

Brighton Zoning Board of Appeals 7/2/19

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JULY 2ND, 2019 AT  
APPROXIMATELY 7:15 P.M.

July 2nd, 2019  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

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

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CHAIRPERSON MIETZ: Good evening. I'd like to call to order the July 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 June 28, 2019.

CHAIRPERSON MIETZ: Will you please call the roll?

MR. DiSTEFANO: Please let the record show all members are present.

CHAIRPERSON MIETZ: We have no minutes so we can go forward.

APPLICATION 7A-01-19

7A-01-19 Application of John Smyth, agent, and Rochester Electric Workers Building Corp., owner of property located at 2300 East River Road, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold a one day clambake event in September of 2019 and September of 2020. All as described on application and plans on file.

JOHN SMYTH: Good evening, I'm John Smyth, I'm on the Board of Directors with Rochester Electric Workers Building Corp. We are at 2300 East River Road, we've had an

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annual clambake for several years now and this is just our usual two year upkeep. As we've discussed in the past, we've handed everybody a layout of how the tent gets situated on our property, as well as the cooking. This is an adults only party and we have no live music or DJ planned at the event.

MS. WATSON: Are there any changes at all expected for this year or next year as compared to what the events have been?

JOHN SMYTH: No. We are cookie cutter, doing the same thing every year.

MS. TOMPKINS WRIGHT: Rick, were there any complaints in the years past?

MR. DiSTEFANO: There have been no complaints. And, for the record, do you have ample on site parking to handle your crowd?

JOHN SMYTH: Yes. For the crowd that we have the event takes about half of the lawn property. We park cars on the lawn for that event.

CHAIRPERSON MIETZ: How many people approximately come and go?

JOHN SMYTH: We see about 425 to 450 maximum ticket sales.

CHAIRPERSON MIETZ: They are in and out?

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JOHN SMYTH: Yes.

MS. WATSON: Do you have any plans for security?

JOHN SMYTH: Planned security? I'm sorry.

MS. WATSON: Yes, is there anybody working security or helping with parking?

JOHN SMYTH: Yes. We have volunteers process people that are parking, people that are handicapped park on the actual driveway part just for ease of getting in and out of the car. We usually have a team of four people directing cars and where to park them on the lawn.

We do get security overnight because the catering company usually brings their stuff on Friday evening, leaves it overnight. So at 8:00 p.m. on Friday night we have security in the parking lot and I come back at 8:00 a.m. to relieve them. Then there's people at the building, I'm basically the security for the day.

MS. WATSON: And do you have dates and times?

JOHN SMYTH: Yes, they are on the sheet -- I'm sorry, it doesn't say right on your sheet. It's September 7th, in 2019, and it will be September 12th, in 2020. We begin the process of registration at 12:00 p.m. People do not really show up until 11:30 a.m. and we end at

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6:00 p.m.

CHAIRPERSON MIETZ: Any 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.

APPLICATION 7A-02-19

7A-02-19 Application of William H. Harvey, applicant, and William J. Harvey, owner of property located at 1820 South Clinton Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to allow for the operation of a food cart selling to the general public from July 3, 2019 thru September 6, 2019 and again from May 20, 2020 thru September 6, 2020 where not allowed by code. All as described on application and plans on file.

WILLIAM H. HARVEY: Good evening, my name is William H. Harvey, and this is a little bit different than our previous applications for operation of a hot dog cart at 1820, because we're applying for two years. So those two-year segments of July 3rd to September 6th, and then May 20th to September 6th, 2020.

We have received all of the permits needed for Monroe County. I'm food handler, safety certified actually

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globally now, which is pretty cool. We are registered sales tax collectors, we are an LLC, and we only serve precooked food items to the public. And I believe you should approve it because there's no real fast-food place in the Town of Brighton, which I do enjoy. But seeing as Zweigles is a local food company I think it enriches the diversity of the town.

CHAIRPERSON MIETZ: How have things gone for you?

WILLIAM H. HARVEY: Things have been very good. We actually expanded to another location at 1000 Pittsford Victor Road and then my brother, my adopted Ukrainian brother runs the 1820 location.

CHAIRPERSON MIETZ: So it's been well received by the public?

WILLIAM H. HARVEY: Yes, sales are great. We made a Facebook page now, we've done a number of catering jobs, a lot of them in Brighton, graduation parties. They generally enjoy it.

CHAIRPERSON MIETZ: And it's a little more multi-faceted business?

WILLIAM H. HARVEY: Yes. I have some loyalty cards if you would like to take them.

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MS. TOMPKINS WRIGHT: Is that bribery?

WILLIAM H. HARVEY: No, they are valid at each location.

MR. CLAPP: A couple quick questions, last application in the minutes, your operating hours were 11:00 to 3:00, and I notice your application is for 10:30 to 3:00.

WILLIAM H. HARVEY: Yes, a half hour earlier gives us a little bit of time to set up because it's only one person at the site now, my brother. So it takes him a little bit longer for set up.

MR. CLAPP: Okay. And also to clarify, other than what's on the umbrella or cart itself, are there any signs?

WILLIAM H. HARVEY: No flags, just the umbrellas on the carts.

MR. CLAPP: Thank you.

CHAIRPERSON MIETZ: Any other questions for Mr. Harvey?

MS. TOMPKINS WRIGHT: Have you seen the conditions that were listed in the last application? You don't have any issues of the conditions given previously?

WILLIAM H. HARVEY: No, we've had no problems with parking or sales tax. We have not displayed any other

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advertising.

MS. TOMPKINS WRIGHT: So one of the conditions is the trash is removed daily.

WILLIAM H. HARVEY: Yes.

MS. TOMPKINS WRIGHT: No issues?

WILLIAM H. HARVEY: No. We tow the cart back to our storage unit on West Henrietta Road and do recycling and trash and take those out daily. And nothing is dumped on the site either, to be clear.

MR. CLAPP: One other detail, the minutes from the last time say the cart is compact, it's a small cart?

WILLIAM H. HARVEY: Yes, very small.

CHAIRPERSON MIETZ: Any other questions?  
Thank you, sir.

WILLIAM H. HARVEY: Thank you.

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

APPLICATION 7A-03-19

7A-03-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for 1) an Area Variance from Section 203- 2.1B(3) to allow a detached garage to be located in a



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front yard in lieu of the side or rear yard as required by code; and 2) an Area Variance from Section 207-6A(1) to allow said garage to be 19.1 ft. in height on lieu of the maximum 16 ft. allowed by code. All as described on application and plans on file.

APPLICATION 7A-04-19

7A-04-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 205-2 to allow an attached garage to be 1,171 sf in size in lieu of the maximum 900 sf allowed by code. All as described on application and plans on file.

APPLICATION 7A-05-19

7A-05-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 205-2 to allow a single family house to be constructed with a left side (east) elevation of 34.75 ft., a right side (southwest) elevation of 37.5 ft. and a rear side (south/southeast) elevation of 38 +/- ft. where a maximum height of 30 ft. is allowed by code. All as described on application and plans on file.

JIM FAHY: Good evening, my name is Jim Fahy

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from Fahy Design Associates and we are the architects for Loren and Jamie Flaum and their redevelopment plans for 141 Old Mill Road. With me this evening is Mark Bayer from Bayer Landscape Architecture and he is our project landscape architect and he's directing with the assistance of Costich Engineering all of the site improvements and site development portions of the project.

As summarized in our letter of intent, we are here this evening seeking your approval of five area variances to the Town of Brighton Zoning Code believed necessary to our proposed project on Old Mill. The project in summary of what we are planning to do, Loren and Jamie Flaum are proposing to raze the existing 5,200-square-foot home on the property and all existing site improvements, followed by the reconstruction of a new single-family home and associated site improvements.

They're proposing a 6,900 square foot, two-story home, with a 2,700-square-foot finished walkout basement. There will be an attached three-car garage of 1,171 square feet, with an adjoining drive-thru porte-cochere and attached carriage garage of 574 square feet.

We're on a 3.81-acre parcel. If you haven't had the chance to walk the property, it's a gorgeous piece.

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It's probably one of the nicest pieces in the Town of Brighton that I've had the chance to see and work on. We're bordered at the north by Old Mill Road and at the south by Allens Creek. It's a generally lightly or gently sloping property with the exception of at the existing house and also where we will be placing our new home, there's fairly steep slopes dropping currently as much as 13 feet from the roadside to the rear of the house.

I think it's important for the Board to understand that we have been before all of the other Boards. As you know the ARB, presented to them in late May, it was passed enthusiastically with the only conditions that we receive the variances that we're asking for this evening. In that presentation I thoroughly reviewed not only the architecture of the home and the exterior appointments, but also the scale and massing of this home, its positioning on the site, and its appropriateness to the neighborhood. We discussed all of these items before that Board passed the home.

As shown in the graphics presented in our application, it's a soft contemporary home with lath and plaster stucco exterior with stone accents. The porte-cochere and attached carriage garage as you can see in

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the front elevation in front of the podium, was strategically positioned to privatize and veil the garages and family parking area. The angle forward was purposefully planned to not only soften the presentation of the front elevation but it was also done to minimize any required adjustments to existing grading on site.

Our ZBA application clearly summarizes the importance and appropriateness of each of the variances that we've asked. And our belief that the development of the proposed construction is consistent not only with the character of the neighborhood, but the objectives of the RLA Zoning District as a whole.

Therefore, as I go through these and Mark goes through those that deal with the site development improvements we are going to try to keep these to just the key points of what we're asking for. I know you've read all of our points of the text.

The first variance is for a detached garage in the front yard. In combination with that detached garage exceeding the 16 feet maximum height per Town Zoning. The carriage garage and porte-cochere are attached to the main residence and they're an integral component to the exterior aesthetics of the home and will be viewed as a continuation

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of the residence and not as a detached structure.

The angle forward as I just had mentioned not only accommodates the existing grading on site, but it softens the visual impact of the residence on the road side of the home. As a structure attached to the main residence by the porte-cochere, the height of this carriage garage is complementary to the scale and massing of the residence. I feel strongly that if I would lower the height of the structure from the 19 feet at the ridge down to 16 feet or lower, that it would definitely be out of scale with the remaining portion of the home.

I think also additionally important to this whole idea of a structure forward of the main line of the front wall of the house is our setting. We are on a 3.81-acre parcel as I had mentioned. We have 207 foot of frontage at the front setback for the property. Our overall footprint and structure including residence, porte-cochere, and carriage garage fits comfortably on the property only accounting for 3.4 percent of the property area.

The front setback of the carriage garage is 79 feet, which is well behind the 60 feet required by code. Our side setback at the carriage garage is 46 feet, which again is well beyond the 31 feet required by code.

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3 Additionally and I think important is because of the size of  
4 our property and on our property we have both east and west  
5 on the left and the right side, there's a mature stand of  
6 trees that will principally remain intact that will also help  
7 soften any views of our home from the neighboring properties  
8 east and west.

9 Our second variance request is for an attached  
10 garage exceeding the 900 square feet allowed by code. A  
11 three-car attached garage of 1,171 square feet is common of  
12 new upscale homes constructed not only in the Old Mill  
13 neighborhood but in Brighton as a whole.

14 The garage fits seamlessly within the  
15 footprint of the home and is in the character of the overall  
16 scale and massing of the proposed structure. A variance was  
17 similarly granted in 2013 for an 1,130-square-foot three-car  
18 garage at 191 Old Mill just east of our property.

19 This trend will undoubtedly continue because  
20 the property on Old Mill is so desirable and for these newer  
21 homes, that I believe that this trend will absolutely  
22 continue as the older homes are either renovated or razed  
23 with new property owners.

24 Our third variance request of the maximum  
25 building height of 30 feet, this variance request for

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building height for both the sides and the rear elevation is a function of the existing natural site topography. The existing site has a natural grade drop of approximately 13 feet from the front wall of the proposed home to its rear. Our proposed site development plan minimizes regrading -- Mark will speak to that -- to maintain a natural and relatively unaltered profile to the site's existing topography.

The proposed single-family residence is designed with relatively modest roof pitches of seven twelve front to back, which is creating our maximum roof height. And this is done to maintain building height below the 30 foot allowed at the front of the home. Our front home elevation is 27'9", so this height over 30 feet on the sides and the rear is strictly a function of existing grade. So we have gone that extra yard to make sure that this house does not exceed it the best that we can, with the existing site topography.

Again, the home at 191 Old Mill Road to the east of us has a sloping yard and the home was placed with a portion of that home on the slope of the property. They received a variance for height on that structure of 34 feet, relatively close to what we are asking for. Our maximum is

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just over 38 feet at the rear of the property. I would like to make sure that if this is approved that the Board provides us a little bit of leeway inches as we finalize our grading. I've given you a number of 38 foot, zero and a half. That is exactly what it measures from the grading right now. Mark and I are working final grading out to inches difference, so I would hate to have an approval of 38 foot, zero and a half if it becomes 38 foot, two inches or three inches. So how this Board crafts that approval or drafts that approval I'd appreciate some leeway in that even if it were another 4 to 6 inches of height.

That's a summary of the variances asked for of the house, I will now hand it over to Mark to talk about the site development side of this and the variances that are for that, unless the Board wants to ask questions of the building first and then ask questions of the site second.

MR. DiSTEFANO: Do you want to handle it all as a whole and ask questions or do you want to, just these three applications, ask questions? Do you want to hear the whole presentation first?

MS. SCHWARTZ: Here the whole thing.

MR. DiSTEFANO: Okay. Let me read the other ones.



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## APPLICATION 7A-06-19

Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 207-10E(2) to allow front yard pavement coverage to be 36.5% in lieu of the maximum 30% allowed by code. All as described on application and plans on file.

## APPLICATION 7A-07-19

Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for Area Variances from Section 207-2 to allow for 1) a front wall with guardrail to range in height from 4 ft. to 5.5 ft. where a maximum 3.5 ft. high wall/fence is allowed by code, 2) a side yard wall with guardrail to range in height from 5.6 ft. to 10 ft. where a maximum 6.5 ft. high wall/fence is allowed by code, and 3) allow a rear yard wall with guardrail to be 9.6 ft. where a maximum 6.5 ft. high wall/fence is allowed by code. All as described on application and plans on file.

MARK BAYER: Good evening, my name is Mark Bayer, I'm the project landscape architect working with Jim Fahy on the project. The project as Jim has stated is on a wonderful and very substantial site and it's a 3.81 site.

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And one of our goals for the project has been to kind of confine our disturbance and limit our work to the area of the property that's where the existing house is. So this site plan shows only a portion of the lot. Most of you probably are aware that our area of work is up in here, but there's a whole other natural area that's lower on the site.

So one of the goals again has been to minimize the impact to disturbance grading and any work that we are doing in the lower part. We're not going near the forever woodland area which is down here by the creek. We are working right up where the existing house is, and that's been a goal of ours from day one.

As Jim described, one of the things we've been doing as landscape architects has been trying to work with the existing topography as much as possible. And I'm sure you're most all familiar with what's going on at the site, but essentially we are creating an arrival courtyard garden, I would call it. The existing drive configuration is more or less the way it is today and there's an arrival court that's going to be planted. It will have a wall height of about three six surrounding it. And all of the perimeter will be planted, it will be treated with nice pavement treatments and nice detailing with the wall.

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3 And then, as Jim had mentioned, there is a  
4 garage that is being classified as detached but there's  
5 actually a porte-cochere that connects that garage with the  
6 main house. And I want to talk about that a little bit  
7 because one of the variances we are seeking tonight is the  
8 area paving. That is, we're at 36.5 percent, but the  
9 allowable is 30 percent. And I want you to understand that  
10 that includes that we're classifying the front yard from this  
11 corner of the house sort of following the house around, so  
12 the garage court is included in that 36.5 percent.

13 And what I wanted to note is that, you know,  
14 given the scale of the property and the neighborhood, you  
15 know, we are absolutely confident that this courtyard is  
16 scaled correctly and the garage court is scaled to allow cars  
17 to move in and out of the garages and back up. And with the  
18 wall that surrounds, with the paving kind of planted at all  
19 edges, with this porte-cochere garage combination this is not  
20 even going to be at all visually impactful. You cannot even,  
21 you will not hardly see this behind that building.

22 With the low wall and planting here, I think  
23 the impact is going to be absolutely minimal. And I think it  
24 is totally in keeping and appropriate for this neighborhood  
25 and the scale of the lot, and the types of homes that are

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being built here. So that is sort of a description of what's going on with that variance there.

And the wall height variance -- and I handed out some visuals of that courtyard for you to get a look at -- and you can see, I think, one of the beautiful things that Jim talked to this, is that this detached garage which is attached by the porte-cochere it really, you know, you don't know that that garage is necessarily from the street view, the doors of the garage are to the interior. The exterior looks like it's part of the building. And with the porte-cochere detail, again, this garage door is completely concealed. Again, this is being designed and thought of as a courtyard garden. Yes, you can drive on it, but you arrive into a garden-like space. So that is that.

The other thing I wanted to touch on was the backyard. The owners would like to have a pool. And, again, one of the goals as I've mentioned before was that we do not want to do excessive grading into the lower reaches of the property. So what we did is because the lot does slope and fall at the lower level of the house we created the pool area pretty tight to the house and kind of keeping everything compact on the site.

And then we have introduced a retaining wall

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so that we, again, we can minimize the amount of earth work we have to do to get the level area. We're using the wall to create a level area of the lower reaches. And by doing that, we don't have to get out into this meadow area with Earth work and fill and all of that.

So one of the variances -- and there's another factor here that I will mention to you -- is that pool, one of the interesting ways we're handling the requirement of pool code that requires a four-foot surround is we're actually using the wall as a means of achieving four feet of grade change from the outside so that we don't have to have fencing running through the middle of the lot to create a enclosure. We are actually using the wall and a minimal amount of fencing kind of up higher on the site.

So there's no fencing here and the wall not only carries the grade, it solves the problem of having to have a pool encloser on the side that the owners will look out to the meadow and the creek. The wall height is again to carry that grade that's there, and then remember the request is for a wall on this side by the pool, that's 6.5-foot wall height, which is actually the code in the backyard.

What's pushing us over is the desire to have -- if the owners want to do it and I think they do

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because they have small children -- a little guardrail. It will be a 36-inch guardrail. So if you take the wall height of maximum height of six, six, plus the three, that's where you get the nine six, but very necessary I think, and again very good reasons for doing it. And then the wall goes to much lower because you're going uphill this way. So it goes from the maximum of six, six here to a much lower wall as you go uphill, almost to nothing as you get to the top.

The other area that I wanted to describe to you is, there is over in the garage court on this side, which there is another wall that comes around and returns to the attached garage, and there's a set of steps. And the function of that is that grade is falling across the site this way, and there's a lot of trees over on this part of the property. And we are letting the natural grade fall and down the slope, and then we're holding up the garage court pavement with the wall. The wall at this end closer to the street and closer to the property line, is going to be a maximum of two six on this outside, and will be about one foot high consistently on the courtyard side. So, and then as it goes down the hill it reaches a maximum elevation at that corner right there of about seven feet.

So the request that you see is at the low

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3 end -- or the high end here, we are in the front yard again.  
4 That front yard division is about right here, so going this  
5 way we are in the front yard. So the code say three six in a  
6 front yard. At this corner our wall will be no more than two  
7 six, but we have that guardrail that's going to kind of carry  
8 through there potentially that pushes it to the five six.  
9 But the wall height itself is two six, on the outside. On  
10 the inside it is consistently one foot above the pavement.

11 My point being that from the street side you  
12 are only seeing the one foot of wall, on the courtyard side  
13 with the three-foot cable rail which is really light. The  
14 railing will be a light design and with that going back to  
15 Jim's idea of a detached garage porte-cochere, you are  
16 literally not going to see this wall from anywhere on the  
17 public side of the property. And this side we are keeping  
18 much of the vegetation and plantings. This darker green is  
19 all plantings, so literally not visible and totally necessary  
20 to kind of not get in and regrade all around those trees  
21 there. Very important to know that.

22 And then the same thing on the pool. Totally  
23 not visible from the street side, and again wall height is  
24 really maxed out at six, six, which is code. It's the  
25 railing that's pushing us over. So I probably said enough.

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Any questions?

MR. DiSTEFANO: Can you just talk a little bit about the front wall?

MARK BAYER: Sure. The front wall is compliant, it will be under the three six. It's just a low surround wall that will be done in the same material as the front of the house. It will done in a natural stone, well it's a cultured stone but it will look like a natural stone.

And again, that is to kind of complete and set up the whole concept of a courtyard garden effect. We kind of tie the whole building complex together and make it look like a space you're arriving into and treat it really nicely with plantings, paving, and kind of create that effect. And between that and the plantings and the carriage garage, again, I think the 36.5 percent paving, you know, much of that is over here which is totally not visible.

And I want to point out again this is a 3.8 acre lot and our total footprint is very small relative to the lot area. And I do also want to point out something to the Board, I think you'll be interested to know what we are doing in this courtyard area and auto port and garage court, we are picking that storm water up which potentially could have drippings from cars and so on, we're going to collect



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3 that and we are going to take it to a large rain garden here  
4 and that water will be discharged into the rain garden where  
5 it will be moved through -- the plantings that we're doing  
6 there is like a biofilter if you will, so any contaminants  
7 will be settled out there from the paved areas. And also  
8 then below us is thousands of square feet of kind of woodland  
9 area that will be a further filter.

10 So environmentally we are managing that storm  
11 water that's in that paved area to go through a biofilter  
12 before it ever finds its way into the adjacent ground. And  
13 again, there's a long distance between where we're filtering  
14 and the creek itself and a major wetland filter in this zone.  
15 So I think it's sound in terms of the environmental approach  
16 to storm water management.

17 MR. DiSTEFANO: And just to be clear with the  
18 front wall, there is going to be a guardrail on that front  
19 wall too?

20 MARK BAYER: No, not out here, only here in  
21 the front yard technically here.

22 MR. DiSTEFANO: Okay.

23 MARK BAYER: And that is a retaining wall.  
24 This is just a freestanding wall, so it's not -- we're  
25 classifying everything forward of this corner as front yard.

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That why that's --

MR. DiSTEFANO: Okay. I just want to be clear that what's right out closest to the road that would all meet code.

MARK BAYER: That meets code. Everything that's visible in that front courtyard meets code.

MR. DiSTEFANO: Thank you.

MARK BAYER: Yes. Any questions?

CHAIRPERSON MIETZ: Why don't we ask questions while Mark's up here on the last couple applications. Are there any questions relating to the retaining walls or ornamental walls, the things that are in, we stopped at Number 6, any questions?

MS. TOMPKINS WRIGHT: I have a quick question, the pavement calculations also includes the kind of gravel walkway as well?

MARK BAYER: In the front yard it does. It accounts for that, so it includes that. And I didn't mention this and thank you for asking about it. It's basically just a way to get mowers and so on to the back here, so a gravel lane way.

MS. TOMPKINS WRIGHT: Would that gravel lane in combination with the drainage systems in the front yard

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really alleviate the storm water runoff to neighboring properties running that to the adjacent properties?

MARK BAYER: Yes. We are managing all of that water and we have set up a storm system on the site that there will be conductor or piping that will come around the building. So we even have the ability to tie in all of the roof leaders and take them into the storm water management rain garden area that we're talking about.

CHAIRPERSON MIETZ: Any other questions for Mark about the walls or any of that stuff?

MS. TOMPKINS WRIGHT: I mean, it's safe to say that the majority if not all of the height issues with the walls are really caused by elevation changes on the property. That if this were a flat property you would be able to manage what you are doing without retention walls and your fencing and everything would be to code?

MARK BAYER: Right, well even the swim pool, I think there's a real important thing to note and that is, you know, if we just talk about walls this meets code. But it is kind of an interesting code and we are interpreting a guardrail as fence above that, but it's basically just a cable rail to prevent their kids from spilling over the wall. So the wall itself is at six six, so that three-foot

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guardrail puts you at nine six. Here, we are over by six inches at the corner, but the guardrail pushes us up to the ten feet. So instead of nine six it's a seven-foot high corner with a three-foot rail.

And then we're going uphill that's why it becomes a maximum of two six here, the wall. And on the inside the whole wall, you're only going to see one foot on the inside. This is the low side, that's the high side.

MS. TOMPKINS WRIGHT: But we're measuring all of these from the low side?

MARK BAYER: That's what I have done.

MR. DiSTEFANO: Yes.

MS. SCHWARTZ: And the guardrail then is three feet consistently?

MARK BAYER: Yes.

CHAIRPERSON MIETZ: Any other questions on this part of it? Okay.

Jim, could you come back up and we will see if there are questions. So questions related to the architectural piece of this, any other questions?

MS. SCHWARTZ: Could you explain the function of the two garages?

JIM FAHY: Sure. It's no different than other

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2  
3 presentations I've had with this Board for homes on  
4 Ambassador Drive or elsewhere in Brighton. They need that  
5 storage, they have a young family and they're planning for  
6 their future. They have more than one car. Loren has more  
7 than one himself, so instead of parking these vehicles off  
8 property or out in front where they're visible they can put  
9 them inside of a structure that hides those vehicles.

10               So when you have a family of four or five and  
11 there's an extra vehicle that someone may have a summer car  
12 and you have a property that you can house all of the  
13 vehicles it's a good thing. The neighbors will love this and  
14 I think our solution to this by creating this parking court  
15 that's hidden by a porte-cochere and the carriage garage is  
16 about as good a solution on a large lot as I have ever -- I  
17 can't come up with a better idea than that. Otherwise you  
18 have, if you think about it, if you have a need for five  
19 vehicles to be covered on the property and you attached that  
20 to the house now your garage oftentimes goes out of scale and  
21 massing with the attached home unless this thing is just  
22 ridiculously large.

23               But for a home of this size, 6,900 square feet  
24 on two floors, is that large, yes, but is that  
25 extraordinarily large, no. This solution is a good one for

## Brighton Zoning Board of Appeals 7/2/19

that.

MS. TOMPKINS WRIGHT: Can you tell what the square footage is of the detached garage?

JIM FAHY: That's 574 square feet.

MR. DiSTEFANO: Of the detached garage?

MS. TOMPKINS WRIGHT: Yes, the attached is --

JIM FAHY: Eleven seventy-one, it is in the application it's more in a summary. It wasn't -- because it's under the square footage allowed it was just noted in the summary.

CHAIRPERSON MIETZ: On the 1,171 garage, you stated it was situated and not situated, but it was designed to accommodate the massing of the rest of the house. So is it that or is 1,171 square feet necessary to park the vehicles? Let's just be clear about it.

JIM FAHY: No, I don't think --

CHAIRPERSON MIETZ: Maybe I misunderstood.

JIM FAHY: I think you did, but all I said is it's 1,171 square feet. I said it's where it's in line with new upscale homes in Brighton. I've received this variance on a dozen homes. Then I said it is in scale and massing with the home. So it's one thing to argue to this Board that I have a garage that for new homes garages of 26- to 28- to

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30-foot deep is a common, common request by homeowners.

So and my garage bays are not overly wide. I just had a little extra depth in there and it's real easy with a three-car garage to get above 900 square feet. So it's in line with where I think it should be.

CHAIRPERSON MIETZ: Okay. So I guess let me rephrase then, you would say that you designed it as it related to fitting the appropriate vehicles in a three-car garage, have enough walking space, have a little bit of storage space so that was how the 1,171 feet --

JIM FAHY: Keeping in mind the home that I was attaching it to. So it's a combination of things --

CHAIRPERSON MIETZ: All three things.

JIM FAHY: Right, exactly.

CHAIRPERSON MIETZ: Okay.

MS. TOMPKINS WRIGHT: Just to confirm, under the code both detached and unattached garages are looking at a maximum of 900 square feet?

MR. DiSTEFANO: No, 600 for a detached and 900 for an attached. And just for clarification in why this detached garage is not considered attached even though it's physically attached by the porte-cochere is that in order to be an attached garage it has to be attached with enclosed

## Brighton Zoning Board of Appeals 7/2/19

space. Even if it's not heated, but it has to be enclosed, so that would make it an attached garage. And this is just basically an overhang attaching.

JIM FAHY: Right. So if I had, let's just take this a step further. If I had folding glass doors on that porte-cochere I wouldn't be before you for this request. It's kind of crazy, I think, but it's the Town Code. We're trying to work with the code.

CHAIRPERSON MIETZ: Okay. The design seems to work. So any other questions related to this?

MR. DiSTEFANO: Jim, just for clarification, and I know the way we interpret height for the structure is the mid point of the roof and eaves. So I wanted to make sure it's clear, the overall height of this structure even at the front will be over 30 feet. But the way the Town calculates the height it's at 27'9", correct?

JIM FAHY: Correct. And I think we're arguing --

MR. DiSTEFANO: I just want to be clear as to the peak, what would you say the height of the structure is? I just want to make it clear.

JIM FAHY: Maybe another six feet tall, but that's not how your code reads.



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MR. DiSTEFANO: That's not how our code reads, but I just want to make it clear that --

JIM FAHY: Every town is different, yours is mean roof -- actually mean roof is more used than ridge height, but there are townships that look at ridge height.

MR. DiSTEFANO: Right. Because we do it on accessory structures we look at ridge height, we look at the highest point of that structure, on accessory structures. But with principal structures we look at the mean between the peak and the ridge and eave.

JIM FAHY: Which is a good point, Rick, because our 19.1 feet on the carriage garage is to the ridge, not to the mean roof.

MR. DiSTEFANO: And if it was done with the mean --

JIM FAHY: It would be well under 16 feet. It would probably be 12 or 13 feet to the mean roof.

CHAIRPERSON MIETZ: All set? 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 7A-08-19

Brighton Zoning Board of Appeals 7/2/19

7A-08-19 Application of John and Monique Marchioni, owners of property located at 102 Southern Parkway, for an Area Variance from Section 205-2 to allow a covered porch to extend 3.4 ft. into the existing 13.2 ft. side setback where a 15 ft. side setback is required by code. All as described on application and plans on file.

MONIQUE MARCHIONI: Good evening, my name is Monique Marchioni I'm the resident and owner applicant for this variance request. And the variance requested is from the code 15-foot side setback requirement to construct a covered porch over a portion of the existing rear patio to provided shade and year-round shelter over an outdoor kitchen area. The construction is to be 9'8" in lieu of the existing 12'2" non-conforming roof line where the 15 feet is required by code.

The proposed project blends with the colonial style of the home and it's the minimum necessary to allow us to cover the existing kitchen while keeping the porch centered with the pool of the pool house and not disturbing the bay window which lends a lot of light to our home and an electrical panel box which is also on the rear existing patio.

The difference between this application and

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1  
2  
3 the prior application that we submitted for a gazebo is that  
4 now we are attaching the gazebo to the home, hence now we  
5 have a covered porch. We've talked over this project with  
6 both of our neighbors on either side of us and they are on  
7 board with the project. I do have a letter in support of the  
8 project from the neighbors at 100 Southern Parkway which is  
9 located on the side where there's the setback issue. And  
10 they only request, again, they are on board with the project  
11 but they did request we put a partition on so the covered  
12 porch on the side where the setback is will be enclosed.

13 And even with this addition we are under the  
14 building coverage requirement that's required by the code and  
15 the rear yard coverage requirement that's also required by  
16 the code.

17 MR. DiSTEFANO: Do you have a copy of that?

18 MONIQUE MARCHIONI: Yes, I do.

19 MR. DiSTEFANO: Just for the record I have a  
20 letter signed by the Stewarts of 100 Souther Parkway just  
21 stating the fact that they do not have an issue with the  
22 proposed project or variance requested.

23 MONIQUE MARCHIONI: Are there any questions?

24 CHAIRPERSON MIETZ: So what do you feel is  
25 better about this approach than the previous one, just from

## Brighton Zoning Board of Appeals 7/2/19

your own perspective?

MONIQUE MARCHIONI: Well now it is attached to the roof and we are not limited by the square footage requirements. We're going to have gutters now so the rain water will now go into the gutters and put it into the storm sewer system, it won't be coming off of the slab and running into the ground. And with the partition it will provide greater privacy and less noise for our neighbors.

CHAIRPERSON MIETZ: Okay.

MR. CLAPP: The reason that requires the setback variance, the roof needs to extend a little further. Is that just to cover the kitchen, the pre-existing outside kitchen?

MONIQUE MARCHIONI: Correct. And the home has a pre-existing nonconforming setback.

MR. CLAPP: Looking at the plan this would, the roof of the attached porch would only extend like two and a half feet beyond the existing roof?

MONIQUE MARCHIONI: Correct, 2.4.

MR. CLAPP: Will there be any, I'm thinking awnings or screening that could come down on other sides of the porch if you needed to block wind or things like that? Is that in the plans at all?

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MONIQUE MARCHIONI: No, there's no awnings or anything attached to the roof line, no screening not at this point, no plans for that.

MS. SCHWARTZ: What made you decide to have a solid wall rather than three open sides? I mean, the roof goes over, it looks amply that it would give you the protection you need. Why did you put a solid wall?

MONIQUE MARCHIONI: That was requested by our neighbors at 100 Southern Parkway that they wanted that partition there instead of having it completely open and we were on board with it. It would add greater privacy for us and for them as well.

MS. SCHWARTZ: But they didn't have any requests the first time?

MONIQUE MARCHIONI: No, but we didn't have the plans to do an addition, it was just a gazebo at that point which would all be open.

MS. TOMPKINS WRIGHT: And what sits immediately north of this to the neighbors, a pool, correct?

MONIQUE MARCHIONI: What was that?

MS. TOMPKINS WRIGHT: What sits on your neighbor's property kind of adjacent to where this wall will be?

Brighton Zoning Board of Appeals 7/2/19

MONIQUE MARCHIONI: Their pool and patio.

MR. CLAPP: This is for more clarification I think for me, maybe Rick can answer this. Is the real difference here that this is now an attached porch which puts it in a different category than a freestanding gazebo?

MR. DiSTEFANO: Yes. It's a covered over porch, so the roof is part of the principal structure so it can extend out as much as it wants to provided it meets the coverage requirements and setbacks. It meets coverage requirements, it encroaches into the side setback so that's why they are here for that variance and square footage really does not become an issue at that point in time.

MR. CLAPP: So the only issue is that approximately two and a half feet --

MR. DiSTEFANO: Encroachment into the side setback, correct.

CHAIRPERSON MIETZ: Other questions over here? 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 7A-09-19

7A-09-19 Application of James Buholtz,

## Brighton Zoning Board of Appeals 7/2/19

contractor, and Isaac Jones, owner of property located at 230 Richs Dugway, for an Area Variance from Sections 203-2.1B(3) and 203- 16A(4) to 1) allow a detached garage to be located in a front yard in lieu of the side or rear yard as required by code, and 2) allow said garage to be 789 sf in size in lieu of the maximum 600 sf allowed by code. All as described on application and plans on file.

JAMES BUHOLTZ: Basically we can't put it much --

MR. DiSTEFANO: Name and address please?

JAMES BUHOLTZ: James Buholtz, I'm representing Isaac Jones III. We have no other place to put it due to the fact there is now a sewer main located that we were unaware of in the beginning of the project. So that is about the only place we can position it, you know, on the lot, a large lot.

MR. DiSTEFANO: Before we go on much further, there was a sewer main that is now a sewer easement that cuts across the property that was just recently marked. I don't know if your plans represent the correct location of the garage anymore due to the location of that sewer easement that you cannot encroach into.

JAMES BUHOLTZ: Yeah, that's up to Steve.

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MR. DiSTEFANO: Well, it's not up to Steve, it is up to this Board getting the plans to match what the actual request is going to be --

JAMES BUHOLTZ: Well, at that point --

MR. DiSTEFANO: -- and I haven't seen anything from anybody at this point in time. I mean, right now it appears you'd be at least 15 feet into the easement with the location of the detached garage. So if you've taken the same garage and pushing it out of the easement you're going to be that much closer to the road. So this Board I don't think can make a legitimate decision until we know exactly where the garage is going to be located and the plans as submitted don't reflect that.

JAMES BUHOLTZ: Due to the fact of the sewer.

MR. DiSTEFANO: Due to the fact where that easement is, correct.

JAMES BUHOLTZ: Well, we intended to put it in the rear of the property, that's right over the sewer.

MR. DiSTEFANO: Well, right. And all I'm saying is, the Board can't make a decision on -- even if they say yeah, you can have it in the front yard, we don't know where in the front yard it's going to be. And I don't think they're going to give you a blanket wherever it fits in the



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front yard approval here. So we are going to need to see revised plans showing where the garage, staying out of the easement, is going to be located on the site. Because right now the plans submitted do not match -- would not work with the location of the easement.

JAMES BUHOLTZ: All right. Now can I coordinate with Steve?

MR. DiSTEFANO: You're going to have to, yes. And then we're going to need to see revised plans. So that being said, if you guys have issues with this or any questions, maybe some of that can be talked about here even though we're going to have to table it until we get a revised location plan.

MS. TOMPKINS WRIGHT: But this is the general location of it?

MR. DiSTEFANO: That's a good question, we don't know, because that easement is much closer to the road. That garage as it sits is about 15 feet into the easement, give or take. So that means that garage can move 15 feet closer to the front setback which might put it in the right of way. We just don't know where in general it might be. It might have to be shifted, somehow redesigned, so it's maybe longer instead of, you know, or wider instead of longer.

## Brighton Zoning Board of Appeals 7/2/19

MS. TOMPKINS WRIGHT: But this location is in the easement area?

MR. DiSTEFANO: That location is in the easement area, it was just basically --

JAMES BUHOLTZ: Last week.

CHAIRPERSON MIETZ: That's unfortunate it happened.

MR. DiSTEFANO: There was a sewer that went down there and everybody knew there was a sewer down there. The easement dates back to the 1920s and a lot of research had to be done to locate the easement and that was just completed late last week.

JAMES BUHOLTZ: Due to the fact that they're redoing the road down there now. So that's where I asked him about it because I saw the manhole and it came up and Steve said someone checked, but he knew where it was more or less. So he moved it but he also said as long as I was outside of ten feet where they could service it. Now I have to get him to agree to it.

MR. DiSTEFANO: I have to have something that says -- and then you'll have to redesign that with something that says that ten foot or a five foot encroachment or whatever that encroachment of the easement would be

## Brighton Zoning Board of Appeals 7/2/19

acceptable.

JAMES BUHOLTZ: The sewer is 16 feet down under the ground and it services three houses.

CHAIRPERSON MIETZ: Yes, we understand.

JAMES BUHOLTZ: He said if he has to redo it he would put it in an eight-inch pipe.

MR. DiSTEFANO: Yes.

JAMES BUHOLTZ: So I have to get him basically to write something to you.

MR. DiSTEFANO: What we're going to need to do is table it and leave the Public Hearing open. We're going to need to see a revised plan --

JAMES BUHOLTZ: I'll have to come back in another month then?

CHAIRPERSON MIETZ: Right.

MR. DiSTEFANO: -- and verification that the sewer department is going to sign off on that revised plan. So you might have to get a surveyor out there to professionally locate the point, and actually probably flag it on the lot so this Board will know exactly where that's going to be located.

JAMES BUHOLTZ: All right.

MR. DiSTEFANO: Because right now it's hard to

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tell especially where that easement was marked.

JAMES BUHOLTZ: He just marked the sewer outlet last Friday.

MR. DiSTEFANO: Right.

CHAIRPERSON MIETZ: That's unfortunate, it probably would have been better to wait, but that's fine. You understand by tabling it it's just the time.

JAMES BUHOLTZ: I know.

CHAIRPERSON MIETZ: The Public Hearing stays open so everything else is fine. Is there any reason to ask questions? I really don't think it makes a lot of sense.

JAMES BUHOLTZ: If I get permission of the sewer department --

CHAIRPERSON MIETZ: I just don't want to have you to have a problem next month, so we really need it professionally located, and because until you do that he's not going to be able to answer whether he does or he doesn't, meaning Steve.

JAMES BUHOLTZ: Okay, fair enough.

CHAIRPERSON MIETZ: Thank you, we appreciate it. At this point is there anyone that would like to speak regarding this? We'll leave the Public Hearing open.

APPLICATION 7A-10-19

Brighton Zoning Board of Appeals 7/2/19

7A-10-19 Application of Samuel and Shoshana Herman, owners of property located at 115 Varinna Drive, for an Area Variance from Section 207-10E(5) to allow a concrete patio to be constructed up to the lot line where a minimum 4 ft. setback is required by code. All as described on application and plans on file.

SAMUEL HERMAN: So the way our house is designed --

MR. DiSTEFANO: Name and address?

SAMUEL HERMAN: Oh, my name is Samuel Herman owner of 115 Varinna Drive with my wife. So we just put a patio in our backyard on the side of our house. I don't know if people have seen it or checked it. So the side of our house is kind of behind where the garage I guess was before we had the house. It's kind of narrow, we wanted to make the patio wide enough that we could have a patio set and host people, have guests, and utilize the space close to the fence. But not just have it kind of squared off, have it like a little bit flared to give aesthetically a little bit more pleasing look. And if we tried to not flare, it would be making it more narrow then it would be difficult to fit people in and use the space properly.

One of the issues encountered was that there's

## Brighton Zoning Board of Appeals 7/2/19

1  
2  
3 going to be rainwater which could go into the neighbor's  
4 property. We showed him the pictures that there are some  
5 flower beds which would, you know, soak up most of the water  
6 and is very far from the neighbor's house because we're on a  
7 corner. So our neighbor's house is I can't say exactly off  
8 the top of my head, but 40/50 feet away and whatever it is.  
9 We don't think that would have a significant effect on their  
10 house or lifestyle.

11 MS. TOMPKINS WRIGHT: Is the patio pitched  
12 towards that neighboring property or is it pitched towards  
13 your own yard?

14 JAMES BUHOLTZ: It's pitched kind of at an  
15 angle towards their property on my yard, meaning it's not  
16 pitched towards a house it's going towards, meaning the house  
17 is on the side and then it's a slight pitch which goes  
18 towards their house and I guess my yard also.

19 MS. TOMPKINS WRIGHT: It goes sort of, what is  
20 that, west then from both of the homes?

21 JAMES BUHOLTZ: I don't want to speak exact  
22 directions because I am not -- I don't know exactly how it  
23 works. But it's definitely going away from my house and the  
24 understanding that I have is that it's towards where that  
25 fence is, part of it is on my property also, but . . .

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MS. TOMPKINS WRIGHT: Did you say you spoke with this neighbor?

JAMES BUHOLTZ: My neighbors know about it, we're friends with them and we've spoken about it in the past. Not a deep conversation, you know, but . . .

CHAIRPERSON MIETZ: So --

JAMES BUHOLTZ: The neighbor we spoke to basically said it's very far from us, it's not going to affect us, so I don't care about it.

MS. DALE: So since the patio already exists typically with something like that you would be like a complaint or something that's why, oh darn, I shouldn't have done this --

JAMES BUHOLTZ: So what happened?

MS. DALE: Yes. Assuming something happened to trigger, so usually that's because a neighbor complained.

JAMES BUHOLTZ: It was my foolishness. Basically what happened was we hired a contractor who does a lot of projects we heard of and he did our driveway also. So when he told us -- I don't know what the codes are in the city or not -- so what he said was I need to get a permit for you guys to do your driveway. But your patio we don't need a permit for and it could be patios and walkways can be right

## Brighton Zoning Board of Appeals 7/2/19

up to the property line. So he did it all at the same time. If we were trying to hide it we wouldn't have done it, obviously. So we did it all at the same time and when they came to see the driveway then they said the patio is not done properly, which we weren't aware of at the time, and that's why everything was done.

CHAIRPERSON MIETZ: Okay. So as a practical matter you said a few months ago that you designed this patio area to accommodate furniture, et cetera, and that was the reason that it was necessary to design it exactly this way because it wouldn't have worked without it or would have been too tight if you respected the setback?

JAMES BUHOLTZ: The reason we did it that way was because we wanted to utilize the space to have as much seating as we could. And if we had made it smaller it wouldn't have been a useful area, because it's not such a large backyard for what we want to use it for anyway.

CHAIRPERSON MIETZ: Okay. Was the curvature, how was that part of the mindset of how to design it?

JAMES BUHOLTZ: That was just the design to make it look nicer aesthetically -- but we wanted to use as much of it as we could while making it aesthetically pleasing.



## Brighton Zoning Board of Appeals 7/2/19

CHAIRPERSON MIETZ: But honestly, you had no idea that when you were scaling this originally that you needed to respect the setback, when you were designing it?

JAMES BUHOLTZ: I didn't know that would be an issue with the setback when we made it, no.

CHAIRPERSON MIETZ: All right. Any other questions on this?

MR. CLAPP: I was wondering how much, if we have an issue with the coverage issue with the patio and the driveway --

MR. DiSTEFANO: No. If you were to consider it a side yard, which you could, you could pave basically 100 percent of a side yard, and if you are to consider it a rear yard, I don't think it would come close to the 35 percent of a rear yard area. So I think either way you look at it, if as a side yard or rear yard, there's not an issue.

MR. CLAPP: Okay.

MR. DiSTEFANO: For coverage purposes.

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

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

## Brighton Zoning Board of Appeals 7/2/19

then the Public Hearing is closed. We will take until  
8:30 p.m. for a break.

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Brighton Zoning Board of Appeals 7/2/19

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 28th day of July, 2019.

At Rochester, New York

  
Rhoda Collins

Brighton Zoning Board of Appeals 7/2/19

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## Brighton Zoning Board of Appeals 7/2/19

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JULY 2ND, 2019 AT  
APPROXIMATELY 8:30 P.M.

July 2nd, 2019  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

## PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

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

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

## Brighton Zoning Board of Appeals 7/2/19

## APPLICATION 7A-03-19

7A-03-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for 1) an Area Variance from Section 203- 2.1B(3) to allow a detached garage to be located in a front yard in lieu of the side or rear yard as required by code; and 2) an Area Variance from Section 207-6A(1) to allow said garage to be 19.1 ft. in height on lieu of the maximum 16 ft. allowed by code. All as described on application and plans on file.

Motion made by Ms. Dale to approve Application 7A-03-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The granting of the variance will not substantially change the character of the neighborhood or detrimentally affect the surrounding properties. The garage and porte-cochere will be integral to the exterior visual aesthetics and viewed as a continuation of the main residence and not as a detached structure. The proposed house and garage will fit comfortably on the property. The front setback at the carriage garage of 79 feet will be behind the 60 feet minimum required. Additionally, the mature stance of trees at both of the side yards will probably veil the

proposed structure from neighboring properties.

2. The positioning of the porte-cochere and carriage garage forward of the front wall of the residence was in large part due to the natural grading on the site and the desire to minimize the construction difficulty.

3. The proposed structure including the attached carriage garage are consistent with surrounding properties and will have no adverse effect or impact on the physical or environmental conditions of the neighborhood.

4. The garage will be integral and continuous to the building and will not be viewed as a detached accessory structure or will it be viewed as a negative impact to the front facade.

5. The Architectural Review Board approved the scale and the positioning on the site and the appropriateness with the neighborhood in May and they requested 19.1 foot height of the garage in lieu of the maximum 16 feet allowed by code is designed to fit aesthetically with the size and scale of the home. The front setbacks at the garage of 79 feet is well behind the 60-foot minimum required.

**CONDITIONS:**

1. Approval is granted only based upon the application submitted and testimony given.

## Brighton Zoning Board of Appeals 7/2/19

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

(Second by Ms. Tompkins Wright.)

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

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



## Brighton Zoning Board of Appeals 7/2/19

## APPLICATION 7A-04-19

7A-04-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 205-2 to allow an attached garage to be 1,171 sf in size in lieu of the maximum 900 sf allowed by code. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 7A-04-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. While the variance is substantial the design and character of the garage is in scale with the proposed home and will not be visible from the street.
2. No other alternative to construct the second garage would meet the needs of the applicant and achieve the desired result.
3. No negative effect on the character of the neighborhood would likely result from the approval of this variance since similar sized attached garages are a part of the newer construction in the neighborhood.

**CONDITIONS:**

1. Approval is granted only based upon the application

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submitted and testimony given.

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

(Second by Mr. Clapp.)

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

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

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APPLICATION 07-05-19

07-05-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 205-2 to allow a single family house to be constructed with a left side (east) elevation of 34.75 ft., a right side (southwest) elevation of 37.5 ft. and a rear side (south/southeast) elevation of 38 +/- ft. where a maximum height of 30 ft. is allowed by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 7A-05-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. Though the requested variance for building heights of 37'6", 34'8" and slightly over 38 feet on the east, west, and south's elevation respectively are substantial, the front elevation is 28 feet in height which is 2 feet less than a maximum building height allowed by code.

2. The variance request is a result of a function of the site sloping topography from the front to the back of the lot.

3. There are no other homes abutting the rear of the

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property therefore there will be no adverse effect on the character of the neighborhood.

4. The new home at 191 Old Mill Road has a similar topography and requires a similar variance.

**CONDITIONS:**

1. This variance only applies to the height requests on the east, south, and rear elevations of the proposed home.

2. All necessary building and planning approvals must be obtained.

3. The height of the rear and right elevation can be plus or minus 38 feet, and the elevation height on the left can be 35 plus or minus feet.

(Second by Ms. Tompkins Wright.)

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

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

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APPLICATION 7A-06-19

7A-06-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for an Area Variance from Section 207-10E(2) to allow front yard pavement coverage to be 36.5% in lieu of the maximum 30% allowed by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 7A-06-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The granting of the requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The size and scope of the impervious surface in the front yard is in keeping with the scope of the building being constructed and the neighborhood and will thus not appear out of character. Further, the increase to coverage will not increase surface runoff due to the planned drainage system that collects water to the rain garden, as well as the more pervious nature of a portion of the planned surface as a gravel walkway.
2. The requested variance is not substantial as it represents only a 6.5 percent increase over what is permitted

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by code.

3. The benefit sought by the applicant cannot reasonably be achieved by any other method while meeting applicant's requirements due to the size and the scope of the building being constructed on the property.

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 increase in the front yard pavement coverage to 36.5 percent in the location as depicted on the application and in the testimony given.

2. The front yard storm water will be managed on site so as to not affect neighboring properties.

3. All necessary Planning Board approvals shall be obtained.

(Second by Ms. Watson.)

(Ms. Schmitt, yes; 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 7A-07-19

7A-07-19 Application of Costich Engineering, agent, and Loren and Jamie Flaum, owners of property located at 141 Old Mill Road, for Area Variances from Section 207-2 to allow for 1) a front wall with guardrail to range in height from 4 ft. to 5.5 ft. where a maximum 3.5 ft. high wall/fence is allowed by code, 2) a side yard wall with guardrail to range in height from 5.6 ft. to 10 ft. where a maximum 6.5 ft. high wall/fence is allowed by code, and 3) allow a rear yard wall with guardrail to be 9.6 ft. where a maximum 6.5 ft. high wall/fence is allowed by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 7A-07-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The property slopes considerably dropping over 20 feet from the road to the pool area. This variance request is the minimum necessary to create level areas to provide access to the garages and to create a pool area behind the house. Any alternatives would require more extensive site disturbances.
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 retaining walls and guardrails will complement the design of the house and will be in keeping with the character of the neighborhood. Other houses on the street also have comparable features in the scale.

3. The location of the walls behind the garages and the house and the addition of landscaping will conceal the walls from the street. There's no evidence that there would be a negative impact to the health and safety and welfare of the neighborhood.

**CONDITIONS:**

1. This variance will apply only to the project as described in the application and testimony. It will not apply to projects considered in the future that are not in the present application.

2. All necessary Planning Board approvals shall be obtained.

(Second by Ms. Schwartz.)

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

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



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APPLICATION 7A-01-19

7A-01-19 Application of John Smyth, agent, and Rochester Electric Workers Building Corp., owner of property located at 2300 East River Road, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold a one day clambake event in September of 2019 and September of 2020. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 7A-01-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The event will be held for one day each year in 2019 and 2020 on the Saturday after Labor Day from 11:30 a.m. to 6:00 p.m.
2. There is ample parking on the site for the event.
3. This is the 16th consecutive year that this event has taken place. No comments were received by the building department.
4. It will have no adverse effect on the neighborhood area as it is bordered by vacant land, CSX Railroad, East River Road, and the Genesee river.

**CONDITIONS:**

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1. There will no band or sound system during this event.

2. All equipment brought to the site expressly for the clambake will be removed within 48 hours of the event including all trash.

3. No parking will be allowed on East River Road.

4. All proper fire marshal permits relating to the event shall be obtained.

5. This variance grants permission for the events to be held on September 7, 2019, and September 12, 2020.

(Second by Ms. Schwartz.)

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

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

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## APPLICATION 7A-02-19

7A-02-19 Application of William H. Harvey, applicant, and William J. Harvey, owner of property located at 1820 South Clinton Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to allow for the operation of a food cart selling to the general public from July 3, 2019 thru September 6, 2019 and again from May 20, 2020 thru September 6, 2020 where not allowed by code. All as described on application and plans on file.

Motion made by Mr. Clapp to approve Application 7A-02-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The variance is not substantial and its hours of operation, 10:30 a.m. to 3:00 p.m., will be well within the general business hours of the surrounding properties.

Further the cart is compact and will not be housed on site outside of the business hours.

2. The requested temporary revokable use permit will not alter the essential character of the neighborhood as the location is primarily commercial in nature.

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

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revokable use permit requested as the applicant has demonstrated competence by securing the appropriate Monroe County Health Department certification required.

**CONDITIONS:**

1. The use approved is only for a hot dog cart operation as described in the application submitted and testified to during this meeting.

2. The hours of operation shall be limited to 10:30 a.m. to 3:00 p.m., five days a week.

3. The cart shall be stored off site when not in operation and trash shall be collected and removed daily.

4. No additional signage shall be permitted other than what is on the cart itself and its attached umbrellas.

5. All appropriate certifications shall be obtained and this temporary revokable use permit shall be valid for July 3, 2019, through September 6, 2019, and again from May 20, 2020, through September 6, 2020.

(Second by Ms. Schwartz.)

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

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

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APPLICATION 7A-08-19

7A-08-19 Application of John and Monique Marchioni, owners of property located at 102 Southern Parkway, for an Area Variance from Section 205-2 to allow a covered porch to extend 3.4 ft. into the existing 13.2 ft. side setback where a 15 ft. side setback is required by code. All as described on application and plans on file.

Motion made by Mr. Clapp to approve Application 7A-08-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance will not result in a substantial change in the character of the neighborhood or detrimentally affect the surrounding properties as the design of the attached porch complements the design of the house and is mostly not visible from the road. Also, a wall on the porch will provide a screen to the closest adjacent neighbor.

2. The variance is necessary to allow the roof of the proposed attached porch to cover the existing outdoor built-in grill and outdoor kitchen.

3. The requested area variance is not substantial as the existing roof line is at 12.2 feet where code requires 15 feet and the requested 9.8-foot setback is not

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substantially greater than that of the existing roof.

4. The variance is the minimum necessary to allow the porch roof to cover the existing outdoor kitchen.

5. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood as the new porch roof will have gutters tied to the existing storm drains.

**CONDITIONS:**

1. This variance pertains only to the application submitted and testimony given.

2. All necessary building permits shall be obtained.

(Second by Ms. Tompkins Wright.)

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

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

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APPLICATION 7A-09-19

7A-09-19 Application of James Buholtz, contractor, and Isaac Jones, owner of property located at 230 Richs Dugway, for an Area Variance from Sections 203-2.1B(3) and 203- 16A(4) to 1) allow a detached garage to be located in a front yard in lieu of the side or rear yard as required by code, and 2) allow said garage to be 789 sf in size in lieu of the maximum 600 sf allowed by code. All as described on application and plans on file.

Motion made by Ms. Dale to table Application 7A-09-19 for additional site drawings to be provided.

(Second by Ms. Schwartz.)

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

(Upon roll call, motion to table and leave the Public Hearing open carries.)

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## APPLICATION 7A-10-19

7A-10-19 Application of Samuel and Shoshana Herman, owners of property located at 115 Varinna Drive, for an Area Variance from Section 207-10E(5) to allow a concrete patio to be constructed up to the lot line where a minimum 4 ft. setback is required by code. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 7A-10-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The side setback intrusion is mitigated by the curvature of the patio and the location of the house of the most affected neighboring property as it relates to the property line.
2. The patio is the minimum size to meet the desired result.
3. No negative effect on the character of the neighborhood is likely to occur since the majority of the patio will be minimally visible.

**CONDITIONS:**

1. Based on the testimony given and plans submitted.

(Second by Ms. Schwartz.)

(Ms. Tompkins Wright, no; Ms. Dale, yes;



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Ms. Watson, yes; Ms. Schmitt, yes; Mr. Clapp, yes;  
Ms. Schwartz, yes; Mr. Mietz, yes.)

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

## 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 28th day of July, 2019.

At Rochester, New York

  
Rhoda Collins