

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

September 4, 2019
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

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

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

NOT PRESENT:

JUDY SCHWARTZ

REPORTED BY: SUSAN M. RYCKMAN, CP,
Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive,
Batavia, NY 14020,
(585) 343-8612

1 CHAIRPERSON MIETZ: At this time I would
2 like to call to order the September session of the
3 Brighton Zoning Board of Appeals.

4 Rick, was the meeting properly
5 advertised?

6 MR. DiSTEFANO: Yes, Mr. Chairman. It was
7 advertised in the Brighton-Pittsford Post of
8 August 29, 2019.

9 CHAIRPERSON MIETZ: Okay. Would you please
10 call the roll.

11 MR. DiSTEFANO: Please let the record show
12 that Ms. Schwartz is not present.

13 CHAIRPERSON MIETZ: Okay. So we do have
14 minutes to look at, and we don't have Judy. It's the
15 July minutes. Are there any corrections, additions,
16 anything anyone found? Looked pretty good to me,
17 actually, too. That's usual.

18 MR. DiSTEFANO: No motion.

19 CHAIRPERSON MIETZ: How about a motion?

20 MS. TOMPKINS WRIGHT: I move to approve the
21 minutes of July 2nd, 2018.

22 (Second by Mr. Clapp.)

23 (Mr. Clapp, yes; Ms. Tompkins Wright,
24 yes; Ms. Dale, yes; Mr. Mietz, yes; Ms. Watson, yes;
25 Ms. Schmidt, yes.)

1 (Upon roll call, motion to approve
2 carries.)

3 CHAIRPERSON MIETZ: Okay. Wonderful. Thank
4 you. All right.

5 So Rick, when you're ready, please read the
6 first application.

7 **APPLICATION 9A-01-19**

8 Application 9A-01-19. Application of
9 Nancy Sutton, owner of property located at 368 Meadow
10 Drive, for an Area Variance from Section 207-2E to
11 allow a fence to be constructed with the decorative
12 side facing out in lieu -- excuse me, decorative side
13 facing in, in lieu of facing out toward adjacent
14 properties as required by code. All as described on
15 application and plans on file.

16 CHAIRPERSON MIETZ: You're up.

17 MS. SUTTON: Hi, I'm Nancy Sutton; I live at
18 368 Meadow Drive. And the reason why I'm requesting
19 this variance is because ever since I've lived in this
20 house, for 17 years, the fence has been facing in.

21 The property behind is the 590 exit, and the
22 adjacent behind there is also the Charbroil parking
23 lot.

24 I also have a letter from my next door
25 neighbor, Larry Heininger, that is in favor of having

1 the finish side facing in. So I can...

2 MR. DiSTEFANO: Thank you.

3 MS. SUTTON: And Larry said it's been that
4 way for the past 36 years, since he moved in, and the
5 previous owners put it in that way. So it seems it's
6 more beneficial to have it with the decorative side
7 facing in, since no one else is going to see it except
8 my neighbors and me.

9 MS. DALE: The fence is going to go right
10 where the old fence has been; same height and
11 location, and --

12 MS. SUTTON: Yes. It's just a slightly
13 different style. Currently it's a stockade fence, and
14 now it is going to be a dog-eared fence.

15 MR. DiSTEFANO: I will add for the record,
16 there is a sewer easement that runs down that property
17 line. It was brought to our attention from the sewer
18 department. So Ms. Sutton will have to talk to them
19 to see whether or not they will allow the fence to
20 remain in that easement. So I think, you know,
21 basically, if we don't have a problem with it, we just
22 say, you know, get your approvals.

23 CHAIRPERSON MIETZ: Right.

24 MR. DiSTEFANO: That or get your approvals
25 from the sewer department to allow that fence to, you

1 know, basically remain in that --

2 CHAIRPERSON MIETZ: Is that parallel to the
3 property line?

4 MR. DiSTEFANO: It runs -- yeah, right down
5 that center lot line between her and her neighbor,
6 Mr. Heininger. It runs down.

7 CHAIRPERSON MIETZ: It is not across the
8 property?

9 MR. DiSTEFANO: Not across the back, down
10 the side lot line. So right where the fence goes over
11 to the garage is right where that storm sewer easement
12 is.

13 CHAIRPERSON MIETZ: Okay. So you are aware
14 of what you would need to do?

15 MS. SUTTON: Yeah. Rick gave me the
16 information.

17 CHAIRPERSON MIETZ: Obviously, we have to --
18 probably just we can deal with that --

19 MR. DiSTEFANO: Yeah.

20 CHAIRPERSON MIETZ: -- as part of the
21 conditions.

22 MR. DiSTEFANO: Correct, condition it that
23 way.

24 CHAIRPERSON MIETZ: Are you going to stain
25 this fence, or is this just going to be natural?

1 MS. SUTTON: No, it's just natural.

2 CHAIRPERSON MIETZ: Does anyone else have a
3 question about this application?

4 MR. CLAPP: Just curious, did you, by any
5 chance, check with the owners of the Charbroil to see
6 if they cared? I would be surprised if they did.

7 MS. SUTTON: No, I didn't, because actually,
8 it's the very end of the -- of the parking lot. I
9 mean, it hardly even faces the parking lot. I mean,
10 it's the woods, actually. It's the edge of the
11 parking lot. I mean, their dumpster is back there.
12 So I can't imagine they would care.

13 MR. CLAPP: Yep. Thank you.

14 CHAIRPERSON MIETZ: Anything else? Okay.
15 Thank you very much.

16 MS. SUTTON: Thank you.

17 CHAIRPERSON MIETZ: Is there anyone in the
18 audience that would like to speak on this application?

19 There being none, I am closing the public
20 hearing.

21 **APPLICATION 9A-02-19**

22 9A-02-19 Application of Tim Case,
23 contractor, and Dawn Murphy, owner of property located
24 at 101 Branchwood Lane, for an Area Variance from
25 Section 207-10A(2) to allow an egress window to be

1 located 2-feet from a lot line in lieu of the minimum
2 4-foot as required by code. All as described on
3 application and plans on file.

4 MR. MURPHY: I'm Dawn Murphy; I live at
5 101 Branchwood Lane in Brighton. It is a townhouse.
6 I do have neighbors on either side. And I've lived
7 there since 2013, myself and my two daughters, who are
8 now teenagers.

9 I wanted to have more livable space, as it
10 is a two bedroom. We use the basement, but I am
11 concerned with a safety issue of spending a great deal
12 of time there, in case there were -- I won't let them
13 have sleepovers down there. I am trying to make it a
14 safer environment so we can have more useful space
15 within our home.

16 CHAIRPERSON MIETZ: Okay. We good? And so
17 can you talk about the project then, or -- state your
18 name.

19 MR. CASE: Tim Case, ABS Foundation
20 Services. What we would like to do is, by putting an
21 egress window in the basement, if you look at the
22 front of the house, there is a window on the living --
23 in the living room. We want to try to centrally
24 locate that window, the new window, and the well
25 directly in the center of that existing window.

1 In order to do that, because of the storm
2 sewer pipe on the left side of the window, I can't
3 shift the well to the other side, and it would look
4 kind of funny. What that requires then is 2-feet to
5 the edge of her unit, which that's where we get in
6 trouble with the 4-foot setback. So the edge of the
7 well, technically, will be about 2-feet from the
8 so-called lot line or the edge of her adjoining unit.

9 MS. WATSON: I know it's mentioned in the
10 application, but just for the record, can you speak to
11 why it couldn't be an egress on the rear of the
12 property?

13 MR. CASE: Yeah. On the back of the
14 property there is a concrete patio, and all the
15 utilities, air-conditioning, gas, electric, everything
16 else comes in right there, and it could really make it
17 almost impossible to put it in there.

18 Plus, the living space is on the front side
19 of the basement, where in the back all the utilities,
20 as in the furnace, hot water heater, and everything
21 else are on the back side of the basement.

22 MS. TOMPKINS WRIGHT: That was my exact
23 question.

24 CHAIRPERSON MIETZ: Great minds think alike.

25 MR. CASE: I mean, the front of the house

1 usually is not the preferred place to put an egress
2 window, but on certain instances it's the only place
3 to put it. Yeah, ideally, I would like to have it on
4 the back, but it just would be almost impossible to
5 put it on the back.

6 MS. DALE: And you will be fixing up the
7 bushes and such so that the landscaping is...

8 MR. MURPHY: Absolutely. And I forgot to
9 mention, I have letters from my adjacent neighbors on
10 either side, as well as the neighbor across the
11 street, who said that they are okay with it, since
12 they will be looking at it and be directly next to it.
13 So I checked with them.

14 MR. DiSTEFANO: For the record, we have
15 received already a letter from the neighbor at
16 105 Branchwood, and I also have a letter from the
17 neighbor at --

18 MR. MURPHY: Sorry. James is right next --
19 I'm sorry, I can't think of what his address is. He
20 is right next to me.

21 MR. DiSTEFANO: The other adjacent property
22 owner, and the property owner directly across the
23 street at 102 Branchwood, that basically state that
24 they do not have any issues with the request.

25 MS. TOMPKINS WRIGHT: I think it's 95.

1 MR. DISTEFANO: Is that what it says?

2 MS. TOMPKINS WRIGHT: I am basing that on
3 the tax map.

4 MR. CASE: Have you seen what these look
5 like?

6 CHAIRPERSON MIETZ: Yes.

7 MS. TOMPKINS WRIGHT: Yes.

8 CHAIRPERSON MIETZ: We got them.

9 MS. TOMPKINS WRIGHT: The letter from your
10 neighbor at 105, Michael Phillips, mentions that he
11 believes you're going to restore the bushes and
12 restore the lawn areas. I just want to confirm that
13 that's accurate?

14 MR. MURPHY: Correct, right. They will
15 probably put in some kind of tree, you mentioned
16 arborvitaes?

17 MR. CASE: Well, just low -- you want low
18 bushes, basically --

19 MR. MURPHY: Sorry, not trees.

20 MS. TOMPKINS WRIGHT: -- to shield the view.

21 MR. CASE: People put it around it. Because
22 you don't want it too high, because you will have to
23 climb over it.

24 MS. TOMPKINS WRIGHT: Hopefully never.

25 MR. MURPHY: Yes.

1 MR. CASE: Hopefully never.

2 MR. MURPHY: Yeah. Put a big asterisk
3 there.

4 MR. CLAPP: How far does that come out?

5 MR. CASE: Forty-four inches.

6 MR. CLAPP: Normally a well is about 24,
7 maybe?

8 MR. CASE: A normal window well, 18 to 20
9 inches. I mean, you have to be able to -- basically,
10 egress windows are actually for ingress for the fire
11 department, more than they are for you. So what
12 they're, basically, they have to be a certain size so
13 a fireman with his air pack can get through the
14 window. Granted, that window will not be there for
15 very long when they are going in, but that's basically
16 what the sizes are for, is for the firemen to get in
17 and out.

18 MR. CLAPP: So is it fair to say that almost
19 even without the plantings, you really wouldn't see it
20 from the street?

21 MR. CASE: Typically that well, I mean, if
22 we put it in to where we are supposed to, the top edge
23 of the well is approximately 3-inches above grade, so
24 that water and debris and stuff like that doesn't have
25 a chance to go over the top of it. So the top is very

1 decorative. It looks like stone. But it would stick
2 up, typically, about 3-inches above grade. And then
3 the cover sits on top of that, and it's flat, so you
4 don't even see that.

5 MR. CLAPP: Thanks.

6 CHAIRPERSON MIETZ: Okay. Other questions?
7 Thank you very much.

8 Would anyone in the audience like to speak
9 regarding this application?

10 There being none, then the public hearing is
11 closed.

12 MR. CASE: So will they get notified by
13 mail?

14 MR. DiSTEFANO: You can call me tomorrow or
15 wait to get a letter in the mail.

16 MS. MURPHY: Okay. Thank you.

17 **APPLICATION 9A-03-19**

18 Application 9A-03-19. Application of
19 Reid Richards/Five Guys Restaurant, lessee, and Twelve
20 Corners Associates, LLC, owner of property located at
21 1881 Monroe Avenue, for modification of an approved
22 sign variance to allow for a change of business name
23 and sign location. All as described on application
24 and plans on file.

25 CHAIRPERSON MIETZ: I don't know if there is

1 anyone here regarding that? We can pass on it for
2 now.

3 MR. DiSTEFANO: See if someone shows up.

4 **APPLICATION 9A-05-19**

5 The next three I will read. Application
6 9A-05-19, Application of Costich Engineering, agent,
7 and Loren and Jamie Flaum, owners of property located
8 at 141 Old Mill Road for modification of approved
9 variances 7A-04-19 and 7A-05-19, reducing the size of
10 the attached garage from 1,171 square feet to
11 688 square feet, eliminating the need for the
12 variance, and reducing the height of the house from a
13 maximum 38 plus or minus feet to a maximum 37.5 feet.
14 All as described on applications and plans on file.

15 **APPLICATION 9A-06-19**

16 Application 9A-06-19. Same applicant, same
17 owner, property located at 141 Old Mill Road for
18 modification of approved variances 7A-06-19 and
19 7A-07-19, to allow a reconfiguration of the front yard
20 parking, and allow for an increase in height of the
21 front yard fence/wall from 4-feet, 3-inches, and a
22 side yard fence/wall to 10-feet, 3-inches. All as
23 described regarding applications and plans on file.

24 **APPLICATION 91-07-19**

25 Last but not least, 9A-07-19. Same

1 applicant, same owner. For property located at
2 141 Old Mill Road, for an Area Variance from
3 Section 203-2.1B(6) to allow a rear yard standby
4 emergency generator to not be located behind the house
5 as required by code. All described on applications
6 and plans on file.

7 CHAIRPERSON MIETZ: Okay.

8 MR. FAHEY: Jim Fahey, from Fahey Design
9 Associates. Mark Bayer is supposed to be here. I've
10 never been with Mark where he hasn't shown up to a
11 zoning meeting. So I think I will talk a little bit
12 slower about my side, because he's touching on all of
13 the site issues that are being changed.

14 CHAIRPERSON MIETZ: Let's give it a whirl.

15 MR. FAHEY: We'll give it a whirl, and see
16 where we are. The reason I provided the extra
17 illustrations for you, to kind of clarify what they
18 basically are. Is the elevations at the top of each
19 page or at the top or right or left top side, are
20 showing the proposed elevations of the house. And the
21 ones on the lower are what I had previously presented
22 to this Board on July 2nd.

23 The main reason to give those to you is,
24 it's almost like a Where is Waldo. If you look at
25 these elevations, they look exactly the same. After

1 we met with you on the 2nd of July and asked for some
2 very important variances we felt were needed to
3 successfully construct our project as we were
4 proposing to design it, we were asked to go through a
5 value engineering process for our client, to bring the
6 budget down.

7 So the resulting design -- we looked at this
8 thing in a comprehensive form, and really, I went
9 through a process with this house and kind of went
10 through a shrink-wrapping of the house, trying to keep
11 all of the same amenities, and the feel that the
12 Flaums were looking for. Not losing any of the
13 amenities, but providing a significant drop in the
14 construction budget. I think we've achieved that.
15 We're at their budget goals now.

16 I think we've also achieved it, as you look
17 at these elevations, there really has not been a
18 significant change in the aesthetic's exterior, and
19 from the livability of this house, all the same
20 amenities are on the inside of the home. So I think
21 it's a real win-win for everyone.

22 The variances that -- we only have a couple
23 of variances that we had requested and were approved
24 that have to do with the building itself. One is the
25 variance for an attached garage over 900 square feet.

1 As part of this cost reduction process, we actually
2 eliminated the angled third attached bay. So that
3 reduced our garage from 1,171 square feet down to 600
4 and some odd square feet. So we've actually pulled
5 that variance from our request.

6 The second thing that has happened by
7 reducing the overall footprint of the house, our roof
8 heights have gone down because we're not spanning as
9 large an area front to back or left to right. So
10 they're minor. They are not much, but they are
11 reductions of what you had approved previously. Our
12 maximum site elevation is 37 feet versus 37.6. And
13 our rear elevation was 38 feet, and it is now 37 --
14 excuse me. Yeah, it was 37.6. It was 38, now it's
15 37.6. So both elevations went down 6 inches because
16 of the roof drop.

17 The other two variances that related to the
18 building, for our carriage garage being located in the
19 front yard, and the height of the carriage garage
20 exceeding 16 feet. Nothing has changed with that. We
21 haven't reduced that size of that garage at all. We
22 still feel it's appropriate to the overall exterior
23 aesthetics of the home.

24 So very little changing here. I think if
25 doing anything, it's actually to the better, but I

1 think we're still maintaining the integrity of what we
2 had presented to the Board two months ago. Why Mark
3 isn't here, is beyond me.

4 CHAIRPERSON MIETZ: Well, really, the issue,
5 you could probably speak to the generator as it
6 relates to why that's necessary to occur in the
7 location that you're suggesting.

8 MR. FAHEY: Yeah. I mean, we've looked at
9 it at different locations, and we feel that is
10 absolutely the best location for it in respecting not
11 only our property but the neighbor's property. It
12 just so happens to have to be in that spot.

13 CHAIRPERSON MIETZ: How big a generator is
14 it?

15 MR. FAHEY: I'm not -- let me see what it
16 is.

17 MR. FLAUM: I think it's 30 kilowatts.

18 MR. FAHEY: It's 30?

19 MR. FLAUM: I think so.

20 CHAIRPERSON MIETZ: If you want to speak for
21 the record. We can't take straight comments. Just
22 introduce yourself.

23 MR. FLAUM: I'm Loren Flaum. I'm the
24 property owner. Just, I guess, for the record, the
25 generator that we are expecting is 30 kilowatts.

1 CHAIRPERSON MIETZ: Here comes Mark. It is
2 30 KW?

3 MR. FLAUM: Yeah, 30 KW.

4 MR. DiSTEFANO: Do we know what the decibel
5 rating on that is?

6 MR. FLAUM: I do not know, sorry.

7 MR. DiSTEFANO: Maybe Mark knows.

8 MR. BAYER: It will be under the required
9 spec.

10 CHAIRPERSON MIETZ: Mark, take a moment and
11 get yourself ready.

12 MR. FAHEY: Do you have any questions on the
13 building changes?

14 MR. DiSTEFANO: The detached garage is going
15 to be located in the same location, that doesn't
16 change in terms of the shrinking of the house? It,
17 basically, is in the exact same location that's
18 previously approved?

19 MR. FAHEY: Yes.

20 CHAIRPERSON MIETZ: You kind of squashed it
21 down a little bit.

22 MR. FAHEY: Yeah. I am calling it a
23 shrink-wrapped.

24 CHAIRPERSON MIETZ: Well, you succeeded
25 then. That's the important part.

1 MR. FAHEY: I will let Mark talk to the site
2 issues.

3 CHAIRPERSON MIETZ: Okay.

4 MR. BAYER: Thank you. My apologies for
5 being tardy. I saw five people ahead of us, and I
6 assumed it would be a bit.

7 CHAIRPERSON MIETZ: We had a couple that
8 came off the agenda, and one that didn't show up. How
9 about that.

10 MR. BAYER: Well, good evening. I'm
11 Mark Bayer, principal of Bayer Landscape Architecture.
12 Obviously here tonight on behalf of Loren and
13 Jamie Flaum for 141 Mill Road.

14 Again, as Jim, I'm sure, described, the
15 house has been modified and reduced. And basically,
16 we've made adjustments to the site that are very
17 slight, but basically to accommodate the changes in
18 the house.

19 And front yard paving, we're back in for
20 that, only because I just wanted to note that the
21 configuration is just slightly different. The
22 percentage of paving is still at 36.5, same as last
23 time. Same rationale applies to the, you know, it
24 being perfectly in keeping and in scale with the
25 neighborhood. Much of the paving is behind the

1 detached garage in the porte-cochere.

2 We have the surround wall in the front yard,
3 which basically kind of sets up the courtyard space.
4 So impacts on the neighborhood, impacts are extremely
5 low, and really haven't changed from last time we
6 presented this.

7 As far as the -- the wall heights go, again,
8 there is a 3-inch change in this wall here, it's a
9 retaining wall, that allows us to do the garage court.
10 At the -- at the high side, I think it's 10.3 right
11 now, and that is a 7.3 wall with the 36-inch
12 guardrail. Just previously we were at 7 and 3, and
13 regrading of this to accommodate the court and the new
14 house configuration, I'm estimating will be about
15 3-inches different than we were.

16 CHAIRPERSON MIETZ: The details staying the
17 same, just responding to the field condition?

18 MR. BAYER: Exactly. And in the front,
19 again, it's the same situation. The wall grade is
20 going up as we go north toward the street, so the wall
21 becomes lower at this end. We're now at a 4.3
22 maximum. With a rail on it, it would be 7.3. So
23 that's really the difference between this time and
24 last time.

25 And again, just to remind you, with this

1 building, the garage here, porte-cochere, the amount
2 of planting we have, and the orientation of that wall,
3 it's really not going to be visible from the street at
4 all. And there's heavy planting on this side to
5 provide buffer to the neighbor.

6 So again, I think it's very similar to what
7 you saw previously.

8 MR. DiSTEFANO: Mark, for the record, the
9 wall height that is closest to the road out front, I
10 am talking that, that is maintaining the 4 feet,
11 correct?

12 MR. BAYER: That has always been per code
13 out here.

14 MR. DiSTEFANO: That's per code. So the 4.3
15 is only that little bit in there?

16 MR. BAYER: Right. As this wall goes from
17 as I mentioned 7.3 at the highest end, and the grade
18 is going up, it becomes about 4.3 at this end, plus
19 the rail.

20 MR. DiSTEFANO: Okay. I don't know if that
21 was clear in the application, and I just want to make
22 sure.

23 MR. BAYER: The front wall has never been --
24 there has never been an application.

25 MR. DiSTEFANO: Front wall has never been an

1 application. Okay.

2 MR. BAYER: And then just in the pool area,
3 things, again actually been changed a little bit.
4 We've added a fire feature and a planter here to kind
5 of flank the steps. Wall height is actually now a
6 maximum of 7.6 as opposed we were requesting 9.6. And
7 that's due to redesign in the way we're doing things
8 and the way we're going to utilize sort of the seat
9 walls and that sort of thing. And we have a better
10 situation relative to grade and the stair system. We
11 no longer have paving near the stairs. So we've been
12 able to comfortably bring it down a little bit. So
13 the request is now 7-foot, 6 maximum there.

14 And as far as the generator, if you wanted
15 to revisit that a little bit. The rationale for the
16 generator location is that the house footprint shrunk.
17 And previously, with the detached garage being much
18 larger -- I'm sorry, the attached garage having a
19 whole 'nother bay on it, I was able to tuck the
20 generator behind it. And I was able to do that and
21 keep it away from the living areas of the back of the
22 house.

23 With the reduced attached garage, there is
24 not -- there is not a good spot to put the generator
25 behind the physical footprint of the building. We're

1 behind the line of the building, we're in the rear
2 yard, but we're not physically behind the structure.
3 And there is a door opening on the garage right here,
4 there is living space all through here, and with the
5 pool and the living space over here, there isn't a
6 good place to tuck it.

7 And this being an extremely large lot, what
8 I was able to do is because of the way the grade is on
9 this lot, we're dropping, you know, 9 feet from the --
10 you know, roughly from the court elevation of the
11 garages down to this lower. It's almost a full story
12 below street. And then we're actually over about 50
13 plus feet from the side lot line.

14 And again, this is a zone, this darker green
15 zone, is a zone where we are doing a ton of planting
16 because we want privacy for the pool. And so our
17 rationale is, again, given the location, given the
18 distance of the lot line, given the elevation change
19 from the road, and everything else in consideration
20 with the living space, this is, we felt, a very good
21 place for the generator.

22 And it will, obviously, I don't recall the
23 exact decibel rates, but we will be submitting that
24 when we get the generator. It will be below the
25 levels required. And that's, essentially, the

1 rationale for where the generator is.

2 CHAIRPERSON MIETZ: Now the plant material
3 that you're planting on that elevation there, we'll
4 call it a 12-month material?

5 MR. BAYER: The planting plan calls for a
6 lot of evergreens, screening plants here.

7 CHAIRPERSON MIETZ: I was trying to recall
8 it.

9 MR. BAYER: It does, yes.

10 CHAIRPERSON MIETZ: All right. Questions?

11 MR. DiSTEFANO: I have just a point of
12 clarification, just so that we're all -- I have
13 exactly what the request is, especially for this front
14 yard wall. So from the front edge of the garage, the
15 attached garage, that point right there, basically
16 where that wall is, it starts there. That's what, the
17 height of that wall at that point, is?

18 MR. BAYER: 7.3 max there.

19 MR. DiSTEFANO: So it goes 7 --

20 MR. BAYER: Plus it has a guardrail.

21 MR. DiSTEFANO: So at that point it is
22 basically the maximum height 10.3 inches, and it goes
23 down?

24 MR. BAYER: Well, the grade goes up so.

25 MR. DiSTEFANO: The height of the fence --

1 MR. BAYER: Goes down.

2 MR. DiSTEFANO: -- goes down to a max of 4.3
3 at that point. So there is a range in height of that
4 front yard fence from 10.3 to --

5 MR. BAYER: 7.3 max, if the rail is there.

6 MR. DiSTEFANO: We have to count the rail,
7 it is part of the height of that fence.

8 CHAIRPERSON MIETZ: So 3-feet differential.

9 MR. DiSTEFANO: So there is actually quite a
10 bit more height to that front yard fence than what we
11 actually advertised and understood in the application.

12 So for the record, that fence wall is going
13 to be in a range from 4.3 feet to 10.4 feet -- 4-feet,
14 3-inches to 10-feet, 3-inches in the front yard.

15 MR. BAYER: Maximum. Understand that that's
16 on the low side of the wall. Because on the courtyard
17 side, the street side, your elevation is considerably
18 higher here. So...

19 MR. DiSTEFANO: Right.

20 MR. BAYER: That's the highest, and it faces
21 away from the street.

22 MR. DiSTEFANO: Right.

23 MR. BAYER: Because this grade here is
24 significantly higher. It's only going to be about
25 2-feet above the pavement here, plus the rail. So

1 it's considerably different.

2 MR. DiSTEFANO: From the courtyard itself,
3 it will be significantly lower. But from the
4 neighboring property, it will have that height.

5 MR. BAYER: Yes. That's where those
6 elevations occur. That's where we have the heavy
7 screen planting. And it's identical to -- the request
8 last time was exactly the same thing. We had a 7-foot
9 wall with a 36-inch rail, and a 4-foot wall with a
10 36-inch rail. So it's changed by 3-inches by
11 modifications in grading.

12 MS. TOMPKINS WRIGHT: Rick, if the front
13 yard fence is a maximum of 10.3, we only advertised
14 front yard 4-foot-3 to be --

15 MR. DiSTEFANO: Well, I don't think it makes
16 an impact because it was based on the approval of the
17 last one. So we're modifying that last variance by
18 3-inches.

19 MR. BAYER: Just so --

20 MR. DiSTEFANO: And we did advertise the
21 side yard fence at the 10.3 inches.

22 MS. TOMPKINS WRIGHT: Okay.

23 MR. BAYER: If it's helpful to you, I do
24 have an illustration of that. It's up on the board.
25 But if you would just kind of want to see how that

1 grade works, it comes up the side, and you can see
2 that.

3 MR. DiSTEFANO: And then just to be clear,
4 on that side, Mark, on that side where we are at 10.3
5 at the corner of the garage going back, we are -- is
6 there fencing at that point going to the rear, or no?
7 Or does it stop there?

8 MR. BAYER: There is pool fence that comes
9 around to that corner. But there is a railing,
10 because of the grade drop, there is a railing. It's a
11 7.3 wall maximum, plus a guardrail.

12 MR. DiSTEFANO: Right.

13 MR. BAYER: Which is like a cable rail.

14 MR. DiSTEFANO: But at that point of the
15 garage going to the rear, what happens to the height
16 of that wall fence? It never gets above --

17 MR. BAYER: No, no, never gets above that.

18 MR. DiSTEFANO: Okay.

19 MR. BAYER: Never.

20 MS. SCHMITT: May I just clarify? Last time
21 we were here, there was going to be some type of, I
22 thought, wire?

23 MR. BAYER: We have taken that off.

24 MS. SCHMITT: Okay.

25 MR. BAYER: Actually, that maximum height is

1 lower now.

2 MS. SCHMITT: So you lowered it?

3 MR. BAYER: Yeah.

4 MR. CLAPP: You said it, I just want to make
5 sure I state it clearly. So my understanding is that
6 the minimal 3-inch change in height is primarily due
7 to changes in the grade, which is a result of
8 downsizing the overall footprint of the project?

9 MR. BAYER: Well, yes. Essentially, with
10 that -- with that change, again, I've modified the
11 grading on this side to preserve more trees up in this
12 corner, and I've let the wall get 3-inches higher to
13 accommodate those things. And to make the grading
14 just overall fit a little better.

15 MR. CLAPP: And again, just to be clear,
16 that the overall visual impact, environmental,
17 et cetera, et cetera, would really be no different
18 from what's already been approved in the prior
19 meetings?

20 MR. BAYER: Absolutely not. Absolutely not.
21 Just a little tweak with the new building.

22 CHAIRPERSON MIETZ: Okay. Other questions?
23 Thank you very much.

24 MR. BAYER: Thank you very much.

25 CHAIRPERSON MIETZ: Is there anyone in the

1 audience that would like to speak regarding this
2 application?

3 There being none, then the public hearing is
4 closed.

5 **APPLICATION 9A-08-19**

6 Application 9A-08-19, application of Benny
7 and Jennifer Cintron, owners of property located at
8 18 Terrain Drive, for an Area Variance from
9 Section 207-2A, to allow a front yard fence to be
10 4-feet in height in lieu of the maximum 3.5-feet in
11 height allowed by code. All as described on
12 application and plans on file.

13 MS. CINTRON: I'm Jennifer Cintron,
14 18 Terrain Drive.

15 MR. CINTRON: Benny Cintron.

16 MS. CINTRON: And we are looking to replace
17 our very old fence, some sections of which were torn
18 down in the windstorm last year. What we're looking
19 to do is replace it with a fence that's a little bit
20 more aesthetically pleasing and more connected to our
21 home. So we are putting up a shed, and it is going to
22 match the house, and the shed will match the fence,
23 and it is sort of cohesive in that way.

24 But the fence that we have selected, which
25 is semi-private, does not come in a 3-and-a-half foot

1 height. So we need a variance for the 6-inches.

2 CHAIRPERSON MIETZ: And it's going to butt
3 up with a fence that's going to continue, basically,
4 to the north from there?

5 MS. CINTRON: So I am really bad about north
6 south, east, west, but it is not going to butt up
7 against any fences.

8 MS. TOMPKINS WRIGHT: Just to clarify the
9 question, this fence will continue into the backyard?

10 CHAIRPERSON MIETZ: Right.

11 MS. TOMPKINS WRIGHT: At which point it will
12 be a higher fence, or the same height, or --

13 MS. CINTRON: Oh, I'm sorry. Yes.

14 CHAIRPERSON MIETZ: That's a 6-foot fence,
15 but is it the same style fence?

16 MS. CINTRON: Yes, same style.

17 CHAIRPERSON MIETZ: So basically, if you
18 were looking across, standing in the neighbor's,
19 you're going to see 6-foot, then a drop down to 4-foot
20 for the remaining section that angles to the street?

21 MS. CINTRON: Yes. But it stops well before
22 the street.

23 CHAIRPERSON MIETZ: Pardon me?

24 MS. CINTRON: It stops --

25 CHAIRPERSON MIETZ: Yes, in the

1 right-of-way, wherever the right-of-way is.

2 MS. CINTRON: It stops well before the
3 right-of-way as well.

4 CHAIRPERSON MIETZ: It shows a little line
5 here. I am not sure how far it's really going?

6 MS. CINTRON: It's about 15, 20 feet or so
7 from our property line. From the concrete sidewalk.

8 CHAIRPERSON MIETZ: Okay.

9 MR. CLAPP: On the property there is one
10 post just sort of freestanding. Is that where it will
11 end?

12 MS. CINTRON: That's where the 6-foot fence
13 will end. That's where the 4-foot will begin.

14 MR. CLAPP: For another how far?

15 MS. CINTRON: Twenty-four feet, as I recall.

16 MR. CLAPP: And you don't have any plans to
17 run the fence then on the other side, in the other
18 direction to mask the pool? I mean, just that one --

19 MS. CINTRON: I would like to, but being --
20 first of all, being that it is a corner unit, I don't
21 think it's super wise, because it's going to look a
22 little weird. Because we can't, according to your
23 code, go all the way. And so it will wind up stopping
24 at an unnatural spot. So aesthetically it won't be
25 very pleasing.

1 MR. CLAPP: I am just curious.

2 MS. CINTRON: Sure.

3 CHAIRPERSON MIETZ: Very good. Now, Rick,
4 the measurement of this fence, I am peaking at the
5 little design of the fence here, it is the Outer Banks
6 Picket?

7 MS. CINTRON: Correct.

8 CHAIRPERSON MIETZ: That's the one you've
9 chosen?

10 MS. CINTRON: Yes.

11 CHAIRPERSON MIETZ: It has these little
12 finials at the top of it. Do you see them there?

13 MR. DiSTEFANO: Yep.

14 CHAIRPERSON MIETZ: Because the code only
15 allows 6-feet in the backyard, right?

16 MS. CINTRON: The code allows 6-and-a-half.

17 MR. DiSTEFANO: Six-and-a-half. So if it's
18 a 6-foot fence with 6-inch finial, they're fine.

19 MS. TOMPKINS WRIGHT: In the front yard, is
20 that a 4-foot fence with an additional 6-inches on it,
21 or is it a 3-foot fence with the decorative finials on
22 it?

23 MS. CINTRON: What the contractor told me
24 was that it was 4-foot total. But if it winds up
25 being a 4-foot fence, we will just eliminate the

1 finials.

2 CHAIRPERSON MIETZ: I don't want you to have
3 a problem later on, if we find out it's 6-inches off,
4 and you're coming back here again and running into a
5 check and all that sort of stuff.

6 MS. CINTRON: Okay. I appreciate that.

7 CHAIRPERSON MIETZ: Okay.

8 MS. TOMPKINS WRIGHT: I know you mentioned
9 this is the design you chose. Can you kind of speak
10 to why you chose this one as opposed to maybe there
11 weren't ones that would work for your purposes in
12 3-and-a-half feet?

13 MS. CINTRON: Sure. So every other fence
14 from the contractor that we chose, which is Lowe's,
15 that was semi-private, which will allow light and air
16 to flow through, well, there weren't any other
17 semi-private. They were all picket fences, which are
18 not private. So it eliminates the privacy of the
19 whole point of the fence.

20 So everything else that had a narrow picket
21 like that was -- really only came in that 6 and 4-foot
22 height. And we don't love the look of the wood
23 fences, so that's why. Also, we don't have the time
24 for upkeep.

25 CHAIRPERSON MIETZ: Okay. Good?

1 MS. TOMPKINS WRIGHT: I don't have anything
2 else.

3 CHAIRPERSON MIETZ: Okay. Thank you very
4 much.

5 MS. CINTRON: You're very welcome.

6 CHAIRPERSON MIETZ: Is there anyone in the
7 audience that would like to speak regarding this
8 application?

9 There being none, the public hearing is
10 closed.

11 The other, the Five Guy sign, didn't come.
12 We will have to deal with that.

13 And the same thing with, does anyone need a
14 couple minute break, or move forward?

15 MS. SCHMITT: Go forward.

16 MR. CLAPP: Go forward.

17 CHAIRPERSON MIETZ: All move forward.

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1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF GENESEE)

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5
6 I DO HEREBY CERTIFY as a Notary Public in and
7 for the State of New York, that I did attend and
8 report the foregoing proceeding, which was taken down
9 by me in a verbatim manner by means of machine
10 shorthand.

11 Further, that the proceeding was then
12 reduced to writing in my presence and under my
13 direction. That the proceeding was taken to be used
14 in the foregoing entitled action.
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21 *Susan M. Ryckman*

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23 SUSAN M. RYCKMAN, C.P.,
24 Notary Public.
25

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK,
3 ON SEPTEMBER 4, 2019, AT APPROXIMATELY 0:00 P.M.

4
5 September 4, 2019
6 Brighton Town Hall
7 2300 Elmwood Avenue
8 Rochester, New York 14618

9 PRESENT:

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

16 DAVID DOLLINGER, ESQ.
17 Town Attorney

18 RICK DiSTEFANO
19 Secretary

20 NOT PRESENT:

21 JUDY SCHWARTZ

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

26 REPORTED BY: SUSAN M. RYCKMAN, Court Reporter,
27 FORBES COURT REPORTING SERVICES, LLC
28 21 Woodcrest Drive,
29 Batavia, NY 14020,
30 (585) 343-8612

1 APPLICATION 9A-05-19

2 9A-05-19 Application of Costich Engineering,
3 agent, and Loren and Jamie Flaum, owners of property
4 located at 141 Old Mill Road for modification of
5 approved variances 7A-04-19 and 7A-05-19, reducing the
6 size of the attached garage from 1,171 square feet to
7 688 square feet, eliminating the need for the
8 variance, and reducing the height of the house from a
9 maximum 38 plus or minus feet to a maximum 37.5 feet.
10 All as described on application and plans on file.

11 Motion made by Ms. Watson to approve
12 Application 9A-05-19 based on the following findings
13 and facts.

14 **FINDINGS AND FACTS:**

15 1. The requested modification reduces the size of the
16 attached garage, thereby eliminating the need for the
17 previously approved variance pertaining to the square
18 footage of the garage.

19 2. The request in the modification reduces the height
20 of the house by half a foot, which is not a
21 substantial change.

22 3. No unacceptable change in the character of the
23 neighborhood, and no substantial detriment to nearby
24 properties is expected to result in the approval of
25 this variance modification. The changes to the

1 previously granted variances would bring the project
2 closer to complying with code.

3 **CONDITIONS:**

4 1. This modified variance will only apply to the
5 project that was described in the application and
6 testimony. In particular, it will not apply to
7 additional projects considered in the future that are
8 not included in the present application.

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

11 (Second by Ms. Dale.)

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

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

1 APPLICATION 9A-06-19.

2 9A-06-19 Application of Costich Engineering,
3 agent, and Loren and Jamie Flaum, owners of property
4 located at 141 Old Mill Road for modification of
5 approved variances 7A-06-19 and 7A-07-19, to allow a
6 reconfiguration of the front yard parking, and allow
7 for an increase in height of the front yard fence/wall
8 to 4-feet, 3-inches (4-feet approved) and a side yard
9 fence/wall to 10-feet, 3-inches (10-feet approved).
10 All as described on application and plans on file.

11 Motion made by Mr. Clapp for modification of
12 the previously approved variances being approved based
13 on the following findings of fact:

14 **FINDINGS AND FACTS:**

- 15 1. The requested variance will not produce an
16 undesirable change in the character of the
17 neighborhood or detriment to nearby properties, as the
18 proposed changes to height and fences and layout of
19 the front yard parking are, substantially, the same as
20 in previously approved variances.
- 21 2. The benefit sought by the applicant cannot be
22 achieved by a method other than an Area Variance.
- 23 3. The requested modifications of the previously
24 approved variances are not substantial. The proposed
25 wall is only 3-inches higher than previously approved,

1 and the coverage of the parking area is substantially
2 the same as previously approved. The previously
3 approved side yard wall with guardrail to a maximum
4 10-feet is now considered a front wall with guardrail,
5 and the additional 3-inches is minimal in nature.

6 4. The size of the proposed modifications are the
7 minimum required to meet the needs of the revised
8 building plans and are not significantly greater than
9 granted in previously approved variances.

10 5. The proposed variance will not have an adverse
11 effect or impact on the physical or environmental
12 conditions in the neighborhood as the modifications
13 are not significantly different than granted in
14 previously approved variances.

15 6. The difficulty leading to this variance request
16 was self-created, however, request of modifications
17 are the result of architectural changes that will
18 result in the reduction and size of the project as a
19 whole.

20 **CONDITIONS:**

21 1. The variance shall apply only to the plans
22 submitted and testimony given.

23 2. This variance is granted with a specific inclusion
24 of the landscaping plans submitted in previous
25 applications.

1 3. All necessary building permits and Planning Board
2 approval shall be obtained.

3 (Seconded by Ms. Tompkins Wright.)

4 (Ms. Schmitt, yes; Mr. Mietz, yes;
5 Ms. Tompkins Wright, yes; Mr. Clapp, yes; Ms. Dale,
6 yes; Ms. Watson, yes.)

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

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1 APPLICATION 9A-07-19

2 9A-07-19 Application of Costich Engineering,
3 agent, and Loren and Jamie Flaum, owners of property
4 located at 141 Old Mill Road, for an Area Variance
5 from Section 203-2.1B(6) to allow a rear yard stand-by
6 emergency generator to not be located behind the house
7 as required by code. All as described on application
8 and plans on file.

9 Motion made by Ms. Dale to approve
10 Application 9A-07-19 based on the following findings
11 of fact.

12 **FINDINGS AND FACTS:**

13 1. The variance request will not result in a
14 substantial change in character to the neighborhood or
15 detrimentally effect surrounding properties, as the
16 generator will be located approximately 9-feet below
17 the elevation of the garage court, and it will be
18 completely hidden from view by the garage court
19 retaining wall. It will also be more than 50 feet
20 from the adjacent property lines to the east, and it
21 will be screened by trees and plantings.

22 2. The difficulty necessitating the variance request
23 cannot be solved in another manner not requiring a
24 variance, as the location of the rear entry doors to
25 the house and the plans site improvements to the rear

1 of the house locating the generator physically behind
2 the line of the house is not feasible.

3 3. The generator will be located to the rear of the
4 house below the elevation of the garage court, and
5 will be heavily screened by trees and plantings. So
6 although not physically behind the lines of the house,
7 the generator is in the position that will provide a
8 high degree of screening and buffering from the road
9 and neighboring properties.

10 4. The variance we believe is the minimum necessary
11 to grant relief from the difficulty, as the proposed
12 location is on the service side of the house in the
13 most remotely, heavily buffered position on the
14 property within reasonable proximity to the house.

15 5. The proposed location of the generator will not
16 have an adverse effect on the physical or
17 environmental conditions of the neighborhood as it is
18 hidden from view and incorporated into the planting
19 area screened from the road by the garage court walls
20 and the neighbor's property by trees and plantings.
21 It will go completely unnoticed in this location.

22 **CONDITIONS:**

23 1. Approval of this variance application requires the
24 generator shall be placed in the rear of the yard at
25 the location depicted in the application and as

1 described in testimony.

2 2. All necessary Planning Board approvals and
3 building permits shall be obtained. All other code
4 requirements regarding residential generators shall be
5 met.

6 (Second by Ms. Watson.)

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

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

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1 APPLICATION 9A-08-19

2 9A-08-19 Application of Benny and Jennifer
3 Cintron, owners of property located at 18 Terrain
4 Drive, for an Area Variance from Section 207-2A to
5 allow a front yard fence to be 4-feet in height in
6 lieu of the maximum 3.5-feet in height allowed by
7 code. All as described on application and plans on
8 file.

9 Motion made by Ms. Schmitt to approve
10 Application 9A-08-19 based on the following findings
11 of fact:

12 **FINDINGS AND FACTS:**

- 13 1. The desired fence is a 6-foot, semi-private fence
14 with 4-inch finials in the rear of the yard that
15 transitions to a 4-foot fence. The 4-foot fence
16 portion is technically in front of the yard and will
17 run perpendicular to French Road. The fence will be
18 approximately 15-feet from the side wall, and will not
19 obstruct visibility of pedestrians or traffic. The
20 homeowners sought to obtain fencing that was
21 consistent with the code requirements,
22 3-and-a-half-feet for a front yard, but were told that
23 the desired fence only came in 4-foot and 6-foot
24 sections and custom heights were not an option.
25 2. The granting of this variance will not

1 substantially change the character of the
2 neighborhood, nor detrimentally affect nearby
3 properties. And the fence would appear to the casual
4 observer to be in the backyard of the homeowner.

5 3. The style of the fencing is consistent with
6 surrounding properties, and will compliment the style
7 of the home and be keeping with the character of the
8 neighborhood.

9 4. There is no evidence that there will be a negative
10 impact to the health and safety of the neighborhood.

11 **CONDITIONS:**

12 1. This variance will apply only to the project as
13 described in the application and testimony with
14 respect to the fence in style, size, and location. It
15 will not apply to a fence or fencing considered in the
16 future that are not in the present application.

17 2. All necessary building permits shall be obtained.

18 (Second by Ms. Tompkins Wright and
19 Mr. Clapp.)

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

23 (Upon roll call, motion to approve with
24 conditions carries.)
25

1 APPLICATION 9A-01-19

2 9A-01-19 Application of Nancy Sutton, owner
3 of property located at 368 Meadow Drive, for an Area
4 Variance from Section 207-2E to allow a fence to be
5 constructed with the decorative side facing in, in
6 lieu of facing out toward adjacent properties as
7 required by code. All as described on application and
8 plans on file.

9 Motion made by Mr. Clapp to approve
10 Application 9A-01-19 for an Area Variance based on the
11 following findings of fact:

12 **FINDINGS AND FACTS:**

- 13 1. The requested variance will not produce an
14 undesirable change in the character of the
15 neighborhood or detriment to nearby properties as the
16 proposed fence is adjacent to the far end of the
17 commercial parking lot and Interstate 590.
- 18 2. The benefits sought by the applicant cannot be
19 achieved by a method other than Area Variance.
- 20 3. The requested variance is not substantial, as the
21 fence will only be visible at the far end of the
22 commercial parking lot, and will not detract from the
23 appearance of adjacent properties.
- 24 4. The proposed variance is the minimum required to
25 meet the needs of the homeowner.

1 5. The proposed variance will not have an adverse
2 effect or impact on the physical or environmental
3 conditions in the neighborhood, as the fence will
4 replace an existing deteriorating fence, and be an
5 overall improvement in the appearance of the property.

6 6. The difficulty leading to this variance request
7 was not self-created, as the proposed fence will
8 replace a deteriorated fence installed by the previous
9 owner of the property.

10 **CONDITIONS:**

11 1. This variance shall apply only to the plans
12 submitted and testimony given.

13 2. All necessary building permits and approvals shall
14 be obtained.

15 3. The property owner shall obtain approval from the
16 Sewer Department for placement of the fence within the
17 easement area.

18 (Second by Ms. Watson.)

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

22 (Upon roll call, motion to approve with
23 conditions carries.)
24
25

1 APPLICATION 9A-02-19

2 9A-02-19 Application of Tim Case,
3 contractor, and Dawn Murphy, owner of property located
4 at 101 Branchwood Lane, for an Area Variance from
5 Section 207-10A(2) to allow an egress window to be
6 located 2-feet from a lot line in lieu of the minimum
7 4-foot as required by code. All as described on
8 application and plans on file.

9 Motion made by Ms. Dale to approve
10 Application 9A-02-19 based on the following findings
11 of fact.

12 **FINDINGS AND FACTS:**

13 1. Although the property is a townhouse with shared
14 walls with neighbors, the existence of the egress
15 window at the location requested will not have a
16 detrimental effect on the surrounding properties.
17 Also, the window well is only about 3-inches above
18 grade level, and will not be visible from the street,
19 as it will be shielded from view by landscaping.

20 2. The difficulty necessitating the variance request
21 cannot be solved in another manner not requiring a
22 variance, as the rear of the property cannot be used
23 due to existing utilities and a patio, and there is a
24 storm sewer in the front of the house.

25 3. The property owner desires safe egress to the

1 basement living space, and approval of this variance
2 will not have an adverse effect or impact on the
3 physical or environmental conditions of the property.

4 **CONDITIONS:**

5 1. Approval is granted specific to the location as
6 described in the application and testimony given.

7 2. All necessary building permits will be obtained.

8 (Second by Ms. Tompkins Wright.)

9 (Mr. Clapp, yes; Ms. Schmitt, yes;
10 Ms. Watson, yes; Mr. Mietz, yes; Ms. Tompkins Wright,
11 yes; Ms. Dale, yes.)

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

1 APPLICATION 9A-03-19

2 9A-03-19 Application of Reid Richards/Five
3 Guys Restaurant, lessee, and Twelve Corners
4 Associates, LLC, owner of property located at 1881
5 Monroe Avenue, for modification of an approved sign
6 variance (5A-10-16, Part I) to allow for a change of
7 business name and sign location. All as described on
8 application and plans on file.

9 Motion made by Ms. Tompkins Wright to table
10 Application 9A-03-19 for lack of representation, and
11 keep the public hearing open.

12 (Second by Mr. Clapp.)

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

16 (Upon roll call, motion to table and
17 keep the public hearing open carries.)

18 * * *

1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF GENESEE)

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5
6 I DO HEREBY CERTIFY as a Notary Public in and
7 for the State of New York, that I did attend and
8 report the foregoing proceeding, which was taken down
9 by me in a verbatim manner by means of machine
10 shorthand.

11 Further, that the proceeding was then
12 reduced to writing in my presence and under my
13 direction. That the proceeding was taken to be used
14 in the foregoing entitled action.
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21 *Susan M. Ryckman*

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SUSAN M. RYCKMAN, C.P.,
23 Notary Public.
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