

PROCEEDINGS HELD BEFORE THE BRIGHTON ZONING
BOARD OF APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER,
NEW YORK, ON APRIL 3RD, 2019, AT APPROXIMATELY
7:15 P.M.

April 3rd, 2019
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON
KATHLEEN SCHMITT
JUDY SCHWARTZ
ANDREA TOMPKINS WRIGHT
JENNIFER WATSON

DAVID DOLLINGER, ESQ.,
Town Attorney

RICK DiSTEFANO
Secretary

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

CHAIRPERSON MIETZ: So at this time I'd like to call to order the April session of the Brighton Zoning Board of Appeals.

Rick, was the meeting properly advertised?

MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Brighton-Pittsford Post on March 28th, 2019.

CHAIRPERSON MIETZ: Okay. Will you call the role?

MR. DiSTEFANO: Please let the record show that all members are present except Mr. Clapp and Ms. Dale.

CHAIRPERSON MIETZ: Okay. We do have some minutes from the March meeting, but they are extensive and I think we can hold those until next month if anyone has any objection.

All right. So Rick, when you're ready, then please, read the first application?

MR. DiSTEFANO: Application 4A-01-19, Application Scott Hill, applicant, and the Country Club of Rochester, owner of property located at 2935 East Avenue, for a Temporary and Revocable Use Permit

pursuant to Section 219-4 to allow for a fireworks display on the evening of September 21st, 2019, in a RLA Residential District. All as described in application and plans on file.

MR. HILL: I'm Scott Hill. And this is my Attorney, Kyle Rider. He also happens to be the groom. So I thought I'd kill two birds with one stone here.

CHAIRPERSON MIETZ: And congratulations.

MR. RIDER: Thank you very much. Thanks for having us tonight.

CHAIRPERSON MIETZ: Please proceed.

MR. HILL: We worked closely with Rick. Also, I've been in contact with Chris Roth. So I think we're following the proper procedures. I think the package is in order. If there's any questions, please ask us that, but this is just a short 10 to 12 minute fireworks display at my daughter's wedding on September 21st of this year. It's going to be at the Country Club of Rochester. It's been going to be put on by Young Explosives, who do other events at the country club. So it will be done exactly

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3 according to their procedures and so we think this is
4 a pretty routine request, but we're here to answer
5 any questions.

6 CHAIRPERSON MIETZ: A couple. You
7 know, we're hearing not directly from the country
8 club other than the letter that says that they
9 authorized you to apply and with their blessing I
10 gather. So what is the normal fare for this? We
11 know we have approved two displays a year for various
12 CCR sponsored events.

13 MR. HILL: Right.

14 CHAIRPERSON MIETZ: What is --

15 MR. HILL: This is in addition to
16 their two events. The last time this was held was
17 five years ago in 2014. And it will be done
18 according to the kind of procedures that they put in
19 place for their events. So we want to put out a
20 letter within the time period, a short time period,
21 probably two weeks, whatever the country club has
22 done in the past, to notify the residents in the area
23 that there will be this short display on that
24 evening.

25 CHAIRPERSON MIETZ: Okay.

MR. HILL: And it's going to be done at this same location that the country club does theirs. It's on the 18th fairway, which is right adjacent to the club itself.

CHAIRPERSON MIETZ: Right. I guess where I was going to, you know, what is CCRs sort of thought process here because if next year ten members wanted to do that, you know, where would we be I guess? Not to pick on your application specifically.

MR. HILL: They've been supportive. Like I say, there's only been two in five years. I don't think it's a big impact on them.

CHAIRPERSON MIETZ: Right.

MR. HILL: Of course, they don't want it to impact their shows for their members. And they thought this event now would not be a problem for them and they have given us their support.

CHAIRPERSON MIETZ: So I guess we could suggest then that it's probably not likely that numerous people would be coming before this Board asking to have fireworks events at CCR beyond what CCR is really doing?

MR. HILL: I don't think so, but no

offense, I mean you'd have to go through this process.

CHAIRPERSON MIETZ: Absolutely, it's fun, isn't it?

MR. HILL: Oh, yes, it is. That's why I've got all dressed up tonight for this.

MR. YOUNG: And they certainly don't, you know, necessarily go out of their way to encourage, you know, everybody that we have, you ought to make this appeal and try and get your own fireworks display. They do not do that. They kind of fall short of that.

CHAIRPERSON MIETZ: Okie dokie. Any questions the Board members have about it?

MS. TOMPKINS WRIGHT: I just had a quick question of Rick. I know there had been some talk in this town, neighboring towns about expanding the notice requirements for fireworks to residential neighborhoods. Is a half mile what would be normally required? Have we heard complaints?

MR. DiSTEFANO: That is a question for the Fire Marshall. He does regulate those for the Town. So I'm not aware of that.

MS. WATSON: Okay.

MR. DiSTEFANO: But they, basically,
are going have to follow -- I think what they testify
that they have to follow the normal procedure --

MS. WATSON: Yes.

MR. DiSTEFANO: -- For the country
club.

CHAIRPERSON MIETZ: We haven't
received any complaints.

MR. DiSTEFANO: We have not received
any complaints from other events.

CHAIRPERSON MIETZ: Other events that
were sanctioned previously.

MR. DiSTEFANO: No, we have not.
Again, it would go to the Fire Marshall, but he's
aware of this request. He hasn't offered me with any
complaints that he received.

MS. WATSON: Okay.

CHAIRPERSON MIETZ: Okay. Any other
questions about it? No. Okay. Thank you,
gentlemen.

MR. HILL: Thank you.

MR. YOUNG: Thank you very much.

CHAIRPERSON MIETZ: Is there anyone in the audience who would like to speak regarding this application? Okay. There being none, the public hearing is closed.

MR. DiSTEFANO: Application 4A-02-19, Application of Alton Jenkins and JoAnn Eldred, owners of the property located at 277 North Landing Road, for an Area Variance from Section 207-2A to allow a fence and gate in the front yard to be 4 feet in height in lieu of the maximum 3.5 feet allowed by code. All as described in application and plans on file.

MR. JENKINS: Hi, good evening, I'm Alton Jenkins. My wife is not here because she's working. She's a nurse at Strong. I feel a little under dressed compared with the two gentlemen, but basically, it's very straight forward. I'm asking for a variance for a 48 inch fence in the front yard versus the 42 inch. And the main reason for that is the fence company that will be constructing it, Jerith Fence out of Pennsylvania, feels that the length of the gate, which will be 18 feet, is too long for good structural support. Ms. Schwartz was

there last week I think it was.

MS. SCHWARTZ: Yes.

MR. JENKINS: And I walked her on the perimeter and everything. And like I said, the main reason asking for that variance is the structural integrity of that 18 foot fence. Any questions?

MS. WATSON: The 18 foot fence is because the length of the driveway?

MR. JENKINS: Yeah, my driveway is 18 foot and I'll have an 18 foot gate and it's just too big of an expanse for a 42 inch.

CHAIRPERSON MIETZ: Okay. Are there any other questions related to this? No.

MR. DiSTEFANO: Just for the record, can you just explain what type of fence it's going to be?

CHAIRPERSON MIETZ: Yes.

MR. JENKINS: It's going to be a black decorative aluminum. It looks very much like wrought iron. My past home was up on the corner of Monroe and Hylan Avenue, the green house up there. It will be a very similar fence to that that we put there.

MR. DiSTEFANO: So totally open style,

see through it.

MR. JENKINS: Correct, correct.

MR. DiSTEFANO: Thank you.

MS. TOMPKINS WRIGHT: I just had one other question. You mention that you're using a fence company out of Pennsylvania. I didn't catch the name, but --

MR. JENKINS: Jerith, Jerith, J-E-R-I-T-H.

MS. WATSON: Okay. Did you look at other fence companies that may have a different way to structurally support a fence?

MR. JENKINS: Yes, I talked to New York State Fence and one other outfit and neither one of them felt that a gate of that length, that short, would be strong enough out of aluminum.

MS. WATSON: Okay. Good.

MR. JENKINS: Decorative aluminum.

CHAIRPERSON MIETZ: Okay. Great.

MR. JENKINS: Thank you.

CHAIRPERSON MIETZ: Thank you. Is there anyone in the audience who would like to speak regarding this application? Okay. There being none

the public hearing is closed.

MR. DiSTEFANO: Application 4A-03-19, Application Beachland Consulting, LLC, property manager and R & A Family Limited Partnership, owner of property located at 2301 Lac De Ville Boulevard, for an Area Variance from Section 205-18B, to allow a rear yard pavement/parking setback of 8.2 feet in lieu of the minimum 10 feet required by code. All as described on application and plans on file.

MR. CRETEKOS: Good evening, everybody. My name is James Cretelos. I'm with BME Associates. I'm here on the behalf of the Applicant, Beachland Consulting. Here with me this evening is Teresa Viggiani, from the Applicant. We're here on behalf of the owner of the property, which is R & A Family Limited Practice and the current tenant, which is Rochester Eye Associates.

The variance we're requesting is for a rear parking setback. It's located in rear part of the site, which kind of abutts up to the back of the Tops Plaza parking area back there. We're requesting a 1.8 foot relief from the 10 foot required rear setback. This allows us to create one additional

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3 parking space on the site. We did submit and go
4 through a site plan application with the Planning
5 Board for some other improvements we're doing on the
6 site. They gave approval on March 20th. Part of
7 that approval included a conditional for this one
8 parking space. Some of the other improvements we're
9 doing out there is really just to maximize the
10 parking space on the property for the existing
11 tenant's needs.

12 Rochester Eye Associates is bringing on
13 another doctor over the summer so and they do
14 currently have parking issues right now. They have
15 occasionally max'd out their parking lot as to date
16 and they've had some customers not able to park on
17 their property to get to their site.

18 They currently have 40 total employees
19 and at about any given time, there's 26 on the site
20 right now, which is taking up just about half of the
21 parking spaces. They do a little bit of retail,
22 selling glasses and things. They do have some
23 unexpected customers. It's not all just scheduled
24 visits.

25 So with the request, we don't feel that

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3 this is a very significant request. We're only
4 asking for a foot and a half relief. And the actual
5 portion of the parking space that we need the relief
6 from is only about 10 percent of that parking space.
7 We don't really think it's going to be a detriment to
8 the neighborhood. There's parking all around it,
9 including the rear of the Tops plaza. There is a
10 berm between their parking area and our site. The
11 Tops parking area sits up about 5 or 6 feet. The
12 berm actually is higher than that and so it screens
13 their headlights from us. So ours is going to be
14 recessed in that area. With it, we are removing a
15 couple trees. We're going to be planting them with
16 new features to incorporate this on to the site.

17 With that, we are going to be removing
18 the dumpster that's out on the site. We're going to
19 be going to a totes enclosures that are going to be
20 located in the rear of the facility. Right now, they
21 only have garbage pick up every other week, garden,
22 recycling, two different trips. So they're okay with
23 going to once a week trips if that's what they need
24 to do just to get the couple extra parking spaces
25 because it's important to Rochester Eye Associates,

who've been there for over 20 years now, they'd like to continue to remain in the Town of Brighton.

If you guys have any questions or if there's anything from the public, I'd be more than happy to address that.

MS. SCHWARTZ: How much has the practice expanded from the time they started at 20 years ago? Like how many more doctors are there now?

MR. CRETEKOS: I believe there's six doctors there now. I'm not sure what they had when they started, but it was developed as an office building. It was built per the parking requirement at the time, which would have required 50 parking spaces. So we're looking to get to 56 I think with the other site plan improvements and then this one parking space we are asking the variance for.

CHAIRPERSON MIETZ: Now, what is the net effect on the project? Then obviously, the variance relates to this issue of one. But how many are you actually adding by removing the dumpster and doing all these other things that you're doing?

MR. CRETEKOS: We're adding two parking spaces up at the northern portion of the site.

CHAIRPERSON MIETZ: Right.

MR. CRETEKOS: We don't need a variance
for that --

CHAIRPERSON MIETZ: Right.

MR. CRETEKOS: -- Because there's a
cross easement. We're going to do some re-striping
with the dumpster relocation. We're only able to
acquire three spaces. Like I said, we're only asking
for the variance on the one.

CHAIRPERSON MIETZ: No, I understand
that. I'm just saying what is the net parking
additions for the project?

MR. CRETEKOS: We're adding six total
spaces for the site plan improvements.

CHAIRPERSON MIETZ: Good. Okay.

MS. WATSON: We're not bumping up
against the increased coverage maximum on this site?

MR. CRETEKOS: No, we did check that.
We're still in compliance with the code.

MS. WATSON: Okay.

CHAIRPERSON MIETZ: Okay. So any
other questions?

MS. SCHWARTZ: One more, are you at

maximum the interior space out as far as
hiring more doctors?

MR. CRETEKOS: I'm not sure on that.
I believe so.

MS. VIGGIANI: Pretty much.

CHAIRPERSON MIETZ: If you can come
up, just name and address, please?

MS. VIGGIANI: Hi, Teresa Viggiani, I
manage the property for the owner. Yes, I mean
they're basically max'd out inside. They have some
records area that they are trying to maybe switch
into a lasik, something of that, but as far as exam
rooms, no, they are max'd for sure.

Yes, basically, what it's coming down
to, they have been there like James said, 20 plus
years and if we can't provide more parking, they
basically told us that they are not renewing. Their
lease is up. So this is kind of our intention to try
to get them to stay.

CHAIRPERSON MIETZ: Sure. That's
fine. And you feel the trash thing is manageable?

MS. VIGGIANI: Absolutely, yes, and I
mean every other week pick up, that's negligible. So

they're fine with doing it.

CHAIRPERSON MIETZ: Okay, sounds good.
Okay. Any other questions for these folks? Okay.
Thank you very much.

MS. VIGGIANI: Thank you.

MR. CRETEKOS: Thank you.

CHAIRPERSON MIETZ: Okay. Is there
anybody in the audience that would like to speak
regarding this application? Okay. Then at this
point the public hearing is closed.

MR. DiSTEFANO: Application 4A-04-19,
Application Mack of All Trades, contractor, and Dale
Dorsett and Ziva Misulovin, owners of the property
located at 85 Rowland Parkway, for an area variance
from Section 207-10A(2) to allow an egress window to
be 7.6 feet from the side lot line in lieu of the
minimum 9.5 feet requirement by code. All as
described on application and plans on file.

MR. MACK: Hi, my name is Mike Mack
from Mack of All Trades. I'm here representing Dale
and Ziva in reference to an egress. It's encroaching
on the boundary line, the property line. In short,
this couple is moving from St. Louis to be closer to

family and they house grandchildren often. They have a finished basement currently that does not have a legal egress. And therefore, we're applying for a variance to be able to place an egress in the basement so that it is safe for when their grandchildren are not necessarily sleeping there, but you know, they're down there. It's like a large living room. So there's an entertainment space down there so their concern is, obviously, the safety of their grandchildren.

CHAIRPERSON MIETZ: There aren't bedrooms down there then?

MR. MACK: No, there is not a bedroom down there. There's a powder room and like a large -- they call it a living room, yeah, family room.

CHAIRPERSON MIETZ: That's good that they're doing it then. Okay. And is there any other alternative of where to put it, how to install it, that would not result in the situation that you have?

MR. MACK: The way it's currently designed and remodeled, it's really the only application on the side versus traditionally, trying

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3 to go out the rear so that we don't run into these
4 issues, but in this circumstance, there just isn't
5 that opportunity while increasing the dollar value
6 significantly.

7 CHAIRPERSON MIETZ: Okay. Jen?

8 MS. WATSON: Will there be change to
9 the landscaping around the area? And I saw there was
10 a fence there. There's quite a bit of foliage and
11 trees and just wondering will it be visible from the
12 nearby properties? Will it be visible from the
13 street and what changes are coming to the landscaping
14 in the area?

15 MR. MACK: Yeah, there's not a lot of
16 change. There's not much going on there. You saw
17 there's an AC unit there. Really what you will see
18 is about four inches of -- we're using Stackwall,
19 which is a poly or plastic well. So that's about all
20 that will be sticking up above the ground and along
21 with the cover that's on top of that. So very
22 minimal visual that you will actually see and tucked
23 to the rear of the property as well.

24 CHAIRPERSON MIETZ: Okay. I know the
25 New York State Building Code sort of defines the size

of that unit.

MR. MACK: Yup, they require 3x3. The unit that we put in is around 40 inches by -- say 40x40. It's like 40x38 or something.

MS. WATSON: Is a basement egress mandated by law for a finished basement?

MR. DiSTEFANO: Today it is. If you were going to finish your basement today, regardless of the sleeping or not sleeping, you have to have the egress window. Probably back when that one was done, if there's no sleeping, he did not need egress.

MS. WATSON: Okay.

CHAIRPERSON MIETZ: Same with the building codes.

MR. DiSTEFANO: It's a pre-existing nonconforming situation most likely.

CHAIRPERSON MIETZ: Yes, it's a private. Okay. Any other questions, questions, questions? Okay. Thanks.

MR. MACK: Thank you.

CHAIRPERSON MIETZ: Is there anyone in the audience who would like to speak regarding this application? Okay. There being none, the

public hearing is closed.

MR. DiSTEFANO: Application 4A-05-19,
Application of Jon Tobin, agent, and Rochester Gas
and Electric Corp., owner of property located at 3050
East Avenue, for an Area Variance from Section 207-2A
to allow a fence in front yard to be 6 feet in height
in lieu of the maximum 3.5 feet in height allowed by
code. All as described on application and plans on
file.

MR. TOBIN: Good evening, Jon Tobin.
I'm representing the 3030 East Avenue Condo
Association that abutts the Rochester Gas and
Electric property of which they're speaking. The
application is to repair an existing fence that is
roughly about 25 years old. And we are looking to
add approximately 43 feet in length to that fence to
provide safety and security for the entire community
is elderly. We'd like to provide safety and security
to homeowners whose garages and front doors open
directly against the traffic on Elmwood and East
Avenue and the intersection across the street from
the fire station.

MS. SCHWARTZ: Did you say repair,

when you say repair, you mean just repair or are you going to replace?

MR. TOBIN: Replace it. It's 25 years old. It's starting to fall down.

MS. SCHWARTZ: Okay. All right. Okay I just wanted to --

MR. TOBIN: New fence.

MS. SCHWARTZ: Good, okay.

MR. DiSTEFANO: Just for a little clarification, there had been a fence up there for a while that was -- basically, if you're familiar with the property, there's a little substation there, basically an underground substation that, you know, protrudes from the ground a few feet. And there was a fence that basically blocked that structure from the neighboring properties back I think it was in '93 --

CHAIRPERSON MIETZ: '92.

MR. DiSTEFANO: '92. They requested extension of that fence going towards South Landing, which was granted by this Board. Now, they want to, basically, take that same fence and extend it towards East Avenue and replacing the whole thing in kind one

fence.

CHAIRPERSON MIETZ: And when it was approved before, it was approved at 6 foot?

MR. DiSTEFANO: It was approved at 6 foot, correct.

CHAIRPERSON MIETZ: Okay.

MS. SCHWARTZ: The same style fence that's up there now?

MR. TOBIN: It's not the same style. The fence that's up there now is a basket weave fence. It's no longer in production. We can't find it. So in order to keep with the existing -- to the best of our ability to keep within the existing architecture of the homeowners' association, we'd go with vertical cedar.

And based on conversations that I had with Rick, originally, because the fence is actually on RG&E property, the finished side would face us. So the unfinished side would face towards East Avenue. So what we -- both Rick and I agreed that what we'll do is, we'll face both sides of the fence. So there won't be a good side and a bad side.

CHAIRPERSON MIETZ: Right.

MR. TOBIN: The idea is so it will be a positive looking structure from either end.

CHAIRPERSON MIETZ: Okay. Good.

MR. DiSTEFANO: Could you say, for the record, approximately how many feet you are from the edge of pavement to the end of this fence or the beginning of this fence?

MR. TOBIN: I'm going to say 20 feet.

MR. DiSTEFANO: Okay.

MR. TOBIN: From the sidewalk.

MR. DiSTEFANO: Well, if you want to go the edge of pavement or sidewalk, just say from the edge of sidewalk.

MR. TOBIN: Right.

MR. DiSTEFANO: About 20 feet from the edge of sidewalk?

MR. TOBIN: Yes.

MR. DiSTEFANO: Thank you.

CHAIRPERSON MIETZ: Okay. Very good. Any other questions? No? Okay. Thank you.

MR. TOBIN: Appreciate it. Thank you.

CHAIRPERSON MIETZ: Is there anyone in the audience who would like to speak regarding this

application? Okay. There being none, the public hearing is closed.

MR. DiSTEFANO: Application 4A-06-19, Application Chris Costanza, architect, and Hucky Land and Colleen Buzzard, the owners of property located at 195 Hollywood Avenue, for an Area Variance from Section 205-2 to allow a building addition to extend 1.4 feet into the existing 13.2 foot side setback where a 17.3 foot side setback is required by code. All as described on application and plans on file.

MR. COSTANZA: Hello, my name is Chris Costanza, I'm from 9x30 Design Architecture. The building we're kind of building here is a really unique greenhouse structure. It's going to be a living space, you know, kind of an extension of a living room but for all seasons and in this climate, we're all trying to find, you know, always nice places to hang out in the winter time and in the rainy days and this building will be, essentially, a glass conservatory, a mini lab or conservatory.

Part of the structure where we want to place the structure, we want to get as much of the solar gain as we can in the winter time. So we want

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3 to have the structure be as far as north on the
4 property line as possible. And then there's an
5 existing garage, which is nonconforming because it
6 goes over the side yard setback by a little bit.

7 The design was to, you know, integrate
8 the greenhouse with the back side of the garage and
9 have that go right across, you know, as an extension
10 of the garage structure. So that's why we're seeking
11 the relief on the variance.

12 And the building materials quality, you
13 know, we're looking for higher quality materials.
14 All of the materials and the structure itself will
15 be, you know, commercial grade, longevity, you know,
16 low maintenance is all what we keep in mind with
17 these types of materials, slotted glass, you know.
18 There will be a lot of green foliage inside and a hot
19 tub, a soaking tub inside of the space.

20 CHAIRPERSON MIETZ: Okay. Questions?
21 Anybody have any questions? I've got a couple. One,
22 how did the 410 square feet, how was that arrived at?

23 MR. COSTANZA: The 410 square feet was
24 the square footage of the heated greenhouse space
25 and then the square footage of the breezeway space

in between the existing house and the greenhouse,
which is unheated.

CHAIRPERSON MIETZ: And it was
determined -- how was the size -- I guess better
question, how was the size of the greenhouse
established?

MR. COSTANZA: Well, it started with
the existing footprint of the hot tub deck that's
there now and the hot tub deck is kind of falling a
part. It's seen better days. And we started with
that footprint. So that's where the edge of the, you
know, garage started. And then as far as, you know,
going out to the west into the backyard, we wanted to
give enough solar exposure so that way the plants
inside would have good, you know, northern light and
also the winter light. And there's some existing
mature trees that is in the corner of the greenhouse.
We wanted to maintain that root structure. So we
didn't want to encroach upon that existing tree to
where that would be harmed.

CHAIRPERSON MIETZ: Okay. Good.
Other questions? Any questions? No? Okay. Thanks
very much.

MR. COSTANZA: One other thing I'd like to point out that I didn't have this at the time of the application, but the owners have spoken with their neighbor that's on that side and --

CHAIRPERSON MIETZ: Sure.

MR. COSTANZA: -- The neighbor is in favor of the project.

CHAIRPERSON MIETZ: On the north side?

MR. COSTANZA: Okay. They said that you probably would wonder and they don't have a problem with that.

MR. DiSTEFANO: All right. Submit that for the record?

MR. COSTANZA: Yes.

MR. DiSTEFANO: Thanks.

MS. WATSON: You said that the landscaping and the trees and everything are along that side of the property are to remain?

MR. COSTANZA: Yes, there's going to be some of the -- the contractor has been over there already to review how access would be. I think there's some small shrubs that might be removed in order to get access to that area. But it is very

overgrown between, you know, this house and the house to the north of it. That whole space there is overgrown with all kinds of landscaping. It's hard to see the structure from the neighbor's property.

CHAIRPERSON MIETZ: All right. Okay. Other questions? Thank you very much.

MR. COSTANZA: Thank you.

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

* * *

C E R T I F I C A T E

I, DOREEN M. SHARICK, do hereby certify that I have reported in stenotype shorthand the proceedings held before the Brighton Zoning Board of Appeals, at Brighton Town Hall, 2300 Elmwood Avenue, Rochester, New York, on April 3rd, 2019.

That the transcript herewith is a true, accurate and complete record of my stenotype notes.

-----*Doreen M. Sharick*-----

Doreen M. Sharick,

Notary Public.

PROCEEDINGS HELD BEFORE THE BRIGHTON ZONING
BOARD OF APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER,
NEW YORK, ON APRIL 3RD, 2019, AT APPROXIMATELY
8:30 P.M.

April 3rd, 2019
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON
KATHLEEN SCHMITT
JUDY SCHWARTZ
JENNIFER WATSON
ANDREA TOMPKINS WRIGHT

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

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

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

APPLICATION 4A-01-19

4A-01-19 Application of Scott Hill, Applicant, and the Country Club of Rochester, owner of property located at 2935 East Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to allow for a fireworks display on the evening of September 21, 2019, in a RLA Residential District. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 4A-01-19 based on the following findings and facts.

FINDINGS AND FACTS:

1. The fireworks display will be limited to one additional occurrence other than the display what's been previously approved by this Board.

2. The display will be allowed on September 21st, 2019, at approximately 7:45 p.m. with a duration of approximately 15 minutes.

3. No negative effect on the character of the neighborhood will be likely since the display is of a short duration and limited to the guests of CCR on

9/21/19.

CONDITIONS:

1. All Fire Marshall approvals and/or permits will be obtained.

2. This display is limited to the guests of CCR only (not the public).

3. The event is as described in testimony given and the application submitted.

4. Every effort should be made to notify properties within a reasonable distance.

(Second by Ms. Schwartz.)

(Ms. Schmitt, yes; Ms. Watson, yes; Mr. Mietz, yes; Ms. Tompkins Wright, yes; Ms. Schwartz, yes.)

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

APPLICATION 4A-02-19

4A-02-19 Application of Alton Jenkins and JoAnn Eldred, owners of property located at 277 North Landing Road, for an Area Variance from Section 207-2A to allow a fence and gate in a front yard to be 4 feet in height in lieu of the maximum 3.5 feet in height allowed by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 4A-02-19 based on the following findings and facts.

FINDINGS AND FACTS:

1. The requested variance for decorative fence to be 48 inches in height in lieu of the 42 inches allowed by code is minimal because it only applies to the fence posts and not the entire length of the fence.

2. The length of the rolling gate must be on 48 inch height posts to stabilize it according to several fence companies.

3. There are substantial berms on either side of the property. Fence will be installed on the inside of the berms and really not visible to the neighbors.

4. Ellison Park is across the street and drops way

down so people using the park will not be able to see the fence.

5. There will be no adverse effect on the health, safety or welfare of the neighbors or the character of the area.

CONDITIONS:

1. The variance only applies to the 48 inch fence, as per testimony and per application, shall be of open style.

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

(Second by Ms. Watson.)

(Ms. Tompkins Wright, yes; Mr. Mietz, yes; Ms. Schmitt, yes; Ms. Watson, yes; Ms. Schwartz, yes.)

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

APPLICATION 4A-03-19

4A-03-19 Application of Beachland Consulting, LLC, property manager, and R & A Family Limited Partnership, owner of property located at 2301 Lac De Ville Boulevard, for an Area Variance from Section 205-18B to allow a rear yard pavement/parking setback of 8.2 feet in lieu of the minimum 10 feet required by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 4A-03-19 based on the following findings and facts.

FINDINGS AND FACTS:

1. The granting of the requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. This lot is in a commercial area surrounded by other medical/commercial properties and parking lots meaning the addition of this one parking space will not have any meaningful negative effect to the area.

2. The requested variance is not substantial as it is only decreasing the setback by approximately 1.8 feet.

3. The benefit sought by the applicant cannot reasonably be achieved by any other method due to the configuration of the site. There are no additional areas on site to create additional parking that would require less of a variance.

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

CONDITIONS:

1. The variance granted herein applies only to the additional parking space described in and the location that's depicted on the application and in the testimony given.

2. All necessary permits must be obtained.

(Second by Ms. Schwartz.)

(Ms. Watson, yes; Mr. Mietz, yes;
Ms. Schmitt, yes; Ms. Schwartz, yes;
Ms. Tompkins Wright, yes.)

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

APPLICATION 4A-04-19

4A-04-19 Application of Mack of all Trades, contractor, and Dale Dorsett and Ziva Misulovin, owners of property located at 85 Rowland Parkway, for an Area Variance from Section 207-10A(2) to allow an egress window to be 7.6 feet from a side lot line in lieu of the minimum 9.5 feet required by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 4A-04-19 based on the following findings and facts.

FINDINGS AND FACTS:

1. No unacceptable change in the character of the neighborhood and no substantial detriment to nearby properties is expected to result in the approval of this variance. The proposed egress window will be barely visible from either the street or nearby properties as it is low to the ground and screened by existing foliage and fencing.

2. A basement egress is mandated by law for safety reasons for finished basements that are in the living room and bathroom in the basement of this home.

There is no practical alternative location that would meet code due to the unique shape of the lot and the location of the existing basement windows.

3. The health, safety and welfare of the community will not be adversely effected by the approval of this variance request. The purpose of this variance request is to improve the home safety to allow for emergency egress.

CONDITIONS:

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

2. All necessary permits shall be obtained.

(Second by Ms. Tompkins Wright.)

(Ms. Schwartz, yes; Mr. Mietz, yes;

Mr. Schmitt, yes; Ms. Tompkins Wright, yes;

Ms. Watson, yes.)

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

APPLICATION 4A-05-19

4A-05-19 Application of Jon Tobin, agent, and Rochester Gas and Electric Corp., owner of property located at 3050 East Avenue, for an Area Variance from Section 207-2A to allow a fence in a front yard to be 6 feet in height in lieu of the maximum 3.5 feet in height allowed by code. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 4A-05-19, based on the following findings and facts.

FINDINGS AND FACTS:

1. The subject location is a front yard. It is protecting the RG&E substation adjacent to the property.
2. The additional height of 2.5 feet is not significant due to the height of similar previously approved fencing, which had been in place since 1992.
3. The additional height and length will provide safety and security to the residential condo units that are on the property.
4. The variance request is not self-created since the existent substation has been in existence for

many years at this location.

CONDITIONS:

1. This application was based specifically on the drawings submitted as to the location and size of the fence and testimony given.

2. All necessary permits shall be obtained.

3. That the proposed fence to be constructed shall be double-sided as to its finish.

(Second by Ms. Tompkins Wright.)

(Ms. Schwartz, yes; Ms. Schmitt, yes; Ms. Watson, yes; Ms. Tompkins Wright, yes; Mr. Mietz, yes.)

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

APPLICATION 4A-06-19

4A-06-19 Application of Chris Costanza, architect, and Hucky Land and Colleen Buzzard, owners of property located at 195 Hollywood Avenue, for an Area Variance from Section 205-2 to allow a building addition to extend 1.4 feet into the existing 13.2 feet side setback where a 17.3 foot side setback is required by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 4A-06-19 based on the following findings and facts.

FINDINGS AND FACTS:

1. The proposed greenhouse will be constructed behind the garage where an existing raised deck and unusable hot tub will be removed.

2. The existing garage is pre-existing nonconforming in that it is over side setback by 5.5 feet.

3. This is the only location for the addition of a greenhouse as there is an existing deck at grade to the south and in order to maximize the solar exposure, it must be placed where requested.

4. The applicant also wishes to align the greenhouse with the existing garage so as to not disturb any existing landscaping and this would aesthetically compromise the elevation of the home.

CONDITIONS:

1. This variance only applies to side setback of 5.5 feet where the placement of the greenhouse is stated in the written application and testimony presented.

2. All planning and building permits must be obtained.

(Second by Ms. Watson.)

(Mr. Mietz, yes; Ms. Schmitt, yes; Ms. Tompkins Wright, yes; Ms. Watson, yes; Ms. Schwartz, yes.)

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

APPLICATION 2A-06-19

2A-06-19 Application of 745 Penfield Rd., LLC, owner of property located at 745 Penfield Road, for a Use Variance from Section 203-9A to allow a cafe with limited sales of convenience items in a RLB Residential district where not allowed by code. All as described on application and plans on file.

TABLED AT THE MARCH 6, 2019 MEETING.

Motion made by Mr. Mietz on Application 2A-06-19 has proven the level of unnecessary hardship required to permit the issuance of the use variance based on the following findings and facts.

FINDINGS AND FACTS:

1A. That the property is incapable of earning a reasonable return on investment if it's used for any of the allowed uses of the district.

1B. The applicant provided evidence from the real estate agent and contractor that the conversion to a residential use is not financially viable and the production of a return less than two percent is not reasonable as an investment.

1C. The real estate agent also presented evidence it's currently not rentable as a residential space

in its existing condition.

1D. So that the evidence presented by the real estate agent is that the current subject building of this application could not be rented as residential space.

2. Finding that the subject property is unique, virtually no lots exist in the Town of Brighton where there's a combination of a residential and clearly, commercial appearing structures on the same lot and no other commercial appearing structures exist within the subject neighborhood.

3. If the variance is granted, it will not alter the essential character of the neighborhood. The use and appearance of this property has been a neighborhood business for many years and the use that has been proposed would not alter that appearance and is similarly comparable to uses that have existed on the property previously.

4. The hardship is not self-created since construction and use of this property have remained the same for many years.

CONDITIONS:

1. The variance granted herein shall apply only to

the following use: a 2300 square foot coffee house/deli with convenience items, providing a combination of the following products and services including beverages, baked goods, grab and go breakfast items, grab and go lunch items, ice cream and other grocery/convenience items typically sold in a coffee house/deli with convenience items.

2. There shall be no more than three picnic tables on the property at any one time.

3. The indoor seating shall be limited to 12 seats with no table service conducive to short term use.

4. The hours open for business shall be limited to 6:30 a.m. to 9:00 p.m., Monday through Saturday.

5. The equipment onsite shall be limited to the following devices: a vented convention oven, a residential style range, a portable griddle, a panini maker, a holding/proofing cabinet, a freezer, a refrigerator, a sandwich station, a hot bar, slow cookers, an air fryer, an espresso machine, coffee brewers, coffee bean grinder, six deli slicer, display cases, a mixer and an ice cream machine.

6. There shall be no inhouse catering or delivery services.

7. There shall be no live entertainment.

8. This use variance is limited to the existing 2,300 square foot building currently on the site as described in testimony.

9. The picnic area, subject to condition number two, shall not exist any closer than 20 feet from the east property line along Colonial Village and in addition, outdoor garbage receptacles with lids will be provided and seating area will be policed every hour for any accumulation of garbage.

10. No commercial vehicles shall be stored on site and no deliveries shall be made by trucks larger than a six wheeled vehicle and deliveries shall be made between 7:00 a.m. and 7:00 p.m.

11. The lighting on this property shall be limited to the property and shall not encroach on nearby, adjacent properties.

12. The following products and services shall be prohibited: alcohol, tobacco products including e-cigarette products, adult magazines, lottery tickets and ATM services.

13. There shall be no expansion of the parking lot or impervious areas without Town approval.

14. There shall be no onsite roasting of coffee permitted on property.

(Second by Ms. Tompkins Wright.)

(Ms. Schmitt, yes; Ms. Watson, yes; Ms. Schwartz, no; Ms. Tompkins Wright, yes; Mr. Mietz, yes.)

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

(Proceedings concluded at 9:42 p.m.)

* * *

C E R T I F I C A T E

I, DOREEN M. SHARICK, do hereby certify that I have reported in stenotype shorthand the proceedings held before the Brighton Zoning Board of Appeals, at the Brighton Town Hall, 2300 Elmwood Avenue, Rochester, New York, on April 3rd, 2019.

That the transcript herewith is a true, accurate and complete record of my stenotype notes.

-----*Doreen M. Sharick*-----

Doreen M. Sharick,

Notary Public.