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PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON FEBRUARY 6TH,
2019 AT APPROXIMATELY 7:15 **P.M.**

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February 6th, 2019
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

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PRESENT:

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DENNIS MIETZ, CHAIRPERSON
JEANNE DALE
DOUGLAS CLAPP
JUDY SCHWARTZ
ANDREA TOMPKINS WRIGHT
JENNIFER WATSON

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DAVID DOLLINGER, ESQ.
Town Attorney

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RICK DiSTEFANO
Secretary

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

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CHAIRPERSON MIETZ: Good evening. I'd like to call to order the February session of the Zoning Board of Appeals.

6

Rick, was the meeting properly advertised?

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MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Brighton-Pittsford Post of January 31,

8

2018.

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CHAIRPERSON MIETZ: Please call the roll.

11

12

MR. DiSTEFANO: Let the record show all members are present.

13

14

CHAIRPERSON MIETZ: Okay. We have couple of minutes here to deal with December and January. We will start with December, Judy.

16

17

MS. SCHWARTZ: On Page 49, Line 12, the first word should be night.

18

19

On Page 61, Line 16, please insert the word Brighton after from. I think that's all.

20

21

CHAIRPERSON MIETZ: Anything else for December? Somebody make a motion.

22

MR. CLAPP: I move.

23

(Second by Ms. Schwartz.)

24

25

(Mr. Clapp, yes; Ms. Schwartz, yes; Ms. Tomkins Wright, yes; Ms. Dale, yes; Mr. Mietz, yes;

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3 Ms. Watson, yes.)

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

6 CHAIRPERSON MIETZ: Okay, January.

7 MS. SCHWARTZ: Page 16, Line 7, the word
8 corners should be doors.

9 Page 21, Line 21, delete the last word.

10 And Line 22, just delete the S at the end of
11 the first word.

12 On Page 34, Line 24, extended not expanded.

13 Page 43, Line 23, insert the word from after
14 run off.

15 Page 46, Line 17, requirements and clearances,
16 not appearances.

17 Page 50, Line 16, the word is detriment.

18 Page 51, Line 3, removed the -ed from
19 extended. That's all I have.

20 CHAIRPERSON MIETZ: Motion?

21 MS. TOMPKINS WRIGHT: So moved.

22 (Second by Ms. Schwartz.)

23 (Ms. Schwartz, yes; Ms. Tomkins Wright, yes;
24 Ms. Dale, yes; Mr. Mietz, yes; Ms. Watson, yes.)

25 (Upon roll call, motion to approve with

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3 corrections carries.)

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5 CHAIRPERSON MIETZ: Okay. Rick, when you are

ready.

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APPLICATION 2A-01-19

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2A-01-19 Application of Our Lady of Lourdes

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Church of Brighton, owner of property located at 150 Varinna
9 Drive, for an Area Variance from Sections 203-2.1B(7) and

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203-9A(4) to 1) allow air conditioning equipment to be
11 located in a front yard in lieu of the side or rear yard as
12 required by code, and 2) allow the noise level of the
13 equipment to be 96 decibels in lieu of the maximum 78
14 decibels as allowed by code. All as described on application
15 and plans on file.

16

APPLICATION 2A-02-19

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2A-02-19 Application of Our Lady of Lourdes
18 Church of Brighton, owner of property located at 150 Varinna
19 Drive, for an Area Variance from Section 207-2A to allow a
20 front yard wall to be 6 ft. in height in lieu of the maximum
21 3.5 ft. allowed by code. All as described on application and
22 plans on file.

23

24 CHUCK WHITE: My name is Chuck White, I'm the
mechanical engineer for the project, with Heather Tendon of
25 the church, and Sue Steele who is the architect for the

3 project.

4 The reason for the project in the first place
5 is we're replacing 50-year old mechanical equipment, air
6 conditioning equipment, in the building. And the heat
7 rejection for cooling in the building is currently a cooling
8 tower that's built into the building, and the wish of the
9 church is to replace it and replace it with an air-cooled
10 heat rejection equipment which would have to go outside.

11 The reasons for the replacement of the --
12 well, we want to replace the list in the application, and so
13 the reason for the variance is to locate the equipment
14 outside of the building. With that, I will hand off to Sue.

15 SUE STEELE: Hi, Sue Steele, landscape
16 architect on the project. I do have plans, do you want them
17 up here?

18 CHAIRPERSON MIETZ: Yes, you can put them up.

19 SUE STEELE: They are not different than what
20 you have in the application. Again, the plans aren't really
21 different, I just added color. And then on the other side I
22 have the photo sym if you want to see it larger. I know,
23 it's in your application as well.

24 So just going through the two requests that we
25 have before you today, the first one is for location and

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3 noise, and the second is for the wall height. So as Chuck

4 said, the equipment needs to be moved outside and we have a

5 unique property in that it's surrounded on three sides --

6 actually four if you include Seton School. So we really

7 don't have a rear or a side yard, that's the location

8 variance we're requesting, unique condition.

9

10 The second being the noise. The noise level

11 for the residential district we are in, makes sense for a

12 residential district being an institution, a church, needs

13 commercial grade equipment and it's not available to get

14 commercial grade equipment at that noise level. So we

15 introduced the wall which will help screen the noise and

16 reduce the noise level. As well as we've added a blanket

17 system, and Chuck can talk more about that system that you

18 can add to the unit to further reduce the noise.

19

20 The wall height is such to prevent visual

21 contact with the units, they are four feet, two inches tall.

22 But we are proposing a six-foot wall to help with really

23 keeping the noise level down. The wall height is a variance

24 because in a front yard the wall height is three feet -- is

25 it six?

26 CHAIRPERSON MIETZ: Three.

27 SUE STEELE: Three feet. We went up to the

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3 max six feet which is allowable in a side or rear yard. So
4 we're still within an allowable if this were a property that
5 had a side or rear yard. The maximum height is six. When we
6 get into the final design we might bring it down a little
7 bit, but that is the height that keeps the noise level as low
8 as we can possibly get it.

9

10 And with the calculations we included in the
11 package these design considerations that we've made have
12 brought the noise levels down to what would be acceptable if
13 you were standing on the sidewalk. So at the right of way
14 you would be at that noise level that would be acceptable,
15 below it, really.

16

17 The two residences that are closest proximity
18 to the condensing units are 110 feet across Imperial and
19 140 when you go across Varinna, so the noise levels will be
20 even further reduced, and I think, we believe acceptable for
21 the residential district. It's kind of a quick overview, I
22 don't know if there's more you want me to share or if you
23 just want to jump in with questions at this point.

24

25 MS. SCHWARTZ: This wall is going to match the
wall that's already up there, I assume?

26

27 SUE STEELE: Yes. We can't match it exactly,
28 the material used on the church originally is no longer

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3 quarried, we contacted the quarry that supplied that

4 material. And even the courtyard, if you are familiar with

5 the church, the courtyard walls were recently constructed in

6 the last five or seven years, but we will find something

7 that's comparable and will have the integrity of the

8 structure, I'm confident of.

9 CHAIRPERSON MIETZ: So to the average person?

10 SUE STEELE: Yes. You're talking to designers

11 and architects.

12 CHAIRPERSON MIETZ: Yes. Just another general

13 question. So the wall itself, you paid attention to create

14 just a visual barrier or is it really helping with the

15 enclosure there? And let's say if there were arborvitae

16 there or something else, are you getting that much value or

17 trying to do security for the equipment? Or, I mean, is it

18 more than just -- why don't you talk about why you really

19 want the wall there.

20 SUE STEELE: Sure. So the wall is to visually

21 screen the height of the unit as directly related to reducing

22 the noise level, because it is significantly louder. Plant

23 material, even evergreens, aren't going to give you that

24 noise reduction that a wall will do.

25 CHAIRPERSON MIETZ: Okay. So but it's not

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3 really needed for any security for that equipment in a sense?

4

CHUCK WHITE: No.

5

CHAIRPERSON MIETZ: Okay.

6

7 CHUCK WHITE: The equipment is a commercial
8 density and basically like connecting those, except for
commercial size.

9

CHAIRPERSON MIETZ: Yes.

10

11 MS. TOMPKINS WRIGHT: Can you speak a little
12 bit as to why -- and you guys get to talk about it -- or in
13 your application it mentions alternative locations that you
14 looked at. Can you speak a little bit about why those
15 locations weren't appropriate for this? For instance, like a
rooftop unit.

16

17 CHUCK WHITE: The only place, there is a
18 possible place between the church and the rectory to put the
19 equipment on the roof, but there's a couple reasons why.

20

21 A) the structure would be significant, the cost and just the
22 structure. B) the visual impact to the neighborhood would be
23 even greater, I think, than what we're proposing. So those
24 are the main ones. It's farther away from the air handling
units, and the structural impact and the visual impact to the
neighborhood.

25

MS. TOMPKINS WRIGHT: Okay.

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3 CHAIRPERSON MIETZ: Any other questions?

4 MR. DiSTEFANO: What about a little bit of the
5 interior of the property? Why some of those locations
6 wouldn't work?

7 CHUCK WHITE: Well --

8 MR. DiSTEFANO: On the inside or using the
9 church in itself to kind of screen and block and everything.

10 CHUCK WHITE: The other side of the church by
11 the parking lot if you -- I think you have a photo in the
12 application -- is basically entirely landscaped area. So
13 it's a little farther away from the area than the mechanical
14 room. And it's been entirely -- it's their main entrance to
15 the church and it's totally landscaped area, so that's why we
16 didn't want to disturb that area. And further away from that
17 still on that side of the property is basically too far for
18 refrigerant piping. It's getting too far for effectively
19 running the piping.

20 CHAIRPERSON MIETZ: Okay. Any other
21 questions?

22 MR. DOLLINGER: Is there anything else you
23 could do to reduce the noise, other alternatives? Not
24 necessarily for location, but for available methods?

25 CHUCK WHITE: There's one method that I

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3 rejected, it's basically a sound baffle that would go on top
4 of the unit that basically doubles the height of the unit.
5 So it's just at some point we are not gaining enough and
6 we're losing the visual, you know, just making it a worse
7 visual situation then not gaining that much more for the
8 sound.

9 The other thing I would like to point out
10 about the sound is, this equipment will not be used like a
11 commercial building or your house all of the time, it's only
12 going to be used basically if they have services in the
13 summer on Sundays or they have regular masses or weddings or
14 special masses like that.

15 CHAIRPERSON MIETZ: Okay. Any other of
16 questions? Okay, thank you.

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

20 APPLICATION 2A-03-19

21 2A-03-19 Application of Bill Gray's, Inc.,
22 owner of property located at 2545 Monroe Avenue, for an Area
23 Variance from Section 205-12 to allow a 20 seat increase to
24 an existing restaurant having 50 parking spaces where a
25 minimum of 51 parking spaces is required by code. All as

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3 described on application and plans on file.

4 APPLICATION 2A-04-19

5 2A-04-19 Application of Bill Gray's, Inc.,
6 owner of property located at 2545 Monroe Avenue, for an Area
7 Variance from Section 205-7 to allow impervious lot coverage
8 (pertaining to the portion of the lot that lies within the
9 BF-1 district) to be 70%, after construction of a 337 sf
10 outdoor patio, in lieu of the maximum 65% allowed by code.

11 All as described on application and plans on file.

12 APPLICATION 2A-05-19

13 2A-05-19 Application of Bill Gray's, Inc.,
14 owner of property located at 2545 Monroe Avenue, for a Sign
15 Variance from Section 207-32B to allow a sign on a second
16 building side where not allowed by code. All as described on
17 application and plans on file.

18 LUCAS BUSHING: Good evening. My name is
19 Lucas Bushing I'm here from Marathon Engineering, we're the
20 civil engineer on the project, and I'm joined by Dan Gray of
21 Bill Gray's Incorporated. As you just mentioned, we're
22 seeking three variances and I will talk through all three of
23 them. If at any point you have any questions or would like
24 to stop me to clarify something, please do so.

25 I'll start with the parking. The parking is

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3 in existing condition and there are 50 parking spaces on the
4 property and 82 seats, which would require 41 spaces. So
5 there's a surplus of parking right now, but that's experience
6 also in the demand throughout the year. There's always a
7 surplus of parking, the restaurant's been open for five years
8 now and they've never experienced a situation of insufficient
9 parking.

10 The additional seats being added are outdoor
11 spaces, they're seasonal spaces. We think of them as
12 optional spaces for existing customers. So there's not an
13 expectation for there to be ten more cars there on any given
14 night, rather that some customers will have the option of
15 sitting outside when we do get some warm weather in
16 Rochester.

17 For that reason we are not proposing adding
18 any spaces or anymore pavement. We believe that the 50
19 spaces where 51 is required by the total parking count is
20 sufficient for the property demands. It's supported by the
21 observations that Dan and us have had over the operation of
22 the business.

23 Speaking to lot coverage, lot coverage also
24 categorized as a pre-existing nonconforming. There is no
25 proposed increase or decrease to lot coverage. There's

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3 really no site work on this property, it's internal
4 renovations and external renovations and some improved walks
5 around the building within five or eight feet of the
6 building. The footprint of development is not changing,
7 which we look at as a plus, so the coverage of the property
8 is to remain as is.

9 MR. DiSTEFANO: Lucas, just a little
10 clarification on that. Where the patio is going isn't that
11 landscaped area now?

12 LUCAS BUSHING: Yes, but it's being replaced
13 by landscaped area.

14 MR. DiSTEFANO: But is it a perfect match from
15 one to one?

16 LUCAS BUSHING: Very close, yes. So this area
17 here is currently landscaped. It will be outdoor seating and
18 this area here will replace it as outdoor landscaping.
19 There's also a built-in overhang there, so that also
20 restricts what portion of that you can count as green space.
21 We kind of zeroed it as green space because really, the
22 coverage footprint is the perimeter of this asphalt.

23 So speaking more to that, there's a zoning
24 line that runs through the middle of the property right here.
25 So this area back here is residential, this area is

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3 commercial. When we talk about lot coverage it gets just a
4 little bit complicated and maybe requires some nuance. So we
5 presented both figures, the coverage of the overall parcel,
6 which is 47 percent, and the coverage of just the commercial
7 parcel -- portion of the parcel, which is 70 percent.

8 We are requesting a variance for 65, 5 percent
9 relief just so that this can always be interpreted as legal
10 on this property. It's a unique situation when you have two
11 zonings on one property. And there's essentially, this is
12 half an acre in the back of residential that will always --
13 that will have no function to Bill Gray's given the zoning.

14 So that's about as close to tax paying open
15 space as it gets. So we think that if you look at the
16 property as a whole despite the separate zoning areas it is a
17 reasonable amount of coverage.

18 I guess the last one I'll talk about is
19 signage. So really what we are requesting is two signs in
20 lieu of one. But just to sort of visualize the magnitude of
21 the request, the requirements of code are 10 percent of the
22 building face that you will be placing the sign on, or 150
23 square feet, whichever is less. So the less building face is
24 131 square feet of allowable signage. We are taking that
25 allowable sign on the west face and cutting it in less than

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3 half. I believe there are two 55-square-foot signs, and
4 putting one on the front of the building and one on the side.
5 So we are trying to be creative in depicting both of these
6 signs. If you put them together they would be legal on the
7 west face of the building. What is more beneficial for
8 vehicular and pedestrian building identification is having
9 those signs, that one big sign split up into two smaller
10 signs. It can be easily identified from either direction.

11 There's a lot of complex highway geometry
12 here, there's a 590 exit ramp directly across from the
13 building. So we find it as useful for the proposed property
14 and again, not in excess in size. If there's any other
15 questions or I guess, Dan, if you want to add anything,
16 that's all I have.

17 DAN GRAY: My name is Dan Gray and I'm the
18 President of Bill Gray's Inc. Just to talk a little bit to
19 the signage, the two signs are less than the sum of the total
20 allowable. I think that splitting it into two is more
21 beneficial to our business because as Lucas said, the
22 building identification. And also it lends -- the size of
23 the sign lends itself more to the architectural aspect of
24 what we're trying to do here, than one big one. So just
25 wanted to throw in that little caveat there. And I'm here

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3 for questions.

4 CHAIRPERSON MIETZ: You've operated this
5 location for five years, I think?

6 DAN GRAY: Yes.

7 CHAIRPERSON MIETZ: What is your experience
8 with customers? Are they driving by it, are they missing it
9 or what would you --

10 DAN GRAY: This site is very similar to
11 another site we have in Fairport. As you know, this was a
12 former restaurant, the one we had in Fairport was a former
13 McDonalds. For about the same amount of time we operated
14 that location and people always associated it with that
15 building, that look of that building and the way it was laid
16 out as McDonalds. I mean, the joke in the town at the time
17 back before we did the renovations there, the people would
18 call it McWahl's.

19 So we went through quite a bit of design
20 iterations with that one before we came up with this and we
21 used this similar architectural style in renovating several
22 other of our locations to give it our own brand identity. We
23 find that once we've done that, that people can find our
24 locations a lot easier. They can identify it with a Tom
25 Wahl's because we don't build it from the ground floor up to

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3 look like a Taco Bell or a McDonalds. We take places over so
4 we kind of need to do this. I don't know if that answered
5 your question.

6 CHAIRPERSON MIETZ: I realize you're not
7 asking every customer about finding it, but are the people
8 complaining that they're driving past it because obviously
9 they missed the driveway, or did that happen?

10 DAN GRAY: We've had people make those
11 comments. I can't say there is half and half, but we have
12 had quite a few customers say, gee, I was coming from the
13 12 Corners, I completely missed the place. But when I was
14 coming from the other direction, when I got off of the
15 expressway, there it is.

16 CHAIRPERSON MIETZ: Correct.

17 DAN GRAY: So we just feel that the signage
18 with the enhancements is going to make this building appear
19 as it should. It should appear as a Tom Wahl's and not an
20 old Burger King as it once was or a Don's Original before
21 that.

22 CHAIRPERSON MIETZ: Right. Now, is that
23 presentation of the sign your new sort of corporate design as
24 it relates to Tom Wahl's or is it specifically to this
25 location?

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3 DAN GRAY: No. The design elements on this
4 you will see at Fairport, Canandaigua, and we just completed
5 a renovation of another restaurant we took over in Newark to
6 this design. So all our freestanding stores will eventually
7 have this. I think there's only one more left after this,
8 after we complete this project.

9 CHAIRPERSON MIETZ: Not so much the design of
10 the tower and all that, but just the sign itself whether the
11 scale might be different than another location, but that is
12 what we would see if we went?

13 DAN GRAY: Correct.

14 MS. SCHWARTZ: You touched upon something that
15 was a question of mine. It looks like you added a great deal
16 of height and mass to this building, which to me is a shame
17 because it's a small scale area-ish, there's really nothing
18 all that big around there. But this looks very massive to me
19 and therefore, you have to put the tower up so the sign can
20 be up high enough, I assume.

21 As sort of like a compromise, if things could
22 be scaled back I would have no problem with your two signs,
23 but to me this changes the whole look of the area. It's much
24 more massive than what it is. Is it essential that you
25 raise -- it looks like raising a roof.

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3 DAN GRAY: Well, I'm sure you're familiar with
4 that location. The thing that catches your eye as far as I'm
5 concerned is equipment on the roof, and much of this was done
6 to take that visual away. It's maybe not as massive as it
7 appears on paper, but this tower, the actual tower structure,
8 is much shorter than even the last one we did in Newark.

9 So I'm not sure if you're getting the sense
10 that we're making this thing monstrous, the building right
11 next door to us is a much bigger scale, more than this one
12 will ever be. But a lot of what we did here was to try to
13 mask the hood filters and the HVAC and all that stuff that
14 sits on top of the roof that you can -- that's in plain sight
15 of people, of pedestrians and our customers currently.

16 MR. CLAPP: Could you point maybe to give us a
17 sense of how high some of those units are that aren't shown
18 on the drawing to give a sense of scale? Because I know what
19 you mean --

20 DAN GRAY: The hood filters?

21 MR. CLAPP: Yes.

22 DAN GRAY: Well, the top of the building right
23 now is about right where these cornices are. This is an
24 additional architectural or a better word is like a knee wall
25 or whatever. Those units just barely fit underneath this and

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3 from the front side as you come off of the exit ramp, or come
4 east and west across the front of this, the height of the
5 building is currently right here. Again, this barely covers
6 it, but this structure here for all intents and purposes as
7 you're making your way in and out of the property does the
8 most coverage to block the view.

9 And although it does on paper look massive, if
10 you've been out to Fairport or Canandaigua, it really isn't
11 that big of a change to the building. It just it's the brand
12 that makes it look like a Tom Wahl's.

13 MS. WATSON: I have a question more related to
14 the parking. Is there ever a time in any season that the
15 parking lot is full?

16 DAN GRAY: We would love for it to be full. I
17 mean, obviously, our busiest nights are Friday and Saturday
18 nights. We come close, but I have never run into an issue
19 with parking in this facility. And as Lucas stated, outside
20 seating is like rolling the dice. Around here, some summers
21 you probably only get two or three decent weekends where
22 people are going to actually want to go outside. Usually
23 it's because they don't want to sit inside because it's nice
24 outside. We don't normally see 20 extra customers, five
25 extra cars come in just because they know they can sit

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3 outside.

4 We hope that by doing this we will attract a
5 few more customers and people will see that there's a Tom
6 Wahl's here, it's not Don and Bob's anymore. That's part of
7 the whole scheme of things. You don't throw a couple hundred
8 thousand dollars at a building and hope you remain static
9 with customers. We do anticipate a little bit more but the
10 only time we've ever even come close is during peak times.

11 MS. WATSON: So one of my thoughts when
12 reviewing this is, oh, this would be a nice place to have an
13 ice cream cone in the summer and then sit outside and eat it.
14 I thought how nice would it be to arrive on a bike. Is there
15 any current parking for bicycles or a bike rack, or would
16 that ever be part of a possibility in the future?

17 DAN GRAY: We have, based on the public's
18 demand. At Fairport, we're several hundred yards off that
19 canal bike path. And after we did the remodel there was
20 quite a few people that said, gee, it would be nice if you
21 had some facilities for bike racks, and we put them in. When
22 we see there's a need for it, we will do it.

23 CHAIRPERSON MIETZ: You have a place you could
24 actually do it on the site, a bike rack?

25 DAN GRAY: There are a couple spots. There's

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3 the right of way for the sidewalk here, there's quite a bit
4 of room between here, there's a little bit of area in the
5 back here. This of course is going to be landscaped and this
6 will be landscaped, but besides that unless we put them
7 around the perimeter.

8 CHAIRPERSON MIETZ: Obviously it would have to
9 be somewhere where they're useable and makes logical sense.

10 MR. DiSTEFANO: This application's also got to
11 go in front of the Planning Board. I think maybe we can ask
12 the applicant to maybe consider bike racks and maybe discuss
13 that. Which, when you go in front of the Planning Board, we
14 can pass our thoughts on through our attorney and through
15 staff to say that we were hoping they would offer something
16 like that.

17 DAN GRAY: The east side entrance that we
18 proposed as a result of the design review committee suggested
19 we do that, because there was a lot of parking on the east
20 side and people would have to walk clear around the building
21 to the west side to get in. They made a good point and we
22 had our architect design another point of entry into the
23 facility. So, yeah, we are open to suggestions like that.

24 CHAIRPERSON MIETZ: Just a question of making
25 it more welcoming. That's certainly an issue we're trying to

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3 accomplish where possible. And if this whole area is
4 attractive to people that would be a good thing.

5 MR. DiSTEFANO: One question regarding the
6 signage: Is there any reason why you feel the west elevation
7 requires signage and the east elevation doesn't require
8 signage?

9 DAN GRAY: The east elevation if you look at
10 the geometry of how the building sits, the east elevation is
11 roads out here and the line of sight to the sign is into the
12 backs of these houses. Furthermore, the drive lanes are
13 further removed from the building so you do have a good line
14 of sight to the front of the building going from east to
15 west. Going from west to east, that's not the case. It's
16 pretty difficult to see this.

17 MR. DiSTEFANO: So you could make the argument
18 that due to the geometry of the road, the property, and the
19 way the building sits that you really can't see that street
20 face well from coming from the city towards Pittsford, but
21 just that front elevation can be seen much easier when you're
22 going from Pittsford to the city?

23 DAN GRAY: Correct.

24 MS. TOMPKINS WRIGHT: I have a question about
25 the outdoor dining. It looks there's some sort of fencing

1 Brighton Zoning Board of Appeals 2/6/19

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3 around the area. Can you go over more detail about how that
4 area's being contained?

5 DAN GRAY: Yes. It's a pretty standard
6 aluminum black metal fencing, and it's just -- we use it at a
7 lot of our other facilities, a lot of our other projects.
8 It's there to contain the people as they sit and enjoy the
9 outside, you know, small kids if they get away from you
10 they're not going to be able to run directly into a traffic
11 lane. So that gives a little bit of security, a little bit
12 of separation from the traffic lane to the outside seating.

13 MS. TOMPKINS WRIGHT: Is there outdoor trash
14 receptacles?

15 DAN GRAY: Yes.

16 MS. TOMPKINS WRIGHT: Will someone be sort of
17 monitoring the area throughout --

18 DAN GRAY: Yes.

19 MS. TOMPKINS WRIGHT: Are there additional
20 lights that will be put out to light this area? More than
21 what's already out there lighting this --

22 DAN GRAY: We feel there's enough ambient
23 lighting from what's there currently that we don't have to
24 add anything additional.

25 MR. DiSTEFANO: So the lights that you're

1 Brighton Zoning Board of Appeals 2/6/19
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3 showing on the elevations they exist now?

4 DAN GRAY: These exist as sconces, we are
5 changing them over to the goosenecks.

6 CHAIRPERSON MIETZ: You're changing the style
7 of them but not the volume?

8 DAN GRAY: Correct. Actually, the sconces
9 have more of just a spread, this directs the light.

10 MS. WATSON: How late is the restaurant open?

11 DAN GRAY: During the winter months it closes
12 at 9:00 p.m. during the week and 10:00 on weekends, and that
13 just gets bumped out an hour during summer months. So it's
14 10:00 during the week and 11:00 on weekends.

15 CHAIRPERSON MIETZ: So will you allow people
16 at 10:45 to sit outside?

17 DAN GRAY: Sure. Probably won't happen,
18 but . . .

19 CHAIRPERSON MIETZ: Other questions? Okay,
20 thank you.

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

24 * * *

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3 REPORTER CERTIFICATE
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56 I, Rhoda Collins, do hereby certify that I did
7 report in stenotype machine shorthand the proceedings held in
the above-entitled matter;8 Further, that the foregoing transcript is a true and
9 accurate transcription of my said stenographic notes taken at
10 the time and place hereinbefore set forth.11
12 Dated this 23rd day of February, 2019.13 At Rochester, New York
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17 Rhoda Collins
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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON FEBRUARY 6TH,
5 2019 AT APPROXIMATELY 8:00 **P.M.**

6 February 6th, 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

1 Brighton Zoning Board of Appeals 2/6/19

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3 APPLICATION 2A-01-19

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5 2A-01-19 Application of Our Lady of Lourdes
6 Church of Brighton, owner of property located at 150 Varinna
7 Drive, for an Area Variance from Sections 203-2.1B(7) and
8 203-9A(4)to 1) allow air conditioning equipment to be located
9 in a front yard in lieu of the side or rear yard as required
10 by code, and 2) allow the noise level of the equipment to be
11 96 decibels in lieu of the maximum 78 decibels as allowed by
12 code. All as described on application and plans on file.

13

Motion made by Ms. Schwartz to approve
14 Application 2A-01-19 based on the following findings and
facts.

15

FINDINGS AND FACTS:

16

1. This is a unique lot with multiple front yards and
therefore placement of the three units is difficult in a
17 required yard.

18

2. The current system is 50 years old and the three new
units will replace the cooling tower which poses a potential
21 health hazard.

22

3. The new units will be screened by plantings and a
proposed 6-foot high decorative masonry wall which will also
23 reduce the decibel level of 96 at the unit to between 46 and
24 66 decibels at the right of way.

25

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3 4. There would be a visual and structural impractical if
4 units were placed on the roof.

5 5. The noise of the three units will also be reduced by the
6 installation of noise quiet shields on each condensing unit.

7 6. The proposed location of this new equipment is also in
8 closest proximity to the building mechanical room, thus
9 eliminating a financial hardship.

10 7. The equipment will only be used seasonally.

11 **CONDITIONS:**

12 1. This variance only applies to the three AC units to be
13 located in the front yard as shown on plans submitted and
14 testimony given.

15 2. All Planning Board and building permits must be obtained.

16 3. The noise block quiet shields must be installed as
17 proposed.

18 (Second by Ms. Watson.)

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

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

24

25

1 Brighton Zoning Board of Appeals 2/6/19
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3 APPLICATION 2A-02-19

4 2A-02-19 Application of Our Lady of Lourdes
5 Church of Brighton, owner of property located at 150 Varinna
6 Drive, for an Area Variance from Section 207-2A to allow a
7 front yard wall to be 6 ft. in height in lieu of the maximum
8 3.5 ft. allowed by code. All as described on application and
9 plans on file.

10 Motion made by Ms. Tompkins Wright to approve
11 Application 2A-02-19 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 proposed masonry
17 wall will be built almost 40 feet back from the property line
18 and due to the size of the building on the property and its
19 architecture, will blend into the existing walls so as not to
20 appear intrusive. Further, the purpose of the wall is to
21 reduce the sight and sound associated with an air
22 conditioning system at the property which will limit the
23 negative effect to nearby properties.

24 2. The requested variance is not substantial given the fact
25 that the property is bounded on multiple sides by rights of

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3 way, and the location that this wall is proposed along
4 functions more as a side or rear yard. The height of this
5 wall would meet rear or side yard requirements were it a
6 traditional lot with traditional rear and side yards.

7 3. The benefit sought by the applicant cannot reasonably be
8 achieved by any other method. The purpose of the wall is to
9 shield the new air conditioning system from view and sound
10 which cannot be achieved with a wall that meets code, for
11 these reasons the difficulties leading to the requested
12 variance are not self-created.

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

16 **CONDITIONS:**

17 1. The variance granted herein applies only to the wall
18 described in and in the location as depicted on the
19 application and in the testimony given.

20 2. All necessary permits must be obtained.

21 (Second by Ms. Schwartz.)

22 (Ms. Watson, yes; Mr. Mietz, yes; Ms. Dale,
23 yes; Mr. Clapp, yes; Ms. Schwartz, yes; Ms. Tomkins Wright,
24 yes.)

25 (Upon roll call, motion to approve with

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3 conditions carries.)
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3 APPLICATION 2A-03-19

4 2A-03-19 Application of Bill Gray's, Inc.,
5 owner of property located at 2545 Monroe Avenue, for an Area
6 Variance from Section 205-12 to allow a 20 seat increase to
7 an existing restaurant having 50 parking spaces where a
8 minimum of 51 parking spaces is required by code. All as
9 described on application and plans on file.

10 Motion made by Ms. Watson to approve
11 Application 2A-03-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The requested variance is not substantial because the
15 request is for only one parking space less than the code
16 requires.

17 2. No unacceptable change in the character of the
18 neighborhood and no substantial detriment to nearby
19 properties is expected to result in the approval of this
20 variance as there are no proposed changes to the existing
21 parking facility.

22 3. The health, safety, and welfare of the community will not
23 be adversely affected by the approval of this variance
24 request. The existing 50 parking spaces is more than
25 adequate to meet both the current and expected needs of the

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3 business.

4

CONDITIONS:

5

1 This variance will apply only to the project as described
2 in the application and the testimony given. In particular it
3 will not apply to projects considered in the future that are
4 not on the present application.

9

2 All necessary permits shall be obtained.

10

(Second by Ms. Schwartz.)

11

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

15

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

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3 APPLICATION 2A-04-19

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5 2A-04-19 Application of Bill Gray's, Inc.,
6 owner of property located at 2545 Monroe Avenue, for an Area
7 Variance from Section 205-7 to allow impervious lot coverage
8 (pertaining to the portion of the lot that lies within the
9 BF-1 district) to be 70%, after construction of a 337 sf
outdoor patio, in lieu of the maximum 65% allowed by code.

10

All as described on application and plans on file.

11

Motion made by Mr. Clapp to approve
Application 2A-04-19 based on the following findings and
facts.

14

FINDINGS AND FACTS:

15

1. No substantial change will be produced in the character
of the neighborhood or no detriment to nearby properties will
be created as there will be no change in the character of the
building and the lot coverage is not changing.

19

2. The benefit sought by the applicant is the minimum
necessary and cannot be achieved by a feasible alternative to
the variance as this is a pre-existing nonconforming
condition and there will be no increase in lot coverage.

23

3. The requested variance is not substantial, the code
requires 65 percent maximum coverage and the requested
variance is 70 percent coverage, only 5 percent more. Also,

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3 the parcel lies within two zoning districts and if the
4 largely undeveloped residential low density portion of the
5 parcel would be considered the lot coverage would be
6 approximately only 47 percent.

7 4. The variance will not have an adverse impact on the
8 physical or environmental conditions of the neighborhood as
9 there will be no change in the lot coverage.

10 5. The variance as required were pre-existing nonconforming
11 coverage and was therefore not self-created.

12 **CONDITIONS:**

13 1. Permeable planting beds shall be installed as shown on
14 the plans submitted.

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

17 3. This approval applies only to the application submitted
18 and testimony given.

19 (Second by Ms. Schwartz.)

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

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

25

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3 APPLICATION 2A-05-19

4 2A-05-19 Application of Bill Gray's, Inc.,
5 owner of property located at 2545 Monroe Avenue, for a Sign
6 Variance from Section 207-32B to allow a sign on a second
7 building side where not allowed by code. All as described on
8 application and plans on file.

9 Motion made by Ms. Dale to approve Application
10 2A-05-19 based on the following findings and facts.

11 **FINDINGS AND FACTS:**

12 1. The applicant intends to perform improvements to the
13 building and the applicant received approval from the
14 Architectural Review Board on December 12th. The proposed
15 improvements include a new tower with signage on both the
16 north and west elevations that facilitate safe ingress and
17 directs traffic to a two-side entrance.

18 2. The request for a second building identification sign
19 will assist in the way finding and allow traffic traveling in
20 both directions on Monroe Avenue to easily and readily
21 identify the building. There will be no change to the
22 character of the neighborhood or be any detrimental effect on
23 the nearby properties.

24 3. The requested variance is not substantial in relation to
25 code requirements as the percentage of the building face is

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3 6.5 percent for the north face and 4.1 percent of the west
4 face, totaling 10.6 percent. The total for both signs is
5 108 square feet where code would allow for 8 feet on the
6 north face or 131 for the west face.

7 4. The proposed variances are consistent with other
8 properties in the commercial district on Monroe Avenue and
9 will not have an adverse effect or impact on the physical or
10 environmental conditions in the neighborhood.

11 **CONDITIONS:**

12 1. This approval applies only to the location and size of
13 the signs as depicted in the application and as described in
14 testimony.

15 2. All necessary Architectural Review Board and Planning
16 Board approvals shall be obtained.

17 (Second by Ms. Watson.)

18 (Ms. Watson, yes; Mr. Mietz, yes;
19 Ms. Schwartz, no; Mr. Clapp, yes; Ms. Tompkins Wright;
20 Ms. Dale, yes.)

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

23

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1 Brighton Zoning Board of Appeals 2/6/19
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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 23rd day of February, 2019.

14 At Rochester, New York

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17 
Rhoda Collins

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