

Brighton Zoning Board of Appeals 8/7/19

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

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

PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
KATHLEEN SCHMITT  
ANDREA TOMPKINS WRIGHT

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 August 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 August 1, 2019.

CHAIRPERSON MIETZ: Will you please call the roll?

MR. DiSTEFANO: Please let the record show Ms. Schmitt and Ms. Tompkins Wright are not present.

CHAIRPERSON MIETZ: We have minutes to look at.

MR. DiSTEFANO: We have the June minutes, we will hear July minutes in September.

MS. SCHWARTZ: On Page 17, Line 11, the word haven't should be opening.

On Page 23, Line 11, change Monroe I believe to Winton.

On Page 56, Line 18, please insert the word want after don't, I don't want.

On Page 70, Line 5, after the word 50 please insert the word foot.

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On Page 84, Line 5, change the word extra to feet.

On Page 89, Line 24, please insert the word to after the word want, I want to.

And Page 94, Line 24, please insert the word be after will, they will be able. And that's all I have.

CHAIRPERSON MIETZ: Anything else?

MS. WATSON: I have one on Page 113, Line 19, change the word lead to leave, will leave 46 feet.

CHAIRPERSON MIETZ: Is that it? Okay. Motion to amend the minutes?

MS. SCHWARTZ: So moved.

(Second by Mr. Clapp.)

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

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

APPLICATION 8A-01-19

8A-01-19 Application of Yuri and Anna Joselson, owners of property located at 10 Chalet Circle, for an Area Variance from Section 205-2 to allow a building addition to extend 7 ft. into the 18.75 ft. side setback required by code. All as described on application and plans

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on file.

DAVID METZGER: Good evening, my name is David Metzger I live at 45 Chalet Circle and I'm here representing the Joselsons this evening because they are away and could not be here. Am I allowed to do that?

CHAIRPERSON MIETZ: Yes.

DAVID METZGER: So this was approved in March of last year and they're asking for it to be reapproved because the year has run out. The reason they did not move forward with the process is they could not allocate the funds sufficient to match the quotes they received. At this time they are prepared to do that so they're asking for the variance application to be approved again so they can start the process.

CHAIRPERSON MIETZ: Do you know, David, if they're intent and have proposals and are really ready to pull a building permit?

DAVID METZGER: My understanding is, yes. They have the builder and they are ready to go for the permits.

MR. DiSTEFANO: Just for the record, basically what triggered them to coming back in is they stopped in and were making application for the building permit.

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CHAIRPERSON MIETZ: Okay. So you alerted them that the time was up?

MR. DiSTEFANO: Because the year was over.

MS. WATSON: Any changes whatsoever to the original variance request?

DAVID METZGER: The only change which is on the update is they added the window that was recommended by the Board.

CHAIRPERSON MIETZ: The ARB. Anyone else have any questions? Thank you, David.

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

APPLICATION 8A-02-19

8A-02-19 Application of Susan and Craig Pearlberg, owners of property located at 15 Birmingham Drive, for an Area Variance from Section 205-2 to allow an enclosed front entryway to extend 3.7 ft. into the 40 ft. front setback required by code. All as described on application and plans on file.

SUSAN PEARLBERG: Hello, I'm Susan Pearlberg.

CRAIG PEARLBERG: Craig Pearlberg.

CHAIRPERSON MIETZ: And your address?

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SUSAN PEARLBERG: We live at 15 Birmingham Drive.

CHAIRPERSON MIETZ: Thank you.

CRAIG PEARLBERG: We would like to get this variance for our front entryway to extend a few feet out past the 40 foot. There's a couple of other entryways on the street that are just a tiny bit as well. I think we'll do their variance, I think it looks quite nice. We plan on making it look quite as original as possible and it would be quite helpful for us in the winter months, we have two very large dogs that we need to bring in from walks and so on as well.

MS. SCHWARTZ: I have a question, what about your trees in the front, are they going to be lost or --

SUSAN PEARLBERG: They will be saved. One of them will have to be cut back a little bit, but it's one of my favorite trees and it will be saved.

CRAIG PEARLBERG: We almost scrapped the project because of the tree.

CHAIRPERSON MIETZ: They are professionally trimmed?

SUSAN PEARLBERG: Yes.

CHAIRPERSON MIETZ: You should be fine.

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MS. WATSON: Do you know what the setback of the house is currently? Are you already at the 3-foot setback?

CRAIG PEARLBERG: No, we have about three feet.

MS. WATSON: Okay. Safe to say 3 feet is sufficient for a vestibule of adequate size.

CRAIG PEARLBERG: We're looking for an extra 3 feet is more accurate.

MS. WATSON: What are the building materials and how will it relate to the house?

CRAIG PEARLBERG: They are going to be as matching as possible.

SUSAN PEARLBERG: Yes. It will be the same siding and the same exact siding, it's going to match the house perfectly. From one peak, the original peak and then we're going to make the vestibule look exactly like that.

CHAIRPERSON MIETZ: Okay.

MS. SCHWARTZ: Just curious, how long have you been in the house?

SUSAN PEARLBERG: A year.

CHAIRPERSON MIETZ: Any other questions?

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.

APPLICATION 8A-03-19

8A-03-19 Application of Roger Langer, Jr., architect, and Our Group 5, LLC, owner of property located at 1485 Monroe Avenue for modification of an approved area variance (11A04-18) from Section 205-6 to allow an accessible ramp to extend an additional 11.7 ft (for a total of 20 ft,) into the 30 ft. front setback (Sylvan Road) required by code. All as described on application and plans on file.

ROGER LANGER: Roger Langer, Greater Living Architecture, 3033 Brighton Henrietta Town Line Road, here representing the owners of 1485 Monroe Avenue. As you will recall I was here last year asking for a variance for front yard setbacks for a handicap accessible ramp into the building on the front elevations. The grading required was higher than anticipated and the contractor went ahead and extended the ramp on his own freewill without contacting me or telling the owner what happened, not realizing he was encroaching further into the variance than was approved.

Although it was just inches of height differential, it resulted in about 11.75 feet of ramp because



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two, 5-foot landings had to be added to the ramp.

Fortunately, he did build the ramp according to the New York State building code requirements which limit the slope of the ramp.

Again, he didn't contact us, didn't tell the owner what he was doing, nor do I think they would have known. So he wound up adding the 11.75 feet or whatever it was, to the ramp in order to make it meet code and get to the handicap accessible parking spot, but of course, that wasn't approved.

So I'm here to amend the variance and I have a couple photographs of before and after. The new owners of this property have done a magnificent job improving the appearance of the building. And they have all intentions of doing everything the right way.

I think you can tell by what they've accomplished with the property it was just, you know, it was unforeseen and now I'm here before you unfortunately asking forgiveness.

CHAIRPERSON MIETZ: Going to ask you as a practical matter, if you were called would this have to be extended this far?

ROGER LANGER: Yes.

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CHAIRPERSON MIETZ: So there was no way to do anything different with the landing because of the --

ROGER LANGER: Correct. You're only allowed a 30-foot ramp before you need a 5-foot landing, so they needed a few more inches of ramp. They were at 30 feet already, so they added the 5-foot landing in the middle and a 5-foot landing at the end, and just a few more feet of ramp is really all that was necessary. But by building code, you can't go more than 30 feet without a 5-foot landing, so they had to break up that entire run of the ramp.

CHAIRPERSON MIETZ: Are they planning to do anything related to maybe trying to make it not look the way it looks as far as any other landscaping and mitigation for the extension?

ROGER LANGER: Yes. There wasn't a plan for that, they've had it professionally landscaped. Part of this is these are all brand new plants and so they are hoping to get some growth out of them and see where it's at. I know these people extremely well.

CHAIRPERSON MIETZ: It could be mitigated a little bit, I think.

ROGER LANGER: Yes. So they do have landscaping with the full length of it if you recall. The

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old landscaping, this is a side view as well, I think they're planning on adding some landscaping on the back side of the ramp between the ramp and the building.

CHAIRPERSON MIETZ: That would be good.

ROGER LANGER: I believe that's in their plan.

CHAIRPERSON MIETZ: That would be helpful.

Are there other questions?

MR. CLAPP: Just explain again how the error occurred or how the original plan was overlooked if this was going to be necessary?

ROGER LANGER: Originally we thought a 30-foot ramp at a 1-in-12 slope would be adequate to get us from the first floor elevation of the office building down to the parking lot grade. Unfortunately about 7 inches, I think -- no, it wasn't that much, it was only three more feet of ramp had to be added, but we were already at that 30-foot limit. So you can't increase the pitch, that's not permitted by the building code, so if you have to add 3 inches of rise, that's 3 feet of ramp, because of 1-in-12, but it also required to put in an intermediate landing. So there goes an additional 5 feet for that, plus a landing of 5 feet was added at the end.

MR. CLAPP: So the error was in the initial

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estimate or measuring of the grade of slope of the landing?

ROGER LANGER: Correct. The civil engineer did go out and do topography or shoot elevation points from what the house finished floor elevation to the parking lot, so we were going by field measurements and trying as best we could to get that accurate dimension and unfortunately we were off a few inches.

MR. CLAPP: Do you know if the parking lot could have been raised to make the 30-foot ramp work?

ROGER LANGER: I guess it could have, but then that would have created an issue at their main entry point because water would now be pitching towards the door that they definitely do not want that as it has a zero threshold as well.

MR. CLAPP: Thank you.

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 8A-04-19

8A-04-19 Application of Niagara Mohawk Power Corporation, owner of property located at 1430 Brighton

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Henrietta Town Line Road, and Rochester Gas and Electric, owner of property located at 1436 Brighton Henrietta Town Line, for Area Variances from Section 207-2 to allow an 8 ft. high fence topped with 1 ft. of barbed wire (surrounding electrical equipment) where a maximum 6.5 ft. high fence is allowed by code and where the use of barbed wire is not allowed by code. All as described on application and plans on file.

BEN WEISEL: Good evening, my name is Ben Weisel from National Grid with the address of 175 East Old Country Road, Hicksville, New York, 11803. I just want to make a brief 6- or 7-minute presentation.

CHAIRPERSON MIETZ: Please go ahead.

BEN WEISEL: Thank you very much. So since the 1920s National Grid or its predecessors have operated an electric transmission substation on our fee-owned property located at 1430 Brighton Henrietta Town Line Road in Brighton. I will discuss tonight our proposal to perform the necessary maintenance work on the station, which will include work on the parcel owned by National Grid and a very small amount of work on the parcel located directly to the north which is owned by Rochester Gas and Electric.

As the Board may be aware, on June 18th,

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National Grid was here before the Brighton Planning Board to request site plan approvals associated with our proposal. Part of this work means bumping out our existing security fence an additional 80 feet by 163 feet in order to maintain a safe driving lane and fire access around a new transformer we're installing at the station. We are here tonight to respectfully request the Board's permission to extend our existing security fence around the perimeter of this bump out.

Before I discuss the details of this proposed security fence, I'd like to provide a very brief summary of the substation's benefits to the public. As the Board may be aware National Grid's considered a public utility under the laws of New York State. As a public utility we are required by law to provide safe and reliable electricity to our customers.

The station's currently a primary supplier of electricity to over 20,000 homes, businesses, schools, and hospitals. This station must maintain a constant supply of electricity to these customers in order to meet the customer's minute by minute energy demands. Therefore the station's continued operation is essential to the provision of safe and reliable electricity to these customers.

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Due to the essential nature of the service we are providing, proposing to protect the continued operation of the substation in the least intrusive way possible by modifying the existing security fence around the perimeter. Specifically what we are proposing to do is build a, as you continue, the 9-foot tall security fence to be installed around the expanded station perimeter, consisting of 8 feet of chain link, topped off with 1 foot of three strands of barbwire.

We're asking the Board to approved the fence for the following three reasons: The first reason is the fence is necessary to secure the safety of this station. The fence will prevent the public from coming into contact with the high voltage electrical assets located on the property. Any time a member of the public gains unauthorized access to a substation, it is a substantial threat to the substation operations and that person's safety. The station has 115,000 volts of electricity running through the equipment. If a member of the public accesses the station their lives would be in immediate danger.

Second, it will prevent petty theft, loitering, and vandalism on the site and also the potential for terrorism if someone with bad intentions is able to get

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over the fence, or tries to get over the fence.

The substation is unmanned, and the proposed fence is the most tactful way for National Grid to secure the property on a 24/7 basis. In addition, the fence conforms with the National Electric Safety Code and the North American Electrical Liability Corporation's critical infrastructure protection standards for substation security.

In addition, our fence will have minimal to no visual impact. The closest home to National Grid's existing fence is approximately .21 miles or 1,126 feet to the west of Lawn Park Circle. The new fence will be located just as far from these same homes. In between the substation and these homes, there stands existing Evergreen trees. Dan and I actually visited the site last winter and we could not see the substation from Park Circle even in a leaf-off situation. All factors minimize the visual impact of the fence.

The third reason is, a barbwire fence will cause no undesirable changes to the community as we were able to locate four other existing barbwire fences within two miles of the station. Those fences include, this is the fence surrounding the Monroe County Water Authority's water tank on Mortimer Avenue, which is .11 miles to the site. This is the existing RG&E station located on Kendrick Road



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which is 1.35 miles from the site. This is a commercial warehouse located on Western Drive which is .56 miles from the site. And this is the fence surrounding the RG&E substation directly adjacent to our substation.

So as you are aware, pursuant to New York State Town Law Section 267, the Zoning Board must take into consideration the benefit to the applicant versus any detriment to the neighborhood. Typically the Board would consider the five factors outlined in Town Code Section 219-2. Although we believe National Grid's proposed fence variance should be approved based on the balancing of these five factors, it is well established under New York State Law that proposed variances related to modifications to existing public utility uses are entitled to a relaxed zoning review.

In a New York Court of Appeals case entitled Consolidated Edison of New York versus Hoffman, the Court upheld when a variance associated with a modification of existing public utility use is requested, the utility must show that the modification is a public necessity and that it is required to run a safe and adequate service, and there are compelling reasons economic or otherwise which make it more feasible to modify our site than to provide power from

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alternative sources.

The Court further stated that where the intrusion or burden on the community is minimal, the shown required by the utility should be correspondently reduced. In this case for the reasons I just discussed, the intrusion or burden on the community is minimal to nonexistent. The proposed fence is a public necessity and it is required to render safe and adequate service to our 20,000 customers. And National Grid is determined that the fence is the most feasible way to ensure the continued safety of the station. Here is a copy of that case.

Any questions? I apologize if that was more information than you needed, just that there's a lot of information.

CHAIRPERSON MIETZ: That's fine. So just one quick question. What's the track record of the station? Have there been intrusions or violations of the fence? Has there been vandalizing? Has there been anything prior to the beginning of the project?

BEN WEISEL: Not that we know of, and the reason why that might be a case is because there's an existing barbwire fence around it.

CHAIRPERSON MIETZ: Yes, I'm aware of that,

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but I'm just asking for the record, have there been any incidents that you were informed of by the Brighton Police or anyone else that something happened?

BEN WEISEL: No. However, this is a very isolated station.

CHAIRPERSON MIETZ: I'm aware of that.

BEN WEISEL: The concern is at other stations people have broken into the stations and have been killed because they touched the electric wires.

CHAIRPERSON MIETZ: Sure. That's not the point of the question. The question is just simply a matter of record, is it or isn't it? So your answer is, no. No, there haven't been any incidents that you have been made aware of, that National Grid's been made aware of.

BEN WEISEL: True. And there's also been no complaints from any Brighton residents.

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

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

APPLICATION 8A-05-19

8A-05-19 Application of John and Heidi

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Vorrasi, owners of property located at 305 Hollywood Avenue, for renewal of a Temporary and Revocable Use Permit pursuant to Section 219-4 to allow for the manufacturing of kombucha tea in a single family residence where not allowed by code. All as described on application and plans on file.

HEIDI VORRASI: My name is Heidi Vorrasi and I live at 305 Hollywood Avenue. These are just pictures of my current kitchen and I will pass them around. This one is vertical and it is a little confusing.

So I came before you two years ago and asked for the use variance, at that time I was unable to find commercial kitchen space that would work. Renting it on a very small scale is difficult, that remains the same. That hasn't changed. I was able to have Judy come by and see my shop. I really, I believe no negative impact to the community or my neighbors. You would never know even being inside of my house that I am producing kombucha there.

I think some of you may have had kombucha at the Brighton Farmers' Market, that is my top customer. I also wholesale around Rochester, so I don't believe there are any negatives or positives. One of the things I've done as a business is I host a fundraiser for a non-profit every year. Last year I raised several hundred dollars for Owen's House,

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1  
2  
3 which is a part of the Center for Youth. This year I'll be  
4 working with the Brighton Food Cupboard. I do donate to  
5 several local charities like Boy Scouts, I do a lot of silent  
6 auctions, and, of course, there are all of the wonderful  
7 health benefits of drinking kombucha. Thank you for  
8 supporting my business.

9 CHAIRPERSON MIETZ: So in essence, these are  
10 your words not mine, but has anything changed from what you  
11 have projected to other than you had hoped you might find a  
12 location to move this into?

13 HEIDI VORRASI: Yes. So two years ago was  
14 kind of the break even and I was able to break even sooner  
15 than that because the kombucha market really exploded. Now,  
16 for me it's not as much the cost factor as it is I'm waiting  
17 for water to boil, like, 90 percent of the time. So it's  
18 like a convenience factor as I am home with my small children  
19 and commercial kitchen space that is not. I have done some  
20 searching and I've asked, could I share space with someone  
21 and it's not gotten any easier.

22 CHAIRPERSON MIETZ: So you stated in the  
23 application that your desire to do that once your children  
24 get older is still the same?

25 HEIDI VORRASI: Yes. I will explore it again

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in two years as my youngest will be in half-day kindergarten.

CHAIRPERSON MIETZ: Is it fair to say that if the right opportunity comes up you would consider that?

HEIDI VORRASI: Yes.

MS. WATSON: Is it fair to say it's a quiet business, it does not necessitate deliveries at various hours of the day and night?

HEIDI VORRASI: I don't do any -- I don't sell from the house at all. I'm at the Brighton Farmers' Market or I wholesale. I also work closely with R's Market in Brighton for people who want to pickup or buy a larger quantity, I use R's Market to do that. I sell it to R's and they sell it from there in larger quantities. So there's no in-house, I don't want it there.

CHAIRPERSON MIETZ: Great.

MR. DiSTEFANO: Due to a couple concerns that came from the sewer department and what you might be discharging into the sewer system, do you know what type of waste that you are producing? I know if you go online it says that acids and glycerol are being produced. That's not good to be going directly into the sewer system. Can you talk a little bit about your product?

HEIDI VORRASI: Yes. There is almost no waste

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2  
3 when you produce kombucha. So the way that you produce  
4 kombucha, you make tea, you sweeten it, you let it ferment,  
5 but you don't dump off a certain amount that is reserve that  
6 goes into the next batch. So there really --

7 MR. DiSTEFANO: So you're not dumping any of  
8 the tea byproduct down into the sewer or anything like that?

9 HEIDI VORRASI: No.

10 MS. DALE: So it's not like making beer, where  
11 you have a mash left and you filter off the liquid and you  
12 are left with a mash?

13 HEIDI VORRASI: No. So there's scoby that  
14 forms on the top that doesn't go down the drain, I compost  
15 it.

16 MR. DiSTEFANO: That's that film on top and  
17 you take it off and you say you compost that portion of it?

18 HEIDI VORRASI: Right. There's water and  
19 detergent and sanitizer that is used in restaurants. That's  
20 everything that's going into the --

21 MR. DiSTEFANO: So that basically is when you  
22 are cleaning out your vats or something? That's just a  
23 typical cleaning solution that would be used in a normal  
24 kitchen.

25 HEIDI VORRASI: Right, exactly. I did have

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the sewer department, they actually came and checked. We have a lot of tree roots that grow in our sewers and so I had the plumber come and snake them out. He had the sewer department come and check the sewers that they are cast-iron. They're not the clay pipes all the way out to the street.

MR. DiSTEFANO: Basically, the simple answer to the question is, there's very little of any discharge into the sanitary sewer system.

HEIDI VORRASI: Right, yes.

CHAIRPERSON MIETZ: That was the only question?

MR. DiSTEFANO: That was my concerns.

HEIDI VORRASI: Good questions.

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 8A-06-19

8A-06-19 Application of Mile Pinkowski, owner of property located at 45 Elm Lane, for 1) an Area Variance from Section 203-2.1B(3) to allow a detached garage to be 1040 +/- sf in size in lieu of the maximum 600 sf allowed by



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code, and 2) an Area variance from Section 207-6A(1) to allow said garage to be 21.75 ft. in height in lieu of the maximum 16 ft. in height allowed by code. All as described on application and plans on file.

MICHAEL PINKOWSKI: Good evening, last name is Pinkowski, P-i-n-k-o-w-s-k-i, Michael, 45 Elm Lane. I'm seeking a variance as you know for a larger garage than is allowed by code. I sought this variance in 2016, which was approved, a little bit smaller by about 40 feet I believe, and 2'7" shorter than the current variance request.

The changes to this variance request was basically due to the side wall of my pool collapsing which has since been removed with a permit pulled by the Town of Brighton, which is turned into a green space. And the fact that the original architect did the design put the garage so that basically a 20-foot car would have to rotate on its own access to get out of the garage, so unworkable to get out on the location it was at.

We've since on the new application moved it to the original location of a shed that was approximately 600 square feet, detached shed, and we'll enter and exit directly out of the driveway without making a turn. So the neighbors aren't affected because of the density of the

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trees, and the garage itself is below the road level as the property is sloping, for anyone who didn't make it to my house.

CHAIRPERSON MIETZ: So the difference in the square footage is simply just the new architect's --

MICHAEL PINKOWSKI: The new architect, yes, actually spent time on the site and realized after I staked it out where the old architect had it and then we looked and said that car's not going to that make turn ever. The new architect worked the size and the squareness in order to be able to accommodate three vehicles and a staircase up to the second floor.

MS. SCHWARTZ: With the second floor, I noticed --

MICHAEL PINKOWSKI: Storage area.

MS. SCHWARTZ: Just storage?

MICHAEL PINKOWSKI: There's no -- we have plenty of living space.

MS. SCHWARTZ: No utilities up there at all?

MICHAEL PINKOWSKI: A half bathroom for workers.

MS. SCHWARTZ: Upstairs in the garage?

MICHAEL PINKOWSKI: The bathroom is upstairs,

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there's not room on the first floor garage level with the three cars and the little staircase design.

MS. SCHWARTZ: What is the square footage of the second floor?

MICHAEL PINKOWSKI: It's 700 square feet and with the sloping roof, there's a peak in the roof large enough for my head not to hit, which is why we got to the 21'6." The original design that was basically bashing my head on almost every spot of it because it was about 5'6." There is the half bath, has two closets, and a sink and a toilet only. And it's approximately six by six on the bath.

CHAIRPERSON MIETZ: I think she was asking how much square footage is on the second floor.

MICHAEL PINKOWSKI: The second floor itself covers about 700 square feet, all in, including the dormers and dormer space with about a 6'6" ceiling height.

MS. SCHWARTZ: You have no intentions of using it for living facing?

MICHAEL PINKOWSKI: Absolutely not.

MR. DiSTEFANO: And just repeat again the square footage proposed for the half bath?

MICHAEL PINKOWSKI: It's about 36 square feet. The reason for the half bath is we have a lot of workers at

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2  
3 our house and our neighbor's house and my wife doesn't like  
4 the workers in the house and the neighbors don't accommodate  
5 them either. We share lawn services and they have been using  
6 some bushes in our neighborhood. So rather than have  
7 everybody watch them, we thought accommodating everybody who  
8 works at our house and the rest of the neighborhood. We kind  
9 of share the same lawn service people, that it would be  
10 better if they're spending the day there they had somewhere  
11 to go, as well as my own workers who come to the house to  
12 work inside of the house.

13 MR. DiSTEFANO: So is this garage going to be  
14 insulated and heated, or what are you going to do in the  
15 wintertime? Is there going to be a kind of a pool house  
16 where you pump it out so the pipes don't freeze?

17 MICHAEL PINKOWSKI: We have people year-round,  
18 so the intention is to keep a minimal amount of heating in it  
19 and not drain pipes and stuff. It's not like a pool house  
20 like some of our neighbors have where we shut that down.

21 MR. DiSTEFANO: So will the entire garage be  
22 heated or will it be the bathroom area?

23 MICHAEL PINKOWSKI: Probably the entire  
24 garage, just because of the cars, et cetera, that are kept in  
25 there. You know, 50, 55 type of heating which is what we do

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for a --

CHAIRPERSON MIETZ: Will it have a furnace in there or are you doing electric?

MICHAEL PINKOWSKI: Electric heat.

CHAIRPERSON MIETZ: Okay.

MICHAEL PINKOWSKI: We have 5,700 square feet and seven bedrooms with two kids. We are not --

CHAIRPERSON MIETZ: Well, you understand the concerns.

MICHAEL PINKOWSKI: I know.

CHAIRPERSON MIETZ: This is a life/safety issue. That's why we need to ask these questions because people do things, whatever they do.

MICHAEL PINKOWSKI: All right. The intention on this is, one, we have storage for all of the junk that is currently accumulating elsewhere, and three sets of lawn furniture, all of the outdoor stuff, to be able to store that during the wintertime.

CHAIRPERSON MIETZ: Can you talk about the architecture, since it's been about three years, about how this is going to be constructed, and generally how is that going to interact with the home?

MICHAEL PINKOWSKI: Sure. The design of the

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house is tied directly to the design of the garage. So same type of stone and HardiePlank siding, Pella windows, slate roof, copper gutters, matching the existing architecture. So it's not a garage per se, but it's a blend of the existing property.

CHAIRPERSON MIETZ: The color is the same?

MICHAEL PINKOWSKI: Yes, it's going to be white with a gray fieldstone fascia, and the same green slate roof that's on the main house will also be. The slate is sitting in the outside warehouse right now.

MR. DiSTEFANO: And for the record, you and I had this discussion, we took the height of this garage to the peak of the roof, but your little diagram is showing the cupola.

MICHAEL PINKOWSKI: The cupola on top is getting whacked because they are about \$7,000 and I can't justify one.

MR. DiSTEFANO: There will be no other --

MICHAEL PINKOWSKI: No.

MR. DiSTEFANO: -- so the highest point of the garage will be the roof line.

MICHAEL PINKOWSKI: Correct. We have a side garage light porte cochere that there's four birds over the

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top of our car all of the time.

CHAIRPERSON MIETZ: Any other questions?

MR. CLAPP: Is it safe to assume the neighbors are aware of the plans and there's no objections?

MICHAEL PINKOWSKI: Yes. Both the primary neighbor at the end of Elm Lane and our neighbor behind are both in favor of having the garage put up.

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, then the Public Hearing is closed.

APPLICATION 8A-07-19

8A-07-19 Application of F & H Development, owner of property located at 1338 Brighton Henrietta Town Line Road, for renewal of a Temporary and Revocable Use Permit pursuant to Section 219-4 to allow for the temporary outdoor storage of construction equipment where not allowed by code. All as described on application and plans on file.

DAVID HOWARD: Good evening to all. My name is David Howard partner at F & H Development, 1338 Brighton Henrietta Town Line Road.

I'm here tonight to ask the Board to allow us

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1  
2  
3 to continue our conditional use. We are in the process of  
4 retaining Marathon Engineering, I'm sure everybody has -- I  
5 don't have the copies in front of me. We are working  
6 directly with Matt Tomlinson and we have been in -- our  
7 architect has drawn up prints, everything has been moving  
8 forward, but we've had a delay with the New York State DEC  
9 due to the delineations of the official wording report from  
10 the DEC. They are running behind.

11 I personally have been involved to get  
12 Mr. Willow Szazar of the Avon office to get us that final  
13 official wording report to our engineer, Matt Tomlinson so  
14 Marathon can come in to present to the Board all of the final  
15 paperwork to Rick and the office so we can continue to move  
16 forward with this project.

17 MS. WATSON: For the record, will you just  
18 give us a little bit of history of the project and what's  
19 happening on the site and when did it all begin?

20 DAVID HOWARD: This has gone on three, four  
21 years. Originally we started the project, ran into a few  
22 little bit of a financial issue due to the company. We  
23 resolved that, we started moving forward again in a positive  
24 aspect. We retained marathon, they came highly advised for  
25 us to use. We retained their services and, you know, we are



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ready to go with the project. On our aspect of it everything is in line, it's just right now trying to get the DEC to move forward right now has been a little bit of a --

CHAIRPERSON MIETZ: What exactly does the DEC need to be involved in the project for? I know generally, but what is the specifics?

DAVID HOWARD: In the back section of the property it's registered a Federal wetland and there's a boundary line, 100-foot boundary line from the edge of the water forward. So Matt is requesting official wording before we come back to the Town. He submits all the paperwork because he says you guys are going to want to see that. We did this once before, but he wants it updated and he wants the official wording from the gentleman at the DEC so when he comes back in to submit all the paperwork everything is in order.

MR. DiSTEFANO: For the record, it's a State wetland that requires the 100-foot buffer around that.

DAVID HOWARD: Yes.

MR. DiSTEFANO: Why don't also for the Board explain a little bit what you are proposing there.

DAVID HOWARD: We're proposing to put an addition onto the existing garage and is basically cold

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storage so we can store the equipment and small peripheral equipment that's on the site inside. There's snowplows, and walk-behind salters, and stuff like that. We can have the stuff stored inside because we have had stuff disappear. Snowplows have been removed from the property at a great expense, \$6,000 a piece.

MR. DiSTEFANO: That facility would require a conditional use permit and site plan approval from the Planning Board. So for them to do it, they can do it per code so they don't need any T and R's. But the fact that everything is outdoor storage with no storage facility per se, that's why they're front for the T and R, which has been into its third go around here.

CHAIRPERSON MIETZ: Okay.

DAVID HOWARD: And we've had the project, I came in personally and sat down with Patricia and had her review the blueprints for the project, and with the Fire Marshal Chris Roth to make sure we were all compliant with everything so far.

CHAIRPERSON MIETZ: So to the best of your ability, the summary is, once you get the DEC there's nothing else to hold up, other than the formal review by the Town?

DAVID HOWARD: No.

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MR. DiSTEFANO: Do you have any -- I know I personally talked to Matt a few weeks, a month ago. How close are you to making the application to the Planning Board?

DAVID HOWARD: As I spoke to Matt Monday, we're just waiting on the DEC and he can compile the paperwork and get it submitted to you.

MR. DiSTEFANO: Then after you get to the Planning Board, how long do you think it will be for the construction process?

DAVID HOWARD: As soon as we get approval the plan is to start. My partner Jeff and I plan to get started as soon as we have approval.

CHAIRPERSON MIETZ: How long do you think it will take from the day you break ground?

DAVID HOWARD: Between 30 and 40 days we can have the addition done, the site cleaned, everything situated. It's not that big, it's something simple and small that we're going to handle ourselves.

CHAIRPERSON MIETZ: So there's an expectation it could happen in the building season after getting to the Planning Board and move swiftly, based on the date. There's an expectation you could get this done before the end of the

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year.

DAVID HOWARD: Yes.

CHAIRPERSON MIETZ: Okay. Any other questions?

MS. WATSON: One question, sort of a curiosity. One of the conditions that was set forth in the last use permit, was that a vehicle be removed from the southeast side of the property. I drove by there today and there was a vehicle on the southeast side of the property so I wasn't sure if it was the same vehicle.

DAVID HOWARD: No. That was as a matter of fact my mother's -- my deceased father's car. My mother is now taking it over. That's the blue convertible you saw on the property, it's licensed and insured and registered.

MR. DiSTEFANO: That was an old Cadillac. That was removed quickly after they were here.

MS. WATSON: I was just checking.

MR. DiSTEFANO: We have limited the number of pieces of equipment to six, is that the number?

DAVID HOWARD: Yes.

MR. DiSTEFANO: At times it looks like there's a lot more than six out there.

DAVID HOWARD: Equipment comes and goes,

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there's a trailer, a twin-axle trailer that's being rehabilitated that will be removed from site and it goes from jobsite to jobsite and travels around the state.

MR. DiSTEFANO: At times will be more than six there?

DAVID HOWARD: No.

CHAIRPERSON MIETZ: You also have the opportunity to put a bunch of stuff inside.

DAVID HOWARD: Yes, sir.

CHAIRPERSON MIETZ: Seasonally, the salt spreaders are stored inside?

DAVID HOWARD: Yes.

MR. CLAPP: Is the house on that property occupied?

DAVID HOWARD: Yes.

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.

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## REPORTER CERTIFICATE

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

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

Dated this 16th day of September, 2019.

At Rochester, New York

  
Rhoda Collins

## Brighton Zoning Board of Appeals 8/7/19

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON AUGUST 7TH, 2019  
AT APPROXIMATELY 8:40 **P.M.**

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

## PRESENT:

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

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
KATHLEEN SCHMITT  
ANDREA TOMPKINS WRIGHT

(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 8/7/19

## APPLICATION 8A-04-19

8A-04-19 Application of Niagara Mohawk Power Corporation, owner of property located at 1430 Brighton Henrietta Town Line Road, and Rochester Gas and Electric, owner of property located at 1436 Brighton Henrietta Town Line, for Area Variances from Section 207-2 to allow an 8 ft. high fence topped with 1 ft. of barbed wire (surrounding electrical equipment) where a maximum 6.5 ft. high fence is allowed by code and where the use of barbed wire is not allowed by code. All as described on application and plans on file.

Motion made by Ms. Dale to approve Application 8A-04-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The applicant is proposing to expand its existing security fence in order to maintain a safety barrier around the new electric transformer. The substation is unmanned and the fence will provide security 24 by 7.
2. The variance request will not result in a substantial change in the character to the neighborhood or detrimentally affect surrounding properties as there is a pre-existing fence surrounding the existing substation which is 8-feet high, and topped with barbwire. Also, the closest homes to



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the property are approximately 1,100 feet away and have existing tall evergreen trees which provide adequate screening.

3. The applicant has presented that their experts have determined that the fence meeting code would not provide proper security required for the substation equipment to keep people from trespassing and causing themselves and the equipment substantial harm.

4. As a public utility, the applicant is required to comply with New York State code which requires security fences to be installed around electric substations. The applicant is also required by law to keep the public safe from energized electric units.

**CONDITIONS:**

1. This variance is granted specific to the applicant's testimony and the specifications of the fence in the location as shown.

2. All necessary building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

## Brighton Zoning Board of Appeals 8/7/19

APPLICATION 8A-05-19

8A-05-19 Application of John and Heidi  
Vorrasi, owners of property located at 305 Hollywood Avenue,  
for renewal of a Temporary and Revocable Use Permit pursuant  
to Section 219-4 to allow for the manufacturing of kombucha  
tea in a single family residence where not allowed by code.  
All as described on application and plans on file.

Motion made by Mr. Mietz to approve  
Application 8A-05-19 based on the following findings and  
facts.

**FINDINGS AND FACTS:**

1. The extension of the temporary revocable use permit will  
not have any negative effect on the neighborhood since no  
odors or sounds are emanating from the property.
2. No substantial validities are made to the property with  
respect to this business activity.
3. The use will only be limited to one room of the home.

**CONDITIONS:**

1. The business shall only occupy the one room as described  
in the testimony given.
2. The temporary and revokable permit is for two years  
commencing on August 8, 2019.
3. All required Department of Agricultural and Markets

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regulations shall be followed.

4. No retail operations shall be permitted from the site.

(Second by Ms. Watson.)

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

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

## Brighton Zoning Board of Appeals 8/7/19

## APPLICATION 8A-06-19

8A-06-19 Application of Mile Pinkowski, owner of property located at 45 Elm Lane, for 1) an Area Variance from Section 203-2.1B(3) to allow a detached garage to be 1040 +/- sf in size in lieu of the maximum 600 sf allowed by code, and 2) an Area variance from Section 207-6A(1) to allow said garage to be 21.75 ft. in height in lieu of the maximum 16 ft. in height allowed by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 8A-06-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance to allow for a detached garage to be 1,040 square feet in size in lieu of the maximum 600 square feet allowed by code and the height of the garage to be 21 feet .75 inches in lieu of the maximum 16 feet allowed by code is substantial. However, the new three-car will be proportionate to the large lot located on the cul-de-sac with two homes.

2. The lot slopes down considerably as you go towards the backyard. Therefore, the peak of the new garage will be below 16 feet if measured from the road.

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3. The garage will not be visible from the road and there is substantial vegetation around the designated area.

4. There are other homes in the greater area that have three-car garages to accommodate larger cars today as well as storage space.

5. The increase of 8-square feet from the 2016 application is for the half bath in the garage.

**CONDITIONS:**

1. This variance only applies to the garage that was described in the written application and testimony presented.

2. The only utilities to the garage which will be heated will be electricity, water and sanitary sewer because of the half bath.

3. There shall be no inhabitable space in the entire garage.

4. All necessary permits and approvals shall be obtained.

(Second by Ms. Dale.)

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

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

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APPLICATION 8A-07-19

8A-07-19 Application of F & H Development,  
owner of property located at 1338 Brighton Henrietta Town  
Line Road, for renewal of a Temporary and Revocable Use  
Permit pursuant to Section 219-4 to allow for the temporary  
outdoor storage of construction equipment where not allowed  
by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve  
Application 8A-07-19 based on the following findings and  
facts.

**FINDINGS AND FACTS:**

1. The applicant is planning to redevelop this property as there has been extended process of planning and redesign as well as financing. The applicant is ready to proceed with Planning Board approvals and construction as soon as they receive necessary information from the DEC.
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 request. As the construction equipment is stored on the site it will be largely shielded by existing fencing at the rear of the property as it relates to the street.
3. The health, safety, and welfare of the community will not

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be adversely affected by the approval of this temporary use requested as the use of the property in this matter remains commercial in nature.

**CONDITIONS:**

1. The temporary revokable use permit shall apply to a maximum of six pieces of equipment stored on the property as specified in plans submitted and testimony given.

2. The storage for vehicles and equipment as described shall not infringe on the wet pond on the north portion of the property.

3. The temporary permit shall be valid for 12 months from August 8, 2019, to August 7, 2020, or whenever construction on the site concludes, whichever occurs first.

(Second by Ms. Schwartz.)

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

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

## Brighton Zoning Board of Appeals 8/7/19

APPLICATION 8A-01-19

8A-01-19 Application of Yuri and Anna Joselson, owners of property located at 10 Chalet Circle, for an Area Variance from Section 205-2 to allow a building addition to extend 7 ft. into the 18.75 ft. side setback required by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 8A-01-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The side setback variance to extend seven feet into the 18.75-foot side setback is sizeable but allows for a more square addition rather than a long narrow room extending into the backyard. In order to accommodate the movement of equipment and door widths within the addition a more square-shaped space is needed.

2. The granting of the variance will allow a family member to be cared for more easily especially as she gets older.

3. No other alternative can achieve the desired result of the applicant such as use the existing deck as it is in the middle of the back of the house and also going behind the garage would result in extending the addition further into



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the backyard.

**CONDITIONS:**

1. This variance is only for the construction of the addition to extend seven feet into the 18.75-foot side setback.

2. All necessary building permits shall be obtained.

3. All materials will match the existing house.

(Second by Ms. Dale.)

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

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

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## APPLICATION 8A-02-19

8A-02-19 Application of Susan and Craig Pearlberg, owners of property located at 15 Birmingham Drive, for an Area Variance from Section 205-2 to allow an enclosed front entryway to extend 3.7 ft. into the 40 ft. front setback required by code. All as described on application and plans on file.

Motion made by Ms. Watson to approve Application 8A-02-19 based on the following findings and facts.

**FINDINGS OF FACT:**

1. The requested variance will not produce an undesirable change in the character of the neighborhood nor be a detriment to nearby properties as other houses on the street have similar entryways.
2. The benefit sought by the applicant cannot be achieved by any method other than an area variance as the front of the house and the existing uncovered front stoop are already close to the required setback. Any entrance constructed to meet code would be too narrow to be practical.
3. The requested variance is not substantial as the new vestibule replaces an existing stoop and will extend less than four feet into the required setback.

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4. The size of the proposed vestibule is the minimum necessary to provide shelter and minimum storage when entering and exiting the house.

5. The health, safety, and welfare of the community will not be adversely affected by the approval of this variance request the vestibule is merely intended to provide shelter from the elements.

**CONDITIONS:**

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

2. All necessary permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

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APPLICATION 8A-03-19

8A-03-19 Application of Roger Langer, Jr., architect, and Our Group 5, LLC, owner of property located at 1485 Monroe Avenue for modification of an approved area variance (11A04-18) from Section 205-6 to allow an accessible ramp to extend an additional 11.7 ft (for a total of 20 ft,) into the 30 ft. front setback (Sylvan Road) required by code. All as described on application and plans on file.

Motion made by Mr. Clapp to approve Application 8A-03-19 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The amendment to the previously granted variance is necessary because the original design was based on inaccurate elevations and grades and a longer rail including intermediate landings was constructed by the contractor to meet required code. The ramp as constructed extends to 10 feet from the property line instead of the 21.7 feet allowed by the previous variance.

2. No other alternative can eliminate the difficulty and produce the desired result in providing handicap accessibility in order to comply with the front yard setback from Sylvan Road and meet the New York State required

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building code requirements.

3. The requested variance is the minimum variance possible because the slope length and depth of the ramp is determined by the building code requirements. The size of the ramp cannot be reduced and still meet these necessary requirements.

4. Granting of the request will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties nor will it have an adverse effect or impact on the physical or environmental conditions of the neighborhood. Providing handicap accessibility to the property will increase the overall safety and the ramp is designed to look like a sidewalk with handrails and landscaping in keeping with the surrounding neighborhood.

5. The alleged hardship was not self-created by the applicant as the 2015 international existing building code requires handicap accessibility for the first floor of a business. Additionally the difficulty of comply with the corner lot's two front setbacks is not self-created by the applicant.

**CONDITIONS:**

1. This variance will apply only to the accessibility ramp as described in the application and testimony. In

## Brighton Zoning Board of Appeals 8/7/19

particular, it will not apply to additional structures considered in the future that are not presently in the application.

(Second by Ms. Schwartz.)

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

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

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## REPORTER CERTIFICATE

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

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

Dated this 16th day of September, 2019.

At Rochester, New York

  
Rhoda Collins