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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JULY 2ND, 2019 AT
4 APPROXIMATELY 7:15 **P.M.**

5

6 July 2nd, 2019
7 Brighton Town Hall
7 2300 Elmwood Avenue
7 Rochester, New York 14618

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PRESENT:

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

14

15 DAVID DOLLINGER, ESQ.
16 Town Attorney

17

18 RICK DiSTEFANO
18 Secretary

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

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3 CHAIRPERSON MIETZ: Good evening. I'd like to
4 call to order the July session of the Zoning Board of
5 Appeals.

6

Rick, was the meeting properly advertised?

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MR. DiSTEFANO: Yes, Mr. Chairman, it was
advertised in the Brighton-Pittsford Post of June 28, 2019.

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9 CHAIRPERSON MIETZ: Will you please call the
10 roll?

11

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

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

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APPLICATION 7A-01-19

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17 7A-01-19 Application of John Smyth, agent, and
Rochester Electric Workers Building Corp., owner of property
18 located at 2300 East River Road, for a Temporary and
Revocable Use Permit pursuant to Section 219-4 to erect a
20 tent and hold a one day clambake event in September of 2019
and September of 2020. All as described on application and
22 plans on file.

23

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

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

8

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

11

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

13

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

15

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

18

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

21

22 CHAIRPERSON MIETZ: How many people
approximately come and go?

23

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

25

CHAIRPERSON MIETZ: They are in and out?

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JOHN SMYTH: Yes.

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

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JOHN SMYTH: Planned security? I'm sorry.

7

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

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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.

14

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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.

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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

2

3 6:00 p.m.

4

CHAIRPERSON MIETZ: Any other questions?

5

Thank you.

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

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APPLICATION 7A-02-19

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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.

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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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3 globally now, which is pretty cool. We are registered sales

4 tax collectors, we are an LLC, and we only serve precooked

5 food items to the public. And I believe you should approve

6 it because there's no real fast-food place in the Town of

7 Brighton, which I do enjoy. But seeing as Zweigles is a

8 local food company I think it enriches the diversity of the

9 town.

10 CHAIRPERSON MIETZ: How have things gone for

11 you?

12 WILLIAM H. HARVEY: Things have been very

13 good. We actually expanded to another location at

14 1000 Pittsford Victor Road and then my brother, my adopted

15 Ukrainian brother runs the 1820 location.

16 CHAIRPERSON MIETZ: So it's been well received

17 by the public?

18 WILLIAM H. HARVEY: Yes, sales are great. We

19 made a Facebook page now, we've done a number of catering

20 jobs, a lot of them in Brighton, graduation parties. They

21 generally enjoy it.

22 CHAIRPERSON MIETZ: And it's a little more

23 multi-faceted business?

24 WILLIAM H. HARVEY: Yes. I have some loyalty

25 cards if you would like to take them.

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MS. TOMPKINS WRIGHT: Is that bribery?

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

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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.

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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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3 advertising.

4

5 MS. TOMPKINS WRIGHT: So one of the conditions

6

7 WILLIAM H. HARVEY: Yes.

8

9 MS. TOMPKINS WRIGHT: No issues?

10

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

15

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

18

19 WILLIAM H. HARVEY: Yes, very small.

20

21 CHAIRPERSON MIETZ: Any other questions?

22

23 Thank you, sir.

24

25 WILLIAM H. HARVEY: Thank you.

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

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31 APPLICATION 7A-03-19

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33 7A-03-19 Application of Costich Engineering,
34 agent, and Loren and Jamie Flaum, owners of property located
35 at 141 Old Mill Road, for 1) an Area Variance from Section
36 203- 2.1B(3) to allow a detached garage to be located in a

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

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APPLICATION 7A-04-19

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10 7A-04-19 Application of Costich Engineering,
11 agent, and Loren and Jamie Flaum, owners of property located
12 at 141 Old Mill Road, for an Area Variance from Section 205-2
13 to allow an attached garage to be 1,171 sf in size in lieu of
14 the maximum 900 sf allowed by code. All as described on
15 application and plans on file.

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APPLICATION 7A-05-19

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18 7A-05-19 Application of Costich Engineering,
19 agent, and Loren and Jamie Flaum, owners of property located
20 at 141 Old Mill Road, for an Area Variance from Section 205-2
21 to allow a single family house to be constructed with a left
22 side (east) elevation of 34.75 ft., a right side (southwest)
23 elevation of 37.5 ft. and a rear side (south/southeast)
24 elevation of 38 +/- ft. where a maximum height of 30 ft. is
allowed by code. All as described on application and plans
on file.

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JIM FAHY: Good evening, my name is Jim Fahy

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3 from Fahy Design Associates and we are the architects for
4 Loren and Jamie Flaum and their redevelopment plans for
5 141 Old Mill Road. With me this evening is Mark Bayer from
6 Bayer Landscape Architecture and he is our project landscape
7 architect and he's directing with the assistance of Costich
8 Engineering all of the site improvements and site development
9 portions of the project.

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

19 They're proposing a 6,900 square foot,
20 two-story home, with a 2,700-square-foot finished walkout
21 basement. There will be an attached three-car garage of
22 1,171 square feet, with an adjoining drive-thru porte-cochere
23 and attached carriage garage of 574 square feet.

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

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

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

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

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

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

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

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

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3 of the residence and not as a detached structure.

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

14 I think also additionally important to this
15 whole idea of a structure forward of the main line of the
16 front wall of the house is our setting. We are on a
17 3.81-acre parcel as I had mentioned. We have 207 foot of
18 frontage at the front setback for the property. Our overall
19 footprint and structure including residence, porte-cochere,
20 and carriage garage fits comfortably on the property only
21 accounting for 3.4 percent of the property area.

22 The front setback of the carriage garage is
23 79 feet, which is well behind the 60 feet required by code.
24 Our side setback at the carriage garage is 46 feet, which
25 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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3 building height for both the sides and the rear elevation is
4 a function of the existing natural site topography. The
5 existing site has a natural grade drop of approximately
6 13 feet from the front wall of the proposed home to its rear.
7 Our proposed site development plan minimizes regrading --
8 Mark will speak to that -- to maintain a natural and
9 relatively unaltered profile to the site's existing
10 topography.

11 The proposed single-family residence is
12 designed with relatively modest roof pitches of seven twelve
13 front to back, which is creating our maximum roof height.
14 And this is done to maintain building height below the
15 30 foot allowed at the front of the home. Our front home
16 elevation is 27'9", so this height over 30 feet on the sides
17 and the rear is strictly a function of existing grade. So we
18 have gone that extra yard to make sure that this house does
19 not exceed it the best that we can, with the existing site
20 topography.

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

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3 just over 38 feet at the rear of the property. I would like
4 to make sure that if this is approved that the Board provides
5 us a little bit of leeway inches as we finalize our grading.
6 I've given you a number of 38 foot, zero and a half. That is
7 exactly what it measures from the grading right now. Mark
8 and I are working final grading out to inches difference, so
9 I would hate to have an approval of 38 foot, zero and a half
10 if it becomes 38 foot, two inches or three inches. So how
11 this Board crafts that approval or drafts that approval I'd
12 appreciate some leeway in that even if it were another 4 to
13 6 inches of height.

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

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

23 MS. SCHWARTZ: Here the whole thing.

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

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3 APPLICATION 7A-06-19

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

10 APPLICATION 7A-07-19

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

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

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

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

15 As Jim described, one of the things we've been
16 doing as landscape architects has been trying to work with
17 the existing topography as much as possible. And I'm sure
18 you're most all familiar with what's going on at the site,
19 but essentially we are creating an arrival courtyard garden,
20 I would call it. The existing drive configuration is more or
21 less the way it is today and there's an arrival court that's
22 going to be planted. It will have a wall height of about
23 three six surrounding it. And all of the perimeter will be
24 planted, it will be treated with nice pavement treatments and
25 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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3 being built here. So that is sort of a description of what's
4 going on with that variance there.

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

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

25 And then we have introduced a retaining wall

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

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

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

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

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

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

25 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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3 Any questions?

4 MR. DISTEFANO: Can you just talk a little bit
5 about the front wall?

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

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

19 And I want to point out again this is a 3.8
20 acre lot and our total footprint is very small relative to
21 the lot area. And I do also want to point out something to
22 the Board, I think you'll be interested to know what we are
23 doing in this courtyard area and auto port and garage court,
24 we are picking that storm water up which potentially could
25 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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3 That why that's --

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

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

9 MR. DiSTEFANO: Thank you.

10 MARK BAYER: Yes. Any questions?

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

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

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

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

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

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

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

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

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

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

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

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

13 MARK BAYER: That's what I have done.

14 MR. DiSTEFANO: Yes.

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

17 MARK BAYER: Yes.

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

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

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

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

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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

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3 that.

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

6 JIM FAHY: That's 574 square feet.

7 MR. DiSTEFANO: Of the detached garage?

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

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

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

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

19 CHAIRPERSON MIETZ: Maybe I misunderstood.

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

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3 30-foot deep is a common, common request by homeowners.

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

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

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

15 CHAIRPERSON MIETZ: All three things.

16 JIM FAHY: Right, exactly.

17 CHAIRPERSON MIETZ: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 CHAIRPERSON MIETZ: All set? Thank you very
21 much.

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

25 APPLICATION 7A-08-19

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3 7A-08-19 Application of John and Monique
4 Marchioni, owners of property located at 102 Southern
5 Parkway, for an Area Variance from Section 205-2 to allow a
6 covered porch to extend 3.4 ft. into the existing 13.2 ft.
7 side setback where a 15 ft. side setback is required by code.
8 All as described on application and plans on file.

9 MONIQUE MARCHIONI: Good evening, my name is
10 Monique Marchioni I'm the resident and owner applicant for
11 this variance request. And the variance requested is from
12 the code 15-foot side setback requirement to construct a
13 covered porch over a portion of the existing rear patio to
14 provided shade and year-round shelter over an outdoor kitchen
15 area. The construction is to be 9'8" in lieu of the existing
16 12'2" non-conforming roof line where the 15 feet is required
17 by code.

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

25 The difference between this application and

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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

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3 your own perspective?

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

11 CHAIRPERSON MIETZ: Okay.

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

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

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

21 MONIQUE MARCHIONI: Correct, 2.4.

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

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

6

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

10

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

15

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

17

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

20

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

22

MONIQUE MARCHIONI: What was that?

23

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

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3 MONIQUE MARCHIONI: Their pool and patio.

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

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

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

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

19 CHAIRPERSON MIETZ: Other questions over here?
20 Thank you.

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

24 APPLICATION 7A-09-19

25 7A-09-19 Application of James Buholtz,

1 Brighton Zoning Board of Appeals 7/2/19
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3 contractor, and Isaac Jones, owner of property located at
4 230 Richs Dugway, for an Area Variance from Sections
5 203-2.1B(3) and 203- 16A(4) to 1) allow a detached garage to
6 be located in a front yard in lieu of the side or rear yard
7 as required by code, and 2) allow said garage to be 789 sf in
8 size in lieu of the maximum 600 sf allowed by code. All as
9 described on application and plans on file.

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

12 MR. DiSTEFANO: Name and address please?

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

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

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

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

6 JAMES BUHOLTZ: Well, at that point --

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

16 JAMES BUHOLTZ: Due to the fact of the sewer.

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

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

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

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

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

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

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

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

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

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

7 JAMES BUHOLTZ: Last week.

8 CHAIRPERSON MIETZ: That's unfortunate it
9 happened.

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

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

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

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3 acceptable.

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

6 CHAIRPERSON MIETZ: Yes, we understand.

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

9 MR. DiSTEFANO: Yes.

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

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

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

17 CHAIRPERSON MIETZ: Right.

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

24 JAMES BUHOLTZ: All right.

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

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3 tell especially where that easement was marked.

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

6 MR. DiSTEFANO: Right.

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

10 JAMES BUHOLTZ: I know.

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

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

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

21 JAMES BUHOLTZ: Okay, fair enough.

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

25 APPLICATION 7A-10-19

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

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

8 CHAIRPERSON MIETZ: So --

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

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

16 JAMES BUHOLTZ: So what happened?

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

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

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

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

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

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

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

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

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

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

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

13 MR. DiSTEFANO: No. If you were to consider
14 it a side yard, which you could, you could pave basically
15 100 percent of a side yard, and if you are to consider it a
16 rear yard, I don't think it would come close to the
17 35 percent of a rear yard area. So I think either way you
18 look at it, if as a side yard or rear yard, there's not an
19 issue.

20 MR. CLAPP: Okay.

21 MR. DiSTEFANO: For coverage purposes.

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

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

1 Brighton Zoning Board of Appeals 7/2/19
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3 then the Public Hearing is closed. We will take until
4 8:30 p.m. for a break.

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1 Brighton Zoning Board of Appeals 7/2/19

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REPORTER CERTIFICATE

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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.

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Dated this 28th day of July, 2019.

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At Rochester, New York

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Rhoda Collins

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Brighton Zoning Board of Appeals 7/2/19

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3 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT
4 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JULY 2ND, 2019 AT
4 APPROXIMATELY 8:30 **P.M.**

5 July 2nd, 2019
6 Brighton Town Hall
7 2300 Elmwood Avenue
Rochester, New York 14618

8 PRESENT:

9 DENNIS MIETZ, CHAIRPERSON
10 DOUGLAS CLAPP
11 JEANNE DALE
12 KATHLEEN SCHMITT
13 JUDY SCHWARTZ
14 ANDREA TOMPKINS WRIGHT
15 JENNIFER WATSON

16
17 DAVID DOLLINGER, ESQ.
18 Town Attorney

19 RICK DiSTEFANO
20 Secretary

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

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

1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-03-19

4 7A-03-19 Application of Costich Engineering,
5 agent, and Loren and Jamie Flaum, owners of property located
6 at 141 Old Mill Road, for 1) an Area Variance from Section
7 203- 2.1B(3) to allow a detached garage to be located in a
8 front yard in lieu of the side or rear yard as required by
9 code; and 2) an Area Variance from Section 207-6A(1) to allow
10 said garage to be 19.1 ft. in height on lieu of the maximum
11 16 ft. allowed by code. All as described on application and
12 plans on file.

13 Motion made by Ms. Dale to approve Application
14 7A-03-19 based on the following findings and facts.

15 **FINDINGS AND FACTS:**

16 1. The granting of the variance will not substantially
17 change the character of the neighborhood or detrimentally
18 affect the surrounding properties. The garage and
19 porte-cochere will be integral to the exterior visual
20 aesthetics and viewed as a continuation of the main residence
21 and not as a detached structure. The proposed house and
22 garage will fit comfortably on the property. The front
23 setback at the carriage garage of 79 feet will be behind the
24 60 feet minimum required. Additionally, the mature stance of
25 trees at both of the side yards will probably veil the

1 Brighton Zoning Board of Appeals 7/2/19

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3 proposed structure from neighboring properties.

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

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

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

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

23 **CONDITIONS:**

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

1 Brighton Zoning Board of Appeals 7/2/19

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

5 (Second by Ms. Tompkins Wright.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-04-19

4 7A-04-19 Application of Costich Engineering,
5 agent, and Loren and Jamie Flaum, owners of property located
6 at 141 Old Mill Road, for an Area Variance from Section 205-2
7 to allow an attached garage to be 1,171 sf in size in lieu of
8 the maximum 900 sf allowed by code. All as described on
9 application and plans on file.

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

13 **FINDINGS AND FACTS:**

14 1. While the variance is substantial the design and
15 character of the garage is in scale with the proposed home
16 and will not be visible from the street.

17 2. No other alternative to construct the second garage would
18 meet the needs of the applicant and achieve the desired
19 result.

20 3. No negative effect on the character of the neighborhood
21 would likely result from the approval of this variance since
22 similar sized attached garages are a part of the newer
23 construction in the neighborhood.

24 **CONDITIONS:**

25 1. Approval is granted only based upon the application

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3 submitted and testimony given.

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

6 (Second by Mr. Clapp.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 07-05-19

4 07-05-19 Application of Costich Engineering,
5 agent, and Loren and Jamie Flaum, owners of property located
6 at 141 Old Mill Road, for an Area Variance from Section 205-2
7 to allow a single family house to be constructed with a left
8 side (east) elevation of 34.75 ft., a right side (southwest)
9 elevation of 37.5 ft. and a rear side (south/southeast)
10 elevation of 38 +/- ft. where a maximum height of 30 ft. is
11 allowed by code. All as described on application and plans
12 on file.

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

16 **FINDINGS AND FACTS:**

17 1. Though the requested variance for building heights of
18 37'6", 34'8" and slightly over 38 feet on the east, west, and
19 south's elevation respectively are substantial, the front
20 elevation is 28 feet in height which is 2 feet less than a
21 maximum building height allowed by code.

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

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

1 Brighton Zoning Board of Appeals 7/2/19
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3 property therefore there will be no adverse effect on the
4 character of the neighborhood.

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

7 **CONDITIONS:**

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

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

12 3. The height of the rear and right elevation can be plus or
13 minus 38 feet, and the elevation height on the left can be
14 35 plus or minus feet.

15 (Second by Ms. Tompkins Wright.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-06-19

4 7A-06-19 Application of Costich Engineering,
5 agent, and Loren and Jamie Flaum, owners of property located
6 at 141 Old Mill Road, for an Area Variance from Section
7 207-10E(2) to allow front yard pavement coverage to be 36.5%
8 in lieu of the maximum 30% allowed by code. All as described
9 on application and plans on file.

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

13 **FINDINGS AND FACTS:**

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

1 Brighton Zoning Board of Appeals 7/2/19
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3 by code.

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

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

11 **CONDITIONS:**

12 1. The variance granted herein applies only to the increase
13 in the front yard pavement coverage to 36.5 percent in the
14 location as depicted on the application and in the testimony
15 given.

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

18 3. All necessary Planning Board approvals shall be obtained.

19 (Second by Ms. Watson.)

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

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

1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-07-19

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

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

18 **FINDINGS AND FACTS:**

19 1. The property slopes considerably dropping over 20 feet
20 from the road to the pool area. This variance request is the
21 minimum necessary to create level areas to provide access to
22 the garages and to create a pool area behind the house. Any
23 alternatives would require more extensive site disturbances.
24 2. No unacceptable change in the character of the
25 neighborhood and no substantial detriment to nearby

1 Brighton Zoning Board of Appeals 7/2/19
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3 properties is expected to result in the approval of this
4 variance. The retaining walls and guardrails will complement
5 the design of the house and will be in keeping with the
6 character of the neighborhood. Other houses on the street
7 also have comparable features in the scale.

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

13 **CONDITIONS:**

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

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

19 (Second by Ms. Schwartz.)

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

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

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3 APPLICATION 7A-01-19

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

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

14 **FINDINGS AND FACTS:**

15 1. The event will be held for one day each year in 2019 and
16 2020 on the Saturday after Labor Day from 11:30 a.m. to
17 6:00 p.m.

18 2. There is ample parking on the site for the event.

19 3. This is the 16th consecutive year that this event has
20 taken place. No comments were received by the building
21 department.

22 4. It will have no adverse effect on the neighborhood area
23 as it is bordered by vacant land, CSX Railroad, East River
24 Road, and the Genesee river.

25 **CONDITIONS:**

1 Brighton Zoning Board of Appeals 7/2/19

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

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

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

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

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

12 (Second by Ms. Schwartz.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-02-19

4 7A-02-19 Application of William H. Harvey,
5 applicant, and William J. Harvey, owner of property located
6 at 1820 South Clinton Avenue, for a Temporary and Revocable
7 Use Permit pursuant to Section 219-4 to allow for the
8 operation of a food cart selling to the general public from
9 July 3, 2019 thru September 6, 2019 and again from May 20,
10 2020 thru September 6, 2020 where not allowed by code. All
11 as described on application and plans on file.

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

15 **FINDINGS AND FACTS:**

16 1. The variance is not substantial and its hours of
17 operation, 10:30 a.m. to 3:00 p.m., will be well within the
18 general business hours of the surrounding properties.
19 Further the cart is compact and will not be housed on site
20 outside of the business hours.

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

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

1 Brighton Zoning Board of Appeals 7/2/19

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3 revokable use permit requested as the applicant has

4 demonstrated competence by securing the appropriate Monroe

5 County Health Department certification required.

6 **CONDITIONS:**

7 1. The use approved is only for a hot dog cart operation as

8 described in the application submitted and testified to

9 during this meeting.

10 2. The hours of operation shall be limited to 10:30 a.m. to

11 3:00 p.m., five days a week.

12 3. The cart shall be stored off site when not in operation

13 and trash shall be collected and removed daily.

14 4. No additional signage shall be permitted other than what

15 is on the cart itself and its attached umbrellas.

16 5. All appropriate certifications shall be obtained and this

17 temporary revokable use permit shall be valid for July 3,

18 2019, through September 6, 2019, and again from May 20, 2020,

19 through September 6, 2020.

20 (Second by Ms. Schwartz.)

21 (Mr. Mietz, yes; Ms. Dale, yes; Ms. Watson,

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

23 Ms. Schwartz, yes; Mr. Clapp, yes.)

24 (Upon roll call, motion to approve with

25 conditions carries.)

1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-08-19

4 7A-08-19 Application of John and Monique
5 Marchionni, owners of property located at 102 Southern
6 Parkway, for an Area Variance from Section 205-2 to allow a
7 covered porch to extend 3.4 ft. into the existing 13.2 ft.
8 side setback where a 15 ft. side setback is required by code.
9 All as described on application and plans on file.

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

13 **FINDINGS AND FACTS:**

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

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

23 3. The requested area variance is not substantial as the
24 existing roof line is at 12.2 feet where code requires
25 15 feet and the requested 9.8-foot setback is not

1 Brighton Zoning Board of Appeals 7/2/19
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3 substantially greater than that of the existing roof.

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

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

10 **CONDITIONS:**

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

13 2. All necessary building permits shall be obtained.

14 (Second by Ms. Tompkins Wright.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-09-19

4 7A-09-19 Application of James Buholtz,
5 contractor, and Isaac Jones, owner of property located at
6 230 Richs Dugway, for an Area Variance from Sections
7 203-2.1B(3) and 203- 16A(4) to 1) allow a detached garage to
8 be located in a front yard in lieu of the side or rear yard
9 as required by code, and 2) allow said garage to be 789 sf in
10 size in lieu of the maximum 600 sf allowed by code. All as
11 described on application and plans on file.

12 Motion made by Ms. Dale to table Application
13 7A-09-19 for additional site drawings to be provided.

14 (Second by Ms. Schwartz.)

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

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

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1 Brighton Zoning Board of Appeals 7/2/19
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3 APPLICATION 7A-10-19

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

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

13 **FINDINGS AND FACTS:**

14 1. The side setback intrusion is mitigated by the curvature
15 of the patio and the location of the house of the most
16 affected neighboring property as it relates to the property
17 line.

18 2. The patio is the minimum size to meet the desired result.

19 3. No negative effect on the character of the neighborhood
20 is likely to occur since the majority of the patio will be
21 minimally visible.

22 **CONDITIONS:**

23 1. Based on the testimony given and plans submitted.

24 (Second by Ms. Schwartz.)

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

1 Brighton Zoning Board of Appeals 7/2/19

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

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

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3 REPORTER CERTIFICATE
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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.

11
12 Dated this 28th day of July, 2019.

13 At Rochester, New York
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Rhoda Collins

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