

1

2

3

APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK,  
ON September 4, 2019, AT APPROXIMATELY 7:15 P.M.

5

6

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

7

8

9

PRESENT:

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

13

DAVID DOLLINGER, ESQ.  
Town Attorney

15

RICK DiSTEFANO  
Secretary

17

NOT PRESENT:

JUDY SCHWARTZ

19

20

21

22

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

25

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 arborvitae?

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?

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.

18 | \* \* \*

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF GENESEE)

4

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.

15

16

17

18

19

20

21

22

23

24

25

*Susan M. Ryckman*

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

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.

9 PRESENT: DENNIS MIETZ, CHAIRPERSON  
0 ANDREA TOMPKINS WRIGHT  
1 DOUGLAS CLAPP  
 JEANNE DALE  
 KATHLEEN SCHMITT  
 JENNIFER WATSON

13 DAVID DOLLINGER, ESQ.  
14 Town Attorney

15 RICK DiSTEFANO  
16 Secretary

18 NOT PRESENT: JUDY SCHWARTZ

20  
21 (The Board, having considered the information  
22 presented by the Applicant in each of the following  
cases, and having completed the required review  
pursuant to SEQRA, the following decisions were made:)

23 REPORTED BY: SUSAN M. RYCKMAN, Court Reporter,  
24 FORBES COURT REPORTING SERVICES, LLC  
25 21 Woodcrest Drive,  
Batavia, NY 14020,  
(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.)

17

18

19

20

21

22

23

24

25

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.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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.)

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.)

14

15

16

17

18

19

20

21

22

23

24

25

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 \* \* \*

19

20

21

22

23

24

25

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF GENESEE)

4

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.

15

16

17

18

19

20

21

22

23

24

25

*Susan M. Ryckman*

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