

Brighton Zoning Board of Appeals 6/5/19

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JUNE 5TH, 2019 AT  
APPROXIMATELY 7:15 **P.M.**

June 5th, 2019  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
KATHLEEN SCHMITT

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

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

Rick, was the meeting properly advertised?

MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Brighton-Pittsford Post of May 30, 2019.

CHAIRPERSON MIETZ: Will you please call the roll?

MR. DiSTEFANO: Please let the record show Ms. Schmitt is not present.

CHAIRPERSON MIETZ: Okay. So we have the April and May minutes. Let's start with April. Judy?

MS. SCHWARTZ: On Page 9, Line 23, it's highland, the second word.

On Page 38, Line 25, I say to delete of this.

Page 46, Line 17, it's vented convection. That's it.

CHAIRPERSON MIETZ: Anybody else have anything about April's minutes? Great, let's have a motion.

MS. TOMPKINS WRIGHT: So moved.

(Second by Ms. Schwartz.)

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

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Ms. Watson, yes.)

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

CHAIRPERSON MIETZ: Okay. Let's move on to May.

MS. SCHWARTZ: I only have one. Page 47, Line 11, in conditions, after the word approvals must add please must be obtained. That's it.

CHAIRPERSON MIETZ: Okay. Anything else on May?

MS. SCHWARTZ: So moved.

(Second by Ms. Tompkins Wright.)

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

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

CHAIRPERSON MIETZ: Rick, when you're ready then read the first application.

APPLICATION 5A-01-19

5A-01-19 Application of Zamara Properties 2171, LLC, owner of property located at 2171 West Henrietta Road, for a Use Variance from Section 203-9 to allow a

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restaurant with outdoor dining in an RLB Residential District where not allowed by code. All as described on application and plans on file.

MS. BRUGG: Good evening, my name is Betsy Brugg, I'm with the firm Woods, Oviatt, Gilman. I'm here tonight on this application, Bill Zamiara who is the son of the property owners is here, and John Geer who is the individual proposing to own and operate the restaurant in the building at issue, is also here to answer your questions.

I think we've given you kind of a complete application. I'm going to go through it. The property at 1271 West Henrietta Road has been a restaurant since it was built over 70 years ago. Most recently it had a Chicago Pizza, I think was the name of the business. Before that it was Portafino's, it's been Portabello's, it's been a lot of different things over the years.

It has operated as a legally pre-existing non-conforming use in the district. The last tenant closed down about two years ago, I think May of 2017. There was a dispute, the Zamiaras didn't want him to close down, he just shut the doors, he took off with a bunch of kitchen equipment, and the property has been tied up in litigation for the last couple years and just concluded a few months

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ago. The Zamiaras prevailed. They now have control of the property, they've had it for lease, they've had, I think, over 30 individuals look at it over the past couple years, but they really haven't been able to do anything until the litigation was resolved.

John Geer has a history in the restaurant business. His family operates other restaurants. He's proposing a family-style neighborhood-friendly restaurant. I think some of the previous restaurants have been more of a dinner type of establishment. This is more of a daytime family friendly type of a use that's being proposed. Breakfast, lunch, dinner, he's hoping to do ice cream in the evenings, those kinds of things.

We did go and hold a neighborhood meeting. We invited every resident on Furlong and Doncaster and a number on West Henrietta Road. We had a good crowd, here is the sign-in sheet. I think some people just signed in one person but we seemed to have filled the place. I would say that there were a few e-mails in support that were sent to me and, Rick, I think you already have them.

MR. DISTEFANO: I have them.

MS. BRUGG: There are copies attached here. And this is the sign posting you require. We had a really

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3 fabulous neighborhood meeting. The neighborhood was  
4 overwhelmingly enthusiastic, supportive, excited. I think  
5 they were thrilled that the last operator is no longer there.  
6 He did not own the property, but he did try to propose some  
7 housing development of the property I guess a while back.

8 For the most part, there really weren't that  
9 many issues. A lot of questions from the neighborhood but  
10 they were overwhelmingly excited to have a place they could  
11 walk to to grab a cup of coffee, to meet up. People were  
12 very, very positive. I think we have some residents here  
13 tonight, I'm not sure we have as many as certainly we had at  
14 the neighborhood meeting.

15 So as a result of the fact that this was a  
16 pre-existing non-conforming use and it has been closed for  
17 more than a year, outside of the control of the property  
18 owner but still closed over a year. The Town has deemed  
19 under Town Code that the legally pre-existing non-conforming  
20 use has been abandoned, and therefore the only way to  
21 reestablish the use is to apply for and obtain a use variance  
22 from this Board.

23 So we have submitted written documentation. I  
24 do believe that we meet the standards and requirements. We  
25 have to demonstrate most significantly that the property

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cannot generate a reasonable return for any of the uses permitted by the Town Code. This is a single-family zoning district. This property was built as a restaurant, it is part of the application to submit an income and expense statement. The property is currently generating no income. It does still carry significant expenses. I would say that it is currently generating a negative return and has for the past couple years.

I would point out that we did not have all of the expense information at the time that I filled out the application form. The expenses are actually quite a bit higher than what we are showing. They have been maintaining the property, they spend several thousand dollars on lawn maintenance and painting and snow removal and all of those things that's left out of the analysis. More importantly, you don't even have to look at whether it's viable to utilize this property for the uses permitted by code.

We have submitted in the application a site plan. We went to DDS engineers and said what could you build on here if you wanted to build a single-family that's comparable to what's in the neighborhood? They provided a site plan that's in your packet showing five single-family lots and how they would be configured. If you look at it

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3 it's a little odd. Because we're on West Henrietta Road it  
4 would be unlikely to be able to secure approval for  
5 additional driveways on West Henrietta Road, the DOT is  
6 seeking to reduce driveways and not increase the number of  
7 driveways. And the way that this is configured, the last  
8 would either front on West Henrietta Road or back onto West  
9 Henrietta Road.

10 The cost to develop those five single-family  
11 homes would exceed the fair market value of the homes. So  
12 it's really not economically viable for anybody to invest in  
13 this property, purchase this property, go through the process  
14 of demolition, do the site prep work as required, and then  
15 build five houses comparable to what are in the neighborhood.  
16 I think we've given you an estimate for construction of five  
17 1600-square-foot homes. Some of the homes in the  
18 neighborhood are a little larger, most of them are actually a  
19 little smaller.

20 We've given you an analysis and opinion from  
21 Doug Burkhart who is a real estate broker who has worked with  
22 the property and has a long history with the Zamiaras.  
23 Basically speaking to the market for single-family in this  
24 neighborhood, he provided some comps which were submitted in  
25 the application of sales that have occurred over the last two

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years. Houses are selling between \$95,000 and I think \$172,000 I think was the highest-priced house sold in the last three years in that neighborhood. That \$172,000 I'll point out was actually a larger house, I think about 1900 or 2000 square feet.

So the houses are really falling in the \$120,000 and \$130,000 range in the neighborhood. Certainly marketability he's commented would be impacted by the proximity to West Henrietta Road as opposed to being internal in a residential neighborhood and whether there would be buyers for the new house in this type of location.

We provided you with cost estimates from DDS for site preparation. Just the site preparation alone and the demolition came to about \$92,000 a lot. Even if you consider -- I looked at the lot value for the neighborhood. Most of them are a third of an acre in size and assessed somewhere in the \$35,000 range. So if you add that on and you add the cost of construction, we used \$150 a foot construction cost as a number. I know that I've seen higher estimates.

So using that we'd be looking at spending an excess of \$330,000 to build a house that couldn't sell for that. So I think we've demonstrated that it's just not

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financially viable to develop the property for single-family housing and generate any kind of reasonable return -- any return at all.

Whether the hardship is unique, I think that we can demonstrate that indeed the hardship is unique to this parcel. You're not going to find another property of this size and this location. It was built, this has not been a house, this was built as a restaurant, always been a restaurant. There's some challenges with the location and the size of the property. I think that in respect to the uniqueness, I don't think you'll find another comparable property in the neighborhood, in the residential district, and certainly sitting between these two residential streets.

This will not change the character of the neighborhood in any way. As I said, it's always been a restaurant. The neighborhood has been really supportive of reestablishing the neighborhood restaurant that's always been there. And I do believe this hardship, I think we've demonstrated is not self-created, but resulted from unfortunately from the action of the tenant who locked the doors. And honestly the time it took to litigate this is the issues of the property control.

I think we've demonstrated the burden of

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proof. We'd be happy to answer any questions you have or provide you with any additional information.

MS. SCHWARTZ: I know that, correct me if I'm wrong, but when they were going to have outdoor eating there were conditions put on that. Are you willing to abide by the conditions that have been placed the first time?

MS. BRUGG: Do you have those, Rick? I assume so.

MS. TOMPKINS WRIGHT: Is there outdoor dining proposed? I didn't see anything.

MS. BRUGG: Yes. We are planning to use the same outdoor patio that was used before, the same area. There's no physical alteration proposed to the exterior of the property for this application.

MR. DiSTEFANO: I think it might be helpful if maybe we heard from -- and I don't want to jump ahead of your presentation --

MS. BRUGG: I'm going to share this with John because he's going to be operating the restaurant.

MR. DiSTEFANO: Yes, to hear how this is going to operate, a little bit more on that.

MS. BRUGG: Sure. I think that these conditions are all going to be fine. Let me just share

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these.

MS. TOMPKINS WRIGHT: While he's looking can I ask what other uses are allowed in that residential zone and did you explore whether or not that might be a viable option? I know there's a senior living facility a couple sites down.

MS. BRUGG: Actually, the only use that's permitted in the district are single-family, detached dwellings, not to exceed one dwelling per lot, family daycare homes, and buildings structures and uses owned and operated by the Town of Brighton for municipal uses.

MS. TOMPKINS WRIGHT: Rick, does the Town of Brighton want to operate as a daycare?

MR. DiSTEFANO: I don't believe so. There are other uses that are conditionally permitted, which they don't need to prove that a conditionally permitted use would work there on that site, but --

MS. BRUGG: But it would have to meet the criteria.

MR. DiSTEFANO: Right.

MS. BRUGG: I think that the bulk of those uses are things that I can tell you they're not really uses of that great demand. Places of worship, schools, private golf courses -- I think you could fit one of those in here --

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fire stations and ambulances, daycare centers which is a more commercial use, home occupations are permitted.

MS. TOMPKINS WRIGHT: And did you -- maybe this is something of the prior property owner -- but could you give us an idea of what type of restaurant? You talk about some names, but were there bars in the prior restaurants? Was alcohol served in the prior restaurant?

MS. BRUGG: Yes. So there have been prior restaurants that did have a bar. Mr. Geer is not proposing to have a bar, he's actually going to serve wine and beer only to the table. With table service there's no bar proposed, which I will say some of the neighbors were not happy to hear that, but that's not his plan.

MS. TOMPKINS WRIGHT: To confirm, I know the property is wrapped up in litigation, but the property owner was prevented from leasing it or operating its own restaurant while litigation was going on until a couple of months ago?

MS. BRUGG: Correct, yes.

CHAIRPERSON MIETZ: I think it's important, Betsy, if we could hear a little bit about the restaurant and the plan.

MS. BRUGG: Sure.

JOHN GEER: Hi, I'm John Geer, my family's

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3 been in the restaurant business for a while. We plan on  
4 making this a family-friendly restaurant, very relaxed. As I  
5 said, all family and do breakfast, lunch, and dinner. I can  
6 take any questions.

7 MS. TOMPKINS WRIGHT: The hours you had listed  
8 in the application were 5:00 a.m. to midnight. They're  
9 pretty expansive. Do you anticipate that actually will be  
10 your hours or is that just the open that you're looking for  
11 so that you can kind of figure out what works for the  
12 restaurant?

13 JOHN GEER: Correct.

14 MS. TOMPKINS WRIGHT: What are your thoughts  
15 on how many hours will actually be once you get up and  
16 running?

17 JOHN GEER: 5:00 to 11:00 would be nice, to  
18 midnight would be nice. We will be there after we close to  
19 clean and et cetera, anyways.

20 MS. DALE: How many employees do you estimate?  
21 I know it's family, but --

22 JOHN GEER: About 20.

23 CHAIRPERSON MIETZ: And because you have  
24 experience in the business, when you look at the three pieces  
25 of the day, meaning breakfast, lunch, and dinner, could you

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share with us what you're projection would be on what percentage each one of those would contain of 100 percent?

JOHN GEER: Can you repeat that again?

CHAIRPERSON MIETZ: Yes. So in other words, is breakfast 20 percent, lunch 30 percent, dinner 50 percent?

JOHN GEER: You mean of our income?

CHAIRPERSON MIETZ: No, of the actual volume of the restaurant? So in other words, of the people coming in and sitting there and actually eating, what portion -- not the financial volume -- activity?

JOHN GEER: Well, that's to be told. I mean, as when we are open, who's coming in and we're going to have home-style comfort foods. So we would like to --

MS. BRUGG: I was just going to add, he has a restaurant called T's.

JOHN GEER: It's not mine.

MS. BRUGG: Well, the family.

JOHN GEER: Yes.

MS. BRUGG: But you gave that as an example.

JOHN GEER: Yes.

MS. BRUGG: It's in Webster right next to the BJ's, where Hegedorn's is back there. So it's kind of like a family kind of diner type of a thing, is how he's described

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it to me. A place where people can sit down and have a sandwich.

JOHN GEER: Coffee, soda, ice cream.

MR. CLAPP: Could you describe how you plan to use the outdoor area? And in particular, would there be music out there? And by music, on speakers or anything?

JOHN GEER: No, not really. We were not planning on any of that. We know the outdoor seating would be very nice for the neighbors, simply because there's not too many outdoor seating to enjoy the sunshine. Obviously we're not going to use it year round, so the time that we do have some warm weather we would like to serve some food out there and enjoy it.

MS. BRUGG: I would say at the neighborhood meeting there were neighbors that actually asked if they could have their neighbor gatherings, they could come there to get together and if he would be open to having them, hosting them.

JOHN GEER: Yes.

CHAIRPERSON MIETZ: More questions?

MS. SCHWARTZ: So you don't propose any music?

JOHN GEER: No.

MS. SCHWARTZ: Just eating outside?

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JOHN GEER: Yes. I mean, would you oppose music?

MS. SCHWARTZ: Would I? No.

CHAIRPERSON MIETZ: But it brings other complications, let's just say.

MS. SCHWARTZ: Especially with outside eating.

CHAIRPERSON MIETZ: In a neighborhood atmosphere.

MS. SCHWARTZ: So you are having to midnight, you said? Will you be having outdoor eating until then as well?

JOHN GEER: No, we could follow the conditions that are existing.

MS. SCHWARTZ: Because in summer voices tend to --

JOHN GEER: Yeah, I understand.

CHAIRPERSON MIETZ: We have conditions on that. Any other questions? Thank you.

Is there anyone in the audience who would like to speak? Please come up.

THOMAS BROWN: Thomas Brown, I'm a resident of 205 Doncaster Road. We attended the neighborhood meeting and I would concur, I thought it was very well run. And I think

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overall the strong sense of the neighbors was, we don't want to continue having a rundown-looking building out there on West Henrietta Road, and that the proposed usage that seemed reasonable, especially in comparison to some of the prior establishments.

CHAIRPERSON MIETZ: Thank you. Would anyone else like to speak regarding this application?

MR. DiSTEFANO: Before you close it, Betsy, can I ask you a question? Are there any exterior changes proposed for the site? Any increase in parking areas, any building modifications, any modifications to the outdoor dining area?

MS. BRUGG: No, there are no modifications proposed at this time. I think the neighbors had somebody comment about the need for a Dumpster and enclosure, so we'd be happy to work with the Town to take care of that.

MR. DiSTEFANO: I think that would be a good idea.

MS. BRUGG: I think we did look at some modifications, but that the idea is to open and see how business goes and if there's something needed in the future we would certainly have to come back to the Town.

MR. DiSTEFANO: And for the record, the number

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of seats that you're proposing?

MS. BRUGG: So the floor plan shows 64 interior seats. I believe the parking allows 72, I think is what we had discussed. We understand there's not enough parking to support a hundred seats, for example. So I think we're going to look at how things go and if we need to add parking there definitely is enough space to add it. We would just have to carefully look at that and come back to the Town for the appropriate approvals, and certainly engage the neighborhood again as to where they would want to see that.

The parking does have to be striped as part of this project if you've looked at the site plan or if you've been out there it's just worn out. It needs to be restriped. I believe the engineers have count 36 spaces. They may be able to fit a couple more than that.

MR. DiSTEFANO: I noticed there were some stacked parking spaces. Would they be for employees only?

MS. BRUGG: If they are kept stacked that will certainly be the case, but I believe that the 36 that I was told would be code-compliant parking spaces.

CHAIRPERSON MIETZ: All right.

MS. BRUGG: The effort is really to operate something that fits with the character of the neighborhood,

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something that will hopefully be successful and be a good fit with the neighborhood and see how it goes. And if there is a need for additional parking, it just didn't seem appropriate to apply for it at this point without knowing how things are going to go. And if he can get in there and up and running, that would be helpful. And if there's a need for additional parking, it's a large enough site that we can accommodate that and would just have to take a careful look at that and come back for the appropriate approval.

CHAIRPERSON MIETZ: Okay. Is there anyone else in the audience that would like to speak regarding this application? There being none, then the Public Hearing is closed.

## APPLICATION 5A-03-19

5A-03-19 Application of Daniel Hormaza and Leire Bascaran, owners of property located at 45 Crandon Way, for an Area Variance from Sections 205-2 and 207-10A(4) to allow a deck to extend 14 +/- ft. into the 60 ft. rear setback required by code. All as described on application and plans on file.

MR. DiSTEFANO: Just introduce yourselves.

LEIRE BASCARAN: Yes, I'm Leire Bascaran, this is my husband.

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DANIEL HORMAZA: Daniel Hormaza.

LEIRE BASCARAN: From 45 Crandon Way. And we're just looking to build a deck in our backyard. It's going to be a 14 by 20 composite and just looking to upkeep it. Right now we have a stone patio that's very worn out and it doesn't match with the sliding doors, so our doors go out into some temporary stairs to the grass. Hence why we think this would be the most appropriate way to add an addition to our house and really upkeep it and increase the value of the neighborhood. I believe you have all of the documents.

CHAIRPERSON MIETZ: Can you tell us how you determined the size of the deck and what the reasons were for it?

LEIRE BASCARAN: Yes. So we actually looked at a deck that was big enough to just hold a six-chair table to have a patio table out there and just enough space to be able to walk in a reasonable way. And then that's really it, that's as big as it gets.

DANIEL HORMAZA: Things we looked at, we have some electricity wire coming in so we cannot start from there and it goes all the way to the edge of the house, it is kind of square, fits well. And one thing I was going to add is it is a little slanted downhill, so the deck you're looking to

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put in and be able to move around, that kind of thing.

CHAIRPERSON MIETZ: Okay, very good.

Questions?

MS. WATSON: The primary purpose for the deck is outside dining?

LEIRE BASCARAN: Yes.

MS. WATSON: Have you happened to chat with any neighbors about the project?

LEIRE BASCARAN: We did. They're very comfortable. They actually kept asking when it was happening so we can deliver an update at some point.

CHAIRPERSON MIETZ: Okay. No questions from other Board members? Thank you.

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

APPLICATION 6A-01-19

6A-01-19 Application of Peter L. Morse and Associates, architect, and the Townhouses of Eastbrooke Commons, owner of property located at 477 Eastbrooke Lane, for relief from Section 73-27 - Fire Sprinkler Systems and the requirements of Section 73-29 to allow a new detached garage and a renovated/enlarged maintenance building to be

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constructed without sprinkler systems where required by code.  
All as described on application and plans on file.

PETER MORSE: Good evening, I'm Peter Morse, Architect, I'm representing Eastbrooke Commons and Kenrick Management. We are trying to get two buildings constructed. One is, we're going to renovate an existing maintenance garage building that's got a little break room in it. We want to add two more bays. And across Allens Creek where there's a clubhouse there next to Monroe, we want to build a two-car just for storage of trucks.

Currently the Town has got a sprinkler requirement for all structures and I'm here trying to seek relief for this requirement. Number one is the cost which is approaching 25 to 30 percent just to get the line to the -- we've looked everywhere and to try to get that line to the garage. We also tried to look at portable barrels inside of the building, we couldn't get enough rating for it for a 30-minute deluge to start at the 30-minute coverage for the pressure. So we have been waiting for Monroe County Water Authority for several months.

We would like to push ahead with this. We are offering some concessions, additional exiting. We don't feel that it's burdensome to the nature of the use. They are

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3 basically -- one is a storage for trucks and the other one is  
4 going to be front loaded with small engine repair. There's a  
5 little break room and then there's two other truck storage in  
6 it.

7 So anyway --

8 MS. DALE: I have some questions. Your  
9 application said that for the building, not the garage but  
10 what would be a renovated and expanded maintenance building,  
11 that the sprinkler engineering is nearly complete it says?

12 PETER MORSE: We did it, but we have been  
13 waiting for the Monroe County Water Authority now and we've  
14 had no response.

15 MS. DALE: So is your intention that you would  
16 not withdrawal that application with the Water Authority?

17 PETER MORSE: We would withdraw that if we are  
18 granted this.

19 MS. DALE: You would withdraw it, okay.

20 PETER MORSE: Yes. It's been too long and  
21 it's getting to be costly.

22 MS. DALE: So when you say this sprinkler  
23 engineering is nearly complete, I read that you've already  
24 paid a lot of the cost in getting that work done.

25 PETER MORSE: We have.

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MS. DALE: So if the Monroe County Water Authority approves your application, did you consider just proceeding with this one building --

PETER MORSE: We haven't heard anything from them that gives us any indication that they are anywhere near approving this.

MS. DALE: Okay, but if they do approve it at some point in the future, because you've already made the investment in saying the engineering is nearly complete, if you do get approval would you then finish whatever has to be done and then that particular building would have a sprinkler system?

MS. TOMPKINS WRIGHT: Just to clarify, you've done the engineering work, but the construction has not been completed?

PETER MORSE: No.

MS. TOMPKINS WRIGHT: So what's the future construction cost that would be needed to be completed it's still -- I think your application said 35,000 to do that building?

PETER MORSE: Correct, that's just a --

MS. DALE: So you would withdraw that?

PETER MORSE: We would. We've waited months

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now from them and no response. The cost is high, we've looked at alternatives. It's a Town requirement we are asking for consideration to remove this so we can push ahead with this without the sprinkler requirement.

MS. SCHWARTZ: And insurance is okay with it?

PETER MORSE: Yes.

MS. TOMPKINS WRIGHT: This is just a quick question, across the creek is the clubhouse.

PETER MORSE: Yes.

MS. TOMPKINS WRIGHT: Is the clubhouse sprinklered?

PETER MORSE: No. None of the buildings are sprinklered. They were all grandfathered.

MR. DiSTEFANO: Well before the codes.

CHAIRPERSON MIETZ: Okay. Just for the record though, can you just expand on what you are doing as a mitigation and you can read it in for us, what mitigation that you're offering.

PETER MORSE: We are going to add a couple more exit doors. You've got plenty -- you can be out of there in two seconds, but we would like to offer that as something conciliatory for what we are asking for.

CHAIRPERSON MIETZ: But you also talked about

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a few other things, a fire alarm system --

PETER MORSE: We have a fire alarm system and we will have fire extinguishers.

CHAIRPERSON MIETZ: Yes, you said you would monitor the system.

PETER MORSE: Yes.

MS. TOMPKINS WRIGHT: And I know Chris Roth did not submit any kind of objection to the plan.

MR. DISTEFANO: Correct.

MS. TOMPKINS WRIGHT: The Fire Marshall.

CHAIRPERSON MIETZ: Okay. Any other questions?

MS. WATSON: One of the garages is apparently used for truck storage. You mentioned another one of them is used for small engine repair. Can you -- I don't know what is involved in small engine repair.

PETER MORSE: They have snowblowers they're keeping there. I don't know how much actual bench work they do, but they keep just general yard lawnmowers and snowblowers in that and they may do a little bit of minor work. And then we have a center section . . .

CHAIRPERSON MIETZ: All set? Thank you.

Is there anyone in the audience that would

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

## APPLICATION 6A-02-19

6A-02-19 Application of Stacy Platzel and Edward Ciolkowski, owners of property located at 26 Kirk Drive, for 1) an Area Variance from Section 205-2 to allow a front entryway to extend 3.75 ft. into the existing 26.2 ft. front setback where a 40 ft. front setback is required by code; and 2) an Area Variance from Section 207-10E to allow front yard pavement coverage to be + 46% in lieu of the maximum 30% allowed by code. All as described on application and plans on file.

EDWARD CIOLKOWSKI: My name is Edward Ciolkowski, I'm a property owner at 26 Kirk Drive. We recently purchased the house and are looking to clean it up as most homeowners do. The first piece of this is to put a portico over the existing front stoop. The stoop is already at the front of the house, it's about six-and-a-half by three-and-a-half feet. The variance requested is because there's supposed to be a 40-foot setback from the structure of the house to the road. The current house is already only 26 feet from the road, and we're asking to extend that an additional three-and-a-half feet just to cover the existing

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front porch. That's pretty simple and any questions on that?

CHAIRPERSON MIETZ: So we saw the illustration here, so it's going to remain completely open?

EDWARD CIOLKOWSKI: Yes, it will. It will be essentially a roof and two posts to hold it up on the corners of the porch.

CHAIRPERSON MIETZ: Are renovations needed on the steps at all?

EDWARD CIOLKOWSKI: The steps are in pretty bad condition, we're probably going to take it out and put a new one in.

CHAIRPERSON MIETZ: That was the answer I was hoping for.

MR. CLAPP: The extension of the porch is one part, could you talk more about the driveway plans?

EDWARD CIOLKOWSKI: I can. I figured we'd touch on the portico piece first and then I figured there'd be more discussion around the driveway.

MR. CLAPP: Let's do it.

EDWARD CIOLKOWSKI: Okay, perfect.

MS. TOMPKINS WRIGHT: I just have one quick question. Is the new portico extending out further than the current stoop?

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EDWARD CIOLKOWSKI: No. It's just the minimum necessary just to cover that.

MR. DiSTEFANO: And one other question. Comparatively speaking to the house, it would be to the south of you. Where does your new porch roof extension compare to the front edge of their house?

EDWARD CIOLKOWSKI: I don't think I can answer that for you.

MR. DiSTEFANO: Okay. Would you say that the front portion of the house next door is closer to the street than your existing house?

EDWARD CIOLKOWSKI: Certainly comparable, yes.

MR. DiSTEFANO: Thank you.

CHAIRPERSON MIETZ: Okay. So can you move on to the front yard?

EDWARD CIOLKOWSKI: So and it's probably helpful to look at the illustration of what the existing driveway is where the house sits on the lot. That driveway is a little bit narrower than 10 feet wide, there's just barely room on that for two cars. We would really like to be able to accommodate at least three cars. My preference would have initially to take it into the back of the house, but there's not enough clearance between the side of the house

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1  
2  
3 and the property lines. There's a fence there that would  
4 have to be moved, but the neighbor's fence is actually on the  
5 side of our lot where the driveway is now. While the drawing  
6 makes it look like it could extend back further, what's not  
7 shown on that is where the driveway stops there's actually a  
8 chimney that butts out another 20 inches. So there's only  
9 about 8 feet of clearance between the chimney and the fence  
10 right now.

11 So in the context then we would want to be  
12 able to accommodate more than two cars. What we've tried to  
13 do is look at what the recommendations are for a two-car  
14 width driveway. The general recommendation is 10 feet per  
15 car width, 20 feet. That's what we're asking for. I've  
16 checked other houses in the neighborhood those that have  
17 two-car width driveways, that's coincidentally exactly what  
18 they are. There's also some existing sidewalk in the front  
19 yard going from the front stoop to the road, it ultimately  
20 goes to the mailbox. We propose taking that out since it  
21 would be a wider driveway to try to minimize how much is  
22 hardscaped.

23 And then the existing walkway that goes around  
24 the other side of the house which is where the side entry of  
25 the house is and where the garbage cans are behind the fence,

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bring it a little bit closer to the house to try to again give the visual appearance of a larger main space, what green space is there. Conceptually that's what we're asking for. What questions do you have?

MS. SCHWARTZ: When I was over there I did go up and down the street to see and there really is no other property there that has an expanded driveway into the front lawn. I did peek in back, okay, and the backyard is enormous. You talked about the chimney and I don't see why you can't extend the driveway back to the back, beyond the back of the house, and go over and make a path here and come out. Because to me the change will be dramatic and I think really change the character of the neighborhood, even if you take out that sidewalk. In my opinion it's also one of the smallest front lawns and now to make it blacktop, I think will be quite different. So I think to me there's an alternative to go back and behind the house, because your backyard is really, really a good size.

EDWARD CIOLKOWSKI: I would've liked that, but really having 8 feet and a little less than 8 feet width between the chimney and a fence, I don't see how we could do that in a practical sense without causing damage to the vehicles.

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MS. TOMPKINS WRIGHT: And just to confirm, that fence is actually on the neighbor's property line. There might only be 7 feet between the chimney and the property line.

MS. SCHWARTZ: To drive through?

MS. TOMPKINS WRIGHT: Yeah, 7 feet?

CHAIRPERSON MIETZ: It's not wide enough.

MR. DiSTEFANO: Seven feet is the bare minimum for a driveway, the very bare minimum for a driveway, and you're talking not for a halfway decent sized car.

MS. DALE: Did you consider perhaps removing the walkway that goes across the yard and past the front step and to the side of the house where there's a fence and garbage cans? I didn't know if you could see how important it is to have that paved area.

EDWARD CIOLKOWSKI: If that made the difference in getting this variance approved, I would be glad to do it.

MS. TOMPKINS WRIGHT: It looks like you are planning to remove other -- from the map, I wasn't able to get to the site -- but it looks like from the map surveys that were provided, there is a current walkway leading from the front door to the street. That's going to be removed?

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EDWARD CIOLKOWSKI: Yes.

MS. TOMPKINS WRIGHT: And then there's a significantly wider impervious coverage near the pavers that's going to be narrow?

EDWARD CIOLKOWSKI: Yes.

MS. TOMPKINS WRIGHT: So it does look like you've attempted to minimize the impervious coverage on that side of the house.

EDWARD CIOLKOWSKI: I have. Recognizing that, you know, to your point it is considerably larger than what it is currently. We would be willing to give where we can.

MS. TOMPKINS WRIGHT: Do you have an idea of what the impervious coverage is right now? Does it meet the 30 percent requirement right now?

EDWARD CIOLKOWSKI: It's just under, yes, 29.7 is what I calculated.

CHAIRPERSON MIETZ: One other possibility too is, what is your objective? How many cars are you really trying to park in front of your house?

EDWARD CIOLKOWSKI: Three is what I would like to be able to do. And then recognize when we have people over, realizing that street is also fairly narrow. And so even if we have one or two other cars over visiting as

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guests, to be able to put them in the driveway as opposed to on the road I think is a safety issue or a safety benefit to the neighborhood.

CHAIRPERSON MIETZ: There's another possible way to mitigate just maybe to taper the driveway over to the single exit so that it doesn't go all the way to the street on both sides? So you could park the car, two cars, three cars, and then if the car leaves, the only thing you would have a conflict in the driveway with are the cars. But you would eliminate basically half of one side of this.

EDWARD CIOLKOWSKI: We did look at that also. I played around with a couple different options there. The concern that I had there is if you're trying to swing around there, again the driveway is already right up against where the fence is, where the neighbor's fence is.

CHAIRPERSON MIETZ: I saw that.

EDWARD CIOLKOWSKI: My concern there is, trying to do that would lead to damage. We would rather not do it to our car or the neighbor's fence.

CHAIRPERSON MIETZ: Well, I think you could come over a little bit more away from the fence side and make it a little bit wider. And it's something we could discuss, the effect of that much pavement in a front yard with such a

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small lot is pretty significant. We understand the need in modern days for parking cars and you don't want them on the street and all that stuff, but you have to try to come up with a way -- we will talk about it. Just wondered if you considered it.

EDWARD CIOLKOWSKI: Yes, I did consider it. I did look around the neighborhood too and I notice we are one of the few houses in the neighborhood without a garage. If there had been a garage out back, we probably wouldn't be here. But even the houses that do have longer driveways there is frequently more cars parked in the front of the house as opposed to in the back. So if you look at this lot it feels large, but driving around the neighborhood it's common to see cars in the front of the --

MS. SCHWARTZ: But according to your testimony you said if there were a garage in back you couldn't get back to it anyway.

EDWARD CIOLKOWSKI: Well, as I said unfortunately there's not because of the way they decided to build the house. If they designed it to have a garage back there and have clearance then this would be a nonissue.

MS. TOMPKINS WRIGHT: But his point is if they could have put a garage back there they would have designed

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it with more space.

CHAIRPERSON MIETZ: It's kind of immaterial now.

MS. SCHWARTZ: So what is the maximum number of cars that will be permanently parked there without company?

EDWARD CIOLKOWSKI: Should be three.

MS. SCHWARTZ: No more than three?

EDWARD CIOLKOWSKI: That's right.

MS. WATSON: Just to clarify, you would be willing to remove the horizontal sidewalk in front of the house as well?

EDWARD CIOLKOWSKI: I would.

MS. WATSON: It would lower the percentage of the coverage would be then.

MR. DiSTEFANO: Did you do that calculation?

EDWARD CIOLKOWSKI: I didn't do that.

CHAIRPERSON MIETZ: We can work through it.

MR. DiSTEFANO: Probably going to end up to be about --

MS. TOMPKINS WRIGHT: It would be less.

MR. DiSTEFANO: Yeah, I was going to say maybe three or four percent less --

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EDWARD CIOLKOWSKI: Maybe five at the most.

MS. WATSON: But a bigger spot of green.

MS. SCHWARTZ: I have another question. How long is the driveway from the street to when you get to the chimney or whatever that you can't go beyond?

EDWARD CIOLKOWSKI: It is essentially what the existing driveway is, so I don't have that measurement here, but if you look at the drawing, that has the existing blacktop that stops at the chimney.

MS. SCHWARTZ: Right, but I can't tell how many feet.

MR. DiSTEFANO: From the front property line to the edge of that is about 35 feet. I can't tell you from the street, that pavement of the street, but from the front property line it's about 35 feet.

MS. SCHWARTZ: Okay. And a car is roughly what, 10 feet?

MR. DiSTEFANO: No, a typical parking space is 18 feet. So if you have two cars nose to tail, you're right at that 35, you know, you're at that number. You want a little bit of room between --

MS. SCHWARTZ: What is the size of the vehicles that you are talking about? Are they all SUVs or --

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EDWARD CIOLKOWSKI: One is a mid-size SUV, one is a relatively small Chevy Bolt, the other is a mid-size Volkswagen.

MS. SCHWARTZ: Have you tried parking all of them in that driveway?

EDWARD CIOLKOWSKI: Oh yes, there's no way they would fit.

MS. SCHWARTZ: I just wanted to cover all of my bases.

EDWARD CIOLKOWSKI: No, that's okay.

CHAIRPERSON MIETZ: Okay. Any other questions? Is there anyone in the audience that would like to speak? Yes, sir, please come up.

HERBERT BOYD: Good evening, everyone. My name is Herbert Boyd and I live at 18 Kirk Drive next door to the property of 26. And the problem with this, what he is asking for right now, you got a driveway that is for one car, two cars can park one behind each other, but what he wants to do is make the parking lot into I'd say a hotel complex, even to apartments to a place where you got people coming in and can park.

We don't want -- myself, my wife and probably 80 percent of the people who live on Kirk Drive who already

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signed a petition -- they said, we don't want no parking lot that right now we have a driveway. And we put that in there, you tell them about a double parking lot and the neighborhood is not equipped for that kind of purpose. It's neighborhood friendly and we don't need a parking lot for a driveway.

And what you are asking for, he can pull the car up a little more. As I said, I live next door, there's a fireplace there, you can go up another 5 feet right to the fireplace and park a car behind each other. So you got two cars there comfortably. The other people lived there for 20 years and did the same thing.

So what he is asking for is a place to have people that are coming in, rent it out to, and have like an open house, and that's not an open house neighborhood. And as I said, we oppose it because we don't want a driveway for a parking lot, not in that neighborhood. It would take the value of the whole place down. Thank you.

CHAIRPERSON MIETZ: Thank you.

DAN O'BRIEN: Good evening. My name is Dan O'Brien and I live at 15 Kirk Drive, I've lived there for 22 years. I'm directly across from 26. I watched three SUVs parked in that driveway over the last 20 years I've lived there without a problem. They have smaller cars besides a

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big SUV that the daughter has. What they want to do is make this into a Nazareth rental, okay? Both sets of parents, this is what I heard from the realtor, two sets of parents were buying the house so that their daughters could go to school.

Well, that didn't exactly turn out to be true. It turns out Ed and his wife are buying the house so his daughter can continue going to Nazareth, not pay any rent, and rent out the other two bedrooms. This is a family neighborhood, this isn't a business neighborhood. And this is why you guys exist, to keep us a family neighborhood and to keep the businesses out.

I've watched three cars jockey, as I said, for 20 years, and so has the rest of the neighborhood. And if it's a good idea it would be done in Webster where you're from, and it would be done in West Irondequoit where I'm from. You go to any other town, there's no basketball court in people's front yards. This a slippery slope you're going on if you allow this.

We are not a trailer park, we don't want to look like a business on Ridge Road. Keep us a family neighborhood and protect us since the majority of us have signed a petition that wants this. We don't care about the

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portico. Thank you.

CHAIRPERSON MIETZ: Thank you. Rick, did we receive anything?

MR. DiSTEFANO: No, I did not receive a petition. I don't know if somebody has it.

LAURA VINCENT-BOYD: I brought you a copy, and I also do have a survey of our property and theirs. My name is Laura Vincent-Boyd and my husband Herbert -- who just spoke -- and I live at 18 Kirk Drive, a corner lot right next door to the recently purchased house at 26 Kirk Drive. The new owners have yet to introduce themselves.

First and foremost, we have lived here for 12 years and we are truly grateful for making the Kirk Astor neighborhood our home. From the day we moved in we were and still are greeted with very sincere and friendly, helpful, and cooperative neighbors. The kind that watch each other's houses when they are away, share ladders for cleaning our very tall gutters -- we have a real tall Victorian. Help carry away extra heavy boulders and wake up on a cold, snowy winter morning to find your driveway all snow blown when you didn't even ask. That's our neighborhood.

Most people consider their home purchase to be the most expense investment they will make throughout their

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lives. We want to preserve this neighborhood for all of the other families' investment along with ourselves. We take tremendous personal pride in the 12 years of very hard work we have invested in our castle that we call home.

Respectfully submitted, Laura Vincent-Boyd.

And I am prepared and I have both surveys and you are welcome to copy them if you like. This is the property that these people just bought that had never introduced themselves to us. And this ours at 18 Kirk Drive. I have a lot of extra copies so you are welcome to both of those. Thank you, and we love living in Brighton.

CHAIRPERSON MIETZ: Thank you. Is there anyone else who would like to speak regarding this application?

JAMES WELLER: Good evening. My name is James Weller, I live at 85 Kirk Drive, which I'm proud to say has been my home for 50 years as of this past May. I have two remarks to make tonight. The first one is from my wife who is somewhat adverse to public speaking, so if you don't mind I will read her notes. When we moved to the neighborhood we were the young couple without children, but we chose it because it was a family oriented neighborhood. We raised our daughter and our son, and they visit with their families from

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1  
2  
3 out of state from time to time. We have been to neighbor's  
4 weddings, funerals, christenings, and bar mitzvahs, we know  
5 each other well.

6 I know that Conner, just down the street, just  
7 turned two, and Mike's dog Jack, has some arthritis. That  
8 Lisa, a single mom, takes great pride in her home, and that  
9 Bob's lawn is country club worthy. That there's a small  
10 handprint in the concrete step at Tate and Cristine's, and  
11 that Pat and Dick bought their home next to ours thanks to  
12 World War II GI Bill and Pat still lives there after 68  
13 years. And that Tee enjoyed my bread pudding when he wasn't  
14 feeling well a few weeks ago. New neighbors usually happily  
15 adapt to our neighborhood because they bought their home for  
16 the environment they saw. They did not expect our  
17 neighborhood to adapt to their property changes. That  
18 concludes the remarks of my wife.

19 Mine unfortunately are a little bit more  
20 formal. Good evening. To begin, I wish to thank each of you  
21 for your dedication and service and for your efforts to keep  
22 Brighton beautiful. At the conclusion of my remarks I will  
23 provide the Stenographer and the Chair with a copy of my  
24 remarks. Various legal citations that have been omitted from  
25 my oral remarks are contained in my submission to the record.

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My name is James Weller and I reside at 85 Kirk Drive with my wife, Penelope. I am proud to say that this May marks our 50th year on Kirk Drive. The clerk has just been handed 19 signed letters of residents of Kirk Drive in opposition of Part B or Part 2 of this application. Please note that this letter represents opposition to Part B of this application from approximately 80 percent of the 26 homes in our neighborhood. I will now read this letter to you.

To the Board of Appeals of the Town of Brighton regarding Application 6A-02-19. Dear Board members, I am a resident of Kirk Drive in the Town of Brighton. I object to that part of Application 6A-02-19 which requests a variance to permit the paving of approximately 43 percent or more of the front of the dwelling at 26 Kirk Drive. This amount of paving is inconsistent with the driveways in our neighborhood which predominantly are single-lane driveways of about 10 feet in width at the curb cut. The proposed driveway addition would extend over 30 percent of the front ground level living area of this house. With the exception of four homes with single-lane driveways which connect to a garage inside of the home, there are no properties on Kirk Drive with pavement in front of the living area of the

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dwelling. The parking lot effect of this pavement in front of the house would change the character of the neighborhood.

Furthermore, pavement exceeding more than 43 percent of the 50-foot frontage of this lot would be a substantial change to the amount of paving now existing in front of our homes and would be a detriment to nearby homes and the neighborhood. As mentioned earlier was signed by 19 of the 26 homeowners on Kirk Drive. That's about 80 percent, that's a lot of people saying, no thank you.

MR. DiSTEFANO: Mr. Weller, can I just interrupt you for a second?

JAMES WELLER: Yes.

MR. DiSTEFANO: Do you have copies of those signed letters, because I do not.

JAMES WELLER: We just handed them to you.

MR. DiSTEFANO: Where, this? I've got from Mrs. Boyd just this, so I have not received --

JAMES WELLER: I'm sorry, I beg your pardon, I thought Laura handed them up.

MR. DiSTEFANO: No.

LAURA VINCENT-BOYD: Here's 19 signatures.

MR. DiSTEFANO: Thank you, that's what I'm looking for, thank you.

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JAMES WELLER: Thank you, sir. To repeat, the clerk has just been handed . . .

In addition to being a long-term resident of this neighborhood, I'm also one of the cofounders and the long-term spokesperson for the Kirk Astor Neighborhood Association. The Association represents the 26 homes on Kirk Drive and a similar number on Astor Drive. If it please the Board, and to aid in your understanding of the character of the neighborhood, let me share with you a brief history of the Kirk Astor Neighborhood Association and the many challenges we have faced over the years.

I saw from the late Roy Lockwood who organized the Kirk Astor Neighborhood Association in the early 1970s, for the next 20 years, the Kirk Astor Neighborhood Association addressed a series of major challenges which threatened our neighborhood. The first was a proposal to rezone the Residential B land along Route 441 and the rear lot of Astor Drive into a multibuilding high rise, low income housing project. After our efforts caused that proposal to be withdrawn the same land was subject to a rezone as a high technology manufacturing and industrial park. That too failed.

Shortly thereafter the land you now know as

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the Linden Oaks Office Park was introduced for rezone as a high technology and office park. After nearly 10 years of controversy and litigation, Linden Oaks in its present format and without factories and without an exit and entrance through our neighborhood, which they wanted, was approved.

Of particular interest to this Board and noble achievement in our multiyear struggle with the developers of Linden Oaks and the Towns of Brighton and Pittsford, was a New York State Court of Appeals decision in the matter of the Kirk Astor Neighborhood Association versus the Town of Pittsford, et al. -- I'm going to omit the citations that go on and on and on -- where the Court upheld the demands of our neighborhood to require the Town of Pittsford and a citizen board to take a hard look at the project and give a reasonable elaboration before rezoning or related actions could occur. This decision was and continues to be the gold standard for municipalities in New York State.

In the early 1990s, the Kirk Astor Neighborhood Association became deeply involved with New York State DOT and the multilane expansion of Route 441 and Route 490. Our opposition prevented the construction of a 35-foot high flyover bridge over the north edge of our neighborhood from Rout 490 to Linden Oaks. Can you imagine

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the noise, turmoil, and chaos that would have caused over your neighborhood? We prevented that in our neighborhood.

This effort also secured the preservation of the pedestrian bridge over Route 490 which has linked our neighborhood to the Allens Creek School and East Avenue since 1958.

Almost done with the history. On the brighter side and a continuing benefit to our neighborhood was the establishment by the Kirk Astor Neighborhood Association of the Kirk Astor Refuse District and the Kirk Astor Park District and the preservation and maintenance of the Korean War Veterans Memorial at the entrance to our street.

I am sure you're asking, well, what does this history lesson have to do with the application before you? We submit this recitation demonstrates the residents of Kirk and Astor have worked long and hard to both improve our neighborhood and to preserve its residential character from all manner of degradation both large and small.

Now I will address the specifics of this two-part application. The applicants are Stacy Platzel and Edward Ciolkowski, I hope I pronounced that correctly, of 270 Eastern Court, Webster, which is a home they purchased May 2013 for \$458,000 and in which they both continue to

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reside. Stacy Platzel and Edward Ciolkowski are both mature business executives and may well be described as sophisticated business people. The applicants acquired the property at 26 Kirk Drive on April 29, that's just 36 days ago, for \$137,000. The house on this lot was constructed in 1947, by a postwar housing developer. The house contains 1,408 square feet, one-and-a-half baths, and four bedrooms.

In 1955, this house was acquired by the late Howard Duffy and his wife Mary. Howard and Mary raised five children in this house until it was sold in 2008. From 2008 to 2015, it was occupied by a single woman and her young son. In 2015, it was acquired by the Wendt family, the owners prior to its sale to the present applicants just five weeks ago.

The point of this summary is to note that the Duffy family of seven resided here for 60 years and there were often two or more cars in the existing driveway. The Wendt family was here for three years and there were always two cars in the driveway. These two families somehow managed to live here for a combined 63 years with an 8- to 10-foot-wide driveway. Why then you may ask, is it necessary to more than double the size of the existing driveway with a curb cut to a width of approximately 20 feet? The answer as

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we understand it, why is it the intention of the new owners to be absentee landlords? We further understand the intent to situate the daughter of Ms. Platzel, an undergraduate student at a nearby college, in the house and to rent at least two of the three other bedrooms to other college students, thereby requiring the additional off-street parking.

Let it be know that the Kirk Astor Neighborhood Association does not object to Part A or Part 1, the portico addition of this application as it is in character and architecturally similar to many of the homes on Kirk Drive. However, the Kirk Astor Neighborhood Association opposes Part B of this application for the following reasons: The requested variance is nearly 50 percent greater than allowed by code and is therefore substantial. There are 26 homes on Kirk Drive only two of which have a double-wide curb cut with a double-wide entrance point driveway, two out of 26. It is noted the driveways for the two homes with a double-wide curb cut driveway do not extend across the front of the living areas of those homes.

In contrast, this application for an oversized curb cut driveway extends approximately 45 percent of the front yard and overlaps the front living room of the house by

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about 10 feet for approximately 30 to 35 percent of the front of the structure. This is a significant departure from the predominate design characteristics of the homes in our neighborhood, and would produce an undesirable change in the character of the neighborhood.

The applicant has also failed to address the drainage problems inherent in creating an impervious surface covering approximately 47 percent of the front yard. Specifically in question 17-B of the SEQRA application they deny the storm water discharges from this significant amount of impervious surface will be directed to an established conveyance system and run off into the storm drains. And although not addressed in the SEQRA requirements, the proposed action will require the removal of half of the front lawn and the only tree in the front yard.

Furthermore, the applicant has failed to demonstrate they have considered two other alternatives which would allow the use of this property within code. Specifically and despite their disclaimer to the contrary in 8-B and 8-C of the SEQRA questionnaire, this property is about 300 yards from East Avenue and the East Avenue bus line which offers service to and from downtown Rochester and pass both Saint John Fisher and Nazareth Colleges. Easy access to

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this bus line has been available for over 70 years via the pedestrian bicycle foot bridge over Route 490 which connects Kirk Drive to East Avenue.

Also, and we note at the considerable urging of the supervisor of the Town of Brighton, New York State has reduced the traffic lanes on East Avenue from four lanes to two lanes with part of the former curb lanes now being established for bicycle use. These lane modifications were established to service bicycle traffic which pass by both Saint John Fisher and Nazareth and would offer another practical transportation alternative for nine to ten months of the year.

Furthermore, it is apparent the need for this variance is self-created. The owners are sophisticated business persons who having been entitled for only 14 days filed this variance application. They clearly were aware of the character of the neighborhood, the size of the lot, and the parking limitations of the existing driveway before they consummated this purchase. The owners also state in their addendum labeled 9-F, quote, it is now common for families to have multiple vehicles whereas this was not the case when the house was originally built, close quote.

This statement is at best self-serving since

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this house apparently will not be occupied by a family, but rather by a group of college student tenants, thereby rendering this purported family justification invalid. Once again, this need for additional parking is clearly a self-imposed hardship that does not merit a variance.

In closing, please note the homes on Kirk Drive are each single-family residences. The character of the neighborhood will change if nearly 45 percent of a front lawn is converted into an oversized parking lot. Thereby turning a four-bedroom family home into a for-profit off campus student housing project.

Lastly, the Kirk Astor Neighborhood Association concludes that Part B of the requested variance will produce an undesirable change in the character of the neighborhood and will be a detriment to the nearby properties. Thank you for your consideration and I invite any questions you may have.

CHAIRPERSON MIETZ: I think we are good, thank you very much.

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

APPLICATION 6A-03-19

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6A-03-19 Application of Amy Pink, owner of property located at 15 Victoria Drive, for an Area Variance from Section 205-2A to allow a 6 ft. high fence to extend into a front yard area where a maximum 3.5 ft. high fence is allowed by code. All as described on application and plans on file.

AMY PINK: Hi, my name is Amy Pink, I live at 15 Victoria Drive. So we currently have a pool that is in our side yard, we're on a corner lot so it's kind of an awkward situation. The pool was put in many years ago by the lifetime owner of the house. It had a chain link fence, still does, but it is in a state of disrepair, as well as all of the trees and foliage around it are also in disrepair. We would like to replace the chain link fence with a more safe and private privacy fence, cedar. Do you have any questions?

Also, the other day I did have some signatures that I provided for you guys just with my neighbors who can see it. I just wanted them to voice that they were fine. I did have an additional neighbor walk over on his own after he got information about the variance and he offered another in favor letter and said we are doing a great job.

CHAIRPERSON MIETZ: Okay. Can you help us a little as to understanding geographics? How did you

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determine that the height of the fence should be where you're proposing?

AMY PINK: So our pool, I'd say about 80-85 percent of it is technically in a rear backyard, so we're going to do a six-foot privacy around that. Just because, you know, it's the ultimate good privacy for around your pool so people don't see in and stuff like that. So we just figured it would be aesthetically pleasing to continue that for the other part and not drop down. Especially because that is in our front yard, it faces Winton Road, it faces all of our neighbors so everyone will be able to see us around our pool.

Currently right now when someone comes to do pool maintenance, they put their arm on our chain link and they just jump right over with their legs. I don't want a teenaged boy doing that, I don't a kid to be getting over it, put a cinder block next to it or something and be able to just jump right over, so we figured going with a higher fence.

So it's about 60 feet back from the road, so the setback is pretty far, so it's not in the way. And my other neighbor is on another corner lot so her house line kind of goes like this, so it's not like she's here and

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3 she'll be seeing this 6-foot fence in her line of view.  
4 She's actually also diagonal and she is one of my signatures  
5 as well. But we just figured, you know, the 6-foot fence is  
6 coming in more decorative styles, you kind of find them  
7 easier and build them easier as well.

8 CHAIRPERSON MIETZ: You said it would be a  
9 cedar fence. So is this fence going to be left in a natural  
10 wood condition or is it going to be painted?

11 AMY PINK: We were thinking of staining.

12 CHAIRPERSON MIETZ: A clear stain or a color?

13 AMY PINK: That's a good question. I guess  
14 I'm open to whatever suggestion everyone thinks, but we were  
15 thinking a light color, like a little bit of just a light  
16 stain. Just because the clear, when it fades away you can't  
17 really tell it's fading. We want to be able to maintain it  
18 and have it look top notch so the stain you can kind of see  
19 it fade and you can restrain. But if we do poly, it would be  
20 a little bit easier to not realize the poly is worn off and  
21 then you start getting the graying and such.

22 CHAIRPERSON MIETZ: Okay. And then you spoke  
23 in your application about landscape. Can you try to mitigate  
24 this a little bit? Can you discuss that a little bit?

25 AMY PINK: Yes. So there's currently about

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20-foot arborvitaes that are falling over and they're being tied to a nearby Maple with rope. We want to get rid of those, they don't look good. The upkeep on them, they're in disrepair. We were thinking maybe some wild bushes just to kind of soften the front line of the fence and bring something nice to the landscape.

CHAIRPERSON MIETZ: So you don't plan to put any kind of shrubs at all on there?

AMY PINK: Well, the lilac bushes will be there, so the lilac bushes will basically be, you know, if this is the fence there will be two large lilac bushes just to kind of soften it.

CHAIRPERSON MIETZ: Okay. Any questions?  
Thank you.

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

APPLICATION 6A-04-19

6A-04-19 Application of T.Y. Lin  
International, agent, and Rhinecliff Monroe Corporation,  
owner of property located at 1780 Monroe Avenue, for an Area  
Variance from Sections 203-74B(3) and 207-14.2A(1) to allow  
for the expansion of a restaurant to within 29 ft. of a

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residential lot line in lieu of the minimum 50 ft. required by code. All as described on application and plans on file.

JAY GELB: Good evening, my name is Jay Gelb, I'm with Rhinecliff Monroe Corporation and I brought with me Andrew Gartley and he's with T.Y. Lin. I thought what I would do is give a brief overview of what we're doing and what we're asking for on the property owned by Rhinecliff Monroe located at 1780 Monroe Avenue.

We are here today to request an area variance for a bar/restaurant to be located within 50 feet of a property line adjoining a residential district. The current existing bar/restaurant is located within 20 feet and we are looking to expand within the building. I want to make sure everybody is crystal clear with that, within the building. We're not asking for one inch of space beyond that frame, we're going to be going inside within the perimeter of the building internally.

So the expanded space will be 29 feet for the property line to meet property egress and existing adjacent space, and to accommodate ADA compliant bathrooms. We're not requesting any relief to allow us to get any closer to the residential district. And there is no expansion of the building requested. In essence, the building will not be any

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bigger than it is currently. Also, there's no change of use, it is still and will be a bar/restaurant use.

In conjunction with the expanded area we plan to make facade enhancements and other improvements and very positive changes to the plaza. We presented our improvements to the Architectural Review Board and obtained approval. I am not sure if this was included in your packet, but I'd like to read it for the record. I'm looking at a letter dated April 25th, from the Architectural Review Board signed by Paul R. White who is the secretary.

It states: Your application 3AR-1-19 was presented for review before the Board of Architectural Review at the meeting held on April 23, 2019, and the following decision was reached. And it reads: The revised plan is approved as presented.

Again, the perimeter of the building is not changing, not even an inch. The outer wall will remain at 20 feet from the residential district. Expansion is inward only, the footprint of the building stays exactly the same with no changes of any kind whatsoever. The only change is internal dimensions reconfiguration of current space.

Our overall plan is to upgrade the property. Spent a lot of money to improve the appearance which is

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always good for the neighborhood and the avenue. I'm going to have Andrew talk a little bit about the specifics and then I'll answer any questions.

ANDREW GARTLEY: So my name is Andrew Gartley, I'm with T.Y. Lin. I'm just going to walk you through the plans. So essentially this is the space, again we're not expanding at all on. And so the initial plan C-1 you'll see there's a line on the site plan indicating 29 feet. So the 29 feet is representing the inside of that bathroom wall that we're presenting.

And then the existing dimension is 20 feet from the property line, on the opposite side is residential lots. So if you flip over, you can kind of see this floor plan of that. So, again, we're adding ADA compliant bathrooms to this level. You see there's currently no ADA bathrooms on the first level, so we're making it better in that aspect.

So to add the toilet rooms, if you're considering the distance between for sound, because of the expansion into the vacant tenent space, I wanted you to know that that will have sound attenuation in those walls which will help with any kind of sound barrier. Plus you'll have the additional wall of the toilet room for a sound barrier.

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When asked why we're expanding in, we're going to give it more of a family atmosphere so there's some separation from the bar area.

The seating count won't change. Might ask if there's a parking change, and that is again, no, the parking will not change and meets requirements. You can see on C-1, we identified the parking counts with each -- with Otter Lodge, the vacant retail, the existing 12 Corners Auto Parts, and the vacant retail area that's currently there, and a salon and the hardware store. So we are not changing occupant count within the space and/or the existing parking that's there.

CHAIRPERSON MIETZ: Okay.

ANDREW GARTLEY: Any questions?

MS. SCHWARTZ: Yes, is 2:00 the normal closing time for a restaurant or bar?

MR. DiSTEFANO: It is under a conditional use. In that zoning district hours are I believe 6:00 in the morning to 12:00 midnight. With a conditional use you can request extended hours until 2:00 a.m. That bar/restaurant has basically had a pre-existing non-conforming, it's been there for forever and a day. It was there prior to us having hours of operation, so it kind of continued under

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non-conforming use in that regard.

With this expansion, a new conditional use permit will need to be obtained and as part of that conditional use, the request is to extend hours to 2:00 a.m. So that would be reviewed by the Planning Board in two weeks as part of the conditional use permit that is being applied for.

MS. SCHWARTZ: So the reason I asked is, I don't know if they're aware of some of the concerns from the neighbors with the loud, loud noise and people having had a little bit too much to drink and going outside and being really raucous. And that's why I question the 2:00 because Monday, Tuesday nights you still have to get up to go to work. It's a very child-oriented neighborhood that backs up there. So this is going to be a similar situation, primarily a bar with a restaurant?

ANDREW GARTLEY: Yes. So the idea of the expansion is for more of a family atmosphere. So if you go to a bar, you're not sitting in the bar area. If you bring your kids into the bar it's considered almost like a restaurant too, it's not directly a bar so you can sit with your --

MS. SCHWARTZ: So this is all going to be one

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room then with no partition and the bar is going to be --

ANDREW GARTLEY: There is a separating wall,  
it's a fire --

MS. SCHWARTZ: -- down the middle of the  
restaurant?

ANDREW GARTLEY: Yes, currently right here --

MS. SCHWARTZ: No, no, no, you've got your bar  
over here, and you've got your seating over there, correct?

ANDREW GARTLEY: Yes.

MS. SCHWARTZ: So it's one big room inside?

ANDREW GARTLEY: No, there's a separating  
wall. So between the area -- if you have the plan I can show  
you.

MS. SCHWARTZ: So this is a separate room and  
that's the bar?

ANDREW GARTLEY: Yeah, the two dotted lines  
are actually openings within the wall.

MS. SCHWARTZ: Okay. How many seats will  
there be in the dining room part?

ANDREW GARTLEY: The seats are in the count.  
So in the existing tavern space there will be 40 seats and in  
the new dining area there will be 26 booth seats.

MS. SCHWARTZ: Okay.

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CHAIRPERSON MIETZ: Can you talk a little bit about what the reasoning and the need is to expand and for the adjacent storefront and what you're hoping to achieve out of it?

JAY GELB: Sure. I can comment on that. Basically, as I understand it, an area variance is required for this particular expansion, even though the existing location has been there for a long period of time. That particular space as everybody knows has been vacant for a very long period of time. We think that it would go very nicely with an expansion of that particular restaurant. We have a lot of tenants that had interest in the space. The current tenant is on a month-to-month lease, so we have some options to discuss to see what we can do to expand that particular location and fill that space with a good tenant.

CHAIRPERSON MIETZ: Are there other concerns like the lower level space, those kinds of issues? What do you feel is going to make this a more desirable floor plan?

JAY GELB: First of all, we do plan to do some improvements on the outside to make it look more attractive. I think that hasn't been updated in a very long period of time, so I think that's a big thing and really beautify it. And that's part of this entire project and what we're going

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3 to consider doing. But I think that the expansion into the  
4 area with a family-style type as described in this particular  
5 plan will not only service people that want to come in and  
6 have a drink, but also families that want to come in and  
7 maybe have a drink, but also have a sit-down dinner.

8 MS. SCHWARTZ: Is this a new establishment or  
9 are you located someplace else and moving over here?

10 JAY GELB: The existing tenant is there and I  
11 want to try to stay focused on what we have. We're not here  
12 for a special use permit for a particular purpose, but we do  
13 have options because there are other tenants that have  
14 interest in this particular space.

15 CHAIRPERSON MIETZ: Okay. Questions?

16 MR. CLAPP: A question about the area set  
17 aside or earmarked for outdoor smoking. Are people allowed  
18 to, in practice, allowed to bring alcoholic beverages outside  
19 while smoking?

20 JAY GELB: I'm going to leave that up to the  
21 State liquor authority or whatever is required that we can  
22 do. My understanding is the smoking area was something that  
23 was asked for when we talked about this because to try to  
24 keep people confined rather than have them stand outside in  
25 the front or in the back and smoke. This is kind of in the

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3 area and would be fenced in and that's something we will  
4 review with the Planning Board to make sure that they're  
5 satisfied with that as well. This application we have here  
6 today is simply for the area variance for the distance being  
7 less than 50 feet.

8 MS. TOMPKINS WRIGHT: To confirm, with what's  
9 before the Board is only the less than 50 feet of the new  
10 expansion space of 10 additional feet wider than the current  
11 property because the initial space is already pre-existing  
12 non-conforming use?

13 JAY GELB: Exactly correct.

14 MR. DiSTEFANO: And just to reiterate, that  
15 expansion space really is necessary to bring the entire  
16 activity upstairs to limit the use of the basement, which  
17 probably isn't a real safe situation. And the fact to add  
18 handicapped accessible bathrooms which you do not have now,  
19 correct?

20 ANDREW GARTLEY: On the first floor.

21 MR. DiSTEFANO: There's not handicapped  
22 accessible on the lower level?

23 ANDREW GARTLEY: There's no handicapped  
24 anywhere.

25 MR. DiSTEFANO: So this is to upgrade the

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space and basically take the basement out of play?

ANDREW GARTLEY: Yes, the basement will be storage only.

JAY GELB: And ADA compliant, which is very important today and I want to make sure we have those facilities available.

MS. SCHWARTZ: And Rick, so Planning Board handles the smoking, because I'm thinking --

MR. DiSTEFANO: Yes. As part of the conditional use permit which they're going to have to apply for because that is an expansion of the use. Then we are requiring them to go to the Planning Board, the Planning Board will handle the basic operation of the facility. So hours of operation, the number of employees, smoking area.

MS. SCHWARTZ: Because I'm concerned about smoking/vaping.

MR. DiSTEFANO: Well, that unfortunately we can't tell somebody they can't smoke or vape. We can't do anything about that. So bottom line is I think if they can control it better than it is controlled now, I think that would be beneficial.

MS. SCHWARTZ: And this would probably be more in the evening hours, rather than when kids are walking home

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3 from school. I was there the other day midafternoon and the  
4 bar doors were wide open and this was the afternoon. So I  
5 don't know what it would be like at other times with this  
6 predominately set aside smoking area.

7 MR. DiSTEFANO: I think the smoking area I  
8 believe is going to be totally enclosed.

9 MS. SCHWARTZ: I thought the front was open?

10 ANDREW GARTLEY: No, it's all enclosed by  
11 limited access by a door inside.

12 JAY GELB: You have to go inside the bar.

13 ANDREW GARTLEY: It's kind of like putting  
14 them in the corner rather than up front where everybody comes  
15 in.

16 MS. SCHWARTZ: Okay, thank you.

17 CHAIRPERSON MIETZ: Are there other questions?  
18 Thank you.

19 JAY GELB: Thank you for your time and I  
20 respectfully request approval of our area variance so that we  
21 may proceed ahead with the project.

22 CHAIRPERSON MIETZ: Okay, thank you. Is there  
23 anyone in the audience that would like to speak regarding  
24 this application?

25 ALLEN HARTLEY: I have a question or two.

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MR. DiSTEFANO: You have to come up.

ALLEN HARTLEY: Allen Hartley, 30 Brooklawn.

So this approval tonight is nothing but the 50 setback to the 29 feet. It has nothing to do with the smoking place -- and oh, by the way, people can still go out front and smoke, there's nothing wrong with that -- it has nothing to do with the parking, that will be addressed later. This is not saying that this parking calculation is okay, am I correct?

MR. DiSTEFANO: Well, basically the expansion of the restaurant on the upper level is specific to the number of parking spots on the site. But the number of overall seats that currently exist and what will be there with this expansion are going to remain the same, so there is no net change to the parking requirements of the plaza.

ALLEN HARTLEY: Okay. So there's 40 existing seats in the restaurant?

MR. DiSTEFANO: I believe there's more than that.

ALLEN HARTLEY: Right now on the first floor of the Otter Lodge, how many seats are there?

MR. DiSTEFANO: I could not tell you that.

MS. TOMPKINS WRIGHT: I think the plan says there's 40 seats and there's 26 seats in the basement that

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are being moved up to the first floor.

MR. DiSTEFANO: Is that what the plan says?

CHAIRPERSON MIETZ: 66 seats.

ALLEN HARTLEY: The plan says 66, 26 new seats in the new dining area and 40 existing seats on the first floor.

MR. DiSTEFANO: And the current 26 seats in the basement which are being brought upstairs to --

ALLEN HARTLEY: But that doesn't have anything to do with -- I'm talking about the existing first floor at the Otter Lodge has how many seats? The architect on record is saying there's 40.

MR. DiSTEFANO: There's a total of 66 seats within the Otter Lodge.

ALLEN HARTLEY: Okay, let's go there. There's two stories in the Otter Lodge --

MR. DiSTEFANO: In the new space --

ALLEN HARTLEY: Has anyone here gone and counted the seats in the Otter Lodge?

MR. DiSTEFANO: All we can do is determine what the applicant has made as an application. There's 66 seats, they're matching that number and taking the lower level out of play.

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3 ALLEN HARTLEY: The plans don't say anything  
4 about matching those numbers. The plans say 6 booths, 4-top  
5 booths and a 2-top booth and add it up to 26, and put 40  
6 spread out seats on the first floor in the existing space.  
7 I'm saying that's not what's there.

8 MR. DiSTEFANO: Well, whether what's there at  
9 the Otter Lodge or not, I don't know what the Otter Lodge  
10 has, but this new use can have -- when we have approved the  
11 Otter Lodge in the past the numbers worked out to be -- and I  
12 believe it's 66 seats -- the Otter Lodge is more than 66  
13 seats, or less than 66 seats, that's on the Otter Lodge, but  
14 from their approvals, that's what they were allowed. This  
15 plan is purposing the exact same number of seats in this  
16 revised space.

17 ALLEN HARTLEY: Okay, but the plan doesn't  
18 indicate that that's what they are doing. There's no --

19 MR. DiSTEFANO: I thought they just testified  
20 to that.

21 ALLEN HARTLEY: I don't know, I could not hear  
22 them because he was looking at the drawing.

23 MR. DiSTEFANO: Well, they did just testify to  
24 that, so that is part of the record.

25 CHAIRPERSON MIETZ: What is your concern? You

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are asking these questions, what is your concern?

ALLEN HARTLEY: I'm just doing a little fact checking on the drawings that were submitted to the Town.

CHAIRPERSON MIETZ: That's fine, that's why I'm asking you the question what your concern is.

ALLEN HARTLEY: I'm just -- I live in Brighton I want to make sure things get done right. I have a couple questions about this --

CHAIRPERSON MIETZ: Sure, go ahead.

ALLEN HARTLEY: -- and I'm sure you can satisfy me.

CHAIRPERSON MIETZ: That's fine, go right ahead.

MS. TOMPKINS WRIGHT: Real quick, I just want to point out I don't think you can fact check this plan because they haven't put it into practice yet. They haven't actually reconfigured the space with these exact -- and they did not provide a floor plan for what it looks like now. So we can fact check this after they do the renovations and confirm that they only have 66 seats.

ALLEN HARTLEY: Aren't you supposed to fact check it before they do the renovation to make sure --

MR. DOLLINGER: I think what Rick was saying

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is the important thing. If they decide not to put out all 66 spaces, they put 40 in the bar area and they decide to reduce it to 30 for practical considerations, they have an approval, which is what I understand, from a long time ago.

MR. DiSTEFANO: Right.

MR. DOLLINGER: I think it was from the first meeting I was ever here, as a matter of fact, 25-26 years ago. That allows them to have those 40 upstairs and 26 downstairs. So they're allowed to have those spaces. They were not necessarily using them that way all of the time, because I have been in that bar once. I recall that it probably didn't have 40 spaces in that main area.

So if that's what you are saying, that's probably true. But they're approved to do that and as long as they can show us on a plot that it can be done that way reasonably, you know, that's where we are at.

ALLEN HARTLEY: So when they go to the Planning Board the number of 66 could go up?

MR. DiSTEFANO: No, they would have to come back for a parking variance.

ALLEN HARTLEY: Well, let's talk about the parking. I went through T.Y. Lin's numbers of square footages for each of the existing businesses and their

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calculations and they're pretty close. I think they're a little light. I think the seating's a little light in the bar too. I guess he already figured that one out, on my part. But the nail salon, Rick, it says two stations, two employees per station and two --

MR. DiSTEFANO: A nail salon it doesn't matter how many stations there are, it's done by a square footage calculation, one space for every 300 gross square feet.

ALLEN HARTLEY: That's not what the application says, it says there's two stations, there's two people per station.

MR. DiSTEFANO: That's a hair salon calculation.

ALLEN HARTLEY: So is nail salon not hair salon?

MR. DiSTEFANO: Right, nail salon is not hair salon.

ALLEN HARTLEY: So the application makes it look like it's a hair salon but it's not, it's just a business at 300 square foot?

MR. DiSTEFANO: Yes. Probably the way they calculate it, there's probably more parking than what they really need.

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ALLEN HARTLEY: I don't know, there's a lot of stations in that nail salon.

MR. DiSTEFANO: Well, again, we do not do it per station, we do it per square footage.

ALLEN HARTLEY: All right, well, a nail salon's close to the hair salon, so that's my mistake. I was looking at the wrong part of the code.

MR. DiSTEFANO: Right. A nail salon is considered consumer service.

ALLEN HARTLEY: Okay, so there's 68 existing spaces. Everyone knows that five or six of the spaces are behind Dunkin' Donuts in the fire lane. Let's talk about handicap spaces, there's two for the whole plaza. Is that legal for --

MR. DiSTEFANO: If two is required by code, if they have to put a third one in if required, but I believe two is the maximum number needed under New York State Building Code.

ALLEN HARTLEY: So it's not a Town code thing?

MR. DiSTEFANO: No, it's New York State Building Code.

ALLEN HARTLEY: Can you look into that?

CHAIRPERSON MIETZ: That would really be a

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Planning Board issue, also it's part of the conditional use permit.

ALLEN HARTLEY: Okay. The smoking area, which is a fence, it calls it a 6-foot fence, 6 feet by approximately 20 feet. That doesn't need a variance, the fence can go right on the property line.

MR. DiSTEFANO: Right up to a property line, can be up to six-and-a-half feet in height.

ALLEN HARTLEY: What about snow storage?

MR. DiSTEFANO: I don't believe they plow back there. They plow on the other side.

ALLEN HARTLEY: It's right next to the fire lane at Dunkin' Donuts, it's going to be fenced Dunkin' Donuts.

MR. DiSTEFANO: Right next to it, but they're on their property.

MR. DOLLINGER: That's a Planning Board issue too.

MR. DiSTEFANO: Again, all we're looking at is that expansion. This Board is just looking at the expansion into the neighboring space.

MS. TOMPKINS WRIGHT: And how close it is to the residential.

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ALLEN HARTLEY: So there's no approval on parking right now?

MR. DiSTEFANO: No.

ALLEN HARTLEY: That's Planning Board, it's not a variance from the Zoning Board on parking?

CHAIRPERSON MIETZ: Not unless it required a variance. In other words if the calculation was to be determined in the Planning Board review that it doesn't match the square footage requirements then they would be told to --

MR. DiSTEFANO: Reduce their seats or come back for a variance.

CHAIRPERSON MIETZ: Correct.

ALLEN HARTLEY: So it's up to the restaurant to reduce their seats to get it under because the application --

MR. DiSTEFANO: It's up to the applicant who is making the application. So if Rhinecliff Monroe wants to reduce the number of seats so they don't need a parking variance, if the Planning Board says we think you need a parking variance, that would be totally up to them.

ALLEN HARTLEY: Because right now the way the numbers are cooked, parking is perfect for this restaurant, this proposal, and what's existing. It doesn't take into

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3 account for the one vacant property, the way I read it, the  
4 other half of the martial arts building doesn't have any  
5 parking involved in it. So if that place gets rented out,  
6 looks like you're going to need five more spots.

7 MR. DiSTEFANO: I believe they use a basic  
8 number for that space.

9 CHAIRPERSON MIETZ: By square footage.

10 ALLEN HARTLEY: Can you look? I don't have --

11 MR. DiSTEFANO: Because what we do, if there's  
12 vacant space you have to account for that vacant space. If  
13 they say well, we're going to account for it as retail, one  
14 to three hundred then that's fine, then they have to rent to  
15 retail.

16 ALLEN HARTLEY: So vacant retail, number one  
17 property at 1284, says zero after it, parking summary.

18 MR. DiSTEFANO: It says vacant retail number  
19 two, 1250 square feet, five required.

20 ALLEN HARTLEY: Yes. Now look at vacant  
21 retail number one, the second one after the Otter Lodge.

22 MR. DiSTEFANO: Well, they need to look at  
23 that for the Planning Board. I don't know why they put a  
24 zero in there, but that does require a one to three hundred,  
25 so divide it by four --

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ALLEN HARTLEY: It's not going to matter, is that what you said?

CHAIRPERSON MIETZ: No, it's not going to work, because the parking count has got to work for all those spaces.

ALLEN HARTLEY: Well, if you really want to do the math, a couple of those other parking spots -- or retail outlets should get bumped up. And that doesn't include the basements to these places, they all have basements and a lot of those retail businesses use their basements.

You know Weider's does all of their work down there? All of their screen repair, gas repair, locksmithing, they run all of their business out of there. And the auto parts store warehouses all of their stuff down there.

MR. DiSTEFANO: I think we probably would be talking numbers and parking spaces all night if we really wanted to. The bottom line in this situation is that the numbers aren't changing from what currently exists to what -- and I will say this: From what currently was approved, now whether or not 66 exist at the Otter or not, I don't know, but what currently was approved for the Otter was 66 seats. So provided that this maintains that number and the rest of these spaces in here maintain what they are currently at and

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it meets right at the number, then there's no parking issue.

ALLEN HARTLEY: Looks like we got a five space parking issue.

MR. DiSTEFANO: Well, that we will have to take a look at. Again, we're looking at this particular user, this particular space and the variance, and that they are allowed 66 spaces as per all the previous approvals from going back to when the original Otter Lodge came in back in '95 or '96.

ALLEN HARTLEY: 25 years ago.

MR. DiSTEFANO: Yes.

ALLEN HARTLEY: I remember. So a couple other things that I noticed on the application that I had questions about which I don't know if you can answer because you're the one at the counter that does all of the work as far as when applications come in. Is there a -- it said something about a new water service and a new sewer service on the application. Do you know anything about that? Am I asking the wrong people?

CHAIRPERSON MIETZ: Yes, that would be the Planning Board. The site portion of any changes if they were suggested to be made then would be part of the Planning Board, if it is actually a site plan modification.

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MR. DiSTEFANO: It probably wouldn't even be a site plan modification, probably be, hey, we need to redo our waterline, and you go and you redo your waterline. It's like if you do it for your house, if your waterline --

ALLEN HARTLEY: So lastly, from me I don't have too much more. I'm not opposed to any project like this going in there, I just want to make sure you're all on your toes. Can you look into the five spaces?

MR. DiSTEFANO: Yes.

ALLEN HARTLEY: And also, just because I am the way I am, Weider's uses up four spaces with mulch and soil and products that they sell in their store, just putting that out there. And I'm not sure still again about the handicap spots. I think more than two is going to be necessary after a big restaurant.

MR. DiSTEFANO: We will have to look into that but --

MR. DOLLINGER: At the Planning Board you can talk about the location of them too.

CHAIRPERSON MIETZ: Yeah, that's fine.

ALLEN HARTLEY: That's it. Good to see you, Dennis, thank you.

CHAIRPERSON MIETZ: Good to see you too.

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Okay. Is there anyone in the audience that would like to speak regarding this application? Yes, sir.

REMY FENSTER: My name is Remy Fenster and I live at 59 Rowland Parkway. My concern is the attorney said that the problem was that the place wasn't rentable, so they need more space. All they're taking is 10 feet more, so there's still empty space. Either take it all or take none of it, but to take a small section and say that's, you know, because the space is empty, we need that extra. The whole rest of that building is still going to be empty, so what good is 10 feet going to do? Either use the whole space or don't use the whole space.

CHAIRPERSON MIETZ: What is your concern? I'm not sure I'm understanding what your concern is.

REMY FENSTER: Well, the complaint was -- or the reasoning behind taking the extra was because the space hasn't been rented so you're taking 10 extra feet. That unrentable space is significantly bigger than 10 feet.

CHAIRPERSON MIETZ: It's about 2500, the whole empty space.

REMY FENSTER: So there's still going to be a vacancy there.

MS. DALE: So are you opposed to the

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restaurant being larger?

REMY FENSTER: I don't see a need for it. If their justification for taking that ten extra spaces that the space is not rentable, or hasn't been rentable, it's still not going to be rentable.

MR. DiSTEFANO: Well, it's interesting that sometimes a smaller space is more rentable than a larger space because you can get a store in there that's more affordable.

REMY FENSTER: Ten feet?

MR. DiSTEFANO: Yes, well, the remaining space is more than 10 feet.

CHAIRPERSON MIETZ: It's about 1200 feet.

MR. DiSTEFANO: Yes, and a 1200 foot store is a lot of times more rentable than your larger spaces.

REMY FENSTER: I guess I just don't see 10 feet being that big of a difference. I'm also concerned that they say it's a family restaurant, but there's a significant bar. Let's not kid ourselves, at 1:00 in the morning, at midnight, it is not a restaurant it is going to be a bar. And there's a lot that goes on with a bar. It is already going on there, but now you're making it bigger. So now you're increasing the patronage. That's all I have.

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CHAIRPERSON MIETZ: Okay, thank you for your comments.

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

APPLICATION 6A-05-19

6A-05-19 Application of Marlee Finestone, SWBR, agent, and Excelsior Communities, owner of property located at 1625 Crittenden Road, for a Sign Variance from Section 207- 31C(2) to allow for a second free standing identification sign where only one is allowed by code. All as described on application and plans on file.

BILL PRICE: Good evening, Mr. Chairman, members of the Board, my name is Bill Price. I reside at 305 Siltan Road, and I'm with SWBR. With me tonight is Marlee Finestone and I am expecting someone who works with Excelsior Communities to be here as well.

We do have two applications tonight. The first is the one for an additional sign, a monument sign, identifying the property where only one is permitted by code. There are two signs that have been here for as long as I guess anybody can remember. I'm not sure whether these signs were permitted in the first place when the project was built

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I believe in the 60s or 70s.

The first sign is at the entranceway at Crittenden Way and Crittenden Road. That sign is mounted to a brick wall. That sign is being replaced currently. And this request is for a second sign at the entranceway which is actually closer to West Henrietta Road.

The project, I just kind of wanted to show you where these are. West Henrietta Road is over here, there's a small commercial project here on the corner. Most of this across the street is single-family residential units, I am not sure if they are rented or owned by individuals. There are two residences right here, the project kind of surrounds them. MCC's technical school is over here just to the south which does front on West Henrietta Road.

So the two entrances into the property are right here and over here. On Crittenden Road as you travel westbound there's a rise in the topography, so the road is going up. You cannot see either of these intersections or these entranceways from one another. So you can't if you are here, you cannot see this sign. If you're traveling eastbound, you can see this sign, you can't see the other one. So the request is to permit, formally permit a sign that has been there for I believe as long as the project has

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been up.

The new sign that we're asking for is going to be the same square footage that the current sign is. I do have a picture of that sign, it has been replaced with the current name of the project which is Brighton Village Luxury Apartments, and it was formerly known as Crittenden Apartments. So this sign is going to be exactly the same size in square footage and it's going to be mounted to a masonry base which will match the other sign that's going up at the Crittenden Way.

These two are over 650 feet apart and like I said, you can't see one from the other. So for thinking about visual clutter or too much signage, you really can't see them and it's not really going to impact, in my opinion, the character of the neighborhood or any of the residents.

The sign will not be internally lit, per code. It will be externally illuminated from ground-mounted lights that will be LED fixtures. I will entertain any questions that you have.

MS. WATSON: You said that the size is the same and as far as the second sign goes, it will be in the same location, not any closer to the road?

BILL PRICE: Correct. Going to be positioned

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right where it is. We're actually probably going to drop it, not that you would necessarily notice this, but drop it down probably 6 or 8 inches to the top of the sign. Simply because there are two Norway maple trees out at the curb cut, right at the entranceway that kind of block the view of the sign today. So we're going to drop it down so it's more visual to motorists coming in.

MS. WATSON: Can you just state for the record the basic need for the second sign? Why is the one sign not sufficient?

BILL PRICE: Because you can't see the primary entrance to the project that is Crittenden Way. This is what is considered the primary access point to the property, but you can't see that from West Henrietta Road. You don't know where that is. You do see the buildings, there's four of the buildings right up close to the road but you have no other way to identify that that is the complex. And there has been a sign there for a long, long time so we are just trying to formally approve this and make improvements to the sign.

MS. TOMPKINS WRIGHT: Can you speak a little bit about what I will call the eastern sign -- or the western sign, the inability to put that sign on one of the apartment buildings that are along that road, and the need for the

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monument versus a building sign?

BILL PRICE: I don't know that, but because of the vegetation would probably be one of the reasons. We intend to simply put some simple building mounted numbering on them just for residents and for mail and fire purposes. There are numbers now, but those are going to be improved slightly. I just don't think from a visibility standpoint you would recognize it. You wouldn't know where to look to know that that was a sign identifying the project.

CHAIRPERSON MIETZ: Okay. Is there anyone in the audience that would like to speak regarding part one of this application? There being none, then the Public Hearing is closed.

APPLICATION 6A-06-19

6A-06-19 Application of Marlee Finestone, SWBR, agent, and Excelsior Communities, owner of property located at 1625 Crittenden Road, for an Area Variance from Section 205- 12 to allow for on-site parking to be reduced from 752 spaces to 717 spaces where 864 spaces are required by code. All as described on application and plans on file.

BILL PRICE: Do all of you have a copy of the proposed site plan? I just want know what I need to put up and --

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MR. DiSTEFANO: They have a small copy of it, so if you have a big one for anyone in the audience.

BILL PRICE: Okay. For the Board and the audience, I just want to point out where it is we're talking about making some improvements. A little bit about this applicant, they bought the property earlier this year and has been on a program of making improvements to the site and signage, to the individual buildings as well as to some of the individual units themselves. And so this property will likely be seeing improvements for the foreseeable future.

The first application that you saw was for a variance for a setback on the leasing office. I don't know if you recall that, but that was granted and that leasing office is right here on the property. The next round of improvements after the signs that we'd like to get into is expansion of the common space next to the pool and the clubhouse building, which here is the leasing office and here is the pool and the clubhouse and the main entrance. And we have all of the buildings down here pretty much out of sight from anybody traveling on Crittenden. A blowup of this area, the main intersection coming in off of Crittenden and the first internal intersection is here.

And then the pool and clubhouse are here,

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we're going to expand that common area by taking up a drive and some of the parking that is over here today so we can create a playground, outdoor seating area, grilling areas, fire pit, trellis and going to relocate some flagpoles to this area as well. We will improve the accessibility to the pool. There's currently steps up that sidewalk to the pool and we will make ADA compliant so you don't have to negotiate the steps.

The first part of this is securing the variance for the parking. This project we were a little bit surprised to find out is pretty much under the requirements for parking by code. The code requires two parking spaces per unit, we have a total of 432 units times two, would be a total of 864 parking spaces. The project provides 752 parking spaces, so we are already in a deficiency of over 100 plus spaces.

So what we did was we went out and did a parking study. I have to point out that this property is five separate tax parcels, so in the packet what we did and the chart that we did we showed by lot number. So you would think this is overall, we're not just looking at one number, 864 spaces versus 752 spaces, we're looking at it by lot.

So some of the lots may average around

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1  
2  
3 providing parking of 75 percent of code where one of the  
4 lots, Number 5 I believe, provides 130 percent of what is  
5 required by code. We believe this was done by the previous  
6 owners over time for financing purposes. That's why there  
7 are so many different tax accounts, but we don't actually  
8 know that for a fact.

9           So in the end what we're looking to do to make  
10 these improvements we want to reduce the total number of  
11 parking spaces by 35, so we to want take it from 752 spaces  
12 down to 717 spaces. Those parking spaces are predominantly  
13 coming out of this area right up in here where we're going to  
14 be making the new improvements. Two of the spaces are coming  
15 over here, Lot 4, just on this corner of the intersection.  
16 Because of the way the cars are parked there currently you  
17 actually back out into the intersection to get out of the  
18 parking space and we wanted to widen that sidewalk area so we  
19 can get a handicap ramp in there.

20           The improvements over here we're looking at  
21 doing drop curbs and crosswalk striping on all four corners  
22 of that intersection. So the residents going to the new  
23 improvements and to the pool area have a way to get there, be  
24 able to push carriages, whatever, to get there without having  
25 to drop off of curbs.

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So of the spaces, two are here, four are actually at Lot Number 3. If you were to drive out there you couldn't tell the difference whether this is Lot 2 or Lot 3. So some of the spaces are coming out of this Lot 3, but the majority, I think the number is 28, are coming out of this Lot 2.

If you drill down, what we did on this is we did parking counts for the entire complex and specifically by lot area or by lot. And we found that overall the total number of parking spaces is about 400, is the maximum number that are utilized. The complex is 88 percent occupied right now and of the number of units that are there, 40 percent -- I believe it's 40 percent, or 37 -- are two bedroom, and of the two bedroom units, 100 percent are occupied. So any of the vacancy in this is in one bedrooms. We are going to presume that the two bedrooms would require more parking spaces than the single one bedroom units.

So if you extrapolate out 88 percent occupancy with 400 parking spaces being the most that are occupied at any one time, we would assume the need at 100 percent occupancy would be somewhere between 450 and 480 spaces. That's clearly significantly less than is provided, the 752 that are currently there and it's substantially less than

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code actually requires.

I will tell you that just a windshield survey of Rustic Village, which is probably the closest complex comparable to this, it's almost the same. There are a lot of parking areas there that are 50 percent occupied, 30 percent occupied. I did not take the same amount of time to document that by any means, that's literally just me driving by and taking a look.

But all of the parking counts were done after 8:00 at night and before 7:00 in the morning. So we caught the time we assumed everybody would be home, before the kids go to school, before most people go to work. Just this week we did the counts three times again, but really just for the area nearest the buildings that are going to be affected the most and we found that ten parking spaces were the most that were occupied at any one time.

We do assume that the parking spaces that we're providing after the improvements here and here would be sufficient for the residents of those two particular buildings. They would not have to walk exorbitant distances. We're not talking about asking them to park over in Lot Number 4 or Lot Number 5, walk to the unit. They will be able to use those in the evening because the people using the new

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facilities would be walking to it, or if they had guests that would be a time when residents wouldn't necessarily be able to use those parking spaces.

I think that's been enough and I will let you ask any questions if you have them.

MS. TOMPKINS WRIGHT: I had a question. You mention the parking counts after 8:00 and before 7:00, in the parking study that you provided, the chart, it didn't specify that it's just one per day. Is that an average of the two times that were being counted or on each date would you only count after 8:00 and before 7:00?

BILL PRICE: Each, so there was times that we did the counts and it was one or the other, I apologize that maybe I should have stated which it was. There were some dramatic differences. I think the lowest counts were 282, but we did try to make it weekdays and weekends, wanted to make sure they were both counted.

MS. TOMPKINS WRIGHT: Okay. Do you know if the residents have been informed about a reduction in parking just because of, again, it did not look like there was going to be parking issues on it, but just to see if they had been informed and had any concerns?

BILL PRICE: I can't say whether they'd been

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specifically informed. I would say no, they had not. I think they are starting to see improvements and plans are hanging on walls, but I don't think there's been a conscious decision to tell the ones in the buildings affected the most that the parking would be reduced.

MS. TOMPKINS WRIGHT: And just for the record I'm looking at the site plan and I am not seeing a lot of green space, to stripe additional parking spaces or put these elsewhere, but just for the record, is that your professional opinion as you look at this site as well?

BILL PRICE: As far as green space overall?

MS. TOMPKINS WRIGHT: Well, I mean additional space that you can pave and restripe parking.

CHAIRPERSON MIETZ: But to not remove the parking, but replace the parking?

MS. TOMPKINS WRIGHT: Either or.

BILL PRICE: Oh, places we could put additional parking, yes. I think if we are looking at just the immediate area there isn't a lot. But this little bulb I think we did down here where we have got parking in here, we calculated we could fit three additional spaces right here. If we kind of kick this whole thing back over and did not make this as big we could probably get an additional four.

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MS. TOMPKINS WRIGHT: No meaningful increases?

BILL PRICE: No, it's, you know, if this was being designed today you never would have put as much green space in the front of the buildings on either side the way they've done it. It would have been clustered much better. It would have been storm water management, would have been, you know, the parking configuration, buildings would have not been like this at all.

So could you make more spaces? You would have to push the pavements closer to the buildings and take up the green space that's in front of the buildings to do that. I'm not sure -- it's just based on being there many, many times now, it's just not needed.

MS. TOMPKINS WRIGHT: Yeah.

CHAIRPERSON MIETZ: Okay, other questions?  
Thank you.

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

We're going to take a five minute break.

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REPORTER CERTIFICATE

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

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

Dated this 29th day of June, 2019.

At Rochester, New York

  
Rhoda Collins

## Brighton Zoning Board of Appeals 6/5/19

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JUNE 5TH, 2019 AT  
APPROXIMATELY 0:00 **P.M.**

June 5th, 2019  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

## PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
KATHLEEN SCHMITT

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

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

## Brighton Zoning Board of Appeals 6/5/19

## APPLICATION 5A-01-19

5A-01-19 Application of Zamiara Properties 2171, LLC, owner of property located at 2171 West Henrietta Road, for a Use Variance from Section 203-9 to allow a restaurant with outdoor dining in a RLB Residential District where not allowed by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 5A-01-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The property is incapable of earning a reasonable return if used for any of the allowed uses in the district. The area is zoned exclusively for residential single-family homes and the building on this property was built as a restaurant. Applicant submitted information from a local realtor and a developer as to the process and cost of converting the property to residential property which would not be able to realize a reasonable return at all given the high cost of home construction.

2. The property affected is unique and has highly uncommon circumstances. Unlike most residentially zoned properties nearby or elsewhere in Brighton which have historically been

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developed as residential properties, this property was initially developed as a restaurant prior to the zoning of this area as residential and has operated continuously as a restaurant for nearing 70 years.

3. The variance granted will not alter the essential character of the neighborhood, but instead will reestablish a part of this neighborhood's essential character. The restaurant operated for 70 years and the new restaurant is consistent with previous restaurants located on this property.

4. This hardship is not self-created. This hardship was created by a recent tenant at the property that while under, he discontinued the restaurant resulting in the property owner being legally unable to retake control and market the property for a new restaurant operator to continue the legal non-conforming use status.

5. The variance is the minimum necessary to grant relief of a hardship as it is the minimum necessary to allow the restaurant in the same vein as the former restaurant to continue to operate on the site as it has for 70 years.

**CONDITIONS:**

1. This use variance is limited expressly to restaurant use located within the existing building and current outdoor

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seating area.

2. The hours open to the public shall be limited to 5:00 a.m. through 11:00 p.m.

3. No bar for the service of alcohol shall be installed.

4. The following conditions apply to the outdoor dining area only:

A. There shall be no additional outdoor lighting.

B. There shall not be any outdoor entertainment or music.

C. No preparation of food in the outdoor areas will be permitted.

D. The outdoor seating area shall be limited to 24 seats.

E. There shall be no seating beyond 9:00 p.m. in the outdoor seating area.

5. All necessary fire marshall approvals and building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

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## APPLICATION 6A-02-19

6A-02-19 Application of Stacy Platzel and Edward Ciolkowski, owners of property located at 26 Kirk Drive, for 1) an Area Variance from Section 205-2 to allow a front entryway to extend 3.75 ft. into the existing 26.2 ft. front setback where a 40 ft. front setback is required by code; and 2) an Area Variance from Section 207-10E to allow front yard pavement coverage to be + 46% in lieu of the maximum 30% allowed by code. All as described on application and plans on file.

Motion made by Mr. Clapp to approve Application 6A-02-19, Part 1, based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties as other houses on the street have similar entryways.
2. The benefit sought by the applicant cannot be achieved by a method other than an area variance as the front of the house and the existing uncovered front stoop are already within the required setback.
3. The requested variance is not substantial as the new

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portico covers the same footprint as the existing stoop.

4. The size of the proposed portico is the minimum needed to cover the existing stoop.

5. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood as other houses on the street are also within the required setback and have similar entryways.

6. The difficulty leading to this variance request is not self-created as the size of the allowed setback predates current zoning.

**CONDITIONS:**

1. The variance will apply only to the plans submitted and testimony given.

2. All necessary permits and approvals shall be obtained.

(Second by Ms. Schwartz.)

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

(Upon roll call, motion to approve Part 1 with conditions carries.)

Motion made by Mr. Clapp to deny Application 6A-02-19, Part 2, based on the following findings and facts.

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**FINDINGS AND FACTS:**

1. The requested variance is substantial in that the current impervious coverage is 29.7 percent and an increase to 45.9 percent represents an approximately 50 percent increase over what is permitted by code.

2. The requested variance will significantly alter the nature of the neighborhood.

3. There was insufficient evidence presented that doublewide driveways were prevalent in the neighborhood and that no evidence was presented that any doublewide driveway was located in front of the residential home.

(Second by Ms. Tompkins Wright.)

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

(Upon roll call, motion to deny carries.)

## Brighton Zoning Board of Appeals 6/5/19

APPLICATION 6A-04-19

6A-04-19 Application of T.Y. Lin

International, agent, and Rhinecliff Monroe Corporation, owner of property located at 1780 Monroe Avenue, for an Area Variance from Sections 203-74B(3) and 207-14.2A(1) to allow for the expansion of a restaurant to within 29 ft. of a residential lot line in lieu of the minimum 50 ft. required by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 6A-04-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The existing footprint of the building will remain the same but the restaurant footprint is changing with expansion into the neighboring vacant space.
2. The expansion is to eliminate the use of the basement and use only the first floor of the bar/restaurant.
3. A benefit of the expansion is to provide ADA compliant restrooms on the first floor.
4. The expansion space and the additional need for a variance will not have a detrimental effect on the neighborhood nor is it substantial because it is all located within the existing footprint of the building and also will

## Brighton Zoning Board of Appeals 6/5/19

be no closer to the residential district than it already is.

**CONDITIONS:**

1. This variance only applies to the expansion as per plans submitted and testimony given.

2. All Planning Board and building permits be obtained.

(Second by Ms. Watson.)

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

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

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APPLICATION 6A-05-19

6A-05-19 Application of Marlee Finestone, SWBR, agent, and Excelsior Communities, owner of property located at 1625 Crittenden Road, for a Sign Variance from Section 207- 31C(2) to allow for a second free standing identification sign where only one is allowed by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 6A-05-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance is the minimum variance possible to identify both access drives to the apartment complex and is not substantial in that the signs are located 650 feet apart and are not visible from one another.

2. No unacceptable change in the character of the neighborhood and no detriment to nearby proprieties is expected as a result in the approval of this variance as the proposed signs will be replacing signs that have existed since the development was built. The new signs will match the same size and location of the existing signs.

3. The health, safety, and welfare of the community will not be adversely affected by the approval of this variance

## Brighton Zoning Board of Appeals 6/5/19

request. The new signs will be a positive improvement in terms of both aesthetics and way finding for the property.

**CONDITIONS:**

1. This variance will only apply to the sign that was 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 approvals and building permits shall be obtained.

(Second by Ms. Dale.)

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

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

Brighton Zoning Board of Appeals 6/5/19

APPLICATION 6A-06-19

6A-06-19 Application of Marlee Finestone, SWBR, agent, and Excelsior Communities, owner of property located at 1625 Crittenden Road, for an Area Variance from Section 205- 12 to allow for on-site parking to be reduced from 752 spaces to 717 spaces where 864 spaces are required by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 6A-06-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The granted requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. Parking counts taken at the property indicate that a full number of parking spaces required for use are significantly less than the number of parking spaces required by code. Further, given the location and the fact the vast majority of apartment buildings are set back at least a thousand feet behind Crittenden Road and is unlikely that a lack of parking will create parking issues on the public rights of way or on any neighboring properties.

2. The requested variance is not substantial. The property currently only maintains 87 percent of the required parking

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per code. Following improvements the reduction in parking will result in only a four percent reduction meaning the property will maintain 83 percent of the required parking per code.

3. The benefit sought by the applicant cannot be reasonably achieved by any other method. The property is relatively densely developed and there is no other area to create outdoor space for tenants including outdoor seating, play equipment, and fire pit without reducing the number of parking spaces.

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

**CONDITIONS:**

1. The variance granted herein applies only to the reduction in parking to 717 spaces as described in and in the location as depicted in the application and the testimony given.

2. All necessary Planning Board approvals shall be obtained.

(Second by Ms. Watson.)

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

(Upon roll call, motion to approve with

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conditions carries.)

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APPLICATION 5A-03-19

5A-03-19 Application of Daniel Hormaza and Leire Bascaran, owners of property located at 45 Crandon Way, for an Area Variance from Sections 205-2 and 207-10A(4) to allow a deck to extend 14 +/- ft. into the 60 ft. Rear setback required by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 5A-03-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The house is situated 60 feet from the rear line which is the minimum setback required by code, therefore, a deck of any size would necessitate a variance. The request to build the deck extended 14 feet into the rear setback is the minimum variance possible to construct a functional deck behind the house and will need 46 feet to the rear lot line.

2. 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 deck will complement the house and is similar to other decks existing in the neighborhood in terms of both size and style.

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3. The health, safety, and welfare of the community will not be adversely affected by the approval of this variance request. The location and use of the deck will be the same as an existing patio but with improved level access from the house as compared to the existing stairway of the patio.

**CONDITIONS:**

1. This variance will only apply to the deck as described in 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. Schwartz.)

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

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

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APPLICATION 6A-01-19

6A-01-19 Application of Peter L. Morse and Associates, architect, and the Townhouses of Eastbrooke Commons, owner of property located at 477 Eastbrooke Lane, for relief from Section 73-27 - Fire Sprinkler Systems and the requirements of Section 73-29 to allow a new detached garage and a renovated/enlarged maintenance building to be constructed without sprinkler systems where required by code. All as described on application and plans on file.

Motion made by Ms. Dale to approve Application 6A-01-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The applicant has a new detached garage and a renovated and enlarged maintenance building to better support the service and maintenance of the condominiums.
2. The existing maintenance garage was built prior to the fire sprinkler requirements and is not currently sprinklered.
3. Regarding the new detached garage the applicant states that the cost of sprinklering of the building is out of scale with their budget and would cost over \$35,000.
4. The applicant states that sprinklering the new clubhouse garage is not possible as no waterlines are in the vicinity of the clubhouse building.

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5. The applicant's insurance company is not requiring a sprinkler system and the Town of Brighton Fire Marshall did not submit any concerns.

6. The applicant is committing to establish additional life and safety measures to offset the sprinkler requirements that they are seeking relief from. These measures include adding doors for prompt escape, an automatic fire alarm system, additional fire extinguishers, and a security monitoring system.

**CONDITIONS:**

1. The applicant shall add the doors and fire extinguishers as per application submitted and testimony given. The applicant shall also install and maintain an automatic fire alarm system and security monitoring systems.

(Second by Ms. Schwartz.)

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

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

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## APPLICATION 6A-03-19

6A-03-19 Application of Amy Pink, owner of property located at 15 Victoria Drive, for an Area Variance from Section 205-2A to allow a 6 ft. high fence to extend into a front yard area where a maximum 3.5 ft. high fence is allowed by code. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 6A-03-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The property is a corner lot and the backyard is actually by appearance a front yard.
2. The building code requires a fence around a pool at a minimum of 4 feet.
3. The request for the 6-foot fence is the minimum variance to achieve the desired result and privatize and provide security for the pool area.
4. While the fence will be visible from the street it will be mitigated by the installation of shrubs to soften the effect of the fence.
5. No negative effect on the character of the neighborhood will likely result from this variance since the fence will

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provide adequate screening from the pool area from the road.

**CONDITIONS:**

1. This variance is based on the drawings submitted and the testimony given specifically to the location of the fence.

2. All necessary building permits shall be obtained.

3. As discussed and testimony given shrubs shall be installed to mitigate the effect of the fence.

(Second by Ms. Schwartz.)

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

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

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REPORTER CERTIFICATE

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

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

Dated this 29th day of June, 2019.

At Rochester, New York

  
Rhoda Collins