to allow a standby emergency generator to be located
5 in a side yard in lieu of the rear yard behind the building
6 as required by code, and 2) allow said generator to have a
7 noise level of 76 dBA in lieu of the maximum 72 dBA allowed
8 by code. All as described on application and plans on file.

9 APPLICATION 1A-07-19

10 1A-07-19 Application of St. John's Home for
11 the Aging, owner of property located at 1 Johnsarbor Drive
12 West, for an Area Variance from Section 207-2B to allow a
13 side yard fence height of 11 ft. 4 in. in lieu of the maximum
14 6 ft. 6 in. allowed by code. All as described on application
15 and plans on file.

16 THOMAS PALUMBO: Good evening, folks. My name
17 is Tom Palumbo from Stantec Consultant Services. I'm here
18 representing St. John's application. Also, I have other
19 folks from St. John's as well if there's questions for that.
20 I will go through the generator and then jump into the
21 trellis wall and the fence line and go from there.

22 So the generator is a 275 watt generator, we
23 have proposed it to be adjacent to the transformer which is
24 kind of the northwest side of the building. We really don't
25 have a rear yard on this complex. This little corner over

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3 here is the location of the gas service, gas meter
4 transformer, and naturally it looks and feels like a service
5 area.

6

We think it's a reasonable location for it.

7

We're well away from the adjacent properties, over 320 feet
8 from the road and 120 feet from the west property line. And
9 from the application you'll see I gave you also a Google map
10 of that area. There's a whole wetland to the other side and
11 then the homes don't start until the opposite side of Elmwood
12 Avenue.

13

We've also looked at, we have a Level 2 sound
14 enclosure, so it's the highest enclosure we can have for
15 sound abatement. We've looked at what the sound levels would
16 be at the property line. The west property line it would be
17 down to 61 decibels and at Elmwood Avenue it would be down to
18 56 decibels, and this is only during times of emergency need
19 when they need to have the power. Really, our residents are
20 expecting more of this type of service in the marketplace,
21 and it's really recommended for our assisted living folks.

22

I did take some pictures of the condition
23 that's out there now. And we looked to relandscape this
24 area, much like what's out there currently so that that can
25 be screened as well. So I will pass these out.

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3 So the first picture on the front of the page
4 is the existing condition looking at it from the road, from
5 the existing Johnsarbor Drive. You really kind of need to
6 kind of dig back in behind the trees to see what the
7 transformer is in there, and I literally had to go looking
8 for the transformer. It's a little shadowy, but it really
9 is, if you had the chance to drive by there and see that
10 corner, it's really well screened.

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Brighton Zoning Board of Appeals 1/2/19

So the first picture on the front of the page
condition looking at it from the road, from
ohnsbarbor Drive. You really kind of need to
k in behind the trees to see what the
in there, and I literally had to go looking
ormer. It's a little shadowy, but it really
the chance to drive by there and see that
really well screened.

Like I said, we are only, like, powering parts
area, the elevator, those areas that really are
e. It's not powering all of the building, all

CHAIRPERSON MIETZ: It's just for that

building?

THOMAS PALUMBO: It's for Briarwood and a
thorn, so it's this piece over here.

CHAIRPERSON MIETZ: Okay. Now are the other facility --

THOMAS PALUMBO: On generator?

CHAIRPERSON MIETZ: Yes.

THOMAS PALUMBO: No, they're not. These are
arments and these are the more frail assisted

1 Brighton Zoning Board of Appeals 1/2/19

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3 CHAIRPERSON MIETZ: Okay. Is there any
4 additional screening that you are thinking about or you feel
5 that --

6 THOMAS PALUMBO: No. We felt the planting
7 would be more natural, better screening than trying to put a
8 screen wall or something like that.

9 CHAIRPERSON MIETZ: Any other landscaping
10 screening that you thought about?

11 THOMAS PALUMBO: Well, other than the
12 arborvitae, we have kind of thought the existing did such a
13 good job we kind of wanted to repeat that.

14 CHAIRPERSON MIETZ: Just continuing on?

15 THOMAS PALUMBO: Yes, just continuing it.

16 MR. DISTEFANO: Tom, maybe you just grab that
17 one and they can see where you're -- they don't show up that
18 great.

19 THOMAS PALUMBO: Yes. So the idea would be
20 that we would plant to extend that around the corner, curve
21 it around, and it's probably going to grow around this edge
22 as well. We've been going back and forth on where to put it
23 because we also have a nice patio here that we have gotten
24 approved and we're looking to get going on construction. So
25 if I can, do you want me to go into that?

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3 MR. DISTEFANO: Just let me ask a question
4 about the generator for the record. It is a natural gas?

5 THOMAS PALUMBO: Yes, it is a natural gas
6 generator.

7 MR. DISTEFANO: Thank you.

8 CHAIRPERSON MIETZ: Okay. You can proceed to
9 the next one.

10 THOMAS PALUMBO: So the second part of our
11 application is a little unique. We have a proposed patio and
12 terrace area with terrace seating. This area is located off
13 the dining area and the multipurpose room. So it's kind of a
14 good spot for the seniors to get some outdoor space. They
15 will be able to enjoy the outside a little bit more. And we
16 are really trying to make a most comfortable location for
17 them to do that.

18 What we've learned is a lot of the concern, we
19 have an existing patio here now and it doesn't get used that
20 much. The concern is that during the summer they get a lot
21 of sun on it, there's no shade. And then in the cooler
22 months there's a lot of wind from the west. So they're
23 looking for a windbreak. The solution to that is pretty
24 unique, is to do a trellis wall in segments. So just three
25 segments of trellis wall and they would kind of go between

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3 the proposed ornamental trees that are proposed. So it would
4 be a tree, a piece of trellis wall, a tree, a piece of
5 trellis wall. So the trellis wall is vertical post,
6 horizontal slats, and then it's really created so that we
7 have growing vines growing up through there, and it's
8 proposed to be clematis so it won't be really heavy, but it
9 will provide a good break.

10

11 So the wall itself is a wall or fence,
12 whatever you call it. It's 80 percent transparent, so we are
13 trying to minimize what the impact of that is. This kind of
14 gives a little -- and I have these in 11 by 17, so you can
15 put them in the file if you like -- so here it is in
16 perspective. The seating wall, the little trellis panels
opposite of the trees.

17

18 The reason it is as high as it is, so the
19 posts themselves are considered part of the fence structure,
20 and they are set at a level so they can run these triangle
lights over the top of the patio and create that extra
21 height. That's why we're going up as high as we're going.
22 We need to get the lights up there. Those posts naturally
23 now need to be taken into account as part of the structure of
24 the fence. So that's where we get to the 11'4" and that
25 includes the little seat wall and then the posts on top of

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3 that. So it's grade from outside the seat wall to the top of
4 the post and that should provide plenty of headroom
5 underneath for folks when they're moving around and stuff
6 like that, considering the sag of the lights.

7 CHAIRPERSON MIETZ: Could you describe what,
8 it's somewhat obvious, but what is this area going to be used
9 for and by whom?

10 THOMAS PALUMBO: Well, it's all for residents
11 of Briarwood. It's not really used as restaurant seating,
12 it's used for outdoor seating. Not to say that if someone
13 were out there with a cup of coffee or something like that
14 they couldn't do it. So it really is an expansion, this is
15 their multipurpose room and here is their dining room. We're
16 doing a dining addition in this corner and then really to
17 just expand this and giving them more outdoor space if they
18 can.

19 CHAIRPERSON MIETZ: Is it a quasi-secured area
20 and are people supervised in that area? Could they walk
21 around somewhere else and could someone walk into that area?

22 THOMAS PALUMBO: It's not a memory care area.
23 It's not really more secure than what it is right now. Right
24 now we have a patio and doors that come out to that.

25 CHAIRPERSON MIETZ: And that's been used since

1 Brighton Zoning Board of Appeals 1/2/19
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3 the building was built, the whole patio area was there?

4 THOMAS PALUMBO: Yeah. There was a patio over
5 here and I think we had another one on this corner up on this
6 side. But we are expecting to get much more use out of this,
7 it will be more functional. There's a little fire pit, stuff
8 like that. Get a chance to get outside and enjoy the outside
9 a little bit more.

10 CHAIRPERSON MIETZ: Okay. Questions? Thank
11 you.

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

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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 14th day of January, 2019.

14 At Rochester, New York

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Rhoda Collins

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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JANUARY 2ND, 2019
5 AT APPROXIMATELY 8:00 P.M.

6 January 2nd, 2019
7 Brighton Town Hall
8 2300 Elmwood Avenue
9 Rochester, New York 14618

10 PRESENT:

11 DENNIS MIETZ, CHAIRPERSON
12 DOUGLAS CLAPP
13 JEANNE DALE
14 JUDY SCHWARTZ
15 ANDREA TOMPKINS WRIGHT
16 JENNIFER WATSON

17 DAVID DOLLINGER, ESQ.
18 Town Attorney

19 RICK DiSTEFANO
20 Secretary

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

25 REPORTED BY: RHODA COLLINS, Court Reporter
26 FORBES COURT REPORTING SERVICES, LLC
27 21 Woodcrest Drive
28 Batavia, New York 14020

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3 APPLICATION 1A-06-19

4 1A-06-19 Application of St. John's Home for
5 the Aging, owner of property located at 1 Johnsarbor Drive
6 West, for an Area Variance from Section 203-30A(1) and 203-
7 2.1B(6) to allow a standby emergency generator to be located
8 in a side yard in lieu of the rear yard behind the building
9 as required by code, and 2) allow said generator to have a
10 noise level of 76 dBA in lieu of the maximum 72 dBA allowed
11 by code. All as described on application and plans on file.

12 Motion made by Ms. Watson to approve
13 Application 1A-06-19 based on the following findings and
14 facts.

15 **FINDINGS AND FACTS:**

16 1. The applicant's proposed location is the only feasible
17 option for the placement of the generator. The property does
18 not have a defined rear yard that could service this
19 building. The proposed location is adjacent to an existing
20 transformer and the building's mechanicals.

21 2. The generator will not be visible from the road or nearby
22 properties as it will be 320 feet from the road and 120 feet
23 from the nearest property line. In addition, its existing
24 vegetation will be expanded between the generator from view.
25 No unacceptable change in the character of the neighborhood

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3 and no substantial detriment to nearby properties is expected
4 to result in the approval of this variance as the proposed
5 location is remote to any neighboring properties.

6 3. The requested noise level variance is the minimum
7 possible due to the generator's minimal load to power
8 necessary activities in the senior's home including the
9 elevator, kitchen, and common area, lighting, and heat. The
10 proposed generator includes a Level 2 sound enclosure which
11 has the highest level of sound attenuation available. In
12 addition, because of the large size of the property the
13 perceived sound levels at the perimeter of the property will
14 be substantially lower and less perceptible to surrounding
15 properties.

16 4. The alleged hardship was not self-created by the
17 applicants as the use of emergency generators for senior and
18 assisted living facilities is necessary for the care of these
19 vulnerable populations. The New York State Department of
20 Health also strongly recommends the use of emergency
21 generators for assisted living facilities.

22 5. The health, safety, and welfare of the community will not
23 be adversely affected by the approval of this variance
24 request. In fact, the presence of the generator will benefit
25 the safety of the St. John's Home community.

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3 **CONDITIONS:**

4 1. This variance only applies to the standby emergency
5 generator as described in the written application provided
6 and testimony presented.
7 2. The generator shall be screened as per plans submitted.
8 3. All necessary building permits must be obtained.

9 (Second by Ms. Schwartz.)

10 (Mr. Clapp, yes; Ms. Tomkins Wright, yes;
11 Mr. Mietz, yes; Ms. Dale, yes; Ms. Schwartz, yes; Ms. Watson,
12 yes.)

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

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1 Brighton Zoning Board of Appeals 1/2/19
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3 APPLICATION 1A-07-19

4 1A-07-19 Application of St. John's Home for
5 the Aging, owner of property located at 1 Johnsarbor Drive
6 West, for an Area Variance from Section 207-2B to allow a
7 side yard fence height of 11 ft. 4 in. in lieu of the maximum
8 6 ft. 6 in. allowed by code. All as described on application
9 and plans on file.

10 Motion made by Mr. Clapp to approve
11 Application 1A-07-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The requested application will not result in a
15 substantial change in the neighborhood character as the
16 trellis wall will be over 120 feet from the adjacent property
17 to the west and is also over 230 feet from Elmwood Avenue.
18 2. Although the size of the fence is substantial, the need
19 for the height is caused by the additional need to string
20 required lighting across the patio and will also serve as the
21 trellis for climbing vines that will further screen and
22 minimize the effect of the wall.

23 **CONDITIONS:**

24 1. All necessary building permits shall be obtained.
25 2. The variance applies only to the fencing as per plans

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3 submitted and testimony given.

4

(Second by Ms. Schwartz.)

5

6 (Ms. Watson, yes; Mr. Mietz, yes; Ms. Dale,
7 yes; Ms. Tompkins Wright, yes; Ms. Schwartz, yes; Mr. Clapp,
yes.)

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

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3 APPLICATION 1A-03-19

4 1A-03-19 Application of David Cohen, owner, of
5 property located at 485 Warren Avenue, for an Area Variance
6 from Section 205-2 to allow a deck to extend 12.5 ft into the
7 18 ft. side setback required by code. All as described on
8 application and plans on file.

9 Motion made by Ms. Schwartz to approve
10 Application 1A-03-19 based on the following findings and
11 facts.

12 **FINDINGS AND FACTS:**

13 1. Even though the deck has been constructed it is situated
14 in the only available spot in the yard.

15 2. The house is located on a corner lot and almost any
16 addition necessitates a variance.

17 3. The deck is barely 18 inches above ground and in spots is
18 lower than 18 inches and may not require a variance if there
19 was no railing.

20 4. The railing is truly dictating the need for this
21 variance. However, the railing adds safety and adds a
22 finished look to the deck.

23 5. There's no change in the character of the neighborhood
24 nor any adverse impact on the health and safety of the
25 neighbors.

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3 **CONDITIONS:**

4 1. This deck may not be altered any further without plans
5 submitted and approvals granted.

6 2. All necessary Architectural Review Board approvals and
7 building permits shall be obtained.

8 (Second by Ms. Watson.)

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

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

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3 APPLICATION 11A-10-18

4 11A-10-18 Application of Susan O'Toole, owner
5 of property located at 71 Astor Drive, for 1) an Area
6 Variance from Section 207-10E(2) to allow front yard pavement
7 coverage to be 46% in lieu of the minimum 30% allowed by
8 code; 2) an Area Variance from Section 207-10E(3) to allow
9 rear yard pavement coverage to be 60% in lieu of the maximum
10 35% allowed by code; and 3) an Area Variance from Section
11 207-10E(5) to allow pavement throughout the site to extend up
12 to property lines where a minimum 4 ft. setback is required
13 by code. All as described on application and plans on file.

14 Motion made by Ms. Dale to approve Application
15 11A-10-18 Number 1), based on the following findings and
16 facts.

17 **FINDINGS AND FACTS:**

18 1. The property is heavily shaded and is not easily
19 hospitable to grass without significant time, effort, and
20 cost.

21 2. The proposed project is intended to alleviate
22 difficulties navigating the property and maintaining the
23 property while increasing the aesthetics.

24 3. The area variance will not result in a substantial change
25 to the character of the neighborhood or detrimentally affect

1 Brighton Zoning Board of Appeals 1/2/19
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3 surrounding properties. Rather the project will have a
4 positive impact as a home improvement and professional
5 landscaping, and improving the property's general appearance.

6 4. The variance request will not have an adverse effect or
7 impact on physical or environmental condition of the neighbor
8 as the decorative stone mulch and garden mulch is pervious
9 and will absorb rainwater and runoff from the adjacent paved
10 walkways and patio.

11 **CONDITIONS:**

12 1. The maximum amount of impervious surface shall be limited
13 to 234 square feet of driveway area, 175 square feet of
14 sidewalk area, for a total of no more than 32 percent
15 impervious coverage of the front yard.

16 2. There shall be no stone mulch in the highway right of way
17 unless the applicant receives approval from the Highway
18 Department.

19 (Second by Ms. Tompkins Wright.)

20 (Mr. Clapp, yes; Ms. Schwartz, yes;
21 Ms. Watson, yes; Mr. Mietz, yes; Ms. Tompkins Wright;
22 Ms. Dale, yes.)

23 (Upon roll call, motion to approve with
24 conditions carries.)

25 Motion made by Ms. Dale to approve Application

1 Brighton Zoning Board of Appeals 1/2/19

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3 11A-10-18 Number 2), based on the following findings and
4 facts.

5

FINDINGS AND FACTS:

6

1 The property is heavily shaded and is not easily
2 hospitable to grass without significant time, effort, and
3 cost.

4

5 2. The proposed project is intended to alleviate
6 difficulties navigating the property and maintaining the
7 property while increasing the aesthetics.

8

9 3. The area variance will not result in a substantial change
10 to the character of the neighborhood or detrimentally affect
11 surrounding properties. Rather the project will have a
12 positive impact as a home improvement and professional
13 landscaping, and improving the property's general appearance.

14

15 4. Due to the layout of the property the proposed changes in
16 the rear yard will not be visible from the street and will
17 not impact surrounding properties.

18

19 5. The variance requests will not have an adverse effect or
20 impact on the physical or environmental condition of the
21 neighborhood as the decorative stone mulch and garden mulch
22 are pervious and will absorb rainwater and runoff the
23 adjacent paved walkways and patio.

24

CONDITIONS:

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3 1. The maximum amount of impervious coverage shall not
4 exceed 60 percent of the rear yard as defined in application
5 and as shown on plans submitted.

6 (Second by Ms. Tompkins Wright.)

7 (Mr. Clapp, yes; Ms. Schwartz, yes; Mr. Mietz,
8 yes; Ms. Watson, no; Ms. Tompkins Wright, yes; Ms. Dale,
9 yes.)

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

12 Motion made by Ms. Dale to approve Application
13 11A-10-18 Number 3), to allow pavement throughout the site to
14 extend up to property lines in the side and rear yards only,
15 based on the following findings and facts.

16 **FINDINGS AND FACTS:**

17 1. The proposed project is intended to alleviate
18 difficulties navigating the property and maintaining the
19 property while increasing the aesthetics.
20 2. The variance request will not have an adverse effect or
21 impact on the physical or environmental condition of the
22 neighborhood as the decorative stone mulch is pervious and
23 will absorb rainwater and runoff to the adjacent paved areas.

24 **CONDITIONS:**

25 1. The variance as granted applies only to the side and rear

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3 yard areas. In particular there shall be a 4-foot setback
4 from all pavement in the front yard as defined by code.

5 2. All impervious coverage within four feet of the property
6 line in the side and rear yards shall be stone mulch only as
7 depicted in plans submitted.

8 (Second by Ms. Tompkins Wright.)

9 (Mr. Clapp, yes; Ms. Schwartz, yes; Mr. Mietz,
10 yes; Ms. Watson, yes; Ms. Tompkins Wright; Ms. Dale, yes.)

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

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3 APPLICATION 1A-01-19

4 1A-01-19 Application of Tom and Deborah Dimeo,
5 owners of property located at 160 Norman Road, for an Area
6 Variance from Sections 203-2.1B(6) and 203-9A(4) to allow a
7 standby emergency generator to be located in a side yard in
8 lieu of the rear yard behind the house as required by code.
9 All as described on application and plans on file.

10 Motion made by Ms. Dale to approve Application
11 1A-01-19 based on the following findings and facts.

12 **FINDINGS AND FACTS:**

13 1. The difficulty necessitating the variance request cannot
14 be solved in another manner not requiring a variance as there
15 is no allowable location in the backyard that the generator
16 can be placed that will meet fire safety distance
17 requirements and appearances of windows and doors.

18 2. The requested location of the generator on the side of
19 the house is next to existing facilities for gas and
20 electrical service and will not result in a substantial
21 change in the character of the neighborhood or detrimentally
22 affect surrounding properties.

23 3. The generator will be located a substantial distance from
24 the adjacent properties at about 80 feet from the neighboring
25 property line.

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3 4. The proposed variance is consistent with other Brighton
4 neighborhoods and will not have an adverse effect or impact
5 on the physical or environmental conditions in the
6 neighborhood or district.

7 **CONDITIONS:**

8 1. The location of the generator shall be as depicted in the
9 application and as described in testimony.
10 2. All necessary permits shall be obtained.

11 (Second by Ms. Schwartz.)

12 (Ms. Watson, yes; Mr. Mietz, yes;
13 Ms. Tompkins Wright; Mr. Clapp, yes; Ms. Schwartz, yes;
14 Ms. Dale, yes.)

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

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3 APPLICATION 1A-02-19

4 1A-02-19 Application of Carlton and Lisa
5 Wilson, owners of property located at 330 Rhinecliff Drive,
6 for an Area Variance from Section 205-2 to allow a front
7 porch addition to extend 4.5 ft. (roof edge) into the 40 ft.
8 front setback required by code. All as described on
9 application and plans on file.

10 Motion made by Mr. Mietz to approve
11 Application 1A-02-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The proposed front addition is not significant due to the
15 open design of the porch and overhang.

16 2. No negative effect on the character of the neighborhood
17 will likely result from the approval of this variance since
18 similar additions appear in the subject neighborhood.

19 3. The proposed variance is the minimal requested by the
20 applicant to meet their needs to cover the front entrance.

21 **CONDITIONS:**

22 1. It's based on the testimony given and plans submitted.

23 2. All necessary Architectural Review Board and building
24 permits must be obtained.

25 (Second by Ms. Schwartz.)

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3 (Ms. Watson, yes; Ms. Dale, yes; Ms. Tomkins
4 Wright, yes; Mr. Clapp, yes; Ms. Schwartz, yes; Mr. Mietz,
5 yes.)

6 (Upon roll call, motion to approve with
7 conditions carries.)

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3 APPLICATION 1A-05-19

4 1A-05-19 Application of Alicia Davis, owner of
5 property located at 296 Ashbourne Road, for an Area Variance
6 from Section 205-2 to allow a roof overhang to extend 1 ft.
7 into the existing 30.1 ft. front setback where a 40 ft. front
8 setback is required by code. All as described on application
9 and plans on file.

10 Motion made by Ms. Tompkins Wright to approve
11 Application 1A-05-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The granting of the requested variance will not produce
15 an undesirable change in the character of the neighborhood or
16 be a detrimental to nearby properties. The addition of a
17 12-inch overhang on the front of the garage will be virtually
18 unnoticeable to any passersby and will instead appear in line
19 with the architectural styling of the remodeled column.

20 2. The requested variance is not substantial. The
21 aforementioned garage already encroaches into the setback by
22 almost ten feet and an additional one foot overhang is
23 immaterial.

24 3. The benefits sought by the applicant cannot reasonably be
25 achieved by any other method given the existing location of

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3 the garage, any overhang will extended farther into the
4 setback. A 12-inch overhang is modest and the minimum
5 necessary for a functional and aesthetic benefit.

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

9 **CONDITIONS:**

10 1. The variance herein applies only to the addition of an
11 overhang to the garage as describe in and in the location as
12 depicted on the application and testimony given.

13 2. All necessary Architectural Review Board and building
14 permits must be obtained.

15 (Second by Ms. Schwartz.)

16 (Mr. Clapp, yes; Mr. Mietz, yes; Ms. Dale,
17 yes; Ms. Watson, yes; Ms. Schwartz, yes; Ms. Tomkins Wright,
18 yes.)

19 (Upon roll call, motion to approve with
20 conditions carries.)

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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 14th day of January, 2019.

14 At Rochester, New York
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18 Rhoda Collins
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