

3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON MARCH 6TH, 2019
4 AT APPROXIMATELY 7:15 **P.M.**

6 March 6th, 2019
7 Brighton Town Hall
7 2300 Elmwood Avenue
7 Rochester, New York 14618

9 PRESENT:

10 DENNIS MIETZ, CHAIRPERSON
10 JEANNE DALE
11 DOUGLAS CLAPP
11 KATHLEEN SCHMITT
11 JUDY SCHWARTZ
12 ANDREA TOMPKINS WRIGHT

13

NOT PRESENT:
14 JENNIFER WATSON

15

16 DAVID DOLLINGER, ESQ.
17 Town Attorney

18

19 RICK DiSTEFANO
20 Secretary

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

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3 CHAIRPERSON MIETZ: Okay. Any other
4 corrections to the minutes? Motion, please.

5 MS. TOMPKINS WRIGHT: So moved.

6 (Second by Mr. Clapp.)

7 (Mr. Clapp, yes; Ms. Schwartz, yes;
8 Ms. Tompkins Wright, yes; Ms. Dale, yes; Mr. Mietz, yes;
9 Ms. Schmitt, yes.)

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

12 CHAIRPERSON MIETZ: When you are ready, Rick.

13 APPLICATION 2A-06-19

14 2A-06-19 Application of 745 Penfield Rd. LLC,
15 owner of property located at 745 Penfield Road, for a Use
16 Variance from Section 203-9A to allow a cafe' with limited
17 sales of convenience items in a RLB Residential district
18 where not allowed by code. All as described on application
19 and plans on file. POSTPONED FROM THE FEBRUARY 6, 2019
20 MEETING.

21 JERRY GOLDMAN: Good evening, Mr. Chairman,
22 members of the Board, for the record my name is Jerry
23 Goldman, I live at 59 Branchwood Lane in the Town of
24 Brighton, resident of the town, and I'm the attorney and
25 agent for 745 Penfield Road, LLC, who is the owner of the

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3 .84 acre parcel which is located on the northwest corner of

4 Penfield Road and Colonial Village Road.

5 The property is located in the RLB zoning

6 district where the primary permitted use is single-family

7 residential. The subject property that we have is improved

8 and has been for years by three buildings. One is a

9 two-family dwelling nearest Penfield Road frontage; the

10 second is a commercial building that has been utilized for a

11 number of uses over the course of decades, including

12 DiCrasto's Dairy and Bernunzio's Deli; and an accessory

13 garage structure.

14 We are here tonight to present a use variance

15 application for the use of the existing commercial building

16 on the site to establish a neighborhood-scale cafe deli

17 representing the modern-day equivalent of the uses that have

18 occupied this building for as long as anyone can remember.

19 Neighbors who remember Bernunzio's Deli consider it to be a

20 valuable amenity to the neighborhood.

21 With me tonight are the proprietors of the

22 proposed Tree Town Cafe, Pete and Jena Morganti. Please

23 stand up and identify yourself; and also Dan Garcia and his

24 wife Jessica. Jessica unfortunately can't be here because of

25 a family illness. Jena grew up in this neighborhood and has

3 fond memories of Bernunzio's as a community asset. Dan and
4 Jessica currently live in the approximate area of the site.

5 This property has in recent years had a
6 tortured history. In the 1980s there was substantial
7 controversy about the scope of DiCrasto's Dairy. That wound
8 up with the stipulation that was entered in 1984 and needed
9 further interpretation in 1989. Several years ago there
10 was -- not even that many years ago, there was quite a bit of
11 controversy dealing with the prior user who clearly sought to
12 push the envelope by including uses that were beyond the
13 neighborhood scale, such as off-site catering and a food
14 truck. This use variance is designed to and will have the
15 effect of clearly defining an acceptable scope for the
16 business use of this middle building to ensure that it fits
17 within the neighborhood.

18 I personally have a soft spot for this type of
19 operation. When I was ten years old my family moved from the
20 city to the Town of Irondequoit, and at the corner of North
21 Clinton Avenue and Rumson Road in our residential
22 neighborhood we had a building which had two delis in it.
23 And my first job as a ten-year old was picking up baked goods
24 and Sunday newspapers on my bike and delivering them to
25 houses in the neighborhood. That is the type of use that

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3 we're trying to establish here. It's a key neighborhood
4 asset and it was clearly an indispensable part of our
5 neighborhood.

6 The application tonight is seeking to define
7 the parameters of similar use in our current day, the
8 appropriate vehicle to define the appropriate use of the
9 property is a properly conditioned use variance. Under New
10 York State Law in the Town of Brighton code in order to
11 establish a use variance there has to be four primary
12 elements addressed. The first criteria is proof of a lack of
13 reasonable return for permitted uses. The second is to
14 establish that the hardship is unique to this property and
15 does not apply to a substantial portion of the district or
16 neighborhood. The third element is that the use shall not
17 alternate the essential character of the neighborhood. And
18 finally, a fourth criteria is that the alleged hardship is
19 not self-created by the applicant.

20 We've made two application submissions in this
21 regard. One was our initial application, but then we came
22 back and there's a letter that you probably received tonight
23 that was delivered recently to the Town to address in more
24 specifics the use variance criteria.

25

I am going to summarize our proof on the four

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3 points, but leave it to you and leave it to you and your
4 Council to review and rely upon your judgment in evaluating
5 each of the criteria. With regard to reasonable return, our
6 initial application established in the absence of utilizing
7 this existing commercial building, the property has a
8 marginal return of 1.5 percent, but that's not the whole
9 story when it comes down to it.

10 We have the good fortune right now, the
11 property owner does, of being able to rent the property to
12 good tenants who are paying good rental and not create any
13 maintenance or operational problems. The Town's form with
14 regard to evaluation of dollars and sense proof doesn't
15 provide for the opportunity or actually a line item for
16 maintenance reserves. So there clearly always are
17 extraordinary issues, it could be roof, it could be HVAC, it
18 could be anything else.

19 So to that extent while it is a 1.5 percent
20 that's under optimal conditions right now, that is not what
21 we can expect year after year. In any given year it could be
22 substantially less. A 1.5 percent margin in and of itself,
23 is very slim and is not a reasonable return. Even now you
24 can get at the bank more than 2 percent on a non-risk
25 investment. And it also doesn't take into account the fact

3 that maintaining a vacant building going forward will be a
4 burden, buildings do deteriorate when they are not occupied.

5 A letter submitted by Sherry Kraus, who lives
6 in the neighborhood regarding this application questions
7 whether a reasonable return can be obtained by replacing the
8 initial existing commercial building with a residential
9 structure. Our second letter seeks to address that in more
10 detail. What we did was we came at it from two different
11 perspectives. We first contacted a construction expert and
12 also contacted a real estate broker. The short answer to
13 that question is, no, in terms of the ability to establish a
14 residence on the property.

15 The primary reason is that current
16 construction costs far out strip the ability to retain a
17 return. In this and many other residential neighborhoods
18 sales in this area in this neighborhood and in a lot of our
19 neighborhoods are at about \$100 per square foot, in terms of
20 what the houses can receive.

21 Depending on who you look at, the commercial
22 contractor estimated a cost of about \$190 a square foot to
23 construct a house, and that there are other costs that are
24 involved as well. There's a demolition cost, there's likely
25 asbestos in the building, there are soft costs that are

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3 needed to get approvals, there are utility costs that have to
4 go in. Their estimate was that in order to establish an
5 1,800-square-foot home, which is pretty much in the range of
6 what's going on in this area would cost in excess of
7 \$500,000.

8 A more conservative view was set forth by the
9 professional real estate broker, who applied a construction
10 cost of \$150 per square foot, and that alone is \$270,000 not
11 including the additional soft costs that are involved that I
12 just talked about, which would kick this well over \$300,000.
13 Clearly an 1,800-square-foot house in this neighborhood would
14 not be able to sell for those amounts of dollars, especially
15 considering what the comparable sales have been.

16 The conclusion is that the cost of
17 redevelopment of the commercial building as a residential
18 property could not obtain a reasonable return. The
19 professional opinions of the contractor and the broker are
20 appended to our letter that we submitted now is in your
21 hands.

22 With regard to the second standard, there
23 could be no doubt this property is unique. It's probably one
24 of the more unique properties in Brighton, that being a
25 .84-acre parcel, we have a nonconforming two-family

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3 residence, we have a building which clearly is nonconforming,
4 we have a garage structure. So it is a unique situation in
5 terms of having to deal with these existing conditions.

6 The repurposing of this commercial building to
7 a neighborhood-style cafe or deli also will not change the
8 character of the neighborhood. It does provide a
9 neighborhood amenity. It's something which has been part of
10 this neighborhood for years and years and years now. Now we
11 realize that it was at one point a pre-existing nonconforming
12 use and we still have questions to whether it may still be
13 that. But allowing families to walk to a neighborhood
14 location to enjoy deli products, coffee and ice cream is a
15 true benefit to the neighborhood and we think will not change
16 its character.

17 As a self-creation the current owner bought
18 the property, ran the deli for a number of years, has been
19 trying to find the right fit for the property in the
20 neighborhood. Unfortunately it stayed vacant because they
21 could not find anybody to operate it. Fortunately the two
22 couples came along and are looking forward to serving this
23 neighborhood.

24 The concept to the Tree Town Cafe has been a
25 long-term goal to the Morgantis and the Garcias. Jena and

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3 Jessica having roots in the neighborhood understand the
4 importance of the use. I think from a lot of the letters you
5 have received in the last couple days you'll see that there's
6 a lot of people that really think that it is an important
7 part of the neighborhood, and they think it's a great spot
8 for this because of the roots in the neighborhood.

9 Nothing about our concept is particularly new,
10 but updates will reflect our times. As part of the
11 application the Garcias and Morgantis have defined their
12 mission statement, told a little bit about themselves, and
13 most importantly defined the proposed products and services
14 as well as the hours of operation, all of which is proposed
15 is traditional for a deli cafe in the neighborhood. The
16 primary focus is on breakfast and lunch-type items offering
17 quality products and convenience items for the neighborhood
18 and a neighborhood-friendly operation.

19 The things that have changed over the course
20 of time are things that are part of an evolution. None of
21 this is really new except for when I was growing up no one
22 featured coffee. Now coffee is a key in terms of providing a
23 lot of this stuff. Ice cream also kind of was in, kind of
24 was out. Ice cream now is pretty much a key to dealing with
25 this kind of neighborhood setting to allow parents and kids

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3 to be able to enjoy these treats during the warmer weather
4 and in the evenings.

5 What I want to do is just for information and
6 for everyone to take a look at, is a little bit of the
7 background of what has been on the site and to say that what
8 we are doing essentially is not much different than what has
9 been done before. But rather than engage in the back and
10 fourth of what is -- of was this happening was this not
11 happening, to what degree, and everything else, we have an
12 opportunity here as part of the use variance to clearly
13 define what this use is going to be. Clearly define the
14 limitations of it and to address everything and make sure
15 that we're on the neighborhood scale.

16 Part of what you received in your initial
17 application packet which I'm sure you have reviewed is a list
18 of the products and services, is a list dealing with hours of
19 operation, and some of the no-nos that we don't intend to do
20 on this site.

21 So, you know, and as part of Sherry's written
22 presentation, she's set forth some recommended conditions and
23 limitations for the operation if the use variance is granted.
24 Most of these, I'd say 90 percent, are acceptable to the
25 applicant such as maintaining a mix of grocery, deli, bakery

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3 items, food assembled and prepared on site, no deep frying,
4 no ATM, no alcohol or cigarette sales including e-cigarettes,
5 a limitation on vendor delivery trucks. No vehicles running
6 overnight, except for perhaps neighbors that may come and
7 utilize the property. Can't necessarily police other people,
8 but none related to the business. Encouraging parking on
9 site instead of the street, cars shouldn't idle, no hosting
10 of large crowd events, no drive-thru service or anything of
11 that sort. Outside security lighting being put in and
12 confined to the property.

13 Some of the other proposed restrictions such
14 as not allowing people to pick up in passenger vehicles and
15 deliver out are a little bit too restricted in our mind, but
16 that's really for the Board to decide. You know, in our
17 modern day right now when I go to Wegmans on a Saturday and
18 I'm besieged by all these people with their Insta-cart vests
19 and everything else, it seems like this is the way the world
20 is going these days, but we wouldn't allow any commercial
21 vehicles to come in.

22 This really sets up as a classic use variance
23 case. The dollar and sense proof shows there is a lack of
24 reasonable return from permitted uses as it stands right now.
25 With this restricted use of the commercial building which is

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3 in place we think that a reasonable return can be obtained.
4 On the other hand, trying to go deconvert this to a
5 residential use is something which financially is not
6 feasible because of the modern day construction cost.

7 The property clearly is unique from others
8 similarly situated, we think it will not change the character
9 of the neighborhood, and because of the marketing efforts
10 during the course of the year that it is not a self-created
11 hardship. I think I speak for the Morgantis and the Garcias
12 in expressing their excitement to replicate the experience of
13 this neighborhood as it has been over the years.

14 I want to keep my presentation short, there's
15 a lot of people in the room both that want to speak in favor
16 and against. So we will be available to answer any
17 questions, don't know if you want to do that now, don't know
18 if you want to hear from the public first.

19 CHAIRPERSON MIETZ: We'll ask you questions.

20 MS. SCHWARTZ: Jerry, you said you didn't
21 think the return was reasonable. What do you consider a
22 reasonable rate of return?

23 JERRY GOLDMAN: There are no bright line
24 standards in the court cases. To my mind, if you are talking
25 about a return that's ahead of the market of five to seven

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3 percent return, right now if you're getting a mortgage, you
4 know, it's about a five percent situation. A return on a
5 risk property has to have a higher increment certainly than
6 what you get in a bank.

7 So right now currently I would think a five to
8 seven percent return probably could be something which is
9 acceptable. I will defer to the Chair who can probably
10 advise you in his history as a banking expert as to what
11 could be a reasonable return, but clearly one-and-a-half
12 percent is not it.

13 CHAIRPERSON MIETZ: Okay. So, Jerry, you
14 talked about the last year plus of marketing of the property,
15 can we talk about that a little bit? What was the result of
16 that? What came out of that? I think we can certainly
17 understand why this use is here.

18 JERRY GOLDMAN: Yes. What came out of that
19 effort was as soon as the property became available, the
20 current owner did consult with a broker who is the person who
21 actually wrote the letter which is in your packet. The
22 property was multiple listed for a period of time. The
23 property was also offered in more general terms, there are so
24 many resources out there to offer property. And there are
25 people that took a look at the property and the people that

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3 came in and looked at the property says: We're looking for
4 something that was a broader scale. And they knew that that
5 really wasn't going to pass muster because of the history and
6 because of the grinding down that occurred a couple years
7 earlier relative to it.

8 People wanted to come in and they wanted to
9 have a catering component that was pretty large, and it just
10 didn't make any sense to do that. So in reality there were
11 not offers for uses which work consistent with what was going
12 on in the neighborhood then, and what we anticipate that the
13 neighborhood would have wanted to see.

14 CHAIRPERSON MIETZ: All right, good. Other
15 questions to the Board members right now?

16 MS. TOMPKINS WRIGHT: I may have misheard this
17 but I thought you mentioned that you were not sure whether or
18 not the nonconforming rights had expired or not? Can you go
19 further on that?

20 JERRY GOLDMAN: That's correct. There is the
21 business that was there, the Bernunzio's Deli business
22 terminated somewhere toward the very end of the year in 2017.
23 There was a brief period of time where these current
24 operators opened up the business because they did not really
25 know what was necessary in terms of standards to open up with

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3 regard to it. And I haven't compiled all receipts to really
4 determine if we're within the year period or not, but, yeah,
5 when I take a look at it and took a look at the record in
6 dealing with the prior situation two years ago, dealing even
7 back in 1984, and in the 1980s, people were parsing: Okay,
8 do we do this, or do we do this, and is this consistent, and
9 everything else. I think that this provides a clean slate
10 for us to go on this. And I think we do have the ability to
11 show the dollars and sense proof and approve the use
12 variance. So rather than try to: Is that, is this, is this,
13 is that? It's better off to define what it is we want to see
14 out there.

15 MS. TOMPKINS WRIGHT: The Chef's site was
16 running some sort of a bakery at some point during 2018 --

17 JERRY GOLDMAN: Not during 2018.

18 MR. DiSTEFANO: No.

19 JERRY GOLDMAN: Toward the end of 2017.

20 MR. DiSTEFANO: August of 2017 is when Chef's
21 vacated the property.

22 JERRY GOLDMAN: They were paying rent long
23 after that and they were doing some activities out there. So
24 I don't want to go there because this is a situation where
25 you talked to staff and staff made it clear that they were

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3 not going to make an interpretation that the use continued.

4 And like I said, rather than engage in the,
5 okay, they did not say coffee before and now they're saying
6 coffee, and go into it. To me it makes sense just to come
7 clean on the application.

8 CHAIRPERSON MIETZ: Are you planning to
9 discuss the operation or --

10 JERRY GOLDMAN: I'm prepared to discuss the
11 operation, but that was in our application materials. Let me
12 grab it here.

13 MS. TOMPKINS WRIGHT: While you're looking for
14 that, the material seems to suggest the cost for razing the
15 commercial building and building a new residential, is there
16 any thought to whether or not you can renovate the current
17 commercial building into a residential building?

18 JERRY GOLDMAN: It was not built as a
19 residential building to our knowledge. And when we talked to
20 the construction contractor about that the construction
21 contractor did not think that it was any way suitable to be
22 converted into a residential property. There would be
23 substantial costs involved with it and certainly given what
24 it is there would hardly be any return in trying to do that.

25 We can talk about what is being proposed. And

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3 I will paraphrase and go through the products and services
4 that are listed on the application and what is intended to be
5 served include beverages such as coffee, espresso drinks,
6 smoothies, pre-packaged beverages. In addition, baked goods,
7 there is going to be baking on site, assorted cookies,
8 muffins and bagels. Breakfast will be grab and go, many as
9 sandwiches, home fries, et cetera. There is a case that will
10 have deli-type items in there. Lunch is also grab and go
11 with sandwiches and soups. Ice cream of course will be
12 seasonal, and one of the key elements for us is to be able to
13 have people be able to sit down outside and be able to enjoy
14 some ice cream with their families.

15 In addition, grocery and convenience items
16 will be there, milk, butter and eggs of that sort. Our
17 restriction is no commercial vehicles used for catering and
18 delivery on the site. We are proposing as hours of
19 operation, 6:30 a.m. to 9:00 p.m. Monday through Saturday,
20 with preparation for opening and clean up, and closure a half
21 hour before and after the hours open for business.

22 The expectation in the short term is that it's
23 going to start out with breakfast and lunch and go to that
24 regard, but as we get into the summer months certainly we
25 would hope to expand into more. And in terms of even the

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3 grab and go it will be expanded as everyone gets acclimated
4 on the site.

5 We are proposing a limited amount of indoor
6 seating, and the indoor seating itself on our floor plan
7 showed about 19 seats. I don't anticipate at the end of the
8 day this is going to be anywhere near that amount. But for
9 historic perspective I think the last page or second-to-last
10 page of the materials I just handed out showed that there was
11 a similar situation in terms of having a few tables within
12 the store itself. It's not meant for people to sit down and
13 camp out over there. It is people waiting to pick up if they
14 have kids with them and everything else so that they are able
15 to sit down. So that is something that is more an amenity
16 for people to be able to wait and pick up their stuff.
17 There's no table service being prepared.

18 Outdoor seating and garbage management, we
19 talked about four picnic tables outside. Just basically
20 picnic tables for people to be able to sit. Outdoor garbage
21 receptacles with lids would be outside to maintain,
22 receptacles would be monitored and emptied as needed by staff
23 in the store and at the end of the day.

24 As part of the application and part of what
25 was apparently the Chef's war, if you will, was there was a

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3 request for a list of the equipment that we intend to have on
4 the site. That is in your application packet. One thing I
5 will note again, I think I said this in my main presentation
6 is that no deep frying. We're just talking about the ability
7 to be able to do our basic baking, assembly, Kraft-type food,
8 without doing that type of thing. We always get into the how
9 do you deal with smells when you have deep fryers. That's
10 something that we are not interested in doing. Air fryer,
11 yes, we are starting air fryers these days. Deep frying, no,
12 that doesn't exist.

13 That's pretty much a sketch of the operation
14 itself. If there are any other details with regard to it we
15 will be glad to address that or any questions with regard to
16 any of those elements.

17 MR. CLAPP: In terms of delivery, would Grub
18 Hub or similar operations where an individually owned vehicle
19 is operated in a commercial manner be consider a commercial
20 vehicle? Because maybe they might not own a deliver vehicle
21 or have a delivery person, but the trend is a lot of Grub Hub
22 traffic in and out, so I don't know if that's pertinent, the
23 question.

24 JERRY GOLDMAN: Well, to our mind it's a car
25 and most of the Grub Hub people aren't traveling in vans. I

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3 think what we're trying to do is to keep the neighborhood
4 kind of situation going on. Even if it's down the street
5 sometimes people are looking to have something delivered or
6 if it's in the proximate neighborhood, so it's certainly
7 something that could be discussed.

8 MS. SCHWARTZ: Tied into that, could you
9 describe the truck traffic that is expected on a daily basis?

10 JERRY GOLDMAN: Okay. My understanding is
11 that for this type of operation -- and let me know, do you
12 want to speak?

13 PETE MORGANTI: Yes.

14 JERRY GOLDMAN: Come up and introduce yourself
15 for the record.

16 PETE MORGANTI: Yes, I am Pete Morganti and
17 yeah --

18 CHAIRPERSON MIETZ: Your address, please.

19 PETE MORGANTI: 230 Clover Lane Drive. As far
20 as the delivery goes, we don't intend to provide delivery
21 services ourselves. As far as Grub Hub goes, we don't manage
22 that, that wouldn't be on our end to manage. We look at it
23 as the same as take out. If someone's going to come pick it
24 up or have somebody else come pick it up, what's the
25 difference? There's usually cars that pick it up. So we

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3 wouldn't be promoting delivery, we wouldn't have delivery
4 vehicles that we operate on site designed for that, but the
5 plan -- we wouldn't want to limit people to use their
6 prerogative if they want somebody else to come pick up their
7 food as opposed to them picking it up.

8 JERRY GOLDMAN: Judy's question was talking
9 about deliveries coming in and whether you expect 18 wheelers
10 or whether you expect panel vans.

11 PETE MORGANTI: So when we received a letter
12 from the neighbors in regards to the size of the delivery
13 trucks we were in agreement with their request that the
14 trucks be limited in scope to, I believe it was a certain
15 number of axles that was requested. We agreed with what the
16 parameters were on that, I believe it's two axles, and
17 limited in scope. So we wouldn't be having large 18 wheelers
18 pulling in. We don't anticipate even using product that
19 would require that.

20 MS. SCHWARTZ: And how many on a given day or
21 week, volume of them?

22 MS. TOMPKINS WRIGHT: And what's the time of
23 when deliveries will be made?

24 PETE MORGANTI: Delivery will be made during
25 the day. Like we mentioned it's primarily a breakfast and

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3 lunch operation, and so we would need that to happen in the
4 daytime, nothing in the evening. And weekly I believe at
5 most it's going to take us some time to figure out inventory
6 needs and things like that.

7

8 But again, those are areas we would be
9 flexible, obviously knowing we need to have product and we
10 can't limit what we're getting, but we don't anticipate
11 having daily deliveries, more so weekly will be more
realistic.

12

13 JERRY GOLDMAN: It's a 2000-square-foot
14 building, it's not a large operation. So to that extent they
15 would come as necessary, but it's not going to be
particularly extensive.

16

17 CHAIRPERSON MIETZ: Okay.

18

19 MS. TOMPKINS WRIGHT: This is kind of, I don't
20 know if this is going to be too subjective, but in comparison
21 to how much groceries you're planning on having, convenience
22 items like milk, butter, eggs, is that more in line
23 volume-wise with, like, the size of the Pittsford Dairy
24 provides or Butcher Block? So volume-wise, how much of that
grocery item is being provided versus how much of it is
really like the grab-and-go sandwiches and soup thing?

25

PETE MORGANTI: We don't have a lot of space,

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3 so it's not going to be a grocery store. It would be more
4 convenience items aimed at the neighbors in the area. We are
5 not trying to compete with Hearts or Wegmans or Trader Joe's,
6 more or less, we want the people in the neighborhood to have
7 an opportunity to grab things on the way home, in the morning
8 as they run out. It's more to try to provide a service.

9 My wife grew up in the neighborhood and she
10 would tell me all the time, man, I wish you could run to
11 Bernunzio's and grab a loaf of bread or a carton of eggs,
12 things like that. We are looking at small shelf space. I
13 think we even limited the percentage, and it should be in our
14 application the percentage of what we would be selling as
15 retail in order to limit that.

16 MS. TOMPKINS WRIGHT: And no nonfood items,
17 grocery items? Is it just consumable food items that are
18 being sold?

19 PETE MORGANTI: Yes, consumable food items and
20 we have considered mugs and things that are related to the
21 use coffee. We wouldn't be turning it into a T-shirt store
22 or a furniture store, but things that clearly correlate with
23 a coffee cafe atmosphere we would like to be able to sell a
24 couple mugs. Again, it's not a major part of our business
25 plan, but if you go to a coffee shop generally they have mugs

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3 with their brand on it and something like that.

4 CHAIRPERSON MIETZ: Okay. Anymore questions
5 of the Board members right now?

6 MR. CLAPP: I have a question. Well, which
7 is, one of the priorities they're talking about, they could
8 not properly run the business that is being described now.
9 And when they were limited in what they could do in terms of
10 catering they closed -- or moved. So my question is, is this
11 actually a profitable or reasonable proposal? I have no way
12 of judging that.

13 PETE MORGANTI: So from what we understand, we
14 have been in communication with the previous owner. His
15 advice to us was that he was very profitable. His reason for
16 vacating wasn't because he couldn't generate income, but it
17 did not fit with his plans.

18 JERRY GOLDMAN: He was before Chef's.

19 PETE MORGANTI: We are not referring to
20 Chef's.

21 MR. CLAPP: I wasn't referring to either.

22 JERRY GOLDMAN: Okay.

23 PETE MORGANTI: From what we understood,
24 Chef's was very profitable, but it didn't fit with what they
25 were attempting to do. I can't speak to the other.

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3 JERRY GOLDMAN: Yes, it's a different business
4 model, is really what it is. And one of the benefits is that
5 this is definitely a sweat equity type of situation. You
6 have four people here that really are passionate about it and
7 want to do it. It's not an outside business venture. To
8 them, it's more like their neighborhood and what they want to
9 do or what they remember when they were growing up. So it's
10 a different dynamic in terms of what the dollars and cents
11 are.

12 CHAIRPERSON MIETZ: Okay. Anything else right
13 now? Okay, Jerry, thank you.

14 JERRY GOLDMAN: Thank you.

15 CHAIRPERSON MIETZ: Okay. Just for
16 organizational purposes, could I get a hand of anyone who
17 believes they would like to speak regarding this application
18 so I can get a sense of how many people are here? Great.
19 And if someone changes their mind that's fine. We will start
20 on this side of the room.

21 SHERRY KRAUS: I'm Sherry Kraus, 46 Park Lane,
22 nearby. I am here not only for myself as a neighbor and
23 interested party, but also on behalf of my brother, Robert
24 Stokes who lives two doors down from 745 Penfield Road, at
25 41 Colonial Village Road. And also for many of the neighbors

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3 on Colonial Village Road, quite a few of them are here
4 tonight and will be speaking.

5 And it seems like only yesterday that I was up
6 here in front of you about this identical site, this
7 identical owner, Charlie Davis, who owns this 745 Penfield
8 Road, LLC. And Mr. Davis was here trying to convince you
9 that the operation of a popular regional food truck business
10 was a proper use of that site within the limitations of the
11 pre-existing nonconforming use.

12 Now, at that time the neighborhood objected,
13 disagreed, and the Town also disagreed. And when the Town
14 Planner refused to approve the site for that purpose that was
15 appealed to you, you had two different Zoning Board
16 applications before you, multiple hearings, that took
17 actually well over a year to resolve. But in the end you
18 made the proper determination that the Town Planner was
19 correct and that that was not a proper operation without
20 enormous conditions and limitations that you imposed.

21 And Mr. Clapp, you are absolutely right, it
22 was not long thereafter that the operator Chef's Catering,
23 did move from the property and Ms. Wright, as to your
24 question regarding the termination or lapse of the
25 pre-existing nonconforming use, that happened at the end of

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3 August 2018. That was well documented by reason of
4 abandonment, the theory of abandonment. And the operations
5 on that site were very carefully monitored at all times by
6 the neighborhood and the Town. And the actual exit day for
7 Chef's Catering and the abandonment date of August, end of
8 August 2018.

9 MR. DiSTEFANO: I need to just clarify that
10 for the record, 2017.

11 SHERRY KRAUS: I'm sorry, 2017. Okay, thank
12 you, Rick. The years are starting to blend together.

13 Now, again, the most important change in that
14 site since I last saw you is the fact that the legal
15 commercial use of that site for the retail operation on that
16 portion of that very large parcel, almost an acre, has ended
17 by reason of the expiration, the abandonment of the
18 pre-existing nonconforming use.

19 As a result, the retail portion of the site
20 has now reverted to the surrounding residential zoning of R-1
21 single-family residential. That's the way it should be.
22 That's the way pre-existing nonconforming uses are meant to
23 be under the law and under the theory of good zoning
24 regulation. They are meant to expire, they are not meant to
25 be perpetual. They're given as a deference to the owner

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3 because these are uses that pre-existed the zoning. And when
4 something happens where that use ends either by abandonment,
5 casualty or whatever the reason, that use is no longer legal.
6 It dies, it ends. And it's supposed to revert because that
7 type of use is out of character with the rest of the zoning
8 in the neighborhood. And basically, it ends up being a
9 blight on the neighborhood because of that inconsistent use,
10 so it's good land use planning.

11 Could someone possibly give me a little bit of
12 water?

13 In any event, so right now Mr. Davis cannot
14 use that portion of the property for commercial use because
15 it would be illegal. It needs to be used as a residential
16 use. However, he is back before you tonight, again, his LLC,
17 seeking a use variance because he would like to continue the
18 commercial operations on that portion of the site.

19 Now, I know I shouldn't have to remind you as
20 a Zoning Board of the difference between a use variance and a
21 pre-existing nonconforming use, but I will take just a moment
22 to do that. There is a vast difference, a vast difference.
23 Unlike a pre-existing nonconforming use, which is the former
24 status, which has a limited life, a life that can end, and
25 which did end on this property and which is not intended to

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3 be perpetual. If you grant a use variance this evening that
4 is a permanent change in the zoning on that property. You
5 could even call it spot zoning, but we don't use that term a
6 lot because it's so nasty, but it is permanent, it is
7 forever.

8 It doesn't expire, it doesn't lapse, the
9 building could be vacant for 3 years and it would still be
10 there. It's not personal to Mr. Davis, or this LLC, or these
11 operators. Anyone in the future will be able to use it, so
12 that's one significant difference there.

13 The second significant difference is that use
14 variances on line, pre-existing nonconforming uses can be
15 expanded in their use. People can come back to you and say,
16 we can't operate this property with a reasonable return
17 unless you give us more than we can do on this property, more
18 flexibility in use. You could impose 30 conditions tonight
19 and they could come back six months from now, a year from
20 now: We can't do a viable financial operation here unless
21 you relieve us of this condition or this condition, or this
22 limitation or that limitation.

23 With the pre-existing nonconforming use you
24 can't do that, it's kind of set in stone. You can do what
25 you can do with the zoning law. Use variance it's like

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3 mopsy, it can grow. I don't care what you do tonight to
4 protect the neighborhood, you can't really do it. It's
5 perpetual, it runs with the land for anyone who owns or
6 operates the property, and it is changeable in ways that may
7 not be good for the community.

8 In fact, a use variance is a far more valuable
9 commodity to Mr. Davis and his LLC, than the pre-existing
10 nonconforming use ever was. And this is the reason that the
11 requirements and criteria for proving the right to a use
12 variance are so stringent.

13 Jerry went over with you the requirements, the
14 four requirements under the code and New York Law that are
15 required for the owner to show that there is an unreasonable
16 hardship imposed on him if he is forced to keep this
17 residential zoning on this portion of the property. He has
18 to show that. He has a heavy burden of proof to show this
19 unreasonable hardship and he has to go through all four of
20 those requirements and he has to satisfy every single one of
21 them. If even one of them doesn't satisfy, you cannot grant
22 him the variance.

23 Now, we submit to you that this application
24 fails on every single one of those requirements. However, I
25 am going to focus tonight for the purpose of brevity,

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3 although I'm never very brief, with just two of them to show
4 you why this should not be issued.

5 The first requirement -- and Jerry did spend a
6 lot of time on this both in his submissions and his oral
7 statement -- is that Mr. Davis has to show he is unable to
8 realize a reasonable rate of return on the property if it is
9 restricted to its legal use in a residential zone. He
10 doesn't even come close to meeting this requirement.

11 Let me review the facts with you. Charlie
12 Davis bought this property 14 years ago for \$250,000. When
13 he bought the property he knew he was on legal notice that
14 that property's use as an income producing commercial
15 property would only last as long as that pre-existing
16 nonconforming use was in effect. He knew that. He knew that
17 that was the way it was 14 years ago when he bought it. It
18 produced a commercial return because it had the two
19 nonconforming -- pre-existing nonconforming uses on it.
20 Otherwise it would be just like my brother buying his
21 property back in August of last year, you don't owe him any
22 reasonable rate of return on that.

23 So there never should or could have been any
24 expectation by Mr. Davis that his financial return on this
25 property as a commercial enterprise would last forever. But

3 notwithstanding the risk of buying a property like that where
4 the commercial use might someday end, legally, he went ahead
5 and did it. And even thought it had a potential for losing
6 its income producing characteristics in the future like what
7 happened last August when the pre-existing nonconforming use
8 ran out, he went ahead and bought it.

9 But do you know what? I think he likely did
10 make a very good investment decision. Think about it, for
11 14 years he has almost certainly fully recovered his initial
12 investment and then some by the combination of the rental
13 income on the retail establishment, the rental income on the
14 two-family house. And I'm sorry, I'm a tax attorney so I
15 always look at this, depreciation, tax write-offs, enormous.

16 I find it hard to believe that after 14 years
17 he has not more than fully recovered his \$250,000 investment.
18 But even now with the property reverting on that portion to
19 residential zoning it still has significant value. Now, you
20 don't have to take my word on this. This is going to be a
21 matter of public record very soon. The Brighton Town Tax
22 Assessor advised us, the neighborhood, that this property
23 after being adjusted for having no retail use of that parcel
24 will be assessed and valued at \$240,000. Now, that's if he
25 did nothing to it, he just left the building there, left the

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3 garage there, had the house and rented the house, it's still
4 valued at \$240,000. It's a big property, it's almost an
5 acre.

6 So if he does nothing, zero, to this property
7 he is still going to get a 1.3 percent return on this
8 property by reason of the fact that he can still lease out
9 legally the house, the two-family house, 1.3 percent.
10 Actually, I would not mind making 1.3 percent on some of my
11 cash investments.

12 But we all know that a property this large,
13 and this we do know from the building and planning
14 department, could be divided into two separate residential
15 lots where residents could be located, depending on how you
16 do it, maybe not even needing any area variances. And we all
17 know that often especially in this town a subdivided lot is
18 worth a lot more than the single lot configuration that it
19 has now because you can sell it as two different pieces, you
20 got the residence and you got the separate subdivided lot.

21 Now, I want to actually borrow from the
22 applicant's own submission yesterday, and say one of our
23 Exhibit A's will be their own expert, Hamilton Stern
24 Construction. You saw you had a submission from them opining
25 on the cost of converting the parcel to residential,

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3 something consistent. And I want you to look at the letter.
4 Hamilton Stern Construction opines that if
5 Mr. Davis puts in a \$78,000 investment just add up the
6 different things, the retail site could be subdivided and
7 made into a residential building lot, build ready for
8 residential with an undeveloped lot value of \$125,000.

9 So he doesn't have to worry about putting in
10 multi-hundreds of thousands of dollars to build this
11 incredible 1,800-square-foot house that's going to cost
12 \$400,000 on the upside. You know, maybe there's a
13 credibility issue here for me, but if he did nothing but hire
14 someone to subdivide the property, take down the buildings,
15 do the asbestos removal, do the hook ups, whatever, add it
16 up. For a \$78,000 investment the lot will be worth \$125,000.
17 Do you know what that is? That's just shy of a four percent
18 return on his investment.

19 Now, please tell me, first of all we know the
20 two lots. We didn't get any information from the applicant
21 on what the likely value would be on the two separated lots.
22 But believe me, it's very hard to see where the unreasonable
23 hardship to Mr. Davis is on this property by keeping it
24 residential.

25 And the other thing that tremendously bothers

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3 me about this application is that Mr. Davis would expect and
4 assume that this town and this neighborhood has an obligation
5 to him to continue providing him with an 11 percent return on
6 a property that he purchased knowing that any commercial
7 return at all on this property could only be enjoyed until
8 the pre-existing nonconforming use ended. He had no
9 reasonable expectation that that is going to continue in the
10 indefinite future, and it didn't.

11 You, as a Board under your Brighton Town Code,
12 are obligated to grant the minimum variance necessary to
13 address any unnecessary hardship that you find in this case.
14 And it is well established in the law that Mr. Davis is not
15 entitled to a use variance simply by proof that the proposed
16 use would be more profitable than a use not requiring a
17 variance.

18 I don't know how in the world this Board could
19 reasonably conclude that a return as significant as
20 11 percent -- I'm sorry I'm still just blown away by that
21 expectation -- would be required to alleviate any possible
22 hardship which we question at all in this case. In light of
23 the expectation that Mr. Davis should have had the knowledge
24 that someday an end to his commercial return on this property
25 would occur and the fact that he will now realize a

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3 reasonable return on the property under the present
4 residential zoning he is not entitled to a use variance.

5 And okay, I'm almost at the end. Second
6 point, they say there's no adverse impact on the a
7 neighborhood: Oh, this is just like Bernunzio's, no problem.
8 We loved Bernunzio's. Yes, we did. We did love Bernunzio's
9 and Bernunzio's was compatible with the neighborhood. But I
10 am going to tell you something very shocking. Even if Tree
11 Town Cafe were identical to the operations of Bernunzio's --
12 which sadly it is not quite, almost but not quite -- you
13 shouldn't grant this use variance because it will have an
14 adverse impact on the neighborhood.

15 Now going back to the point I made before,
16 unlike the pre-existing nonconforming use that Bernunzio's
17 operated under, the use variance is forever. And the use
18 variance has the potential for being expanded, and the use
19 variance has the potential for any conditions and limitations
20 intended to protect us to be whittled away and removed.

21 But I will tell you one thing that we agree
22 with, with the applicant, the days of the little corner store
23 like Bernunzio's Deli or DiCrasto Dairy are in the past. We
24 agree, they just can't compete in today's commercial climate
25 so what will be the future of this site if you grant a use

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3 variance? As well intentioned and lovely as these people
4 are, how long will Tree Town Cafe find this site financially
5 viable? And when and if they leave, who will come in next?

6 And again, I'm going to rely on applicant's
7 own expert testimony as our Exhibit A. Look at the letter
8 from Mr. Speedy, the realtor. Mr. Speedy the realtor listed
9 this property for over a year. You heard Jerry talk about
10 the problems, there were no takers. He states that even
11 though he had no takers, of course until now, he had a lot of
12 inquiries from people for a full-service and sit-down
13 restaurant, or a business office.

14 Now, how long do you think it will be before
15 there's an application by this owner or a future owner, these
16 operators or future operators, to modify your use variance or
17 to relieve them from the conditions you impose this evening
18 to allow for a more viable operation, like a full-service
19 restaurant, a sit-down restaurant. Maybe they'll want an
20 expansion of the buildings next year or expansion of the
21 parking lot the next, or a commercial kitchen the next.
22 Because otherwise we are not financially viable.

23 You should deny this variance because there
24 are no longer any financially viable commercial uses of this
25 site for an operation like Bernunzio's. And any commercially

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3 viable use that's more intense will likely have an adverse
4 effect on this residential neighborhood. The site need to
5 remain in its residential zoning and the variance needs to be
6 denied. Thank you very much.

7 CHAIRPERSON MIETZ: Thank you. Let's go down
8 this side and straight back and then we'll go down this side
9 and straight back. Who would like to speak? Come up.

10 MARGARET GORDON: I'm Margaret Gordon, I live
11 at 52 Colonial Village Road and I have been asked to read a
12 letter from Dan and Susan Macpherson. Honorable Zoning Board
13 members, we are Dan and Susan Macpherson and we live at
14 92 Colonial Village Road about halfway down the street for
15 over 34 years. We had planned on attending the February
16 meeting but unfortunately we will be out of town for the
17 March 6th meeting.

18 We are against the proposed use variance
19 especially since once approved it will never expire and
20 carries a lifetime of potential problems for our
21 neighborhood. The couples that currently want to run it as a
22 coffee shop slash cafe, seem to be mindful of the
23 restrictions of have a business in a residential
24 neighborhood, but they do not own the property and could
25 abandon the business after three months, three years, et

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3 cetera. After that we have no idea who will want to take
4 over and what they will want to do.

5 Those that do not live on our street, they see
6 this as a fun little place to walk to, but they, unlike us,
7 do not need to consider the potential effect on their
8 property values as we do. It is not normal to have a
9 business in the middle of a residential neighborhood and the
10 previous nonconforming use was always meant to end at some
11 point.

12 Even if we put heavy restrictions in place now
13 when a future business or this one cannot make money within
14 those restrictions they will be back before you to beg relief
15 for them. We all know that each of the prior applications by
16 this owner related to this site stated that it was almost
17 impossible to make a profit with a small, quote, mom and pop
18 operation like we had here in the past, Bernunzio's.

19 Just think how many businesses have tried and
20 failed with this location. This could be the next one and
21 the granting of the use variance will just set the stage for
22 more and more intrusions into our neighborhood as each
23 successive business pleads its case for fewer restrictions so
24 it can make a greater profit.

25 For these reasons we urge the Board to reject

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3 this application and protect the future of our street. Thank
4 you, Dan and Susan Macpherson.

5 CHAIRPERSON MIETZ: Thank you. Come up.

6 BRUCE FREEMAN: My name is Bruce Freeman, I
7 live at 126 Colonial Village Road. My wife Bonnie and I have
8 lived there since 1980. As you know 745 Penfield Road is at
9 the corner of Penfield Road and Colonial Village. We are
10 both opposed to the opening of the Tree Town Cafe. I'm an
11 attorney and I submitted a memo to this Board dated
12 February 20th, with an addendum dated February 25th, raising
13 legal arguments, and I ask that the memo be made part of the
14 record.

15 The application for a use variance asks for
16 permission to open what the Brighton Town Code defines as a
17 fast-food restaurant or delivery restaurant at the corner of
18 my residential street. The Town Code definitions of fast
19 food and delivery restaurants are on Page 5 of the memo.

20 The description of the proposed Tree Town Cafe
21 operation which is partially reproduced on Page 16 states
22 there will be a grab-and-go breakfast menu and a grab-and-go
23 lunch menu, as well as delivery and catering. That
24 description, with or without seating, meets the codes
25 definitions of fast food and delivery restaurants.

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3 I'm worried about what granting a use variance
4 to open a restaurant in our residential neighborhood will
5 lead to in the years to come. A neighborhood effort kept
6 Penfield Road and Brighton from becoming a four-lane highway
7 like it is in Penfield. Another neighborhood effort kept
8 Corbett's Glen, which abuts our street, from being developed.

9 Without those efforts the residential
10 character of our neighborhood would already be gone. As I
11 see it, granting a use variance for a fast food or a delivery
12 restaurant could be the first step in a slow transformation
13 of the neighborhood toward a commercial district. For the
14 sake of preserving the character of the neighborhood, I'm
15 opposed to a use variance for a restaurant on our street
16 because of the precedent it would set.

17 This matter has been before this Board twice
18 and decisions were issued by this Board on September 7th,
19 2016, and on April 5, 2017. Both the 2016 and 2017 decisions
20 allowed the business at 745 Penfield Road to continue to
21 operate as a combination deli, bakery and grocery. There was
22 no neighborhood opposition to the operation of the
23 combination deli, bakery and grocery as it was authorized by
24 this Board in 2016, and again in 2017.

25 There was a legal basis for the operation of

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3 the deli in those years because it was a nonconforming use,
4 pre-existing, and it was legal. This Board in 2016 and 2017
5 correctly denied the applications to transform the deli to a
6 restaurant because the operation of a restaurant was not part
7 of the legal pre-existing nonconforming use. This Board's
8 2016 and 2017 rulings specifically recognize a restaurant has
9 never been an approved use of the property at 745 Penfield
10 Road.

11 Now we are here in response to the owner's
12 third attempt to put a restaurant in there. The legal
13 doctrine called res judicata or claim preclusion prohibits
14 repeated requests for the same relief by the same party even
15 when based on different theories. Legal authority for that
16 is on Pages 9 and 10 of the memo. This claim preclusion
17 doctrine applies to Zoning Board decisions, legal authority
18 for that is also on Pages 9 and 10.

19 Because of this claim preclusion doctrine the
20 central question before this Board is whether the application
21 for the use variance to open a restaurant could have been
22 made when the request to open a restaurant went before this
23 Board in 2016 and 2017. Again, under the doctrine the
24 question is not whether a use variance application was made
25 before, but rather whether the use variance application could

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3 have been made. Legal authorities for that is also on
4 Pages 9 and 10.

5 The current application is based upon the
6 theory that the property at 745 Penfield Road is not
7 marketable or able to generate an income unless it is used as
8 a restaurant. That same argument was specifically raised by
9 one of the 2016 applicants Joseph O'Donnell an architect.
10 The August 2016 O'Donnell letter to this Board stated: The
11 property in the existing structures have been used for the
12 proposed purpose since they were originally constructed. It
13 would be cost prohibitive and impractical to believe that
14 this property could be converted to a residential property or
15 it could be marketed as a professional office. The property
16 has been on the market for over a year with no viable offer
17 to be considered. That was August 2016.

18 Compare that 2016 letter to the letter in 2019
19 to this Board from Tree Town's attorney which states: The
20 applicant cannot realize a reasonable return if utilized for
21 purposes allowed in the zone. Without the ability to use the
22 retail building, the applicant's annual return is less than
23 one percent despite marketing efforts this is the only tenant
24 to make a proposal. So the same financial or economic
25 hardship argument now raised in support of the use variance

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3 was raised but not pursued in August 2016. A use variance
4 could have been requested on the same grounds in August 2016.

5 On October 21, 2016, only few weeks after the
6 September ruling by this Board and the second attempt to put
7 the restaurant at 745 Penfield Road, the applicants wrote a
8 letter to the Town Planner requesting confirmation that their
9 plans were consistent with the nonconforming use. The Town
10 Planner responded on December 2, 2016, the applicants
11 appealed the Town Planner's determination, which led to the
12 second hearing and this Board's second decision on April 5,
13 2017.

14 The financial hardship conditions described in
15 the August 2016 O'Donnell letter had not changed between
16 August and December 2016. The applicants were represented by
17 attorneys who specialized in zoning land use law and the
18 appeal of the December 2nd, decision. A use variance
19 application based on financial hardship could have been made
20 in December 2016, just as it could have been made in August
21 of that same year.

22 It's possible the use variance wasn't applied
23 for in 2016, because requests for use variances may trigger
24 an environmental impact review, authority for that is on
25 Page 17 of the memo. According to the language of the

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3 regulation on Page 17, this pending application for a use
4 variance may not be exempt from a mandatory environmental
5 impact report.

6 Because a use variance application based upon
7 financial hardship could have been made in the two prior
8 attempts to put in a restaurant, this pending application for
9 a use variance should never have been made at all. Claim
10 preclusion in this case means the application for a use
11 variance itself is precluded, the application is barred.
12 It's not a defect that can be fixed by imposing conditions.
13 This Board determines the doctrine applies the use variance
14 application effectively becomes null and void and the Board
15 can't consider it.

16 There's a good reason for this doctrine. Once
17 a controversy comes before the Zoning Board hearing and
18 there's a decision, let alone two hearings and two decisions.
19 That should be the end of it. If the neighbors who are
20 opposed to the opening of a restaurant had to hire attorneys
21 this would be the third time a retainer would have been paid
22 to defend against exactly the same request. The cost could
23 easily have been in the tens of thousands. Claim preclusion
24 is supposed to prevent that kind of waste of time and money.

25 The nonconforming use which for decades

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permitted the deli to operate was abandoned in August 2018. The lot has now reverted to purely residential use. The Brighton Town Code requires elimination of nonconforming uses and protection of residential areas. Those are explicit town policies underlying all of the property use regulations in the code.

The code restricts restaurants to purely commercial districts. You have to go through 11 articles of residential office and commercial property use regulations described in the code before you get to the first line which allows a restaurant of any kind. Article 10 describes the first district that would allow a fast food or delivery restaurant, it's called a neighborhood commercial district and it's designated BF-1, 12 Corners is designated BF-1.

Article 10 specifically prohibits locating fast food and delivery restaurants, quote, within 50 feet of a property line adjoining a residential district. That distance requirement which is specifically designed to promote the Town policy of protecting residential neighborhoods can't be met at the Penfield Road location.

All of these code provisions and explicit Town policies are quoted in the memo. All of them would be violated by allowing a restaurant at 745 Penfield Road.

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3 Brighton Town Code Section 219-2 prohibits this Board from
4 granting a use variance which will, quote, alter the
5 essential character of the neighborhood.

6 Because the pre-existing nonconforming use as
7 a deli was abandoned in August 2018, the neighborhood is now
8 once again purely residential. I don't see how a use
9 variance allowing any type of a business at 745 Penfield Road
10 could be granted without violating that code provision which
11 specifically applies to use variances and specifically
12 prohibits altering the essential character of the
13 neighborhood. Thank you.

14 CHAIRPERSON MIETZ: Thank you.

15 KAREN BARROW: Good evening, Chairman, members
16 of the Board. For the record my name is Karen Barrow, I
17 reside at One Colonial Village Road. My husband and I live
18 next door to and share a property line with the applicant's
19 property. We have a vested right in what happens.

20 First of all, I'd like Jena and Pete and their
21 partner to know that my comments tonight are in no way a
22 reflection of them or who they are. I've met Jena, I've had
23 a chance to talk to her and she's very pleasant. They do
24 understand what happened in 2016 and 2017, and said they
25 really do not want to create issues for the neighborhood.

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3 We've resided at this address for 24 years and have only
4 experienced one successful enterprise known as Bernunzio's
5 Deli.

6 Since the sale of that business there have
7 been three other businesses that have started and closed in
8 those 14 years because it was not profitable for them to
9 operate. If you divide that out it's an average of 4.5 years
10 per business, give or take. I too used to walk to the
11 neighborhood corner deli on the corner of Norton and Shady
12 Lane in the city 40 years ago and I used to buy candy dots on
13 a piece of paper.

14 In today's market with the rising labor costs
15 entire margins for the small food retailer, either one has to
16 have the backing of a large enterprise such as a Subway,
17 Panera Bread, a 7-Eleven, or a lot of private investor money
18 to compete.

19 Here are a couple of reasons why I think the
20 food industry is changing, and one of them is backed up by
21 what Mr. Goldman spoke about for Wegmans and Insta-cart. In
22 2017, Amazon started a beta test of a grab-and-go brick and
23 mortar convenience store. They invested millions in
24 developing a technology that according to Joseph Feldman a
25 retail analyst says has a lot of potential to really be game

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3 changing in the way people shop. They are serious about
4 groceries, says John Blackridge an industry analyst at Cohen,
5 who covers Amazon. Amazon Go seems like an incredible step
6 up from any kind of food grocery store that I have ever been
7 to. My question to the Board is: Do we really want to see
8 an Amazon moving in after Tree Town Cafe?

9 Another example is the pre-prepared delivered
10 foods market. This is a food service such as Blue Apron
11 where you get a subscription and get food delivered to you
12 either on a weekly basis or a daily basis and all you have to
13 do is open the box and the food is there. You cook it up,
14 and everything is done for you.

15 In a recent D&C article entitled Five Ways To
16 Get Healthy Meals Delivered To Your Home, Tracy Shoemaker
17 reports that more people are looking for ways to save time
18 and planning, shopping and cooking meals. One might say
19 wouldn't Tree Town Cafe fall under this auspices? And I
20 would say that that is one of the reasons why it's going to
21 be difficult for any small deli grocery, bodega, whatever you
22 want to call it, starting up in this spot. And that's why
23 others haven't succeeded, that's why, as Sherry said it has
24 taken a whole year to find an interested party because
25 catering is the way to go.

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3 My last remarks concern what we've all
4 experienced living next to the deli. As you well know in our
5 appearance in 2016 and 2017, we the neighbors had to be
6 cut -- the policing -- we had to be policing what was
7 happening next door. I said that wrong, let me start over
8 again.

9 As you well know in our appearance before you
10 in 2016 and 2017, we the neighbors had to be the police
11 calling the town before because of the constant and
12 consistent pushing of boundaries of the use of this property.
13 What we discovered firsthand was that the applicant was less
14 than trustworthy in reporting his intent, versus what was
15 actually happening.

16 For example, I provided for you some pictures
17 of lighting that was requested to be taken care of two years
18 ago. These pictures were taken within the past week and they
19 show the impact on our bedroom in terms of bright lighting on
20 the garage that sits next to the deli. Living next to the
21 deli people have often asked us why would we live here?

22 When we moved in, Bernunzio's was a thriving
23 business and as everyone has said, fit with the neighborhood.
24 Often, however, living next to the deli has answering the
25 door at midnight to the police saying someone has broken in.

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3 And you probably can go back to when Bernunzio's was owned
4 and find out and look at those police reports. They asked us
5 if we heard any ruckus and we said yes, and they said don't
6 worry, we'll take care of it.

7 But the real issue here is that the proposed
8 use variance is for the perpetuity and will long outlast this
9 attempt to make a go of it by operators. We ask that you
10 carefully consider what you've consistently heard from the
11 neighbors and deny this application. Three previous
12 operators have failed to make a long-term business successful
13 given the necessary restrictions.

14 We would be naive to assume that this last
15 attempt -- that this attempt would be the last attempt. Be
16 careful to pay attention because what is being proposed right
17 now and here today is open to so much more. Therefore, I am
18 not in favor of approval of this use variance request. Thank
19 you.

20 CHAIRPERSON MIETZ: Thank you.

21 NANCY CHRISTOPHER: My name is Nancy
22 Christopher, my husband Tom and I live at 44 Colonial Village
23 Road. Our house is the second house from the corner of
24 Colonial Village Road and Penfield Road, diagonally across
25 from the cafe. I am starting by referring to an article in

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3 the Democrat and Chronicle dated November 21, 2018, written
4 by Steven Borne, the name of the article is Where You Live
5 Effects How Long You Live. It goes on to say the area people
6 live the longest are the neighborhoods around Panorama Plaza.
7 Two reasons why are stated in the article are congenial
8 neighbors and nearby family.

9 Another factor is that the area is relatively
10 free of pollution. In additional, and I quote, social
11 interactions can trigger to health and people feel that they
12 can go out and interact with their neighbors. They socialize
13 and engage in outdoor activities. I'm fairly sure most of
14 our neighbors at Colonial Village meets some if not all of
15 this criteria.

16 There was a small restaurant near Panorama
17 Plaza which is so busy that customers feel fortunate just to
18 find a parking place even though they have about 40 places to
19 park. If you find a parking place and are seated when you go
20 inside and you don't have to wait for a table or booth, you
21 are really feeling lucky. I understand this is a restaurant
22 owner's dream to have this many customers. The hours they
23 are open are from 6:00 a.m. to 2:30 p.m. I've included this
24 as an example that a restaurant or a cafe can be successful
25 with shorter hours than the hours that are being proposed.

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3 At the Tree Town Cafe the parking is limited,

4 which is a concern to us because of the possibility of cars

5 or trucks decided to park on Colonial Village, which was done

6 in the past. In addition, there's already an increase in

7 traffic on Penfield Road making it increasingly more

8 difficult to turn left or right from Colonial Village Road

9 onto Penfield Road, and from Penfield Road onto Colonial

10 Village Road. Then to think about adding traffic from the

11 cafe exiting the parking lot onto Colonial Village then

12 turning onto Penfield Road.

13 People that are going for a walk, riding their

14 bicycles, skiing -- which I have seen on the streets --

15 walking their dogs, and parents taking their children for a

16 walk, may not able to go past the first house on our street

17 when they are coming towards the cafe, since Colonial Village

18 does not have sidewalks and our street is narrower than most

19 streets.

20 Are people going to be restricted from

21 enjoying their outdoor activities because of traffic? Will

22 the traffic from the cafe make it a longer wait than it

23 already is to turn onto Penfield Road? Also, in the past

24 some of the delivery trucks coming to the cafe would be

25 located with leaving their engines running until they were

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3 ready to leave. The noise from these engines could be heard
4 at our house and possibly even further.

5 Yes, we would like to live long, even though
6 we think many of you decided we already have. We would like
7 to live in a quiet neighborhood and interact with our
8 neighbors, be able to engage in outdoor activities as much as
9 we can. Tom and I wanted to live where we are now as long as
10 possible.

11 I believe many of the people that live on
12 Colonial Village Road want their home because the houses and
13 the surroundings are unique. We moved here in a snowstorm
14 44 years ago. When we first moved here DiCrasto's was the
15 first business to open where the cafe is going in, but all I
16 can remember is the pizza; when Bernunzio's opened their
17 deli, I do remember going there a few times; and lastly,
18 Chef's Kitchen.

19 How many more businesses will come and go on
20 our street? We can't tell how many more will try or what the
21 future will bring, but we are protected in the negative in
22 that the people that live on the street now and in the future
23 if this use variance is passed, the new variance is a serious
24 concern because it would be forever and never could be
25 reversed. Thank you.

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3 CHAIRPERSON MIETZ: Thank you.

4 JEFF BARROW: Good evening, Jeff Barrow and I
5 live at One Colonial Village Road, again, immediately
6 adjacent to the property.

7 Well, here we are again. It seems not that
8 long ago that we were before you. We never expected to be
9 here again, quite frankly, after such a clear ruling by the
10 Town a little over a year ago. You've heard the legal
11 arguments, but as a layperson and an immediate neighbor I
12 have to say it just feels like the applicant is trying to
13 make a run around that expiration of the nonconforming
14 variance. We all conclude the applicant knew full what the
15 original intent of the Town was for that property and when it
16 lay vacant for the 12-month period it seemed like the
17 original intent was going to be fulfilled. It's time.

18 This applicant is again trying to cover up the
19 potential harm to the neighborhood, among other things as
20 you've heard was the mention of seating for up to 20 people
21 and yet claiming this is not a restaurant or a fast food
22 place, but in reality it can be for future operators. Of
23 course, there were no takers for over 12 months because as
24 you've heard business owners saw that it was not a viable
25 site without drastically changing things, to the detriment of

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3 the neighborhood. And if this variance is granted that's
4 exactly what will happen.

5 So members of the Board, I would say it's time
6 to now support the original intent for this property. If
7 it's not now then I don't know what is. It's time. Thank
8 you.

9 CHAIRPERSON MIETZ: Thank you.

10 Anyone else on this side of the room? Come
11 ahead.

12 BARBARA COTE: Hi, my name is Barbara Cote, I
13 live at 40 Colonial Village Road and I'm pretty much right
14 across the street from the deli. I have lived there for
15 26 years, raised my kids there, and I am against the variance
16 request. One of the things mentioned on this is
17 reestablishment of the proposed use will not alternate the
18 essential character of the neighborhood, and listening to
19 that is like Groundhog Day, the movie.

20 We were here, that was argued, it didn't
21 happen. Things were -- I got out of bed in the middle of the
22 night and they had installed lighting on their garage, the
23 previous owner, and I could see everything in my room. I
24 couldn't even get it dark by drawing the shades in my room.

25 I just don't believe that by changing things

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3 and letting somebody back in again and changing how things
4 are that you're ever going to see us go away. Because we're
5 going to have Scope Creek and we're going to have constant
6 things that are in conflict.

7 What you do to run a commercial business and a
8 restaurant or a deli or a grocery store or whatever on the
9 corner and what we need as residents to preserve the
10 essential character of our street are in opposition.

11 I'm not against Tree Town Cafe I am against
12 Tree Town Cafe on the end of my street. I don't want light
13 in my bedroom in the middle of the night. I don't want
14 trucks running, I don't want to have to be vigilant and be
15 back here and you certainly do not Groundhog Day from us.
16 Thank you.

17 CHAIRPERSON MIETZ: Thank you. Anyone else on
18 this side of the room? Let's start in the front here please.

19 RYAN BELL: Hi, my name is Ryan Bell, I live
20 at 118 Colonial Village Road with my wife Annalise and our
21 two young children. And the commercial building, or once
22 commercial building at 745 Penfield Road is about 600 feet up
23 the street from our house and it has a driveway opening onto
24 our street. And knowing all this we are in full support of
25 the variance application and I believe a coffee shop at this

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3 site would be a great addition to our neighborhood.

4 I've spoken personally to members of at least
5 13 other households on our street or closely adjacent to the
6 property who feel similarly and along with others they're
7 represented in the signatures in support of this application
8 that have been provided to the Board. I heard sentiments
9 from these neighbors like for example: I was so disappointed
10 when that place closed; or, I would love to have a cafe I can
11 walk to and get coffee.

12 I say this because I want to make very clear
13 that Sherry Kraus and others you've heard similar things from
14 tonight, as much as I respect them as neighbor and some of
15 them as friends, do not speak for me or for many neighbors.
16 And I ask the Board to look specifically at the letters of
17 support and signatures from residents of Colonial Village
18 Road that have been submitted.

19 For those neighbors who are less enthusiastic,
20 I know impact on property values is one concern we've heard,
21 among many hypothetical ones, and I have to respectfully
22 disagree with that concern. Our own story as well as
23 national data suggests to me that the effect is likely the
24 opposite.

25 My wife and I purchased our home on Colonial

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3 Village in large part because of the presence of Bernunzio's,
4 not in spite of it. We strongly feel that losing the ability
5 to have a unique walkable cafe or deli on this site itself
6 would be an adverse impact to the character of our beloved
7 street. The 2017 Community Preference survey conducted by
8 the National Association of Realtors indicates we are not
9 unusual. They found that multiple generations of home buyers
10 prefer homes in neighborhoods with easy walks to shops and
11 restaurants.

12 I'm also confident that other short and
13 long-term negative impacts on our neighborhood can be
14 minimized. I won't speak too much about the conditions and
15 limitations that were proposed because those have been
16 discussed already, but I want to say that including this list
17 was a risk and I appreciate the offers in doing so because it
18 offers a starting point for compromise.

19 I would like to enter, if I may, into the
20 record an annotated version of this list that highlights a
21 few points at minimum for further review or adjustment. But
22 overall as has been said most of it I think is common sense.
23 I hope and I think that everyone's desire here is to find a
24 way that this site can once again be an asset to our
25 community. A place that brings neighbors together for a cup

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3 of coffee, a sandwich or an ice cream cone on a summer
4 evening.

5 So as a homeowner on Colonial Village Road and
6 wanting to stay for a long time to come, God willing, I urge
7 the Board to approve this application with common sense
8 restrictions as needed. Thank you.

9 CHAIRPERSON MIETZ: Thank you. Anyone else?

10 SETH STANO: I'm Seth Stano over on Rondale
11 Road, I'm here in support. I think what has to be emphasized
12 is the vast majority of the community for this. I heard one
13 speaker say they were against it. I guess the petitions, the
14 letters, it all indicates everyone is for this. Every family
15 and young family I've talked to, they want the deli there to
16 be able to walk and get coffee and orange juice or tea. My
17 daughter wants to walk there and get tea. We lived there
18 before Bernunzio's and we loved walking there to get food and
19 ice cream. It's just common sense. It's 95 percent for,
20 5 percent against. Let's go.

21 CHAIRPERSON MIETZ: Thank you. Sir.

22 JIM SPEEDY: Hi, my name is Jim Speedy, I'm
23 the broker that marketed the property. I live at
24 340 Panorama Trail, prior to that I lived at 43 Stoneham
25 Drive. I lived in the neighborhood, I shopped at

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3 Bernunzio's, my son worked at Bernunzio's. I just want to

4 point out, like the last fellow said, everybody loved the

5 walkability of the neighborhood. The only shop in a one-mile

6 radius is Bernunzio's Deli and it did offer walkability, the

7 score would obviously go up. Without the deli, the

8 walkability, the score of the neighborhood would plummet, I

9 believe because there's nothing else to walk to.

10

11 So it adds value as a real estate agent, and

12 it adds a huge amount of value. The same reason Park Avenue,

13 Neighborhood of the Arts, 12 Corners is booming is

14 walkability score. You take away Bernunzio's there's nothing

15 to walk to in our neighborhood. You walk to Tops? That

16 would be it, but that is too prohibitive with the hill and

all.

17

18 I'd like to address the lot value. We're

19 lucky enough to just have a lot sell on Penfield Road less

20 than a few months ago. A lot sold next to the pink historic

21 house to the left of it. I don't have the address, I did

22 provide a few. It sold for \$40,000. The reason it sold for

23 that is the cost for building a home is so exorbitant these

24 days. And it's still marketed by a homebuilder to speculate

25 a home purchased there -- build a home there, so nobody has

bought the lot yet.

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3 The third reason I want to bring up is the
4 deli itself. When Chef's took over they did extensive
5 renovations. I marketed the store and showed it numerous
6 times. When Chef's left the store he gutted the store, it
7 was basically a 2000-square-foot space. If he left it the
8 way Bernunzio's had it, it would have been an easier market.
9 I would have rented it in a month's time, but since Chef's
10 took all of their equipment, left an empty store, it was cost
11 prohibitive for a lot of the people to go in there and buy
12 cases and freezers.

13

14 If these people want to do that, that's great.
15 They're going to have a major investment in the place,
16 obviously. And with four people working the store it seems
17 cost effective if those four people wanting to work the
18 store, I think the neighborhood could support it. I think
19 Bernunzio's was profitable, everyone, I think, was
20 profitable, I just think it needs someone to manage it.
21 Thank you.

22

23 CHAIRPERSON MIETZ: Thank you. Yes.

24

25 TRINA CLICKNER: Hello, my name is Trina
Clickner, I am at 217 Cloverland Drive. The reason I'm here
tonight is because Pete and Jen are my neighbors. When they
told me what they had planned I was real excited about it.

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3 Whether they're doing it for money or for love or for
4 education or to bring something back to the neighborhood and
5 seem to me that's their business.

6 And it would be nice to see the neighbors in
7 support of building something new that these young kids are
8 going to do. I heard a lot of talk about bad things that
9 happened in the past. I felt scolded and I'm sure a lot of
10 people felt scolded for things that have happened in the
11 past. But I believe that something really great could happen
12 there and I think it will be great if we are in support of
13 it, so thank you.

14 CHAIRPERSON MIETZ: Thank you. Anyone else?

15 LARRY THOMAS: My name is Larry Thomas, I live
16 at 763 Penfield Road directly across from Bernunzio's Deli,
17 been there 28, 29 years. And when the deli went away we
18 missed it. My twin boys, 25 years old, the two of them
19 worked there. It was just such a great place at the end of
20 the street to go to, to walk to and just to have people hang
21 out at. For that to be gone and empty for the last year and
22 a half, it's been vacant, something's been missing. I just
23 want to put my name in that I am for that to be back in
24 session, basically. Thank you.

25 CHAIRPERSON MIETZ: Thank you. Sir.

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3 NATE MAGNUSEN: My name is Nate, I live at
4 190 Alaimo Drive and I'm just saying basically the same thing
5 that all of these folks have. We have lived there for about
6 7 years. Bernunzio's was a huge reason why we fell in love
7 with the neighborhood. I have two small kids and a
8 900-square-foot house. We should have moved a long time ago
9 but the prospect of having a place like that again, a place
10 that we can walk to for breakfast on Saturdays, ice cream
11 over the summer, that's the kind of thing that really would
12 make us want to stay and plant some roots there. So what
13 they said, I'm all for it and thank you.

14

CHAIRPERSON MIETZ: Anyone else?

15

16 ANNALISE DEZOETE: Hi, my name is Annalise
17 Dezoete, I am the wife of Ryan Bell who you have heard from
18 earlier. I live at 118 Colonial Village Road. I echo a lot
19 of sentiments that you have heard. I have a couple of things
20 that I wanted to say, one is that I feel that there -- and
21 I've talked to a lot of people -- that there is more support
22 for this cafe going in than there is against. A lot of
23 people could not come tonight because they have young
24 children. My husband and I have a three-year old and an
25 eight-month old and we had to hire a babysitter to come here.
That is how strongly we feel about this cafe because we love

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it.

4 One of the reasons I love it, is I am a
5 stay-at-home mom of two young children. I am not at all
6 worried about negative impacts on the neighborhood, I have
7 two young children, of this cafe going in. I would love to
8 be able to send my kids up to the top of the street to get
9 meats and eggs, or if they want to go get an ice cream cone
10 and I don't have to drive them somewhere.

11 Another thing I would like to say, the
12 neighborhood has done a lot of great things together in
13 working together to not have a 4-lane road go in. I love
14 that they did that, that's great. That's preserving the
15 character of the neighborhood. They worked hard as they said
16 to not have the Glen developed. I love that, that they
17 didn't have the Glen developed.

18 But I think that having this cafe there is
19 another thing that it's not -- we're not fighting something
20 that that's going to destroy the neighborhood, we're helping
21 to have an asset to the neighborhood. My husband said one of
22 the reasons we moved to this street, absolutely. We wanted
23 to originally live, we were looking somewhere much closer
24 downtown. We wanted something walkable when we moved here
25 from downtown Denver. There's nothing walkable but

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3 Bernunzio's, and before we put an offer on the house we ate
4 there.

5 So we are very excited about this. I'm not
6 worried about the safety implications, as I said I have two
7 small children and I know that there are many, many more
8 people, even the bus driver. My husband takes the bus
9 everyday to work. The lady asked my husband, do you know
10 what's going on there? He said, I think they're trying to
11 start a coffee shop. She said, I would love that.

12 So this is something, it's many more people
13 are in favor of this than are opposed. As you will see a lot
14 of letters were sent in, a lot of names on, and we would just
15 absolutely love this. And also, I wanted to say I respect
16 all of my neighbors who are up here with different opinions,
17 and it's a great neighborhood and I hope it continues to be
18 so.

19 CHAIRPERSON MIETZ: Okay. Anybody else? At
20 this point the Public Hearing is closed. Thank you for your
21 participation. We will move on to the next application.

22 APPLICATION 3A-01-19

23 3A-01-19 Application of Robert Jacobson,
24 agent, and Courtney Perinton, LLC, owner of property located
25 at 1221 East Henrietta Road, for a Sign Variance from Section

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3 207-26D to allow a logo to be 41% of the sign area in lieu of

4 the maximum 25% allowed by code. All as described on

5 application and plans on file.

6 ROBERT JACOBSON: I'm Bob Jacobson, I live at

7 22 La Tour Manor in Fairport. In December we bought the

8 piece of property at 1221 East Henrietta Road. We started a

9 business there on January 1st, called Lite Coms. We make

10 satellite equipment for the military. I'm an engineer by

11 degree, but we had a marketing company make our logo for us

12 and we love how the logo turned out. We're going to put just

13 a regular sign up on the building with our name in block

14 letters. But we kind of laid it out with our logo and

15 thought it looked a lot nicer if the logo was 41 percent of

16 the sign not 25. But we just feel it's more pleasing to the

17 eye and it looks good in the neighborhood. We've provided

18 pictures of it and I'm happy to answer any questions.

19 MS. SCHWARTZ: Does it light in any way?

20 ROBERT JACOBSON: It does have an up light on

21 it from the previous tenant, it's not a lit up sign.

22 CHAIRPERSON MIETZ: Your hours, there's no

23 evening operation there?

24 ROBERT JACOBSON: No, just daytime.

25 CHAIRPERSON MIETZ: Any other questions?

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3 Thank you.

4

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 3A-02-19

9

10 3A-02-19 Application of Holly Garnish,
11 property manager, and The Park at Allens Creek, LLC, owner of
12 property located at 100 - 160 Allens Creek Road, for a
13 Temporary and Revocable Use Permit pursuant to Section 219-4
14 to allow a food truck on site up to three (3) times per
15 summer, for the years 2019 and 2020 where not allowed by
16 code. All as described on application and plans on file.

17

18 HOLLY GARNISH: Yes, I am Holly Garnish, I'm
19 the commercial property manager for the park at Allens Creek
20 Office Park at 100-160 Allens Creek Road. And I'm here to
21 renew our temporary use permit that we had the last 2 years,
22 Where we were allowed to invite a food truck on the property
23 to park on our private lot in the back towards the expressway
24 side of the property. So it was not open to the public or
25 seen by the public, but only for the benefit of my tenants a
couple times per summer, and I would like to request up to
three times, like once each summer month.

26

27 And they really enjoy it. I get constant

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3 feedback about that. And a big part of my job is for tenant
4 relations and leasing, and to keep them happy and leasing in
5 the Town of Brighton. I like to provide the sense of
6 community and events like this get people outside, enjoy the
7 green space, network, and they really enjoy it. So I am
8 hoping we can do it again.

9 MS. SCHWARTZ: Rick, were there any questions
10 or complaints or anything?

11 MR. DISTEFANO: I did not receive any
12 complaints.

13 MS. SCHWARTZ: And it won't change in any way,
14 the processes?

15 HOLLY GARNISH: No, it will be exactly the
16 same.

17 MS. TOMPKINS WRIGHT: Same items, and it will
18 be the same food truck as well?

19 HOLLY GARNISH: Actually, we'd like to do a
20 different choice, you know, but it's only -- it's spread out
21 and they're only there for a couple of hours. So they like
22 to vote on which ones they want.

23 CHAIRPERSON MIETZ: Sure, that's fine. Do you
24 have a sense of the volume of how much it was used?

25 HOLLY GARNISH: How much? It was about 125 of

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3 my tenants at least. We do count for the average --

4 CHAIRPERSON MIETZ: For a couple hours?

5 HOLLY GARNISH: Yes.

6 CHAIRPERSON MIETZ: That's good, great. Any
7 other questions? Thank you.

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

11 APPLICATION 3A-03-19

12 3A-03-19 Application of Mamason's Monroe LLC,
13 owner of property located at 2735 Monroe Avenue, requesting
14 extension of approved variances 9A-03-17, 9A-04-17, 9A-05-17
15 and 9A-06-17 (all approved on February 7, 2019) pursuant to
16 Section 219-6F all for the purpose of constructing a new
17 restaurant building with a drive-thru pick-up window. All as
18 described on application and plans on file.

19 GREG MCMAHON: Good evening, I'm Greg McMahon
20 with McMahon LaRue Engineers and Surveyors who are
21 representing Mamason's Monroe, LLC, who are the owners of the
22 property. Approximately a year ago you granted several
23 variances for a new Mamason's restaurant at the site which
24 was a former Pizza Hut and an Italian restaurant. Due to
25 several issues revolving around the Whole Foods project, the

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3 project construction of the new restaurant has been somewhat
4 delayed. We are now final plans for the new building are
5 nearing completion. However, the variances which were good
6 for a year expired and we want to get those extended and hope
7 to start construction in the very near future.

8 CHAIRPERSON MIETZ: A couple questions I have.
9 We don't have to get into the nuts and bolts of what is going
10 on across the street, however, depending on what goes on
11 across the street, you're here for extending the variances.
12 Is there a desire to begin building this project this year,
13 this spring, this summer?

14 GREG MCMAHON: Yes.

15 CHAIRPERSON MIETZ: So really it no longer has
16 anything to do Whole Foods?

17 GREG MCMAHON: No, that is correct.

18 CHAIRPERSON MIETZ: Okay. I think, you know,
19 again, I think that's an important separation. Can't dictate
20 over businesses what to do, but again if we're going to
21 extend this we need to see some kind of a plan. So you would
22 be getting to the Planning Board or do whatever else you
23 needed to do?

24 GREG MCMAHON: Yes. Planning Board approval's
25 been granted. The only thing holding up the signing of the

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3 plans is the granting of the extension to these variances.

4 So if these variances are extended, we expect to submit the
5 originals to the Town to start the signature process.

6 CHAIRPERSON MIETZ: Well, without some unusual
7 delay then we would see construction on that site, the
8 demolition, everything?

9 GREG MCMAHON: By late spring, early summer is
10 applicant's intent.

11 CHAIRPERSON MIETZ: Okay.

12 MS. SCHWARTZ: Isn't this a little unusual?
13 Don't we usually say you have to commit before the year's up
14 to --

15 MR. DiSTEFANO: They were. The application
16 was in to us before the year was up. I received their
17 application prior to the year being up, for the extension of
18 the variances. They physically didn't come to the Board
19 within the year but they had the application to me. So in my
20 opinion that was a fair attempt of getting that application
21 and process going forward.

22 CHAIRPERSON MIETZ: Okay. So any other
23 questions? Everyone clear on this was an approved project
24 that obviously has been held up and intends to move forward.
25 They're not requesting any changes, the conditions are the

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3 same. Okay. Thank you.

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

7 APPLICATION 3A-04-19

8 3A-04-19 Application of Shawn Carey, owner of
9 property located at 1550 Elmwood Avenue, for an Area Variance
10 from Section 205-2 to allow for the reconstruction of a
11 single family house with a 10.5 ft. front setback where a 40
12 ft. front setback is required by code. All as described on
13 application and plans on file.

14 SHAWN CAREY: My name is Shawn Carey, my
15 address is 1550 Elmwood Avenue, that's my wife Valerie, we do
16 have a 16-month old son. So our 950 or so square foot house
17 is a little cramped for us. We would like to make it a
18 little larger. We planned to do that by basically adding a
19 second story and using the existing footprint of the house
20 without changing anything on the street side.

21 In order to do that after talking to our
22 builder it's been determined that demolishing the house would
23 be a better course of action than trying to patch it up,
24 because we would like to change the direction of the house
25 really. A lot of the properties that surround our property

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3 were built afterwards so our living room window for example
4 looks out over our neighbor's backyard. The whole house is
5 just kind of backwards.

6 So rather than trying to change all of the
7 openings for the doors and windows we are going with the
8 course of demolishing the house, building it up with a second
9 story. We would like to keep it on the current foundation
10 and that's why we are here for a variance because the current
11 location of the house, it's a pre-existing nonconforming use
12 situation. With the factoring in the demolition to the
13 property that changes our pre-existing status so we would
14 like a variance to basically build the house where it stands
15 right now.

16 CHAIRPERSON MIETZ: Okay.

17 MS. DALE: We have a letter submitted to us
18 from a supporting neighbor that said so long as the footprint
19 in the foundation was the same, that that was fine. Are
20 there other neighbors expressing concerns?

21 SHAWN CAREY: We spoke with the neighbors at
22 1524 and they did not send a letter but they did support what
23 we're doing, pretty much unilaterally. They said, happy that
24 you're doing something. The house has been neglected for a
25 while because we've known that it's not really going to

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3 support our lifestyle as we need it to. So we've known

4 something needs to happen. If we can't make the house

5 bigger, really our only option is to find another place to

6 live. So this is really our best shot at staying at this

7 address.

8 MS. SCHWARTZ: I think I read that you said

9 all of your trees are going to be able to remain?

10 JERRY GOLDMAN: Yes.

11 MS. SCHWARTZ: Even those evergreens that are

12 really --

13 VALERIE CAREY: Our builder has assured us

14 he's going to keep the trees in place. So we don't plan

15 to --

16 CHAIRPERSON MIETZ: Can you just for the

17 record tell us your name and address?

18 VALERIE CAREY: Oh, I'm Valerie Carey,

19 1550 Elmwood Avenue, Shawn's wife.

20 CHAIRPERSON MIETZ: Thank you.

21 VALERIE CAREY: Our builder has assured us

22 that no trees will be taken down. No trees will be removed.

23 MS. TOMPKINS WRIGHT: Just to clarify, part of

24 the reason for reusing the current foundation and not it

25 moving farther away is for that purpose so all of the trees

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3 remain on the property.

4 VALERIE CAREY: Yes. It would be impractical
5 and existing driveway would have to be removed and a whole
6 new driveway put in to go to the house in a new location. It
7 would be a lot to the lot. We feel like this is the least
8 change to the neighborhood because everything stays the same
9 essentially.

10 MS. SCHWARTZ: The garage is relatively new so
11 is that new house going to matching the garage?

12 SHAWN CAREY: As close as we can. So the
13 house isn't much bigger than an out building. So the garage
14 was done, I did the siding myself, it's natural cedar. And I
15 did the shed in a similar finish. But we can't afford to do
16 that with the house, but we will keep the colors. We're not
17 using vinyl so it will be Hardy board siding with colors that
18 are consistent with the dark browns and Earth tones.

19 CHAIRPERSON MIETZ: Okay. Is it your
20 intention once you finalize with all the relative work, it's
21 all affirmative to begin the project this year?

22 VALERIE CAREY: Yes, absolutely. We want to
23 get it done.

24 SHAWN CAREY: We are hoping April or May.

25 CHAIRPERSON MIETZ: What else have you done?

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3 You have come before this Board so far --

4 VALERIE CAREY: Architectural Review Board,
5 for Historical Committee and we've done an initial Planning
6 Board meeting. We have one more after this, the Planning
7 Board again. We are working with Greg McMahon to finish the
8 site plan.

9 CHAIRPERSON MIETZ: Do we have other
10 questions? Thank you.

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

14 APPLICATION 3A-05-19

15 3A-05-19 Application of Charles and Brenda
16 Lyons, owners of property located at 43 Delaware Road (Tax
17 ID#s 147.16-1-52 & 147.16-1-53) for an Area Variance from
18 Section 205-2 to allow a house side setback of 3.6 ft, after
19 resubdivision of two lots into one, in lieu of the minimum 15
20 ft. required by code. All as described on application and
21 plans on file.

22 CHARLES LYONS: My name is Charles Lyons, I
23 live at 43 Delaware Avenue and my wife and I have a septic
24 system and the septic system is shot. We have to take our
25 showers at the gym.

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3 In order to replace it I was told because of
4 the code we have to have a larger area than we currently
5 have. So as has been suggested the contractor has proposed
6 that he runs it into the second lot we own. In order to do
7 that we have to legally combine the two lots and that's what
8 our petition is for.

9 We have a need, it will make no change to the
10 neighborhood whatsoever. The problem is the setback of the
11 house is three and a half feet from the east lot line and
12 it's required to be I think 15 and a half. It's been that
13 way since 1890, and it's not the only one in the neighborhood
14 like that. It will make no physical change to the
15 neighborhood. That's it.

16 CHAIRPERSON MIETZ: So your intention is to
17 repair the system, it needs to be done, but the lot is going
18 to remain, in essence, the way we see it today.

19 CHARLES LYONS: The changes will be
20 underground.

21 MR. DiSTEFANO: Just for the record that that
22 is requirement by Monroe County Health, correct?

23 CHARLES LYONS: Yes. That I combine the two
24 lots is a County requirement.

25 CHAIRPERSON MIETZ: Just make to make the

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3 septic system up to code?

4

CHARLES LYONS: Yes.

5

CHAIRPERSON MIETZ: Any questions? Thank you.

6

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

9

APPLICATION 3A-06-19

10

11 3A-06-19 Application of Jahdish Kaur, owner of
12 property located at 30 Jefferson Road, for a Temporary and
13 Revocable Use Permit pursuant to Section 219-4 to allow for
14 the placement of a large storage container on site for a two
15 year period where not allowed by code. All as described on
application and plans on file.

16

17 AMAN SINGH: My name is Aman Singh and I live
18 at 55 Essez Drive and I'm here on behalf of my mom and dad
19 who own the property at 30 Jefferson Road. So we are
20 basically just requesting a temporary use permit to have a
storage container on our property at 30 Jefferson Road.

21

22 CHAIRPERSON MIETZ: Can you give us some
23 background on what the purpose of it is, what the purpose of
24 your interests are? You're fairly new owners of this
property I gather?

25

AMAN SINGH: My dad owns the property, but he

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3 purchased it a while back, for five years. The reason we use
4 a container is we own a few restaurants in town, Thali of
5 India and Naan-Tastic. When we purchased a lot of paper
6 products like custom logo printed cups, bags, whatever it
7 might be, the minimum quantity on those are about 50,000 for
8 each unit, whether you want a small cup or a large cup. So
9 we have a lot of paper good product inventory that we use the
10 container to store for it.

11 CHAIRPERSON MIETZ: Okay. Now, 30 Jefferson
12 Road, we all know it has been sitting like it is for a long,
13 long time. Is there any plans to develop 30 Jefferson Road?

14 AMAN SINGH: It's for sale and the reason we
15 don't have stuff in there is we have to show the property to
16 people and they can see what it looks like, not a stack full
17 of boxes.

18 CHAIRPERSON MIETZ: So you intention is to
19 sell the property?

20 AMAN SINGH: Correct.

21 MS. SCHWARTZ: Is it up for sale now?

22 AMAN SINGH: Yes. It has a for sale and for
23 lease sign.

24 MS. SCHWARTZ: How long have you been trying
25 to sell it?

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3 AMAN SINGH: The past four or five years.

4 MS. SCHWARTZ: Are you going to do anything to
5 the property while this container is there? Because it's in
6 kind of rough condition.

7 AMAN SINGH: It's basically a box on the
8 inside. We're trying to get different tenants to either
9 lease it out or sell the property. And we don't know what
10 use they'll need it for, so it's good to just leave it as is
11 until someone might want to --

12 CHAIRPERSON MIETZ: I think what she's talking
13 about is the exterior of the property, the condition of the
14 lot, the way it appears from the outside not the building
15 itself.

16 MS. SCHWARTZ: Which might have some help in
17 leasing.

18 AMAN SINGH: There's no plans for that right
19 now. Like I said, we're trying to lease it or sell it as is.

20 MS. SCHWARTZ: So do you propose this
21 container to be smack dab in front of the building or where
22 is it?

23 AMAN SINGH: It's not, it's further back on
24 the side of the property.

25 MR. DiSTEFANO: It's there now.

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3 MS. SCHWARTZ: Okay.

4 CHAIRPERSON MIETZ: Okay.

5 MR. CLAPP: Is the building currently used to
6 store those materials and so you need to get them out of the
7 building? Is that why you're --

8 AMAN SINGH: Yeah, initially we put it in it
9 but then a lot of it is paper products so I didn't want
10 moisture or anything, or even like any type of animals
11 getting in and ruining the product. We have some equipment
12 in the building, but again did not want paper products in
13 there. So that's why it's there.

14 The other thing is, like I said, we're showing
15 the property so if it's full of, you know, 50,000 cups and
16 bags and stuff you can't really see anything.

17 CHAIRPERSON MIETZ: Okay.

18 MR. DOLLINGER: Are there other spaces that
19 you can -- where this use is permitted for storage where you
20 could put this stuff?

21 AMAN SINGH: Not that I know of. The only
22 thing I could think of is, like, actually renting a warehouse
23 or something. But we own the property, we pay taxes, so we
24 assumed it was fine to store stuff there until it sells.

25 CHAIRPERSON MIETZ: You understand the code is

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3 you obviously came up in discussions, you understand and you
4 made the application. Just wanted to make sure you're clear
5 on why.

6

7 AMAN SINGH: Yeah. That's why we initially
8 did it, we didn't know that was an issue. And then that's
9 why we're requesting for a special use permit, if we could
get that.

10

11 CHAIRPERSON MIETZ: Okay. So would you
12 suggest that it's two years or whenever the property is
leased or sold?

13

AMAN SINGH: Correct.

14

15 CHAIRPERSON MIETZ: Okay. Any other
questions?

16

17 MS. SCHWARTZ: You have no other location with
all your other businesses to store it?

18

19 AMAN SINGH: No, this is the only place that
we use for storage.

20

21 CHAIRPERSON MIETZ: Questions, anybody else?
Thank you.

22

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

25

APPLICATION 3A-07-19

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3 3A-07-19 Application of Woodstone Custom
4 Homes, owner of property located at 97 Willard Avenue (lot 1
5 of the pinnacle Hills Subdivision) requesting an
6 interpretation/determination pursuant to Section 219-2 that a
7 defined front yard should be considered a side yard. All as
8 described on application and plans on file.

9 JEFF SMITH: Good evening, my name is Jeff
10 Smith with Woodstone Custom Homes, 15 Fishers Road,
11 Pittsford, New York, that's our address. I am here
12 discussing Lot 1 of Pinnacle Hill subdivision where we are
13 building new homes on an eight-lot subdivision. And we have
14 clients both employed at the University of Rochester that
15 want to build a new home on Lot 1. And when they suggested
16 that the rear of their house be oriented to the south of the
17 lot it made sense, it's park area that we actually dedicated
18 to the Town as part of the subdivision process. And they
19 wanted to build about a 3,700-square foot, two-story similar
20 to some homes built elsewhere.

21 And I quickly realized right away that it was
22 not how the engineer had drawn the house pad on the lot. So
23 playing around a little bit I realized there would be plenty
24 of room on the lot to shift the house pad around and at that
25 time there were no setbacks delineated on the

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3 subdivision plans which I think was our oversight. So I
4 asked the engineer what our building parameters were and they
5 told me one thing and they verified it with the Town and the
6 Town did not agree with their interpretation.

7 So that's why I'm here tonight. We are
8 feeling that the lot as you see on the paperwork we submitted
9 is somewhat L-shaped, it turns around the end of a dead end
10 street that we extended Willard Avenue. And we're thinking
11 that the frontage follows the right of way of the street, in
12 which case it would go back 30 feet off the end of the road
13 but no further.

14 The Town staff has made an initial
15 determination that the frontage would go beyond the street
16 across the entire 127-foot sideline. In our interpretation
17 we wonder why, it doesn't seem to fit within the designations
18 we look at the code. And quite honestly, it was probably an
19 oversight on the Planning Board subdivision process where we
20 should have had the setbacks discussed at the Planning Board
21 level, but we did not.

22 At this point we would like to request the
23 Board review it and whether our interpretation is correct or
24 not, and that is why we are on the agenda this evening.
25 We're also simultaneously submitting to the Planning Board

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3 for later this month we will be on their agenda to --
4 regardless of the setbacks we wanted to -- because our
5 clients want to building their home this summer, we're trying
6 to also kind of fast track the reorientation of the building
7 box so that we're presenting to the Planning Board, much the
8 same way we have done with you, but it shows that where the
9 box used to be here, where the rear orientation to Howland
10 Avenue we're trying to rotate the box to the south where the
11 rear orientation to what is now Town park land.

12 And we looked at a couple different designs
13 potentially using an angled plan to try to take advantage of
14 the shape of the lot, which is an L-shape. As you see where
15 Willard stops here we're interpreting the frontage follow
16 that road and would come around here, but not continue here
17 the Town's initial interpretation has been to extend the
18 frontage entirely down this sideline for --

19 CHAIRPERSON MIETZ: The south elevation.

20 JEFF SMITH: Right. So we're hoping to one
21 way or the other we have to address the reorientation of the
22 building box with the Planning Board because it entails the
23 grading plans, et cetera. And we are hoping that during that
24 process whether through an interpretation or through the next
25 meeting agenda item, we would be requesting the variance that

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3 we would like more room there to plan a house of the
4 proportion that was able to be placed on the lot with the
5 building footprint and all we have available over 26 percent
6 building pad we will use a fraction of that.

7 And to the east we have the storm water
8 management facility of the subdivision, so we don't have any
9 neighbors. And to the east of that we have park land some
10 more. That's my interpretation question.

11 CHAIRPERSON MIETZ: Okay.

12 MR. DiSTEFANO: I think maybe we do and we
13 decide on the interpretation now because if we decide in
14 favor of the applicant, we don't hear the variance request.
15 We decide on against the applicant, then we hear the variance
16 request for this proposal.

17 MS. TOMPKINS WRIGHT: So just to clarify, I'm
18 looking at the map showing the proposed building setbacks,
19 what would our interpretation or the current interpretation
20 the Town's taking regarding the frontline is 127-foot line
21 and the 88-foot line and the 40-foot line?

22 MR. DiSTEFANO: Yes. That all actually works
23 out for the front yard. It is a very bizarre lot. I think
24 the most lenient interpretation from the Town's standpoint is
25 that you take the 30 feet from Willard, the front lot line

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3 along Willard, and it says in the code you define that front
4 yard from a line drawn parallel to the street from lot line
5 to lot line.

6

7 So if you draw a line parallel to Willard at
8 30 feet off Willard Avenue, from lot line to lot line you go
9 from the 50-foot west bearing lot line all the way across to
10 the 153-foot westerly lot line. And basically the code says
11 from lot line to lot line. That's how you determine the
12 front yard.

13

14 MS. TOMPKINS WRIGHT: And Rick, there along
15 the westbound line, the 30-foot westbound line and the
16 50-foot westbound line?

17

18 MR. DiSTEFANO: No, I'm sorry, I should say
19 it's the southern lot line.

20

21 MS. TOMPKINS WRIGHT: Right. Let's go
22 straight up and down, the two straight up and down lines, the
23 30 and 50?

24

25 MR. DiSTEFANO: Yes, right across like this.

26

27 MS. TOMPKINS WRIGHT: Right. But I'm asking a
28 separate question now.

29

30 MR. DiSTEFANO: Okay.

31

32 MS. TOMPKINS WRIGHT: The perpendicular ones
33 that are 30 and 50, would they be considered -- would they

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3 require a 30-foot setback based on this lenient
4 interpretation of the code?

5 MR. DiSTEFANO: Based on a strict
6 interpretation of the code they would require a 30-foot
7 setback.

8 MS. TOMPKINS WRIGHT: But based on drawing
9 this line --

10 MR. DiSTEFANO: Basically it's saying here's
11 your front yard.

12 MR. DOLLINGER: Does anybody have any issue
13 with them building this house?

14 MS. TOMPKINS WRIGHT: No.

15 MR. DOLLINGER: Then the question becomes
16 which one of these two applications has less presidential
17 value?

18 MS. TOMPKINS WRIGHT: The variance.

19 MR. DOLLINGER: So I'm thinking that we should
20 table this one for now, go to the variance and if everybody's
21 in favor of them allowing them to put the house there, we
22 grant the variance just for this lot only, and then we don't
23 set the precedent of the setback. Then we can save some
24 time.

25 CHAIRPERSON MIETZ: It really is a pretty

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3 convoluted thing.

4 MR. DOLLINGER: It's a good idea, it's going
5 to make the house a lot nicer.

6 MS. TOMPKINS WRIGHT: And it's unlikely we're
7 going to have a lot shaped like this come up again.

8 CHAIRPERSON MIETZ: Let's not reach out --

9 MR. DiSTEFANO: The street's never going to go
10 through. Willard is never going to continue on.

11 CHAIRPERSON MIETZ: No, it can't. I don't
12 know that we need to table it now.

13 MR. DOLLINGER: I don't know if we even need a
14 presentation on the variance.

15 CHAIRPERSON MIETZ: Unless they're going to
16 add anything different.

17 MR. DiSTEFANO: I think they have to just to
18 put the --

19 MR. DOLLINGER: Just to put the fundamental
20 elements on the record for the variance.

21 APPLICATION 3A-08-19

22 3A-08-19 Application of Woodstone Custom
23 Homes, owner of property located at 97 Willard Avenue (lot 1
24 of the Pinnacle Hills Subdivision) for an Area Variance from
25 Section 205-2 to allow a single family house to be

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3 constructed with a 12 ft. front setback in lieu of the
4 minimum 30 ft. front setback as required by the provisions
5 set forth in the approval of the Pinnacle Hills Subdivision
6 under Town Law 278 - Cluster Development. All as described
7 on application and plans on file.

8 JEFF SMITH: Jeff Smith, Woodstone Custom
9 Homes, 15 Fishers Road, Pittsford, New York. I'm here on the
10 basis that you may not grant the interpretation that we were
11 making. And I would ask the Board that we be allowed to come
12 closer to our eastern boundary which may be considered a
13 30-foot front setback area and have a 12-foot side setback.
14 It's not a large change because it's only a question of going
15 to a conventional sideline setback. To our east is a storm
16 water management facility and to the east of that is park
17 land.

18 The big advantage of this is that we will
19 orient the house to a larger portion of the lot, and will
20 disturb the Howland Avenue residents much less than we would
21 have had we built the pad according to the engineer. Quite
22 honestly, as soon as the owner's questioned it, I looked at
23 it and said, why did they draw the box there? I mean, it was
24 a silly placement. It probably should have -- it's not
25 configured, we probably should have considered it somewhat

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3 like a flag lot and actually set sideline setbacks during the
4 Planning Board process, which is part of the subdivision
5 review, but apparently it just got skipped.

6 We don't feel there will any undesirable
7 change in the character of the neighbor. We don't feel
8 that -- and we feel that we actually will have a positive
9 effect on it. And it's kind of self-created, but it's not.
10 It was not our intention to make this ill-thought out
11 placement of the building box. And I told both the proposed
12 owners that they had a great suggestion and it should be
13 oriented to the south.

14 And it really that lot looks a little bit more
15 like a cul-de-sac lot. So when it goes around to the end of
16 the street you would treat the side line, the cul-de-sac lot
17 as a sideline. And so, that's what we're asking that if the
18 interpretation is such as the frontage we would appreciate
19 the variance. We've done a lot of concept planning on the
20 house, but none of it works well if we can't get a little bit
21 more volume on that portion of the lot.

22 CHAIRPERSON MIETZ: Okay, that's good. Is
23 there any other questions? Is everyone clear on this? Thank
24 you.

25 Is there anyone in the audience that would

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3 like to speak regarding this application?

4 JAMES SWARTS: Good evening, I'm James Swarts,
5 S-w-a-r-t-s, 39 Willard Avenue. And I am here to ask the
6 Board to table this motion for the simple reason that the
7 neighborhood was not aware until we read it in the notice in
8 the paper last week of this meeting. The property in
9 question has a big impact, not just on Willard Avenue and the
10 variance being requested which would be front of the sight
11 line of the three houses that are currently on that side of
12 the street, all of which were built decades ago.

13 But also the properties on Howland Avenue of
14 which have lost their barrier between that property and their
15 property because of the clear cutting of this land. Now, I
16 have nothing against the building itself, I have spoken to
17 the two young doctors from the U of R, they're very, very
18 nice people but the question is moving this house at an angle
19 into that lot at this time, asking for all these variances,
20 like I said it cuts the sight line and disrupts the whole
21 atmosphere of that area moving closer into the town park
22 area, which has already been granted from the approval of the
23 original site design, which is now part of the Town of
24 Brighton.

25 CHAIRPERSON MIETZ: Right.

1 Brighton Zoning Board of Appeals 3/6/19

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3 JAMES SWARTS: So it's intruding more on the
4 Town line again, but again the opportunity of the four houses
5 on Howland that are directly affected, have not had the
6 opportunity to view the proposal and respond to it. And so
7 for that reason to allow, as I started talking to those
8 neighbors the other day none of them are able to come
9 tonight, and they would like the opportunity to know exactly
10 what the proposal is as it affects their property.

11

12 My other neighbors on Willard also are
13 concerned over the setback and how it would effect the sight
14 line on Willard. For that reason --

15

16 CHAIRPERSON MIETZ: Sir, what is your specific
17 concern, that by bringing that building closer than the
18 30-foot setback line that it's going to have a different
19 impact?

20

21 JAMES SWARTS: Yes. Because we're all
22 required at the current setback and this would be moved over
23 into the right of way more, in the sight line.

24

25 MS. TOMPKINS WRIGHT: Have you had a chance to
look at the --

26

27 JAMES SWARTS: No, I haven't. Because of the
28 short notice I did not get a chance to get to Town Hall to
29 see what the blueprint -- the footprint proposal was. Only

1 Brighton Zoning Board of Appeals 3/6/19
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3 what we were able to read and when I called the Town.

4 MS. TOMPKINS WRIGHT: So can you let him take
5 a look?

6 MS. SCHWARTZ: Well, the other neighbors --

7 MR. DiSTEFANO: Well, just for the record
8 neighbors at 216, 172, 188, 192, 200, and 208 Howland were
9 notified by mail. So they had direct notification and the
10 property owned by David Hormer on Willard Avenue was notified
11 also and also 180 Howland Avenue were directly notified of
12 this application.

13 JAMES SWARTS: Okay. So that's a
14 misunderstanding from what the ones who responded to me told
15 me. That's interesting, because David said he didn't know
16 about it.

17 MR. DiSTEFANO: He did get -- unless it got
18 lost in the mail, he did get notified. I wanted to give
19 clarification on that.

20 JAMES SWARTS: I don't know what their
21 notification was, but the ones I've talked to were surprised
22 when I took the copy of the newspaper.

23 CHAIRPERSON MIETZ: Okay, thank you.

24 Is there anyone else that wants to speak
25 regarding this application? There being none, then the

1 Brighton Zoning Board of Appeals 3/6/19
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3 Public Hearing is closed.

4 APPLICATION 3A-10-19

5 3A-10-19 Application of Evan Graziano,
6 architect, and Excelsior Communities, owner of property
7 located at 249 Crittenden Way, for an Area Variance from
8 Section 205-5 to allow a building addition to extend 1.75 ft.
9 into the 30 ft. side setback required by code. All as
10 described on application and plans on file.

11 EVAN GRAZIANO: Good evening, my name is Evan
12 Graziano, I'm a designer at CJS Architects here on behalf of
13 my client, Excelsior Communities who recently purchased the
14 property known as Crittenden Way Apartments and now named
15 Brighton Village, on which the building we're asking a
16 variance for, 249 Crittenden Way is located.

17 The new owner wants to rejuvenate the property
18 starting with the leasing office, in the existing leasing
19 office. And that will be completely renovated on the
20 interior as well as we want to build an addition, vestibule
21 addition on the exterior. We've talked about whether this is
22 considered a side yard or a front yard setback. I believe
23 it's a side yard, and we are asking for a variance that
24 extends 1.75 feet into the 30-foot setback, 5.8 percent, so
25 we can make this addition of the vestibule.

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3 We believe it's an improvement to the
4 neighborhood and definitely improvement to the building. The
5 size of the vestibule has been minimized to make it ADA
6 accessible. So it is the minimum size that it needs to be.
7 That's it.

8

9 MS. DALE: Is the building ADA accessible

10

11 EVAN GRAZIANO: No, it is. It has a step up,
12 so part of this will be a small ramp so that the building
13 will be accessible.

14

15 MS. DALE: This has an improvement of
16 becoming --

17

18 EVAN GRAZIANO: Becoming accessible, yes. The
19 vestibule is for energy efficiency, creating an air lock, you
20 know, between the new lounge, office space inside.

21

22 CHAIRPERSON MIETZ: I understand the property
23 was recently purchased. Is there intentions to do other
24 improvements on the property? I think it's obvious what this
25 is doing, but is there other things in promising them, but
just what else might be encountered as far as other types of
activities?

26

27 EVAN GRAZIANO: Over the next several years
28 there's plans to do improvements on the rest of the

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3 buildings, apartments, landscaping, and rejuvenate the whole
4 apartment complex. The first priority is the leasing office.

5 CHAIRPERSON MIETZ: There would be some
6 landscaping improvements too?

7 EVAN GRAZIANO: Yes. So where the vestibule
8 bumps out there's kind of a strip of landscaping at the front
9 of the building as well to help spruce things up.

10 CHAIRPERSON MIETZ: Is there anything
11 physically being done to the building other than the
12 vestibule?

13 EVAN GRAZIANO: There are a couple window
14 additions on the exterior and the interior will be altered,
15 and relaid and layed out differently on the interior. Gone
16 to the Architectural Review Board and they have granted us
17 approval pending the variance.

18 CHAIRPERSON MIETZ: For these improvements and
19 whatever else you're doing to the outside of the building?

20 EVAN GRAZIANO: Yes.

21 MR. CLAPP: Make sure they understand clearly
22 the renovations to the interior are really what is driving
23 the need for the vestibule to be ADA compliant.

24 EVAN GRAZIANO: Correct.

25 MR. CLAPP: If you weren't doing any

1 Brighton Zoning Board of Appeals 3/6/19
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3 renovations inside you wouldn't need to do the vestibule,
4 essentially.

5 EVAN GRAZIANO: Yeah, for the way they want to
6 operate the space requirements on the inside they use the
7 entire space. It's a small buildings, it's 1,200-square
8 feet. So having a vestibule it's going to be an exterior
9 vestibule because of space.

10 MR. CLAPP: Thank you.

11 CHAIRPERSON MIETZ: Any other questions thank
12 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 3A-11-19

17 3A-11-19 11 Application of Anthony D'Angelo,
18 owner of property located at 479 French Road, for Area
19 Variances from Section 205-2 to 1) allow an attached garage
20 to be 1,250 +/- sf in size, after construction of a 367.5 sf
21 addition, in lieu of the maximum 900 sf allowed by code, and
22 2) allow said garage addition to extend 9.65 ft. into the
23 15 ft. side setback required by code. All as described on
24 application and plans on file.

25 FRANK D'ANGELO: Good evening, my name is

1 Brighton Zoning Board of Appeals 3/6/19
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3 Frank D'Angelo, owner of Custom Homes 1615 Scottsville Road
4 in Rochester. Anthony D'Angelo is also my son, he couldn't
5 be here tonight, a young kid that's a newborn.

6 I currently built the home when we first did
7 it in 2012, I believe. Basically all he's looking for is
8 some extra garage space for some extra storage. Isn't really
9 going to affect the character of the house. I believe you
10 also have a letter from the neighbor next door, which doesn't
11 mind the minimum setback.

12 Like I said, it's just going to be built to
13 the left side, one garage bay, front to back. What brought
14 it all on is he went to one of these dome shows where they --
15 you know, they now have these small campers that fit inside
16 garages. He's looking for maybe something like that or
17 another summer car. He doesn't like to leave stuff outside,
18 doesn't want to rent some place to bring a trailer back and
19 forth, it's not feasible when you're working all of the time.

20 MS. SCHWARTZ: You can go to the back of the
21 property, but is it possible to take the one-car garage and
22 step back a little bit and do a tandem so that you're not
23 doing the front and go out the back?

24 FRANK D'ANGELO: No, because there's more
25 house behind that garage.

1 Brighton Zoning Board of Appeals 3/6/19
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3 MS. SCHWARTZ: Okay. I didn't go out back, it
4 was a snowy day.

5 FRANK D'ANGELO: No, you can't. And like I
6 said, you know --

7 CHAIRPERSON MIETZ: So you looked at other
8 alternatives.

9 FRANK D'ANGELO: I looked at all the options.
10 It's a simple, easy, like I said even the neighbor right next
11 door, they're fairly new homeowners, young couple that moved
12 in, they plan on staying a while, they get along well. I
13 believe you have a letter from the couple.

14 MS. SCHWARTZ: So is it going to look like two
15 double car garages or will the third and the fourth be --

16 FRANK D'ANGELO: It's going to be -- we don't
17 want to impact the look of the house. So basically all we're
18 going to do is step it back a foot or two from the third, so
19 it looks stepped and it fits in with the home. Same front,
20 same stone, same doors, same siding.

21 MS. TOMPKINS WRIGHT: Any other homes in the
22 neighborhood that, you know, have garages at this size?

23 FRANK D'ANGELO: As you go down towards
24 Clover, there's a number of houses that have garages that are
25 attached, they have detached, three-car, four-car, there's

1 Brighton Zoning Board of Appeals 3/6/19
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3 some houses there with a lot of garage space.

4 CHAIRPERSON MIETZ: Clearly there's no work
5 intention related to the space?

6 FRANK D'ANGELO: No, no. My son's a
7 pharmacist. He just likes to keep everything neat and clean.
8 His property is immaculate.

9 MS. SCHWARTZ: So there would be no
10 electricity in it?

11 FRANK D'ANGELO: No, it's basically storage.

12 MS. SCHWARTZ: Okay.

13 CHAIRPERSON MIETZ: Okay. Any other
14 questions? Thank you.

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

18 Let's take a five-minute break.

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3 REPORTER CERTIFICATE
45 I, Rhoda Collins, do hereby certify that I did
6 report in stenotype machine shorthand the proceedings held in
7 the above-entitled matter;8 Further, that the foregoing transcript is a true and
9 accurate transcription of my said stenographic notes taken at
10 the time and place hereinbefore set forth.11
12 Dated this 26th day of March, 2019.13 At Rochester, New York
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1516 
17 Rhoda Collins
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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON MARCH 6TH, 2019
5 AT APPROXIMATELY 10:00 P.M.

6 March 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 KATHLEEN SCHMITT
14 JEANNE DALE
15 JUDY SCHWARTZ
16 ANDREA TOMPKINS WRIGHT

17 NOT PRESENT:

18 JENNIFER WATSON

19 DAVID DOLLINGER, ESQ.
20 Town Attorney

21 RICK DiSTEFANO
22 Secretary

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

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34 REPORTED BY: RHODA COLLINS, Court Reporter
35 FORBES COURT REPORTING SERVICES, LLC
36 21 Woodcrest Drive
37 Batavia, New York 14020

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3 APPLICATION 3A-11-19

4 3A-11-19 11 Application of Anthony D'Angelo,
5 owner of property located at 479 French Road, for Area
6 Variances from Section 205-2 to 1) allow an attached garage
7 to be 1,250 +/- sf in size, after construction of a 367.5 sf
8 addition, in lieu of the maximum 900 sf allowed by code, and
9 2) allow said garage addition to extend 9.65 ft. into the
10 15 ft. side setback required by code. All as described on
11 application and plans on file.

12 Motion made by Ms. Dale to approve Application
13 3A-11-19 based on the following findings and facts.

14 **FINDINGS AND FACTS:**

15 1. The applicant's difficulty leading to the variance
16 request is self-created however, it is due to the desire to
17 house a camper and yard equipment indoors which is a more
18 aesthetically pleasing option than such equipment being
19 visible to the neighbors and the applicant's impacted
20 neighbor has provided a letter of their support.

21 2. The variance request will not result in a substantial
22 change in the character to the neighbor or detrimentally
23 effect the surrounding properties as the large house is on a
24 large lot and the garage is approximately 200 feet from the
25 road and 100 feet from neighboring houses. Also there are

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3 several other homes in the area with garages of this size and
4 similar side setbacks.

5 3. The benefit sought by the applicant cannot be achieved by
6 any other method feasible for the applicant to pursue.

7 **CONDITIONS:**

8 1. The variance is granted only to the size and location
9 provided in the application and as per temporary given.
10 2. All necessary ARB approvals and building permits shall be
11 obtained.

12 (Second by Ms. Tompkins Wright.)

13 (Mr. Clapp, yes; Ms. Schwartz, no; Mr. Mietz,
14 yes; Ms. Schmitt, abstain; Ms. Tompkins Wright, yes;
15 Ms. Dale, yes.)

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

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1 Brighton Zoning Board of Appeals 3/6/19
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3 APPLICATION 2A-06-19

4 2A-06-19 Application of 745 Penfield Rd. LLC,
5 owner of property located at 745 Penfield Road, for a Use
6 Variance from Section 203-9A to allow a cafe' with limited
7 sales of convenience items in a RLB Residential district
8 where not allowed by code. All as described on application
9 and plans on file. POSTPONED FROM THE FEBRUARY 6, 2019
10 MEETING.

11 Motion made by Chairperson Mietz to table
12 Application 2A-06-19.

13 (Second by Mr. Clapp.)

14 (Ms. Schwartz, yes; Ms. Tomkins Wright, yes;
15 Ms. Dale, yes; Ms. Schmitt, yes; Mr. Clapp, yes; Mr. Mietz,
16 yes.)

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

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3 APPLICATION 3A-01-19

4 3A-01-19 Application of Robert Jacobson,
5 agent, and Courtney Perinton, LLC, owner of property located
6 at 1221 East Henrietta Road, for a Sign Variance from Section
7 207- 26D to allow a logo to be 41% of the sign area in lieu
8 of the maximum 25% allowed by code. All as described on
9 application and plans on file.

10 Motion made by Ms. Schwartz to approve
11 Application 3A-01-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. Though the requested variance is substantial, the logo to
15 be 41 percent of the sign in lieu of 25 percent allowed by
16 code, it will make it easier to locate the building which is
17 situated back and on the parcel above grade.

18 2. The building is very linear and the new sign will add
19 some definition to a rather plain facade.

20 3. There will be no adverse effect on the character of the
21 neighborhood as this proposed sign will fit in with the
22 industrial zone.

23 **CONDITIONS:**

24 1. This variance only applies to the 41 percent logo on the
25 business sign as described in the written application and

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3 testimony presented.

4 2. All Planning Board and ARB approvals must be obtained.

5 (Second by Ms. Dale.)

6 (Ms. Schmitt, abstain; Mr. Mietz, yes;

7 Ms. Tomkins Wright, yes; Mr. Clapp, yes; Ms. Dale, yes;

8 Ms. Schwartz, yes.)

9 (Upon roll call, motion to approve with

10 conditions carries.)

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3 APPLICATION 3A-02-19

4 3A-02-19 Application of Holly Garnish,
5 property manager, and The Park at Allens Creek, LLC, owner of
6 property located at 100 - 160 Allens Creek Road, for a
7 Temporary and Revocable Use Permit pursuant to Section 219-4
8 to allow a food truck on site up to three (3) times per
9 summer, for the years 2019 and 2020 where not allowed by
10 code. All as described on application and plans on file.

11 Motion made by Ms. Tompkins Wright to approve
12 Application 3A-02-19 based on the following findings and
13 facts.

14 **FINDINGS AND FACTS:**

15 1. The requested temporary and revocable use permit if
16 granted will not alter the essential character of the
17 neighborhood as the food trucks will not be visible to nearby
18 properties. The food trucks will not be heard over the road
19 noise from the 590 expressway and they will only be present
20 for three short periods of time each summer.

21 2. The requested temporary and revocable use permit if
22 granted will not endanger the health, safety, or general
23 welfare of the community as the food trucks will not be open
24 to the general public. All waste created by the food trucks
25 will be fully contained and removed properly. The food

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3 trucks will be coned off from the parking lot to ensure
4 traffic and public safety.

5 3. The temporary and revokable use permit if granted will
6 provide a value to office tenants helping to maintain
7 occupancy on the property to benefit both the property owner
8 and the tenants.

9 **CONDITIONS:**

10 1. This permit allows one licensed food truck on site three
11 times per summer for each of the 2019 and 2020 summer seasons
12 for the duration of two to three hours per visit.

13 2. All waste created by the food trucks will be fully
14 contained and removed properly from the property.

15 3. The food trucks will be coned off in the parking lot to
16 ensure traffic and pedestrian safety.

17 4. The food trucks shall display a current City of Rochester
18 Fire Department food truck inspection sticker.

19 (Second by Ms. Schwartz.)

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

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

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3 APPLICATION 3A-03-19

4 3A-03-19 Application of Mamason's Monroe LLC,
5 owner of property located at 2735 Monroe Avenue, requesting
6 extension of approved variances 9A-03-17, 9A-04-17, 9A-05-17
7 and 9A-06-17 (all approved on February 7, 2019) pursuant to
8 Section 219-6F all for the purpose of constructing a new
9 restaurant building with a drive-thru pick-up window. All as
10 described on application and plans on file.

11 Motion made by Ms. Tompkins Wright to approve
12 Application 3A-03-19, Application of Mamason's Monroe, LLC,
13 which is requesting an extension of approved variances based
14 on the findings of fact listed in approvals for Application
15 9A-03-17, 9A-04-17, 9A-05-17, and 9A-06-17, and a finding of
16 fact that the applicant testified they had been delayed in
17 development of the site.

18 The conditions shall be all previous
19 conditions for the aforementioned applications shall remain
20 unchanged.

21 (Second by Mr. Clapp.)

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

25 (Upon roll call, motion to approve with

1 Brighton Zoning Board of Appeals 3/6/19
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3 conditions carries.)
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3 APPLICATION 3A-04-19

4 3A-04-19 Application of Shawn Carey, owner of
5 property located at 1550 Elmwood Avenue, for an Area Variance
6 from Section 205-2 to allow for the reconstruction of a
7 single family house with a 10.5 ft. front setback where a
8 40 ft. front setback is required by code. All as described
9 on application and plans on file.

10 Motion made by Mr. Clapp to approve
11 Application 3A-04-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The requested variance will not produce an undesirable
15 change in the character of the neighborhood or detriment to
16 nearby properties as the proposed structure will be built on
17 the foundation of the current pre-existing noncompliant house
18 precluding the need for excavation or removal of the trees
19 for construction or for installation of utilities. The
20 construction of the two-story house is consistent with the
21 two-story houses on adjacent properties and the adjacent
22 two-story commercial building.

23 2. The benefit sought by the applicant cannot be achieved by
24 any other method other than an area variance as the unique
25 shape of the lot and location of the current house foundation

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3 and detached garage make construction of the new house
4 elsewhere on the lot impractical.

5 3. The requested variance is for a 10'5" front setback where
6 40 feet is required by code. However the foundation is a
7 pre-existing nonconforming structure is at the requested
8 setback, no additional incursion on the current setback is
9 being requested.

10 4. The size of the proposed variance is the minimum
11 necessary to allow construction of the new house on the
12 existing foundation.

13 5. The proposed variance will not have an adverse effect or
14 impact on the physical or environmental conditions in the
15 neighborhood as no excavation or removal of trees will be
16 required for construction or installation of utilities.

17 6. The difficulty leading to this variance request was not
18 self-created as the pre-existing structure has been on the
19 lot for decades and no reduction of setback requirements is
20 requested beyond that of the pre-existing structure.

21 **CONDITIONS:**

22 1. This variance shall apply only to the plans submitted and
23 testimony given.

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

25 (Second by Ms. Schwartz.)

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3 (Ms. Schmitt, abstain; Mr. Mietz, yes;
4 Ms. Dale, yes; Ms. Tompkins Wright, yes; Ms. Schwartz, yes;
5 Mr. Clapp, yes.)

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

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3 | APPLICATION 3A-05-19

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5 Lyons, owners of property located at 43 Delaware Road (Tax
6 ID#s 147.16-1-52 & 147.16-1-53) for an Area Variance from
7 Section 205-2 to allow a house side setback of 3.6 ft, after
8 resubdivision of two lots into one, in lieu of the minimum 1
9 ft. required by code. All as described on application and
0 plans on file.

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FINDINGS AND FACTS:

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3 4. The variance requested is the minimum necessary to grant
4 relief.

5 5. The setback requested is consistent with surrounding
6 properties and since the house was built in 1890 and is
7 common on Delaware Avenue.

8 (Second by Ms. Tompkins Wright.)

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

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

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3 APPLICATION 3A-06-19

4 3A-06-19 Application of Jahdish Kaur, owner of
5 property located at 30 Jefferson Road, for a Temporary and
6 Revocable Use Permit pursuant to Section 219-4 to allow for
7 the placement of a large storage container on site for a two
8 year period where not allowed by code. All as described on
9 application and plans on file.

10 Motion made by Chairperson Mietz to deny
11 Application 3A-06-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The building is currently for sale and there's no
15 anticipated renovation or other improvements to the property
16 that are planned.

17 2. Placing a storage unit there that has nothing to do with
18 this property will cause unnecessary further detriment to the
19 physical appearance of the property.

20 3. Having a trailer on a vacant property such as this is a
21 negative impact on the character of the neighborhood.

22 4. The Board is not convinced that there aren't alternatives
23 to the placement of the storage unit elsewhere.

24 (Second by Ms. Schwartz.)

25 (Mr. Clapp, yes; Ms. Tomkins Wright, yes;

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3 Ms. Schmitt, abstain; Ms. Dale, yes; Ms. Schwartz, yes;
4 Mr. Mietz, yes.)

5 (Upon roll call, motion to deny carries.)
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3 APPLICATION 3A-07-19

4 3A-07-19 Application of Woodstone Custom
5 Homes, owner of property located at 97 Willard Avenue (lot 1
6 of the pinnacle Hills Subdivision) requesting an
7 interpretation/determination pursuant to Section 219-2 that a
8 defined front yard should be considered a side yard. All as
9 described on application and plans on file.

10 Motion made by Ms. Schwartz for Application
11 3A-07-19, the Board makes the determination that the front
12 setback as determined by the Town Planner is affirmed.

13 (Second by Mr. Clapp.)

14 (Ms. Schmitt, yes; Mr. Mietz, yes; Ms. Dale,
15 yes; Ms. Tomkins Wright, yes; Ms. Schwartz, yes; Mr. Clapp,
16 yes.)

17 (Upon roll call, motion to affirm the
18 Planner's decision carries.)

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1 Brighton Zoning Board of Appeals 3/6/19
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3 APPLICATION 3A-08-19

4 3A-08-19 Application of Woodstone Custom
5 Homes, owner of property located at 97 Willard Avenue (lot 1
6 of the pinnacle Hills Subdivision) for an Area Variance from
7 Section 205-2 to allow a single family house to be
8 constructed with a 12 ft. front setback in lieu of the
9 minimum 30 ft. front setback as required by the provisions
10 set forth in the approval of the Pinnacle Hills Subdivision
11 under Town Law 278 - Cluster Development. All as described
12 on application and plans on file.

13 Motion made by Ms. Tompkins Wright to approve
14 Application 3A-08-19 based on the following findings and
15 facts.

16 **FINDINGS AND FACTS:**

17 1. The granting of the requested variance will not produce
18 an undesirable change in the character of the neighbor or be
19 a detriment to nearby properties. The property's location at
20 the end of Willard Avenue abutted up against Brighton Town
21 park land and the Town of Brighton storm water management
22 facility means that a less than code setback will have little
23 if any effect on the neighborhood as a whole.

24 2. The requested variance is not substantial, given that
25 this 127-foot section of the lot line that is considered a

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3 front lot line doesn't actually abut frontage on any right of
4 way.

5 3. The benefit sought by the applicant cannot reasonably be
6 achieved by any other method. Applicant testified that they
7 looked at several other options for house placement, but the
8 benefit sought by the applicant namely an aesthetically
9 pleasing southern facing home cannot be achieve without
10 extension into the front setback along the 127-foot lot line
11 that the code considers a front lot line.

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

15 **CONDITIONS:**

16 1. The variance granted herein applies only to the setback
17 of the house described in and in the location as depicted on
18 the application and in the testimony given.

19 2. All necessary Planning Board approvals shall be obtained.

20 (Second by Ms. Schwartz.)

21 (Mr. Clapp, yes; Mr. Mietz, yes; Ms. Dale,
22 yes; Ms. Schmitt, abstain; Ms. Schwartz, yes; Ms. Tomkins
23 Wright, yes.)

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

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3 APPLICATION 3A-10-19

4 3A-10-19 Application of Evan Graziano,
5 architect, and Excelsior Communities, owner of property
6 located at 249 Crittenden Way, for an Area Variance from
7 Section 205-5 to allow a building addition to extend 1.75 ft.
8 into the 30 ft. side setback required by code. All as
9 described on application and plans on file.

10 Motion made by Mr. Clapp to approve
11 Application 3A-10-19 based on the following findings and
12 facts.

13 **FINDINGS AND FACTS:**

14 1. The requested variance will not produce an undesirable
15 change in the character of the neighborhood or detriment to
16 nearby properties as the proposed entrance vestibule will
17 extend only 1.75 feet into the existing 30-foot side setback.
18 It will also provide ADA compliant access to the building and
19 will be enhanced by planting of shrubs around the building as
20 indicated on the landscape plans submitted with the
21 application.

22 2. The benefit sought by the applicant cannot be achieved by
23 a method other than an area variance as an ADA compliant
24 entrance must be provided as a part of the proposed building
25 renovations and there is insufficient interior space to make

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3 creation of a compliant vestibule feasible without extending
4 the vestibule beyond the front wall of the building into the
5 required setback.

6 3. The requested variance is not substantial requesting a
7 setback of 28'3" where 30 feet is required, a reduction of
8 only 1'9" or 5.8 percent.

9 4. The size of the proposed entrance vestibule is the
10 minimum required for ADA compliance clearances for the
11 entrance vestibule exterior landing and sidewalk.

12 5. The proposed variance will not have an adverse effect or
13 impact on the physical or environmental conditions in the
14 neighborhood as the designed vestibule complements the
15 existing building and addition of landscaping around the
16 structure will replace some impermeable paving and provide
17 additional drainage while also enhancing the appearance of
18 the building.

19 6. The difficulty leading to this variance request was not
20 self-created as necessary renovation of the building interior
21 requires the creation of an ADA compliant entrance not
22 feasible without extending the entrance into the setback.

23 **CONDITIONS:**

24 1. The variance shall apply only to the plans submitted and
25 testimony given.

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3 2. The variance is granted with the specific conclusion of
4 the landscape plans submitted with this application.

5 3. All necessarily permits and approvals shall be obtained.

6 (Second by Ms. Tompkins Wright.)

7 (Ms. Schmitt, yes; Mr. Mietz, yes; Ms. Dale,
8 yes; Ms. Schwartz, yes; Ms. Tompkins Wright, yes; Mr. Clapp,
9 yes.)

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

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3 REPORTER CERTIFICATE
45 I, Rhoda Collins, do hereby certify that I did
6 report in stenotype machine shorthand the proceedings held in
7 the above-entitled matter;8 Further, that the foregoing transcript is a true and
9 accurate transcription of my said stenographic notes taken at
10 the time and place hereinbefore set forth.11
12 Dated this 26th day of March, 2019.13 At Rochester, New York
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1516 
17 Rhoda Collins
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