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A P P E A L S

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FEBRUARY 5th, 2020  
at approximately 7:15 **p.m.**  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

DENNIS MIETZ,   Chairperson

JEANNE DALE                    )  
DOUGLAS CLAPP                )  
KATHLEEN SCHMITT            )   BOARD MEMBERS  
JUDY SCHWARTZ                )  
ANDREA TOMPKINS WRIGHT)

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
JENNIFER WATSON

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

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CHAIRPERSON MIETZ: Good evening. I'd like to call to order the February session of the Zoning Board of Appeals.

Rick, was the meeting properly advertised?

MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Brighton-Pittsford Post of January 30, 2020.

CHAIRPERSON MIETZ: Will you please call the roll?

MR. DiSTEFANO: Please let the record show Ms. Watson is not present.

CHAIRPERSON MIETZ: We don't have any minutes to talk about. Rick, when you are ready read the first application.

APPLICATION 1A-02-20

1A-02-20 Application of Vitalize Medical, PLLC, lessee, and 2900 Monroe Ave., LLC, owner of property located at 2900 Monroe Avenue, for an Area Variance from Section 205-12 allowing for 102 on-site parking spaces in lieu of the code required 114 parking spaces necessary for the establishment of a medical use on said property. All as described on application and plans on file.

ALAN RAINBOW: Good evening, my name is Alan

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Rainbow. I work for Baldwin Real Estate and we manage the Clover Commons Shopping Center. I appeared before you a month ago seeking a variance on our parking ratio to accommodate a new tenant, Vitalize who we would like to move into the vacant end of the shopping center where the Park Avenue Bike Shop used to be. The space has been vacant a few years now.

One of the requests when the last meeting was tabled, their decision was tabled, was that I submit a drawing or rendering of the space layout which I believe you all have. And just to show that there is a certain amount of space dedicated for personal training, for the fitness, there's a general waiting area, and a lot of the space in the rear of the configuration is dedicated to the employees that work for the facility. So just to put it at ease I know there was a general concern that the population, the number of users and the employees that would occupy the leased space would increase the parking demand within the shopping center.

I also submitted my last appearance an inventory of parking at various times throughout the business day. And I've recalculated, or tabulated a similar set of data for the month of January, and the numbers didn't change anything significantly from December. In fact, we had two

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more available parking spaces in January than we did during December.

So I also have an individual with me tonight from Vitalize, their business manager, Mr. Al Campagna, who can speak to the specifics of operation if need be.

MS. SCHWARTZ: I have a concern. I mean, thank you for this layout, the configuration of space. But I have a question, I have kind of counted up how many possible people could be there at one time and I can't remember whether it was with employees or not, but it came up to, like, 22 people? I mean, you have a lot of space here. Are you going to have people in all of these exam rooms and four people need a fusion at the same time and separately waiting and you're going to use up a lot of parking.

As I look at this, people will be coming and going, but you could have a lot of people there at one time and I don't know where all this parking is going to be, that's my concern. Or do you plan on having the space out and then growing? My other question is are you located somewhere else now and you're moving because you need more space?

ALAN RAINBOW: Well, I am the landlord so probably not the best person to speak to the use. But I can

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share with you that Al and I had a conversation just prior to the start of tonight's meeting and Vitalize has eight employees but only two of the employees are full-time employees. And also the staff is part timers that work in different shifts, so they are not in the business of -- and maybe Al can speak to that.

CHAIRPERSON MIETZ: Can I just make a suggestion? I think you're going to hear a lot of questions that are really relevant as it relates to how this is used. So maybe he could take five minutes and explain it instead of us asking one question and one question and one question. If you don't mind, that would be helpful.

ALAN RAINBOW: That would make sense.

AL CAMPAGNA: Good evening, my name is Al Campagna, I'm the business manager for Dr. Angel Bowat who is the owner of Vitalize medical.

CHAIRPERSON MIETZ: Can you just give us the business address?

AL CAMPAGNA: My office is at the Parnall Office Building at Rochester General Hospital. There's currently a facility located at 980 Westfall Road. It's approximately 2,000 to 2,200 in size. This isn't like a physician's office, meaning that it's not like people come in

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on a regular basis for treatment say of high blood or diabetes and so on. It's what I call a performance and appearance enhancement service. It's a cash service so it's not like people are paying with insurance for it, so it's not like a doctor's office.

Right now Dr. Bowa has owned the business for approximately two years and another physician owned it before that, so it's been around for about five or six years. And at any one time, right now currently, we have about 100 active patients, 100 active users. They come in there for diet programs, so they might come in once a week. They might come in for hormonal replacement which might be once a month.

Dr. Bowa would like to expand it but we are not going to be jumping to 300 or 400 patients, you know, customers in a short period of time. It's probably going to happen over a long period of time. The fitness center is not like a gym, it's not like a YMCA or a Rochester Athletic Club. These would be individuals who essentially pay to have a personal trainer help them with strength and development or cardiac development. So they would be one on one.

They might have a couple of other clients who might be in there using equipment, but it isn't like a gym where you buy a membership and come in and work out any time

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you want. You know, whenever the facility is open. It's pretty limited.

All of the patients that are coming there, well, clients really, we don't call them patients. They are clients. They are not coming to us, this is elective, they are not coming to us because they are necessarily ill. It says here retail, Dr. Bowa wanted to have juices and so on available for people who are there. There's an agreement with the landlord that we would not compete with the established businesses there that already have exclusives, like the Starbucks, things of that nature.

So it's not like it is a retail where people come in and order a coffee or order a latte or a cappuccino like they would. If they are there they want to get a drink, juice or something, they can get it there at the facility while they are waiting.

MS. DALE: Is it by appointment only or is there ever walk-ins?

AL CAMPAGNA: It's by appointment. All of the clients, it's not a walk-in facility like an urgent care. We are not doing medical care. This is, you might decide for example to get a Botox injection or you want hormonal therapy, it is by appointment, it is cash and it is

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expensive. So it's not like --

MS. TOMPKINS WRIGHT: The patient load and the employee base, is that used more similar to a waxing or studio or a salon-type use more so than a true medical space?

AL CAMPAGNA: Yes. It's not a medical facility, because of the services that are provided like hormonal therapy, we have a physician there part-time, we have a PA who is part-time. It is classified as a medical site, but this is not like going to an internist or a pediatrician or a dermatologist. You might decide that you want to get your wrinkles filled, so you make an appointment, you might come in for three or four injections, might not come back in again for a couple months.

MS. TOMPKINS WRIGHT: And the way they get patients in and out is more similar to the salon use?

AL CAMPAGNA: Yes, it is advertising. It's not we typically don't get referrals from physicians, it's usually self-referrals by the client, and most of the business comes from radio advertising.

CHAIRPERSON MIETZ: So the fitness center, let's focus on that. It's a pretty good size space, I don't know how many pieces of equipment or whatever are there, but someone can't decide today that they just want to, like, I



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might want to go to the JCC if I was a member. I can't just show up and use the equipment like at the JCC?

AL CAMPAGNA: Correct. You would be forming a relationship with a fitness trainer, so you would be coming in to see the trainer.

MR. DiSTEFANO: And that trainer is on site?

AL CAMPAGNA: Yes.

MR. DOLLINGER: And that's another side of the business?

AL CAMPAGNA: Yes, but it all fits together in that as we say it's performance and appearance.

MS. SCHWARTZ: How many employees would you have on premises?

AL CAMPAGNA: Currently, as I said, we have a total of eight, only two of which are full-time.

MS. SCHWARTZ: How many part-time?

AL CAMPAGNA: There are six part-time that we have on the staff right now. They are not all there on the same day. For example, the doctor is only there one day on Friday. The PA is there two days a week. There's a nurse who is full-time and there is a nurse practitioner who is there one day week.

MS. SCHWARTZ: So your full-time people are

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the nurses?

AL CAMPAGNA: And the practice manager, the facility manager.

MS. SCHWARTZ: What would the max number of employees be?

AL CAMPAGNA: Even if we doubled our load we probably then would go with a full-time model than a part-time model. So it would have to get to be quite a bit bigger before we started having say even eight full-time people.

MS. SCHWARTZ: Okay. So taking your business now, your location now, how many patients do you see or clients do you see in a given hour?

AL CAMPAGNA: In a given hour there might be three or four, something like that.

MS. SCHWARTZ: Then why do you need this much space?

AL CAMPAGNA: He wants to grow, he wants to expand, he wants to add certain things. We don't have anything with the retail now, we don't have the fitness for now. And if you saw the facility, the facility right now is pretty cramped at 2,000 square feet. There's a new procedure he has added, again, that hasn't substantially added to the

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staff. The staff is basically the same people we've had there for two years.

MS. DALE: I'm sorry, is this a second location or --

AL CAMPAGNA: No. The other location will be closed, this will be the only facility.

MS. DALE: Okay.

CHAIRPERSON MIETZ: Okay. So as far as, and just for the record because it is kind of broken up for what Alan told us last month, but what are the hours of operation?

AL CAMPAGNA: Nine to five, nine to six, Monday through Friday.

CHAIRPERSON MIETZ: No weekends?

AL CAMPAGNA: Sometimes they will have what they call parties on the weekend and it would be on a Saturday and be called a Botox party. And they would advertise and, you know, might get say 15 or 20 people that might show up for that day, for that afternoon, for those three hours for the Botox party. The idea of course is to sell them the Botox program.

CHAIRPERSON MIETZ: So a presentation?

AL CAMPAGNA: Yes.

CHAIRPERSON MIETZ: Okay.

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MS. SCHWARTZ: You have outgrown your current space, that's why you need to move?

AL CAMPAGNA: I would not say we've outgrown it, part of it is is that he wants to get in a better location. One of the things we found for example, we took a look to see who our patients, who our customers were. What we're looking for is repeat customers.

So we get a lot of young people that come in, but when they find out that one course of treatment costs \$300 and it is cash, they come in for one treatment and they don't come back. So the type of client that continues to be repeat clients are typically executives who are about in their fifties to sixties, ladies that are in their fifties to sixties and they tend to live out in Pittsford, Mendon and so on.

That's why we wanted to move the location because it's located off the road, you can't see it from the road. And it's not the clientele we discovered, the clientele we want to appeal to are not in that area. And as I said, because it is self-pay and it is not inexpensive, we are trying to target --

CHAIRPERSON MIETZ: I understand, you are trying to service your customers.

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MR. DOLLINGER: What is an infusion? What is that?

AL CAMPAGNA: What that is, is the only way I can describe is to, for example, for hydration, basically.

MR. DOLLINGER: So if I stayed out late last night?

AL CAMPAGNA: Yes.

MS. DALE: So like an IV?

MR. DOLLINGER: It's a new thing in Florida.

CHAIRPERSON MIETZ: Okay. Are there anymore questions from the Board?

MS. TOMPKINS WRIGHT: Real quick, last month we had the traffic or parking study and didn't have an idea of how the space was being used. The lowest parking count for available parking was 21. Based on this current use and your layout and the eight employees and your right now four patients per hour, do you anticipate times you're going to need more than 21 parking spaces?

AL CAMPAGNA: No, 21 parking spaces if you look at it as an hourly rate or hourly turnover, that would mean we would have to see about 160 patients a day. A typical physician's office doesn't see that many visits in a day. A single doctor, you know, doing pediatrics wouldn't

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see that many patients in a day, so I don't think we even have that kind of capacity.

MS. SCHWARTZ: Do you have people who are waiting in the waiting room?

AL CAMPAGNA: Usually currently we typically don't have more than one or two people who are waiting. A lot of people, a lot of clients, once they get their program started then essentially it's maintenance. They come in, they pick up their medication or whatever, they pick up their hormones and they leave.

CHAIRPERSON MIETZ: And it's scheduled?

AL CAMPAGNA: Yes. Well, the initial treatment is scheduled, but once they're put on a program once a month they drop in and pick up their -- it's like going to the pharmacy.

CHAIRPERSON MIETZ: All right. So is there any other questions? And we can have Alan come back up. Thank you, sir.

AL CAMPAGNA: Thank you.

CHAIRPERSON MIETZ: Okay. So we discussed the parking field the last time a little bit I think we are all aware of the plaza and how the parking is and where it's located. Does Baldwin have any plans about the employees for

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this location? For example, where they would park or indicating they should park in a particular place?

ALAN RAINBOW: We will encourage any employee of any of the stores and shops there to park in the rear of the shopping center, in the back parking field, as we discussed previously. And we are challenged a little bit because of the green space versus the asphalt that we have, there's really nothing that we can do with configuration to modify. It's kind of what we have right now is, you know, what we think we are going to have in the future without any major changes. And we might be able to do things with configuration of the Dumpster enclosure and tightening that up and opening up a couple more parking spaces, but that's about the maximum we could do.

CHAIRPERSON MIETZ: I guess more of what I was driving at measures the control where the parking is. Because as you know, obviously you know, Park Avenue left quite a while ago. You told us the number of years and so people have now gotten used to parking in the vast expanse of that. So, you know, they need to be retrained in some sense so you would be making attempts to suggest that your clients, your tenants?

ALAN RAINBOW: Yes. And that ultimately falls

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on the management company to reeducate and steer the people in the right location. So, you know, we are fairly confident because of the parking surveys that I have been taking over the last couple of months and that this space is the only vacant space that we have in the combination of the two shopping centers side by side. So I wouldn't anticipate a huge spike.

CHAIRPERSON MIETZ: Understood. Is there any other questions for Mr. Rainbow? Thank you very much.

Is there anyone in the audience that would like to speak regarding this application?

DANNY DANIELE: Good evening, my name is Danny Daniele, we own property on Monroe Avenue, put us down for 2851 Monroe Avenue, caddy corner to the property. Thank you for letting us speak tonight, appreciate all of the information they shared. I think it's a great property and a great use.

Obviously we have a few concerns. The Vitalize group, I think runs a great operation as witnessed by their growth, we are all for local business and local growth. It's great to see they are outgrowing their current facility and they need to find a better facility. I would only imagine in a location like that they will continue to



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grow. Our concern is kind of three fold, I'm also slightly, I guess, I don't know if I'm learning new information tonight. Mr. Baldwin said it was the landlord, I thought --

CHAIRPERSON MIETZ: Mr. Rainbow is with Baldwin Real Estate.

DANNY DANIELE: It was at 2900 Monroe Avenue LLC, which is the landlord?

MR. DiSTEFANO: They are the owner.

CHAIRPERSON MIETZ: There's an owner and a management company, Baldwin is the management company that's --

DANNY DANIELE: Oh, so Baldwin is the management company --

CHAIRPERSON MIETZ: Correct.

DANNY DANIELE: -- 2900 LLC is the landlord.

CHAIRPERSON MIETZ: The owner.

DANNY DANIELE: I didn't know if they had sold it to Baldwin, so no sale. I guess the irony is that I don't know who is aware, you might not be aware, the 2900 Monroe Avenue LLC, the owner of this property, the landlord of this property is currently suing the Town of Brighton in litigation regarding traffic and safety, parking issues with other projects down the road. And, you know, our concern is

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the zoning is put in place and I'm the first one to say sometimes the zoning is a little too tight in Brighton we are always asking for leniency here and there, as you know.

And we have had to make changes to properties in the past, in different properties we have had. And currently with this type of use they're asking for parking variance of over ten percent which is significant. And our concern is the traffic on Monroe Avenue, we have had to spend a tremendous amount of assets, time, and money to improve Monroe Avenue in the future following some of the Town's master plans. And that's come at a tremendous expense and we continue to do that.

One of the concerns with the traffic is the left turn into this property has always been a disaster, frankly. Someone tries to make a left-hand turn on Monroe Avenue into the property, a lot of times they don't go into the turning lane because the turning lane, the suicide lane, whatever you want to call it, it's a left-hand turn only for people to get at the traffic signal so they can make a left onto Clover Street.

Many people as they are on the second lane going forward they put their left turn signal in and they stop and they stop traffic behind them while the light is

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green. It adds to the congestion on Monroe Avenue all the way down to 590. It's all too many times someone trying to turn into whether it's Starbucks or whoever is in there, they mentioned the facility is full right now. This is the only vacancy.

I've actually printed out, some of you know we have done a lot of drone videos over the years. This is a -- I can pass these out -- so this picture, for those who can't see it, shows there is a car, a white car, making a left-hand turn into the property and you can see it's waiting to make a turn, it's kind of in a traffic gridlock situation. Just the way, it's not meant to work that way. You have cars backed up on Monroe Avenue waiting for that one individual to make that turn into it.

And everyone says Monroe Avenue is backed up and a lot of times it has to do with a silly situation like this that is causing that traffic backup. And the traffic counts on Monroe Avenue don't jump up but it often seems like it. If you are at the back of the line you're wondering why it's not moving, well it's not moving because of traffic, it's not moving because someone was trying to make a left-hand turn in straight lane and caused a backup.

Again, I think there's a solution to that and

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I don't know how much power this Board has to whether it has to go to the Planning Board or the Zoning Board can do it. There are three means of egress into the property I don't see why perhaps closing off that curb cut would be that difficult. It would probably be a safety enhancement. That curb cut is an old curb cut from years ago. It's probably 50 or 60 feet away from the traffic signal and it causes that gridlock situation very often.

Our properties are like caddy corner all the way down the street. I can't tell you how many times I see that. Feel free to go online and look at the drone videos you'd see it happening often. So that's probably the biggest concern we have.

The second is if you turn the page, again, under the, I don't want you to have to read all the litigation there's thousands of papers that 2900 Monroe Avenue LLC has added to the submissions of the litigations towards the Town of Brighton. On the second page you'll see the trail behind the plaza, and then I think it was, again, it wasn't by default of Baldwin or the tenent here but the landlords are suing the town, they plowed over that trail back there. They tore down all of the trees and added all that stone. I think their intent was to pave it and to add

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more parking back there illegally and at some point the Town saw that and gave them some town, whatever, ordinances. I'm not quite sure where that stands, where they got that information but I know they had to bring it back to the way it was.

Again, the irony is that the landlord who is suing the Town for allowing other properties to possibly do this when they haven't, is doing the very thing they think shouldn't be done. The variance is over ten percent for the parking seems a bit more than necessary especially given the fact that it's a dangerous intersection to get into.

Again, I'm not against the zoning variances but I would say has the Town looked at the possibility of eliminating that curb cut, that unnecessary curb cut, to eliminate those left-hand turns into the property. I was curious what the traffic counts and the parking, I know we've had to do a lot of independent studies to find out what is the parking, what is the traffic.

I don't know if the Board has asked for any kind of independent information. We have used SRF individual, they have people out there, independent individuals counting cars to make sure everything is okay, to make sure that the numbers are in line. And Ms. Judy

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Schwartz just mentioned that they're going to use I think it's a 22 parking spaces or whatever it might be. Will that fluctuate? Who knows, and maybe it would and maybe it wouldn't. I just want to make sure the left-hand turns inside are going to be safe and the zoning laws you all have put in place are for that very reason.

You know, the Park Ave Bike Shop, when they were thinking of leaving they actually contacted us to see if we had any space available. We learned a lot about the reasons why they were leaving, because they didn't want to leave over there but I believe that from my information from Park Ave Bike was that the rent was going up and it was a lot higher than they expected. And they didn't think it was fair, they ended up moving.

I don't want the greed of the landlord who is not here tonight to make us all suffer with the traffic congestions, the issues of the trail behind it, and parking aspects, just so he can profit more at everyone else's expense.

So those are the majority of my comments. Al, you run a fantastic business, I wish you nothing but the best. I'm sure I will need Botox soon.

CHAIRPERSON MIETZ: One question for you. You

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guys obviously have the office building across there, the principal office. So were you there when Park Avenue bike was actually operating on this?

DANNY DANIELE. Yes.

CHAIRPERSON MIETZ: So what was your experience then and is your concern based on the use? Because obviously this has been vacant a lot of years, but if you had some experience when it was there and the parking field was being used is your sense that this is worse?

DANNY DANIELE: The honest answer is it hasn't changed much because the majority of their traffic comes from Starbucks. The Starbucks possibly moving down the street to a traffic signal controlled access and that's what we're talking about adding safety to that corridor. That's probably one of the largest generators and by moving that out of that corner is probably the best thing that could happen for that corner, because that's the largest traffic generator.

So the answer to your question, have I seen a change in it? Not much. There's still a lot of people that make the left-hand turn because Starbucks is still a main generator.

CHAIRPERSON MIETZ: So in your mind then it

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doesn't matter whether it was Park Avenue bike or these folks. The problem remains in your mind the same.

DANNY DANIELE: Right. I think it's the landlord that's not willing to put a dollar into it to enhance the safety like others have. So it's almost like, you follow the rules, the Board is going to give a zoning various. It should be for a, what's the word, a nonowner created verbiage, I guess . . .

CHAIRPERSON MIETZ: I think we understand.

DANNY DANIELE: I think they created that burden by kicking Park Avenue bikes out. They wanted more money and now they've been vacant and now they're trying to circumvent the rules to do that. So my beef, frankly, is with the landlord more than anything else. Here we are trying to put the money into the corridor to enhance it, I would hate to see it go backwards.

CHAIRPERSON MIETZ: Okay, thank you.

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

APPLICATION 2A-01-20

2A-01-20 Application of Reid Richards / Five Guys Restaurant, lessee, and Twelve Corners Associates LLC,



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owner of property located at 1881 Monroe Avenue, for modification of an approved sign variance (5A-10-16, Part I) to allow for a change of business name and sign location. All as described on application and plans on file.

STEVE COSTANZA: Good evening, my name is Steve Costanza, I'm the district manager of the Five Guys Restaurant. My address is 171 Oakridge Way, Greece, New York, 14612. I apologize for my attire I came straight from the grill. I working on the grill.

So when we took over the space, obviously QDOBA was there before and they had a sign on, I believe it's Elmwood side, facing the fire department. We currently have one building sign, we want to add an additional one on that side. We are also going to shorten the two awnings that are on those two windows and I believe there was a picture, I don't know if you have the picture. And then the sign will go above the larger awning window.

The sign is roughly 12 foot by 2 foot and just says Five Guys on it. So that's really it. Just trying to assist in the visibility of business and also that side entrance where eventually we will have a couple patio tables once we get this work done.

MS. DALE: So when I was reading the

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application it said you were looking to replace the existing sign on the side of the building, but I believe that it's one sign today that's above the main entrance and faces Winton Road?

STEVE COSTANZA: Yes.

MS. DALE: So you are asking for a second sign on the side of the fire house?

STEVE COSTANZA: Yes. I believe the landlord removed the existing sign that was there.

MR. DOLLINGER: So you are saying there was a sign facing that way.

MR. DiSTEFANO: Yes. The original variance allowed for that sign for QDOBA to be on the Elmwood Avenue side.

MS. TOMPKINS WRIGHT: Maybe Rick, you can tell how these sizes compare to the size of the sign approved for QDOBA? Are these smaller, same size?

MR. DiSTEFANO: They are definitely different shaped QDOBA was more of a rectangular going down and obviously Five Guys is rectangular going across. Square footage, I don't know but I would say they were fairly close. I think the Five Guys is probably a little bigger than QDOBA.

CHAIRPERSON MIETZ: I think the letter size is

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bigger.

MR. DiSTEFANO: Yes, and I think the overall sign size is larger.

MS. DALE: And for QDOBA are we counting they have that the mask of the --

MR. DiSTEFANO: Well, the mask is a different variance on the Monroe Avenue side.

MS. DALE: But it's still an additional identifier?

MR. DiSTEFANO: It was an additional identifier, yes.

MR. DOLLINGER: But you don't think that was on the Elmwood Avenue?

CHAIRPERSON MIETZ: No, it was definitely not on the Elmwood Avenue.

MR. DiSTEFANO: It was on the Monroe Avenue side.

MS. DALE: No, I was just saying more accommodating because QDOBA had an additional title.

CHAIRPERSON MIETZ: What about with our -- we can talk about the analysis of square footage later.

Does everyone understand where these signs are, and what they're proposing? And just for the record you

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have two listed here, the 21 by 135 and the 23 by 138. Are you clear as to one which one is which? Which one is on the front of the building, is it the one on the top or the one --

STEVE COSTANZA: The one on the top is the one that's there now.

CHAIRPERSON MIETZ: The 21 high by 135 wide is the one on the front over the door? And the proposed one is the 23 by 138.

STEVE COSTANZA: Correct.

MS. DALE: And for the record, the reason you are asking for the second sign is --

STEVE COSTANZA: Just overall visibility and then that side entrance we're currently seeing not a lot of people use it. There's a ton of parking spaces over there. So I think that would enhance also. A, you can come in this entrance as well.

CHAIRPERSON MIETZ: So what is your experience with the traffic patterns been so far? You've been open about how long, about a month or so?

STEVE COSTANZA: Yes. Roughly six weeks and we haven't seen any issues. Definitely a lot of plenty of parking space, the only issues sometimes is workers in the plaza, not just our restaurant but the others. So we ensure

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that everybody parks closer to the road and away from all the entranceways to kind of open them up for customers.

CHAIRPERSON MIETZ: Okay, very good. Any other questions of this gentleman? Okay, thank you.

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

APPLICATION 2A-02-20

2A-02-20 Application of Shailesh Patel, owner of property located at 2323 Monroe Avenue, for an Area Variance from Section 205-7 to allow a roof overhang to extend 10 inches into the existing 6 ft. rear setback where a 50 ft. rear setback is required by code. All as described on application and plans on file.

SHAILESH PATEL: Good evening, my name is Shailesh Patel you can put me down for 2323 Monroe Avenue. We built a connected shed roof that would allow our guests to have sort of covered access from the two stairwells. In the history of the hotel, 57 years and they were never covered. And it just ended up being a snow shovel project every year.

So in our transformation of the Towpath into the Hotel on Monroe we thought we would cover it and make it a proper sort of walkway that is accessible all the way

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1  
2  
3 around the hotel. In building that shed roof we extended  
4 beyond the variance that was allowed where we had an existing  
5 staircase and we extended it by about ten inches. The  
6 extension was done primarily for drainage of the snow that  
7 would build on the shed. And since we added new 6-inch  
8 gutters to properly maintain and transfer put that water to  
9 the right side I need it to come out a little bit more.  
10 Hence, that's why we went beyond the existing line. We  
11 probably should have come and asked before and apologized to  
12 Ramsey.

13 We're looking to kind of get the variance so  
14 we can continue on and finish the rest of the project. As  
15 you would have seen it's not complete yet. We hope to  
16 complete it once we have our variance and permits from the  
17 Town. That's kind of it.

18 CHAIRPERSON MIETZ: Okay. So how is it  
19 actually working, since it's obviously there?

20 SHAILESH PATEL: We've had three snowfalls,  
21 I've had to move it very minimal, just on the outside where  
22 we didn't cover it so kind of just push it and they're done.  
23 I'm not breaking my back anymore. I would say as the sole  
24 sort of benefactor, it works, yes.

25 CHAIRPERSON MIETZ: What about as far as what

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goes on with the drainage that's coming off that upper area, how's that working?

SHAILESH PATEL: Also working. Because at the same time our neighbor is actually reconfiguring his fencing as well. So we've actually together sort of spent some money together to properly line the bed with drainage rocks and pipe that basically takes the water that goes and it takes it to the proper drain. So it's working quite well, actually.

CHAIRPERSON MIETZ: How would you characterize your conversations with your neighbor to the south?

SHAILESH PATEL: Very good. I think he sent an e-mail to Rick. We have been supportive. The history of the hotel has been a tough one, so us transforming it and making it into a nice luxury hotel has changed the clientele. I sure he's appreciated that over the last 90 days where we've kind of been starting up again. I think they really have sort of liked the fact that what we've done was updated it and cleaned it up quite a bit.

That back area once it's completed will have two types of fence. The fence that he's built, the fabricated fence, and then it will have a natural fence that we're going to put up with a trellis with using the existing railings that we had. We're going to be stacking them and

1  
2  
3 having the trellis around them. So it will be a natural  
4 fence on our side, a trellis, and on his side he'll have his  
5 fence.

6 So we think the finished product will create a  
7 nice environment there in the back. It's also lit now, which  
8 it was never lit in the back. It's lit up now. We've also  
9 put our, we took it off temporarily, but we have the logo on  
10 the back as the renderings we had shown. You might have seen  
11 the renderings by now if you have not.

12 CHAIRPERSON MIETZ: Okay, questions? I think  
13 we have it, thank you.

14 Would anyone in the audience like to speak  
15 regarding this application?

16 DANNY DANIELE: Real quick, for Silas over  
17 here. We purchased the hotel on Monroe Avenue near offices,  
18 spent some time and money to upgrade those. Silas has spent  
19 a tremendous amount of time and money on two hotels on Monroe  
20 Avenue which have been in disrepair. He represents a  
21 landlord who may have screwed up a little on the color pallet  
22 on one of the units, but he's working through that, and he  
23 realizes that. But he's the type of landlord that is willing  
24 to put the time, the effort, the money to make the property  
25 better that enhances the community. I love to see that type



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of landlord even make a deal with the Department of Transportation by one his properties so he has enough parking and he can work that out. There's other landlords like the 2900 Monroe Avenue where frankly half their property is still owned by the DOT. I don't even know how you guys frankly can include those in the parking, but I am sure your diligent staff has already taken that into consideration.

My point is for Mr. Silas, he's an exemplary example of commitment to properties in the Town of Brighton. I believe you should let him continue his efforts to improve these properties, it's not an easy task.

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

APPLICATION 2A-03-20

2A-03-20 Application of Jennifer Weaver, agent, and David Kuder, owner of property located at 16 Southern Parkway, for an Area Variance from Section 207-2A to allow a front yard fence to be 4 ft. in height in lieu of the maximum 3.5 ft. allowed by code. All as described on application and plans on file.

JENNIFER WEAVER: Good evening, my name is

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Jennifer Weaver and I live at 16 Southern Parkway and we are here to ask for a variance for a fence that we have existing around our property. This summer we are having an in-ground pool installed and the fence right now is a three-foot fence and pool code is a four-foot fence and I think the rule is 3'6." And we would like to have this variance to allow us to put the four-foot fence around the entire backyard.

We are on a corner lot between Southern Parkway and Eastland Avenue and because it's a corner lot our backyard is, I guess, officially our front yard or part of a front yard. And if we followed the rule to put the four-foot fence in our backyard it actually cuts our entire backyard in half. So I tried to draw that on that picture right there to show where we're looking for the variance in that yellow area.

MS. TOMPKINS WRIGHT: Rick, just to confirm if they were to comply with code that fence would basically go straight back from the corner of the building back towards the --

MR. DiSTEFANO: Basically where that first arrow from Southern Parkway where the yellow turns into red basically, that, from that front corner of the house over to there would be where the fence would meet code and straight

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across on that line.

JENNIFER WEAVER: I tried to include photographs. The entire area along Southern Parkway is a double line of arborvitae trees that are green throughout the winter and are at least 12 to 15 feet high right now. We are planning on extended that fence back about ten feet and there is no tree coverage on that last ten feet area. But we're having landscaping done because we do want it covered so the existing fence right now is not seen from the road and a four-foot fence would also not be seen from the road minus that little area in the back which will eventually also have arborvitae trees planted in front of it roadside.

CHAIRPERSON MIETZ: What type of fence will you be using?

JENNIFER WEAVER: A chain link fence.

CHAIRPERSON MIETZ: Do you know what color?

JENNIFER WEAVER: We were arguing over dark green or black.

CHAIRPERSON MIETZ: So it will be dark, it won't be stainless?

JENNIFER WEAVER: No. We want it to blend in. We don't want to notice the fence from our home and we certainly you don't want it noticed roadside.

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MR. CLAPP: Will the gate portion also be chain link style?

JENNIFER WEAVER: No. There's a photograph of the gate style. We would have to have one raised but the piece that is the gate we wanted to look very pretty. So I'm sure that 20-foot piece right there of the gate will end up being similar to what's on that. You wouldn't see chain link there. We will not put chain link there.

CHAIRPERSON MIETZ: Okay.

MS. TOMPKINS WRIGHT: You included in your packet a photo of 25 Eastland Avenue, this is another over four-foot fence in the neighborhood?

JENNIFER WEAVER: On a corner lot, yeah, they are in the same situation as we are.

CHAIRPERSON MIETZ: Any other questions for Ms. Weaver?

MR. DiSTEFANO: Just to be clear, your existing fence is on the north side of the existing arborvitae which line the road and the new fence basically going to be on that same side, behind the arborvitae that line the road?

JENNIFER WEAVER: Exact same footprint of fence minus moving it back 10 feet to the back part of our

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yard.

CHAIRPERSON MIETZ: Any other questions?

Okay, thank you.

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

MR. DiSTEFANO: Application 2A-04-20, no one is here right now.

APPLICATION 2A-05-20

2A-05-20 Application of Dr. Brian Mattiaccio, DDS, lessee, and Brighton Commons Partnership, owner of property located at 1835 / 1855 Monroe Avenue, for an Area Variance from Section 205-12 to allow for 139 on-site parking spaces (existing) in lieu of the minimum 170 spaces required by code when allowing for the establishment of a 3,650 +/- sf dental (orthodontics) practice on said property. All as described on application and plans on file.

MS. BRUGG: Good evening, my name is Betsy Brugg of Woods, Oviatt, Gilman representing this application with Dr. Mattiaccio and the whole team is here of folks associated with his practice to answer questions.

So the application before you is for a parking variance we have put up the Brighton commons kind of area, I

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think the visual is helpful here. We're here for a parking variance to allow the orthodontics office to locate in the vacant space in I believe the southwest area of the plaza right over here.

So as you know, this plaza this is the heart of Brighton there are a number of vacancies including this space. The majority of uses in the plaza many of them have been there quite a while. They are no high volume traffic generators in the plaza. We have a bridal boutique, I am a regular in the plaza so I can say I have been in there and spent an hour talking to the owner and not seen another person come in. I think the uses there are successful but they are kind of low traffic type of uses. The tailor shop is not a big traffic generator, Soba's is very popular, they do a lot of take-out business, I have lunch there often. I have never been there when it's been crowded with people other than on the occasional Jewish holiday when they may have an event going on.

So it's a plaza that has a lot of local businesses that serve our local community, but they are not large parking consumers. This is a great use to add to the plaza because they have very different peak hours than the other uses in the plaza. Probably the busiest business there

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is CoreLife which opened in what used to be the Bagel Bin formerly the post office space in the back. Obviously people like to park close to the door so most people going to CoreLife try to park in the area closest to CoreLife. Their peak times, you have a traffic study which I'm hoping you had a chance to look at there's a lot of photos. Costich Engineering sat and counted cars throughout the day. The peak times at CoreLife are lunchtime 12 to 1:30. The orthodontist practice has very different peak times, their busiest is 8:00 to 10:00 in the morning or 3:00 to 5:00 in the afternoon.

The nature of the practice is to -- they do braces and probably 85 percent of their business is school age kids. So the attractiveness of this location is in part that we are waking distance to school. As parent who has had braces on my child and had to leave work to take my child for a 15-minute appointment, this is a great location for orthodontics use. It is great for the community, great for the practice, kids can walk over there, kids don't drive a car, this is a walking community. So it really is a nice addition, service to our local community.

The hours of the operation that we've provided in the application, we've given it to you at 7:00 or 8:00

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a.m. to 5:00 or 6:00 p.m., Monday through Friday. He does not open on the weekends, there are no weekend hours. There could be an occasional emergency, but all of the business hours are weekday. The reason we have put 7:00 or 8:00 to 5:00 or 6:00 is because he would split time between his Farmington office and Brighton and there's certain days he's trying to have morning hours to accommodate families where parents have to go to work or need to come in early. And there's always a day of the week when people need to come in a little later. So it's trying to accommodate schedules.

When the patients are seen in the Farmington office, the Brighton office will take calls but will not see patients. So even though we are looking at a use that is operating everyday during weekdays, there's not always patients being seen. So two days a week he's in Farmington on those two days there might be someone taking calls in Brighton, but there will not be patients seen those days.

So I think it's a great complementary use for the plaza and I think that you will see from the data that from a parking standpoint it's a good complementary use to share parking. Now, as the Board knows this is the nature of multi-tenant uses. Tenants come in, tenants go. I think it fits well with the mix of tenants there and it will also be a



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nice kind of fit for virtually any kind of tenant that can come in and out of there over time. Because of the different hours and just the nature of how an orthodontist office works.

So the variance that's requested, just to give you a little history here, which I believe you know this but I will just kind of summarize it. The Bagel Bin, when they came in they needed a use variance, I believe. There was a use variance granted for the Bagel Bin. There was also a variance for the parking. Code required a total of 157 spaces at that time and a variance was granted to allow 17 spaces less than what code required based on the parking available.

So there are 133 spaces actually on the, I should say actually 140 spaces, because what we had was 133. I think what we did, Rick helped me find these I'd lost the seven spaces. But there were seven spaces here so that gave us 140 parking spaces. And thus there was a variance for 140 where 157 was required. That variance, required a visit to the Board and reapproval from the Board when Bagel Bin was replaced by what was essentially a food court type of use. I believe there's a limit, restrictions on the number of seats they may have. And then when CoreLife came in I don't

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believe any further approvals were required for them to occupy that space. So the existing variance is for 140, where 157 spaces is required. We are not building a new plaza, we don't have the option to add spaces or build new spaces so we're working with what is existing.

The Number of spaces attributed to the space to be occupied by the orthodontist office has been treated as retail space with a retail parking ratio of one space for every 300 square feet. This falls within the medical use category and thereof it has a higher parking requirement of one space per 150 square feet. And as a result we need a variance for 12 less parking spaces than are provided.

Again, we are not making any physical alterations to the parking lot, no physical alterations to the property, but the variance to allow less parking spaces for the mixed uses on site is required, and therefore we are requesting the variance that is before you today. I think we said we need 170 per code, we're proposing to maintain the same, I would say 140 except to be totally honest, I counted spaces and I saw that one of the spaces became a handicap space. So somewhere over the years one space was lost so there's actually 139 spaces currently on the property.

So we've addressed the variance criteria in

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the application and I think I'm going to kind of go through them briefly. I do think this is a benefit not only to the property owner, he's been looking for a location for his practice in the Town of Brighton. I think you may know that, I think he's been before this Board for other locations. He's been looking for a number of years and this is really an ideal spot for what he's proposing.

So obviously it's very beneficial to him and at the same time I think this is also a great use. As the Board knows it is problematic getting appropriate, neighborhood friendly, retail and small business uses in the shopping center. The economy we live in, the changes in the retail world, with everybody shopping online, it's very hard for small businesses to survive. This type of use is very complimentary, it serves families and kids from our community. Kids who are walking over from school, it's really a nice complementary use. It serves the neighborhood, and it really will not interfere with the activities or business of anybody else in the plaza, again, because of the different peak times.

As far as the criteria for the granting of the variance, this will not produce any undesirable change in the character of the neighborhood nor will it be a detriment to

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nearby properties. Again, the use is permitted, it's entirely enclosed use, no noise, no smells, there's nothing that would impact any of the nearby residential neighbors. It's complimentary in terms of the other business neighbors, so we don't see any detriment there.

It's consistent with the character of the neighborhood. And I think that having a viable, good commercial use in a shopping center that really is the heart of the town is good for the plaza. What's good for the plaza I think is also good for the community. I think it's not good to have large vacancies right in the center of town.

So I think this is kind of a really good fit for this particular use. Whether the benefits can be sought by any other method, unfortunately not. This is an existing shopping center. There's not another parking space to be squeezed out of anywhere. He certainly has looked at other locations, so we do not have any other options. This is really the only option.

Where the variance is substantial, and I would say the variance is not substantial, we are looking at a shopping center. The town code does not have a parking ration requirement specific to shopping centers --

MR. DiSTEFANO: This size.

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MS. BRUGG: Of this size, right. So I think everybody understands in a shopping center, you do not want to build more parking than you need. One of the beautiful things about a good shopping center is that you will have uses that are busier. Certain uses are busier at lunchtime, other uses are busier in the evening, that's what makes for a kind of vibrant community, and not too much pavement.

So I don't think it's a substantial an amount because of the, I think the parking study supports that there is sufficient parking there for the businesses. I spoke with the property owner, there has never been a problem with parking in the plaza, there's never been a shortage of parking. I don't think we have any concerns with that. And we look at substantiality, I don't think the nature of this variance is substantial given specific facts of this plaza, this particular application, the nature of the use that's being proposed.

It's not a big parking user because so many of the patients are youth that will walk over and they may come before school, may come after school, a parent might come and pick them up after an appointment. There's certainly will be parents that do drive here and there will be a small amount, a small percentage of the practice is adults. But for the

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most part it is not a large parking user.

Whether there will be any adverse effect on the physical or environmental conditions of the neighborhood or the property, nothing adverse. If anything, the ability to get this tenant in the plaza is a stimulus for improvements to the plaza and there are some plans to kind of reface this face as sort of the cornerstone that's going to start the, you know, improvements to the plaza as a whole. I think they'd like to change the facade on the plaza. So they need to get a good tenant in there in order to be able to invest some money in improvements.

And whether the alleged difficulty was self-created, the self-creation would preclude the granting of the variance, but I don't think this was self-created. We're dealing with an existing plaza we're not changing anything, we're just simply putting in a good use that happens to need a variance based on mixed uses that are in the plaza.

So I think we meet the requirements. I would be happy to answer any questions. I could tell you a little bit more about the practice. You have quite a bit of information included in the application. So, with that.

MS. TOMPKINS WRIGHT: Well, I had a question

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about the parking study. It felt like the parking study that was done at the Farmington office was pretty comprehensive, 15 days at various times. The parking study that was done at that plaza was only done on one day. Is there a reason you didn't take a survey multiple days to make sure that that was an average parking load?

MS. BRUGG: I'm not sure why there was such a comprehensive study done for the Farmington office. It is a independent freestanding development that was looked at independently. This is more of a tenant going into an existing shopping center that has existing conditions. I can tell you the Farmington office happens to be larger. All of the administrative offices and billing functions will remain at the Farmington office. But in terms of why the study was more comprehensive, I'm going to guess is because it was a separate freestanding development.

MS. TOMPKINS WRIGHT: The other part of the question was did you guys consider doing more than one day -- three days or four days -- to make sure we were getting an accurate picture of how many parking spaces and where those parking spaces openings were located at various times?

MS. BRUGG: So I'm not sure. I can tell you I'm a regular in that shopping center. So I'm actually

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surprised. I looked at it, it looked pretty typical just from my personal experience. I think probably everybody here has also probably been in there.

CHAIRPERSON MIETZ: I would say.

MS. BRUGG: I think probably everybody here has equal expertise on the parking there.

MS. TOMPKINS WRIGHT: Do you anticipate Abbotts is closed during this time period, do you anticipate Abbotts use putting any extra strain on the parking during the summer months?

MS. BRUGG: Abbotts, I don't think is a huge consumer of parking there since so many walk there. Although they do use parking spaces. The parking requirement for the plaza and the variance is based on, I think that we've applied the general retail to all of the spaces in the plaza. The parking study was done while the jewelry store was still open, that has since closed, but they were still operating. This was done I think in October.

MS. TOMPKINS WRIGHT: October or December?

MS. BRUGG: Sorry, December, but they were still open. I understand they closed about three weeks ago, time flies.

CHAIRPERSON MIETZ: Okay. A couple things,



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could maybe the doctor or you, whomever, we have a little history going back to some of the discussions of before. So let's talk about how this thing is going to move going forward. Obviously, what we are interested in is what his thoughts are about what the parking requirements for his own use is going to be. And obviously, it's only going to be open a couple days a week now, but I presume you're trying to ramp that business up, probably would be moving to this location.

I don't know what your goal is, if eventually it would be open five days a week, possibly? I realize you can't prognosticate, but what is your business plan, could you speak to that?

DR. MATTIACIO: Yes. Dr. Brian Mattiaccio, Farmington, New York 1393 Hathaway Drive. So getting to your question, no, I don't anticipate ever being open five days a week in Brighton. I anticipate being the sole practitioner in Brighton and in Farmington, so this being an extension of my existing business. The days when I'm practicing in Farmington actually seeing patients, like Betsy said, the Brighton office will be administration only, kind of like my call center. So I will have some administrators there answering phones, filling operations I will have an assistant

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on hand if there's a kid who has to walk across the street and have a wire clipped or if something is bothering him. If I have to run out to Brighton later on that night to take care of that emergency I will.

And vice versa when Farmington is closed and I am seeing patients in Brighton, my administrators in Farmington will handle the administration calls, loads, stuff like that. So the intention right now is to start probably rather slowly, as of right now I do have patients in the Brighton area, it's part of the reason why I want to come out here. They drive a long way to come see me, but I am starting from scratch realistically.

So my operation will probably start off really small and ramp up with time, I am sure, but never with the intention of being a five-day-a-week business.

CHAIRPERSON MIETZ: So let's say I understand every new business ramps up, so it's not going to be the same day one as day 365 or whatever. What was your expectation of staffing and a reasonable count for customers be?

DR. MATTIACIO: Using my existing business as maybe an example, my existing business operationally will always be larger. It's a larger facility, it has more chairs than what I can put in. So just size alone in Brighton is

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going to restrict me to a certain degree to not be able to achieve what I can in Farmington. So -- what was your question? I'm sorry.

CHAIRPERSON MIETZ: Just let's just say that once the thing gets ramped up, whatever that period of time is, what would be the employee component?

DR. MATTIACIO: Currently my employee count I believe sits at 11, but I have fluctuated around 9, 10 or 11. I anticipate starting off with two full-time employees in Brighton. They will be that call center as I mentioned and probably the days I'm seeing patients I will bring myself and maybe three or four other employees. So that will be more than enough for probably quite some time.

And considering the capacity I do right now in Farmington I don't anticipate ever being over. If you are talking about max capacity, like, wow this really takes off after a few years, you know, less than what I have now which is 11, so probably in the 8 to 10 range.

MS. TOMPKINS WRIGHT: Just a quick question about your Farmington location, we were talking about what your parking study there shows, is that location walkable to schools or public transition?

DR. MATTIACIO: No. Farmington is a pass

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through community, there is not a Farmington school district. Most of the patients are coming from the Victor Central School District, the Canandaigua Central School District and surrounding communities. Everybody drives to my office, no one walks. There's no school district whatsoever. It's a completely different thing than what's happening in Brighton being right across from the school.

MS. SCHMITT: I apologize if you already answered, but how many patients do you generally see per hour? Not you individually but the office?

DR. MATTIACIO: So we do appointments per hour. It's hard to say how many exact patients. In Farmington I have eight chairs, so I can't see more than eight people at a time. And I'm one person, so I can't see more than two people at a time. How that's possible, that just works out somewhere. So our appointments are actually quite staggered. I think the parking study kind of speaks to it a little bit better than any description I can give. I think at a max volume I had, including employees, maybe 20 some odd spaces taken up. And at my more average times of day you're talking twelve, something along those lines, including employees.

So it's rare except for those peak times that

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every chair in the office is filled, and even in the peak times it's often that it's not filled. Sometime parents or kids get dropped off by grandma or grandpa and mom stops after to pick them up. There's a lot of intermingling of the parking spaces. But appointments per hour, boy, I would say maybe six to eight.

MS. SCHMITT: So your practice is where you are actually doing the orthodontic work as opposed to having a staff person who does the tightening and then you come in to check?

DR. MATTIACIO: That's a great question. No, I am like that, but I see each patient individually so no patient walks out without having time with me. It's a very important part of my practice philosophy. So they might get the patient going and then I come over, and absolutely every time I talk to the parent or grandparent or guardian and I will release them to my staff again and they put them back together.

So appointment range anywhere between 10 minutes and 30 minutes for shorter procedures and of course getting braces on and consultations and things like that they might be there a little bit longer.

MS. SCHMITT: Okay.

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CHAIRPERSON MIETZ: Anybody more questions?

MR. CLAPP: I have a question about the parking, the shared parking arrangement. Well, the parcel where this practice will be located is two separate parcels, but obviously a shared agreement between them. I am wondering is there a chance that that agreement will fall apart at some point leaving a parking issue?

MS. BRUGG: That is a longtime parking agreement between the properties that they operate together with the shared parking.

MR. DiSTEFANO: Basically, they were all under the same ownership. So the 2600 CoreLife and the plaza were under the same ownership. Don't include the ESL facility, that is not part of this, so when we're looking at the 140 parking spaces we're looking at CoreLife and the plaza. The 2600 parcel was sold off a few years ago so now they are owned separately. But as part of the sale of the property there was a cross access easement, parking and egress/ingress cross those two parcels of land. So I don't know how difficult that would ever be to break but I think it would be fairly difficult.

MS. BRUGG: It is. It is a property right.

MR. DOLLINGER: The value of these properties

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is all interrelated.

MR. CLAPP: Thank you.

CHAIRPERSON MIETZ: Any other questions?

MR. DOLLINGER: So would you have your employees -- because it seems to me that at this plaza there's a lot of empty spaces all the time. Would you have your employees park, you know, in the periphery?

DR. MATTIACIO: Yes. The intention here is to make it a convenience for the customer and I think any good business owner would kind of have their team park in the periphery. I have an idea of where I would like them to park because I feel I have lived in that plaza over the past six months as this project was picking up. So I kind of know the whole space but, you know, there's areas that are almost always vacant which is perfect for us to park in. That's just adjacent to CoreLife, that's kind of tucked away, I think their Dumpster is back there, not much going on.

CHAIRPERSON MIETZ: Right, to the west.

DR. MATTIACIO: It's not a very appealing part, but for us how nice is that? That's basically caddy-corner, leaves all of the spaces open to our patients not really impacting what goes on there on a daily basis. It seems ideal, but I would open for anything.

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MR. DiSTEFANO: On that same thought process, those 67 parking spaces that are right at the end of your space, you'll probably virtually never use by anybody. You have been there for quite a while now, like you just said. Just looking at it, did you notice anybody parking there?

DR. MATTIACIO: Not very often.

MR. DiSTEFANO: So that would be for your customer area.

DR. MATTIACIO: That would be prime customer parking as my entry is going to be there, right where the dance studio was.

CHAIRPERSON MIETZ: Okay, good. Any other questions? Thank you.

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

APPLICATION 2A-04-20

2A-04-20 Application of Kanack School of Music and Artistry, and Creative Ability Development, Inc., owner of property located at 2077 South Clinton Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold a one day fund-raising event (May 30, 2020) on said property located in a BE-1 Office District.



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All as described on application and plans on file.

ALICE KANACK: I'm Alice Kanack, the property is 2077 South Clinton. I'm just here to ask for permission to hold this event on that one day. Because we are holding it at the school and we're putting a tent on our parking lot we're asking our neighbors and various people to allow us to have parking on that day and we have a lot of agreements towards that end.

CHAIRPERSON MIETZ: Could you be more specific?

ALICE KANACK: Sure. Tina Marie Salon has 20 spots, Upstate Sports and Spine has 30 to 50 spots, Contemporary Dentistry has 30 to 50 spots, Tops Plaza has 50 to 75 spots, Roc Paris and Implants has 30, and Doctor Susan Spoto has 50.

CHAIRPERSON MIETZ: So what do you anticipate the maximum parking requirements for this day to be?

ALICE KANACK: We are hoping to get 500 people there, which we are anticipating families, so we are thinking we are going to need at most if we had two people per car, 250 spots and we currently have 275.

CHAIRPERSON MIETZ: And it will be throughout a number of hours?

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ALICE KANACK: Right, from 5:00 to 9:00 p.m.

MR. DiSTEFANO: You don't expect everybody, that 500 people to be there from 9:00 to 5:00, it's going to be an in and out type of thing?

ALICE KANACK: Yes, 5:00 to 9:00, yes. It's dinner and dancing and fundraising.

CHAIRPERSON MIETZ: Okay. So it is a, if you are there you're going to get there --

ALICE KANACK: You're probably going to stay. There will be people that will pop in and out, but it is an event.

CHAIRPERSON MIETZ: How will people get to these other parking places because some of them are located on the other side --

ALICE KANACK: Right. So we're thinking we're going to have a shuttle to get people from Tops. Most of the other places are along our side or directly across.

CHAIRPERSON MIETZ: Will that information get to the people before they show up and find out there's no parking spaces in your parking lot?

ALICE KANACK: Yes, yes.

CHAIRPERSON MIETZ: Okay.

MS. TOMPKINS WRIGHT: Normally when we approve

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tents we require them to be removed within 24 hours of the end of the event. You are asking for 48 hours, is there a reason you can't get the tent down the next day?

ALICE KANACK: I think it's the company. We would like it down, because it's large we couldn't do it ourselves.

MS. TOMPKINS WRIGHT: So a third party comes and puts up the tent and removing it?

ALICE KANACK: Yes.

CHAIRPERSON MIETZ: What about the policing of the area as far as trash and other stuff?

ALICE KANACK: It's our property so we plan to take really good care of it.

CHAIRPERSON MIETZ: You guys do a great job, so you will have your personnel responsible for that?

ALICE KANACK: Yes. This is the third time we're holding this event, but the first time we're holding it on our property because we now have space.

MR. DISTEFANO: Where was it held in the past?

ALICE KANACK: We did it at the Rotary Sunshine Campus last year, the year before we used the Artisan Church down the road from us.

CHAIRPERSON MIETZ: Okay, other questions?

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Any discussion in the neighborhood about it?

ALICE KANACK: Not yet, except asking our neighbors for shared parking.

CHAIRPERSON MIETZ: I don't mean commercial, I'm talking about residential ones, the ones to the --

MR. DiSTEFANO: Down Havens?

ALICE KANACK: I have not spoken to them. I would not have a, I mean, no.

CHAIRPERSON MIETZ: Okay. Would it be safe to say you will not encourage any parking over there?

ALICE KANACK: No. We are planning to close off the South Clinton end and have a drive drop-off on Havens that people could turn around and go out to wherever they are parking.

CHAIRPERSON MIETZ: But you would --

MR. DiSTEFANO: You would police that?

ALICE KANACK: Yes.

CHAIRPERSON MIETZ: So we're not getting cars -- as you know it is not a wide street and --

ALICE KANACK: No, we definitely would not allow anybody to park on Havens.

MS. TOMPKINS WRIGHT: You mentioned music and dancing, I know you anticipate that going until 9:00 p.m., do

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you anticipate a lot of noise off the property?

ALICE KANACK: No. We are talking fiddle music. Generally when we have fiddle music people kind of come over and want to listen.

MR. DiSTEFANO: No amplification?

ALICE KANACK: No.

CHAIRPERSON MIETZ: Okay, other questions?  
Thank you.

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

APPLICATION 2A-06-20

2A-06-20 Application of Chris and Jill Hilderbrant, owners of property located at 65 Towpath Lane, for an Area Variance from Section 207-11A and 207-7A to allow a hot tub to be located in an area of a side yard where not allowed by code. All as described on application and plans on file.

CHRIS HILDERBRANT: Good evening, Chris Hilderbrant residing at 65 Towpath Lane.

JILL HILDERBRANT: Jill Hilderbrant.

CHRIS HILDERBRANT: We are trying to put in a hot tub, building a deck and putting in a hot tub. Asking

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3 for a variance because we did get the project started, so  
4 apologize for starting when we didn't know quite what we were  
5 doing. We ran into similar issues as Miss Weaver, that we're  
6 on a corner lot, and rules are different for us. Apparently  
7 if we had a clearly defined rear yard we are allowed to put a  
8 hut tub in the rear yard. But because we are on a corner,  
9 then it's a little unclear what's exactly our rear yard.

10 As we have gone further with this and trying  
11 to understand what we are to do, it appears there's no place  
12 on our property that we can put a hot tub without asking for  
13 a variance because of the yard issue. But also because the  
14 adjoining property are on the circle, the plain of  
15 Mr. Mayer's house where it's supposed to be behind the plain  
16 of the adjoining house.

17 To be behind the plain of the adjoining house  
18 we would then be in our side yard approaching the property at  
19 55 Towpath, so it looks like we would need a variance. And  
20 that instance where Jill and the builder have gone through  
21 and try to put it where it makes the most sense because the  
22 deck would be built off our existing porch raising everything  
23 to a level I can go onto it. Right now there's sort of an  
24 older stone patio and we would be building the deck mostly  
25 above that, adding a ramp so we have a second floor egress

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and having the tub there so we can use it.

MS. DALE: The hot tub will be shielded from the street by the house?

CHRIS HILDERBRANT: From where it is what I would think is from the front of the house facing out to Towpath Lane it will be behind that, you would not see it from there. You would see it from Towpath Circle which is a short cul-de-sac.

MS DALE: Are you planning to put any screening for privacy?

JILL HILDERBRANT: The top, which is a locking top, the way it's going to flip up is it creates a wall. That's from between the road, the cul-de-sac and the hot tub will be the lid that stands, you know, probably four feet above the top of the water. You know, we are open to exploring other options, we just would need to know as far as fencing or planting trees what is even allowed.

CHRIS HILDERBRANT: I was supposed to say that we have a letter from the adjoining properties as well as the rest of the properties in the circle.

MR. DiSTEFANO: We don't have them.

MS. TOMPKINS WRIGHT: As you describe the hot tub, it's actually you're not going to see the sides because

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it's flush with the ground, or flush with the deck?

CHRIS HILDERBRANT: It's somewhat offset.

JILL HILDERBRANT: 18 inches above, from the top of the -- it's going to be as high as this chair. And so from the cul-de-sac you will see the sides of it. It's not within the deck, so it will be on the ground but it's a built-up pad so we can get it high enough to be the right level for him.

MS. TOMPKINS WRIGHT: Okay.

MR. DiSTEFANO: Just for the record, we have received a letter of support from residents at 55 Towpath Lane, 70 Towpath Lane, 31 Towpath Circle, 22 Towpath Circle, 21 Towpath Circle, and 32 Towpath Circle.

JILL HILDERBRANT: One of the signatures is our next door neighbor which is the house, Mayer, 22 Towpath Circle. The hot tub is not supposed to be in front of the face. And his house, if we were looking at the garage it would be okay, but it's got such an angle that if you followed it over it takes us to the other corner of our house. So he did sign the letter that he was okay with the project.

CHAIRPERSON MIETZ: Okay.

MR. DOLLINGER: A question for Rick, is there



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any requirement for fencing around the hot tub?

MR. DiSTEFANO: No, as long as it has a safety cover and the safety cover is in place. When it's not in use we don't require the hot tub to be enclosed with a fence.

JILL HILDERBRANT: And it is regulation now. Every lid is a locking top, I did check on that with the company.

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

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

We will take five minutes and then we will begin.

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FEBRUARY 5th, 2020  
at approximately 8:50 p.m.  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, Chairperson

JEANNE DALE	)	
DOUGLAS CLAPP	)	
KATHLEEN SCHMITT	)	BOARD MEMBERS
JUDY SCHWARTZ	)	
ANDREA TOMPKINS WRIGHT)		

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

NOT PRESENT:  
JENNIFER WATSON

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

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

Brighton Zoning Board of Appeals 02/05/2020

APPLICATION 1A-02-20

1A-02-20 Application of Vitalize Medical, PLLC, lessee, and 2900 Monroe Ave., LLC, owner of property located at 2900 Monroe Avenue, for an Area Variance from Section 205-12 allowing for 102 on-site parking spaces in lieu of the code required 114 parking spaces necessary for the establishment of a medical use on said property. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 1A-02-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance is not substantial given the fact that there currently exists 23 parking spaces available for this use and the evidence presented suggests that at no time more than 23 parking spaces will be used. Additional, the property in the question is not clearly medical in nature, but is likely a hybrid of a consumer service/spa-type business and the medical use which likely has a less intensive parking demand than the purely medical use.
2. No other alternative can alleviate the difficulty and produce the desired result given that there are no other parking spaces available in the property or could be created.

3. There's no unacceptable change in the character of neighborhood and no substantial detriment to nearby properties is expected to result from the approval of this variance because there appears to be adequate parking on site to meet the needs of this proposed business. Evidence was submitted that the parking study was conducted which showed that their existing parking on site sufficient and the applicant testified that the parking demand of this type of use would not create any demand higher than that.

4. The health, safety, and welfare of the community will not be adversely affected by the approval of this variance request.

5. Based on the floor plans submitted by the applicant clinical space is less than 2,000 square feet and thus the Board believes that the parking is adequate.

**CONDITIONS:**

1. This variance will apply only to the parking variance requested as described in the application and testimony.

2. This variance is applies only to the applicant and no further users of this property.

3. The clinical area of the property shall be limited to no more than 2,000 square feet.

(Second by Ms. Dale.)

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

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

Brighton Zoning Board of Appeals 02/05/2020

APPLICATION 2A-01-20

2A-01-20 Application of Reid Richards / Five Guys Restaurant, lessee, and Twelve Corners Associates LLC, owner of property located at 1881 Monroe Avenue, for modification of an approved sign variance (5A-10-16, Part I) to allow for a change of business name and sign location. All as described on application and plans on file.

Motion made by Ms. Dale to approve Application 2A-01-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The restaurant location is in the corner of the building with one side and main entrance facing Monroe Avenue and the second side the entrance is facing Elmwood Avenue.
2. Applicant is requesting a second sign over the second entrance that faces Elmwood Avenue in order to assist customers with finding the restaurant and the entrance.
3. The previous restaurants at the site had two signs with one at the location that the applicant is hereby requesting.
4. Approval of this variance request will have no adverse impact on the environment or be a detriment to nearby properties.

**CONDITIONS:**

1. This application is approved only specific to the plan as

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submitted and testimony given.

2. All necessary Architectural Review Board and Planning Board approvals shall be obtained.

(Second by Ms. Schwartz.)

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

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

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APPLICATION 2A-02-20

2A-02-20 Application of Shailesh Patel, owner of property located at 2323 Monroe Avenue, for an Area Variance from Section 205-7 to allow a roof overhang to extend 10 inches into the existing 6 ft. rear setback where a 50 ft. rear setback is required by code. All as described on application and plans on file.

Motion made by Mr. Mietz to approve Application 2A-02-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The construction of the existing building is a pre-existing nonconforming at the rear setback.
2. While the request to encroach 10 inches into the non-conforming rear setback is significant it is however, less visually impactful and will be mitigated due to the capsulation of the stairway area by the shed roof.
3. No other alternative can meet the desired result due to the coverage needed for this rear stairwell.
4. No negative effect on the character of the neighborhood will result from this variance request since the commercial nature of the lot has existed for many years and the property has been recently renovated.



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5. Drainage to the south property line has been mitigated by gutters and cooperation with the adjoining neighbor to manage the situation.

**CONDITIONS:**

1. Based on the drawings as submitted and the testimony given.

2. All necessary Architectural Review Board approvals and building permits shall be obtain.

(Second by Ms. Tompkins Wright.)

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

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

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APPLICATION 2A-03-20

2A-03-20 Application of Jennifer Weaver, agent, and David Kuder, owner of property located at 16 Southern Parkway, for an Area Variance from Section 207-2A to allow a front yard fence to be 4 ft. in height in lieu of the maximum 3.5 ft. allowed by code. All as described on application and plans on file.

Motion made by Ms. Schmitt to approve Application 2A-03-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The property in question is a large corner lot. The area the homeowners consider to be the backyard not directly behind the home. The homeowners will be installing an in-ground pool which requires a four-foot fence. If the homeowner was to fence in just the pool area the yard would be cut in half.

2. The variance request is to replace the existing three-foot fence on the property with a four-foot fence which is in excess of the 3'5" permitted by code.

3. The proposed placement of the fence will be partially hidden behind two rows of mature trees. This landscaping will help conceal much of the fencing.

4. The granting of this variance will not appear to result in any substantial detriment to nearby properties or otherwise adversely affect the character of the neighborhood as nearby homes with pools also have similarly sized fences. Moreover, there's no evidence there would be a negative impact on the health, safety, and welfare of the neighborhood.

**CONDITIONS:**

1. The variance applies only to the fence as described in the application and testimony provided and will not apply to future projects.

2. All necessary building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

Brighton Zoning Board of Appeals 02/05/2020

APPLICATION 2A-04-20

2A-04-20 Application of Kanack School of Music and Artistry, and Creative Ability Development, Inc., owner of property located at 2077 South Clinton Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold a one day fund-raising event (May 30, 2020) on said property located in a BE-1 Office District. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 2A-04-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The actual use of the tent will only be for one day for the hours of 5:00 to 10:00 p.m.
2. There will be no adverse impact from the installation of the tent because the tent opening will be almost totally screened from the homes by the Kanack School.
3. The fundraising event consists of a catering truck on premises, and fiddle music played by the students of the Creative Ability Development Inc.
4. The applicant has made arrangements for off site parking amounting to 275 and probably only 250 will be needed and is arranging a shuttle for those who park off site to the event.

**CONDITIONS:**

1. This variance applies only for the tent at the Kanack School as presented in testimony and the written application.
2. The tent will be on the premises from May 28th through June 1st and used only on May 30th for the event from 5:00 to 10:00 p.m.
3. All necessary permits must be obtained including fire marshall.
4. No parking shall be allowed on Havens Drive or South Clinton Avenue.
5. The music will not be amplified in any way.
6. The hours of the event shall be from 5:00 to 10:00 p.m.
7. The site shall be cleaned up within 24 hours of the event.

(Second by Ms. Tompkins Wright.)

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

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

Brighton Zoning Board of Appeals 02/05/2020

APPLICATION 2A-05-20

2A-05-20 Application of Dr. Brian Mattiaccio, DDS, lessee, and Brighton Commons Partnership, owner of property located at 1835 / 1855 Monroe Avenue, for an Area Variance from Section 205-12 to allow for 139 on-site parking spaces (existing) in lieu of the minimum 170 spaces required by code when allowing for the establishment of a 3,650 +/- sf dental (orthodontics) practice on said property. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 2A-05-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The granting of the requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The parking variance is for a plaza with shared mixed uses for different peak hours, meaning the demand for parking can often be met through a reduced number of parking spaces in the plaza as a whole. As demonstrated by parking studies the number of available parking spaces in the plaza at all times, and in particular at peak times for the applicant's use, is more than enough to accommodate the applicant's parking needs so as not to put a

strain on any neighboring properties or public rights of way.

2. The requested variance is not substantial given the evidence presented that the current available parking is ore than sufficient and also considering the location of the property is within walking distance to both the Brighton Middle School and the Brighton High School which will result in lower parking demands.

3. The benefit sought by the applicant cannot reasonably be achieved by any other method as there are no other parking areas that could lessen the variance request that are not already being utilized as parking.

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

5. The difficulty leading to this variance request is not self-created as it stems from the mix of uses at the plaza and their shared parking arraignment.

**CONDITIONS:**

1. This variance applies only to an orthodontic office with no more than six treatment chairs and no more than three exam rooms.

2. All necessary town approvals shall be obtained.

(Second by Ms. Schwartz.)

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

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



Brighton Zoning Board of Appeals 02/05/2020

APPLICATION 2A-06-20

2A-06-20 Application of Chris and Jill Hilderbrant, owners of property located at 65 Towpath Lane, for an Area Variance from Section 207-11A and 207-7A to allow a hot tub to be located in an area of a side yard where not allowed by code. All as described on application and plans on file.

Motion made by Mr. Clapp to approve Application 2A-06-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The requested variance will not produce an undesirable change in the character of the neighborhood or detriment to nearby properties. The proposed hot tub will be located near the rear of the house on the corner lot and is not visible from Towpath Lane and also screened by evergreens from the rear neighbor.

2. The benefits sought by the applicant cannot be achieved by a method other than an area variance as the unique nature of a corner lot on a cul-de-sac makes the location of the hot tub anywhere on the property impractical without a variance.

3. The size of the proposed variance is the minimum required to locate a hot tub on the property given the nature of the

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corner lot.

4. The difficulty leading to this variance was not self-created as a need for a variance was created by the location of the house on a corner lot on a cul-de-sac.

**CONDITIONS:**

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

2. All necessary building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

\* \* \*

## REPORTER CERTIFICATE

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

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

Dated this 15th day of March, 2020.

At Rochester, New York

Rhoda Collins  
Rhoda Collins