

A G E N D A
BOARD OF APPEALS - TOWN OF BRIGHTON
OCTOBER 7, 2020

Due to the public gathering restrictions and executive orders in place because of COVID-19, this Zoning Board of Appeals meeting will be conducted remotely. Members of the public will be able to view the meeting via Zoom.

Written comments will be received by Rick DiStefano, Secretary, Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY 14618 via standard mail and/or via e-mail to rick.distefano@townofbrighton.org, until October 7, 2020 at 12:00 PM.

Applications subject to public hearings are available for review on the town's website.

The public may join the Zoom meeting and share comments with the Board. For Zoom meeting information, please reference the town's website at <https://www.townofbrighton.org> prior to the meeting..

7:00 P.M.

CHAIRPERSON: Call the meeting to order.

SECRETARY: Call the roll.

CHAIRPERSON: Approve the minutes of the August 5, 2020 meeting.
Approve the minutes of the September 2, 2020 meeting. **To be done at the November 2, 2020 meeting.**

CHAIRPERSON: Announce that the public hearings as advertised for the BOARD OF APPEALS in the Brighton Pittsford Post of October 1, 2020 will now be held.

9A-03-20 Application of RFM Morgan Properties, owner of property located at 2125 Monroe Avenue (Brighton Garden Apartments) for an Area Variance from Section 205-12 allowing for the demolition of two carports (40 stalls) leaving the property with no covered parking spaces where 40 covered parking spaces are required by code. All as described on application and plans on file. **TABLED AT THE SEPTEMBER 2, 2020 MEETING - PUBLIC HEARING REMAINS OPEN** (See Revisions)

9A-04-20 Application of Save Monroe Ave., Inc. (2900 Monroe Avenue, LLC, Cliffords of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Ann Boylan and Steven M. Deperrior), appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods Plaza project located at 2740 / 2750 Monroe Avenue. All as described on application and plans on file. **TABLED AT THE SEPTEMBER 2, 2020 MEETING - PUBLIC HEARING REMAINS OPEN** (See Supplement Submittal)

10A-01-20 Application of Katherine Solano, owner of property located at 4 Cardiff Park, for an Area Variance from Section 207-10E(5) to allow a driveway expansion to be 2.8 ft. from a side lot line in lieu of the minimum 4 ft. required by code. All as described on application and plans on file.

- 10A-02-20 Application of Brighton Grassroots, LLC, appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods Plaza project located at 2740 / 2750 Monroe Avenue. All as described on application and plans on file.
- 10A-03-20 Application of Chris and Nicole Fitzgerald, owners of property located at 177 Commonwealth Road, for 1) an Area Variance from Section 207-11A to allow an inground swimming pool to encroach 4 +/- ft. into a front yard (Ashbourne Road frontage) where not allowed by code; and 2) 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.
- 10A-04-20 Application of Brian and Sarah Costello, owners of property located at 281 Pelham Road, for an Area Variance from Section 205-2 to allow a garage addition to extend 18.25 ft. into the 58.5 ft. rear setback where a 60 ft. rear setback is required by code. All as described on application and plans on file.
- 10A-05-20 Application of Marisa and Serge Tsvasman, owners of property located at 110 Oak Lane, for Area Variances from section 205-2 to allow a garage addition to extend 2.5 +/- ft. into the existing 12.6 ft. rear setback where a 60 ft. rear setback is required by code, and extend 3 +/- ft. into the existing 18.1 ft. side setback where an 18.75 ft. side setback is required by code. All as described on application and plans on file.
- 10A-06-20 Application of Christopher and Rebecca Hays, owners of property located at 41 Midland Avenue, for an Area Variance from Section 205-2 to construct a shed in a side yard in lieu of the rear yard as required by code. All as described on application and plans on file.
- 10A-07-20 Application of Terry Zappia, Pierrepont Visual Graphics, Inc., agent, and MBC Canal Holdings, LLC, owner of property located at 140 Canal View Blvd., for an Area Variance from Sections 207-10A(1) and 205-8 to allow an awning to extend 12.2 ft. into the 75 ft. front setback required by code. All as described on application and plans on file.
- 10A-08-20 Application of Mark Anderson and Randi Forman, owners of property located at 257 Dunrovin Lane, for an Area Variance from Section 205-2 to allow a screened porch to extend 10 ft. into the 60 ft. front setback required by code. All as described on application and plans on file.
- 10A-09-20 Application of Marco and Anna Frasca, owners of property located at 333 Rhinecliff Drive, for an Area Variance from section 205-2 to allow a 2 story addition to extend 2.3 ft. into the 9 ft. side setback required by code. All as described on application and plans on file.
- 10A-10-20 Application of Jennifer Hanson, owner of properties located at 1050 and 1054 Highland Avenue, for an Area Variance from Section 205-2 to allow a side setback to be 11.8 ft. (13.8 ft to house foundation, 2 ft. bay window) after resubdivision of two properties into one, in lieu of the minimum 21.88 ft. required by code. All as described on application and plans on file.

- 10A-11-20 Application of the University of Rochester, owner of property located at 220 East River Road, for a Temporary and Revocable Use Permit pursuant to section 219-4 to allow a mobile MRI scanner (trailer) to be on site for an 18 month period where not allowed by code. All as described on application and plans on file.
- 10A-12-20 Application of FSI Construction / Frank Imburgia, owner of property located at 3300 Brighton Henrietta Town Line Road, for extension of approved variances (9A-04-19, 10A-07-19 and 10A-08-19), pursuant to Section 219-5F, required for the construction of a 10,000 sf office building. All as described on application and plans on file.
- 10A-13-20 Application of Ken Stavalore, Home Power Systems, agent and Sandy Haque, owner of property located at 290 Hibiscus Drive, for an Area Variance from Section 203-2.1B(6) to allow a standby emergency generator to be located in a side yard in lieu of the rear yard behind the house as required by code. All as described on application and plans on file.
- 10A-14-20 Application of Sean and Lauryn McCabe, owners of property located at 3395 Elmwood Avenue, for an Area Variance from Section 205-2 to allow a garage addition to extend 2.5 ft. into the existing 36.1 ft. rear setback where a 60 ft. rear setback is required by code. All as described on application and plans on file.
- 10A-15-20 Application of John and Dina Wright, owners of property located at 3644 Elmwood Avenue, for an Area Variance from Section 205-2 to allow an addition to extend 3 ft. into the existing 52 ft. rear setback where a 60 ft. rear setback is required by code. All as described on application and plans on file.

CHAIRPERSON: Announce that public hearings are closed.

NEW BUSINESS:

NONE

OLD BUSINESS:

NONE

PRESENTATIONS:

NONE

COMMUNICATIONS:

Letter, with attachments, from Ramsey Boehner, Town of Brighton Building Inspector, and John A. Mancuso, Esq., dated September 23, 2020, in response to applications 9A-04-20 and 10A-02-20. (For entire record <https://www.townofbrighton.org/DocumentCenter/Index/675>)

Letter from Warren B. Rosenbaum, Woods Oviatt Gilman LLP, dated September 23, 2020, in response to applications 9A-04-20 and 10A-02-20.

Letter from David Burrows, architect, dated October 1, 2020, with slight modifications to application 10A-08-20, 257 Dunrovin Lane.

Letter from Warren B. Rosenbaum, Woods Oviatt Gilman LLP, dated October 5, stating the Developer concurs in all respects with the September 23, 2020 letter to the ZBA from Ramsey Boehner, Brighton Town Planner, submitted in opposition to appeals 9A-04-20 and 10A-02-20.

Letter from Julie Montana, Zoghlin Group, dated October 7, 2020, regarding a 2nd Supplemental Affirmation from Mindy Zoghlin, Esq.

Letter from Robert Burke and Charis Lee, 106 Oak Lane, dated October 6, 2020, in support of application 10A-05-20.

Letter from Kerstin Henseleit, 275 Warren Avenue, dated October 6, 2020, with comments regarding application 10A-13-20.

Letter from Mindy Zoghlin, Zoghlin Group, dated October 7, 2020, regarding ZBA appeal made by Brighton Grassroots, LLC (10A-02-20).

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September 23, 2020



VIA EMAIL AND U.S. MAIL

Town of Brighton Zoning Board of Appeals
2300 Elmwood Avenue
Rochester, New York 14618
rick.distefano@townofbrighton.org

Re: Appeals of Building Permit Issuance to M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Daniele Management LLC, and Mardanth Enterprises, Inc., collectively doing business as The Daniele Family Companies

To the Zoning Board of Appeals:

We represent M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Daniele Management LLC, and Mardanth Enterprises, Inc., collectively doing business as The Daniele Family Companies (hereinafter the "Developer"), who was recently issued a building permit by the Town of Brighton (the "Town") Office of the Building Inspector. We write in opposition to the appeals filed by Brighton Grassroots, LLC ("BGR") and Save Monroe Ave., Inc., 2900 Monroe Ave., LLC, Cliffords of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Anne Boylan, and Stephen Deperrior (collectively "SMA") challenging the building permit issuance, and to provide the Town of Brighton Zoning Board of Appeals (the "ZBA") with information on certain of the arguments asserted in those appeals.

Easement from RG&E

In its appeal, BGR states that "the Developer was required to obtain valid instruments from RG[&]E allowing the Developer to construct the amenity and obtain valid easements from RG[&]E authorizing the Town and its residents to use the easement area . . . for recreational purposes." BGR App. ¶ 59. BGR then asserts that the Developer failed in this regard because it "does not have a valid easement for the Trail Amenity because RG&E's required notice to the Public Service Commission . . . expired well before the easement was recorded." *Id.* ¶ 60.

BGR's conclusion on this issue is erroneous. First, the Amenity Agreement with the Town clearly states that the Town will not accept the easements "to use the [] area . . . for recreational purposes" *until the work on the Trail is complete*:

Within sixty (60) days of the completion of the trail, Daniele shall provide and file all necessary trail easements. The trail easements shall be prepared and submitted to the Town for review and approval. Upon satisfactory completion and execution of documents, the easements shall be filed by Daniele at the Monroe County Clerk's Office with the Town being provided copies of each easement with the liber and pages of filing.

BGR App., Ex. A, Sched. C, § 1(c). The above language from the Amenity Agreement, which BGR cites as the authority for this objection (BGR App. ¶ 58), makes clear that the Developer cannot be required to obtain the easement prior to completion of the work on the Trail (nor would the Town accept the easement prior to that point).

Second, BGR's objection fails to take into account the license agreement from RG&E obtained by Developer in order to complete the necessary work on the Trail (*i.e.* the "valid instrument[] from RG[&]E allowing the Developer to construct the amenity" (BGR App. ¶ 59)). A recorded copy of this license is appended hereto at **Exhibit A**. In light of the Town's preference to delay the easements to use the area for recreation until completion of the Trail work, the RG&E easement/conveyance was not necessary for Developer to complete the work on the Trail, and therefore the license accomplishes what is necessary for Developer to complete the work on the Trail and subsequently finalize the easement with the Town as reflected in the Amenity Agreement.

The Town Board's Resolution of March 28, 2018 approved Developer's application for incentive zoning subject to compliance with the conditions identified in Schedules E-1 and E-2. BGR App., Ex. A at 7. The condition contained in Schedule E-1 is the execution of the Amenity Agreement itself—which establishes that the easement to the Town could not be finalized prior to completion of the work on the Trail. Furthermore, (and unsurprisingly) none of the conditions specifically listed in Schedule E-2 impose an obligation inconsistent with the language contained in the Amenity Agreement regarding the timing of the Trail easement. *Id.* at Sched. E-2. Nor do any of the conditions identified in the Planning Board's site plan approval require the Developer to execute and record the Trail easement at this point in time. BGR App., Exs. B-C. BGR's assertion that condition 41 of the Planning Board approval (that all necessary State approvals be obtained) imposes such an obligation is contradicted by the plain language of the Amenity Agreement, and not borne out by the course of conduct followed by the three involved parties (Developer, RG&E, and the Town)—it would be nonsensical for the Town Board to condition execution of the easement upon completion of the Trail work while the Planning Board required the Developer to obtain such an easement so that it could perform the work. BGR's interpretation on this issue should therefore be rejected.

Cross-Access Easements From Mortgaged Properties

Both BGR and SMA assert the argument that the cross-access easements obtained by Developer are invalid by virtue of the fact that certain of the underlying parcels are encumbered by mortgages. BGR App. ¶¶ 74-77; SMA App. ¶¶ 55-56. This is a mischaracterization of the law and a red herring in this appeal.

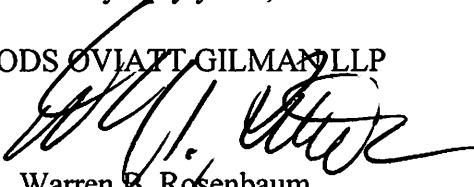
Case law on this subject makes clear that a valid easement can be granted by the fee owner of an estate encumbered by a mortgage, and there is no requirement under the law that the holder of any mortgage encumbering the fee interest must consent in order to render the easement enforceable. See 5 Warren's Weed, New York Real Property § 40.10 (2020) ("Legal capacity of the grantor to make a grant is essential in the creation of an easement. . . an easement can be created only by one who has title to, or an estate in, the servient tenement."); *Lipman v. Vebeliunas*, 39 A.D.3d 488, 490 (2d Dep't 2007) (holding that defendant "inaccurately represented himself to be the owner of the allegedly burdened real property, and was not an agent of the true owner," therefore "he could not create or transfer an interest in that real property," and that were it not for subsequent ratification by the true owner "the easement would [have] be[en] rendered invalid" (citations omitted)).

The existence of the prior recorded mortgage on these parcels is only relevant to the rights, remedies, and defenses as between the mortgagee and the dominant estate holding the easement if there were a foreclosure on the servient property, but the mere fact that the prior recorded mortgage exists does not render the easement invalid or unenforceable as between the fee owners of the servient and dominant estates. See *Alleva v. Tornatore*, 254 A.D. 525, 527 (1st Dep't 1938), *aff'd in Alleva v. Tornatore*, 279 N.Y. 770, 772 (1939) (recognizing that "[w]ithout foreclosure, the [mortgagee] is not entitled to enforce the easement against the defendants, notwithstanding that his mortgage is in default").

We are available to discuss any further questions the ZBA may have related to these appeals.

Very truly yours,

WOODS OVIATT GILMAN LLP



Warren B. Rosenbaum

Please direct responses to Rochester Office

Enc.

TRAIL LICENSE

This agreement made this 1st day of October, 2018 between **ROCHESTER GAS AND ELECTRIC CORPORATION**, a New York corporation with its principal office at 89 East Avenue, Rochester, New York 14649 (hereinafter "RG&E") and **DANIELE SPC, LLC** with offices at 2851 Monroe Avenue, Rochester, New York 14618 (hereinafter "Licensee").

WHEREAS, Licensee wishes to acquire interim rights to develop land owned by RGE for use by the Town of Brighton for the public purpose of walking, hiking, jogging, bicycling and cross country skiing trails or other legal public purpose as approved by the Town of Brighton in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public while RGE negotiates with the Town of Brighton for a permanent trail easement; and

WHEREAS, the State of New York, by way of the Environmental Quality Bond Acts of 1972, 1986 and 1989 and in General Obligations Law Section 9-103, has encouraged municipalities to acquire rights to use land to be used for trails as part of a statewide trail system; and

WHEREAS, RG&E is willing to allow the general public to use a portion of its land known as RG&E Property No. 1106 as walking, hiking, jogging, bicycling and cross country skiing trails in the between the Town of Brighton/Town of Pittsford Border and Highland Avenue in the Town of Brighton if certain conditions are met.

NOW THEREFORE, the parties agree as follows:

In consideration of the sum of One Dollar (\$1.00), and in consideration of the agreements contained hereinafter, RG&E grants without warranty of any kind to Licensee a revocable, non-exclusive license, to a parcel of property known as a portion of **RG&E PROPERTY NO. 1106 IN THE TOWN OF BRIGHTON** (the "Trail"), as shown on the attached maps, designated Exhibit A, attached hereto (hereinafter "Premises"), to construct, maintain, operate, repair, and remove a walking, hiking, jogging, bicycling and cross country skiing trail and other legal public purposes as determined by Licensee (hereinafter referred to as "Permitted Activities".)

It is understood and agreed that this license is granted upon the following terms and conditions:

1. This license is granted solely for use of the Trail for Permitted Activities for a period of 10 years, unless sooner terminated as provided below.
2. Licensee shall have the right to construct, maintain, operate, repair and remove improvements and installations on the surface of the premises and to place thereon directional signs, trail identification signs, regulatory signs, and control structures to prohibit unlawful use of the Trail and to foster and improve enjoyment thereof, subject to the provisions of paragraphs 6 and 7 herein.

3. Licensee shall have the right to protect the Premises from erosion and enhance the scenic value of the licensed Premises by planting and removing trees, plants or shrubs where and to the extent deemed necessary by Licensee, subject to the provisions of paragraphs 6 and 7 herein.

4. Upon the expiration or termination of any of the rights granted in this agreement, the premises of RG&E shall be left in a good condition satisfactory to RG&E. All facilities, improvements or installations must be removed from the premises upon expiration or termination of the License, except that particular facilities, installations or improvements may remain on the Premises upon Licensee obtaining express written approval from RG&E.

5. RG&E makes no representations to Licensee or any other person as to the adequacy, safety or fitness of the Premises for the Licensee's or any other person's intended use nor does RG&E make any representations to Licensee or any other person as to the condition of the Premises. Licensee agrees to inspect the Premises to determine the adequacy, safety and fitness and compliance with laws of the premises from time to time as necessary. Licensee agrees to maintain the Premises and improvements thereon in safe condition and to keep the premises free from hazards. Under no circumstances shall RG&E be required to improve or in any way alter the Premises as a result of or in connection with the License.

6. Licensee shall submit all plans and specifications for any work to be done on the Premises to RG&E at least thirty days before any work is commenced, whether in regard to an original installation or in regard to a subsequent exercise of the rights granted herein. RG&E shall have the right to require changes in such plans and specifications to the extent it deems such changes necessary or desirable. Under no circumstances will RG&E be held to have any knowledge of the adequacy, safety or appropriateness of the plans and specifications. RG&E requires said plans and specifications solely to (a) determine and advise Licensee of conflicts with RG&E's present or planned facilities, and (b) have them available to assist RG&E in its future use of the Premises. Licensee will bear all costs in constructing, maintaining, repairing, operating and removing the improvements, including the planting and removal referred to in paragraph "3" and will reimburse RG&E for any expenses incurred by RG&E made necessary by improvements including, but not limited to, gates to RG&E's access roads and relocation of facilities so as to provide for required clearances. Nothing contained in this License shall prevent RG&E from making improvements at its own expense, if RG&E so desires.

7. Licensee shall notify RG&E of the dates on which any work is to commence and terminate at least five days prior to each such date. If such five day notice is impossible, Licensee shall notify RG&E as far in advance as is reasonably possible. RG&E shall have the right to have a representative present during such work and such representative shall have the right to require work to be halted at any time if he or she reasonably deems it necessary to protect RG&E's property or facilities; however, such right shall impose no duty whatsoever upon RG&E.

8. Licensee shall not cause, nor, insofar as may be reasonably possible, shall it permit persons using the Premises to cause, (a) damage to the premises, including but not limited to natural growth thereon, except as clearly necessary for the exercise of the privileges granted herein, and then only in accordance with paragraphs 6 and 7, (b) littering or befouling of the licensed Premises or other property of RG&E of which the Premises are a part, (c) any fire to be set or started upon or about the Premises, intentionally or accidentally, (d) a nuisance to persons adjacent to the Premises, to other licensees, to RG&E, or to the public in general, (e) improper or illegal conduct upon the Premises, (f) the discharge of firearms on or about the Premises, (g) discrimination fencing or obstruction of any part of the Premises without the written consent of RG&E, (g) discrimination

against any person by reason or race, creed, color, national origin, or sex in the exercise of the privileges granted herein.

9. Licensee shall avoid, and shall be liable to RG&E for, damage to or interference with RG&E's facilities, which are now or hereafter upon the Premises, by Licensee or by persons using the Premises.

10. RG&E shall have the right to use, for any purpose, the space above the Premises and such portions of the Premises on or below the ground as are not actually in use by Licensee. Regardless of impairment of Licensee's rights, RG&E expressly reserves the right to install any of its utility facilities including, but not limited to, electric lines, conduits, wires, cables, guys, poles, towers, anchors and other appurtenances, as well as gas mains, pipes, connections and other appurtenances.

11. Should it appear necessary or desirable (such necessity or desirability being determined solely by RG&E) that RG&E have the use of any portion of the Premises for any of its own public utility uses, and that such use by RG&E would interfere with Licensee's then existing use of the premises, Licensee will, within thirty days after receipt of a written request so to do from RG&E, relocate, at its own expense, such parts of its facilities as are designated in the request to other locations within the Premises of RG&E.

12. Notwithstanding anything expressly or impliedly contained herein to the contrary, RG&E shall have the right, at any time and in its sole discretion, to demand removal of any and all facilities, improvements or installations made or installed by Licensee and/or to revoke and terminate this License and the privileges it confers by giving not less than ten days' written notice to Licensee. Upon expiration of said notice period, this License and privileges herein granted shall be absolutely terminated and extinguished, save for the removal, reimbursement and indemnity obligations contained elsewhere herein. Upon the expiration of said notice period or if RG&E and Licensee determine that a longer period is necessary, Licensee shall have removed all of its facilities, improvements or installations installed by or for it upon the Premises and shall have restored the Premises to a good condition satisfactory to RG&E, all at the expense of Licensee; or, upon the failure of Licensee so to do within said notice period or such longer period as agreed to by RG&E and Licensee, RG&E shall have the right, without further notice, to accomplish, or have accomplished, said removal and Licensee hereby agrees to pay the cost thereof upon demand.

13. It is understood that Licensee shall not construct, maintain, operate or repair its facilities, improvements or installations at any point less than ten feet from RG&E's installations, facilities, equipment, or appurtenances except in any instance where a subsequent installation by RG&E makes such clearance impossible without a relocation by Licensee in which latter instance the then existing clearance will be maintained by Licensee unless paragraph 11 is invoked by RG&E.

14. Licensee shall cause the premises to be used in strict compliance with any federal, state and local statute, law, ordinance, code, rule or regulation.

15. Licensee shall not cause, nor insofar as may be reasonably possible, permit or suffer the storage, use, emission, dumping, depositing, placing, burying or disposing, in any manner, of any hazardous materials or wastes, toxic materials or wastes, and solid, liquid or semi-solid wastes as such terms are defined and regulated under any federal, state or local statute, law, ordinance, code, rule or regulation, and shall indemnify and hold harmless RG&E, its successors or assigns, from any and all claims, demands, loans, damages, cost or expenses (including attorney's fees and court costs) that are incurred or asserted in connection with Licensee's failure to observe such statutes, laws, ordinances, codes, rules or regulations.

16. The Licensee shall provide notice to RG&E within twenty-four hours of the occurrence of any injury, death or property damage upon the Premises and also in the event of any release, emission, dumping, depositing, placing, burying or disposing of any hazardous, toxic or petroleum based wastes or materials or solid, liquid or semi-solid wastes as such terms are defined and regulated under any federal, state or local statute, law, ordinance, code, rule or regulation.

17. Neither RG&E nor the officers, employees, agents or servants of RG&E shall be liable for personal injury or property damage to any person caused by the carelessness, negligence or conduct of Licensee or any other person in the use of the premises connection with this License. Licensee agrees to defend, indemnify and hold harmless RG&E and the officers, employees, agents or servants of RG&E from any and all claims and damages, loans, costs, expenses (including costs of defending any claims, including attorney's fees, and costs of responding to or participating in any Public Service Commission investigations or proceedings brought against RG&E or Licensee because of any knowing or unknowing violations by Licensee of any applicable Public Service Commission investigations or proceedings brought against RG&E or Licensee because of any knowing or unknowing violations by Licensee of any applicable Public Service Commission opinions or regulations to which RG&E is subject), and liability of whatsoever kind or nature arising out of or in any way caused by, directly or indirectly, the existence of this license, the presence of Licensee's facilities on the premises, or the acts or failure to act of Licensee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

18. Licensee shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from an insurance company licensed to do business in the State of New York to cover the premises, designating RG&E, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for bodily injury and with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for property damage. Licensee shall annually furnish to RG&E written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation. The insurance policy shall also provide that the issuing company will provide to RG&E such notice as specified in the notice provision hereof. The rights granted by this License shall immediately terminate upon the lapsing or cancellation of the insurance policy required by this provision.

19. Licensee may not abandon the facilities, installations or improvements it places or causes be placed within or upon the Premises without the prior written consent of RG&E. If Licensee ceases to use or maintain its facilities, installations or improvements and RG&E demands that the facilities, installations or improvements be removed (in the manner set forth in paragraph 12), Licensee shall cause the same to be removed, the Premises to be restored to an orderly condition as close to their original condition as possible, all at the Licensee's expense. Should Licensee fail to so remove within said notice period and RG&E requires such removal, RG&E shall have the right, without further notice, to accomplish, or have accomplished, said removal and Licensee hereby agrees to pay the cost thereof upon demand.

20. At no time shall the activities on, or use of, the premises (or RG&E's property of which the Premises are a part) by Licensee or persons who are sponsored by, guests of, associated with, in the company of, or members or employees of Licensee be deemed adverse or hostile to RG&E, nor shall such activities or uses create in any person any real property interests or prescriptive rights.

21. This license may not be assigned or transferred by Licensee in any manner.

22. RG&E shall have the right to withhold any consent of RG&E referred to herein for any reason or without reason, in RG&E's sole discretion.

23. All notices, demands and requests which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Licensee, addressed to Daniele Family Companies, Attn: Anthony Daniele, 2851 Monroe Avenue, Rochester, New York 14618 or at such other place as Licensee may from time to time designate by written notice to RG&E, or (b) if for RG&E, addressed to Rochester Gas and Electric Corporation, Attention: NY Property Management - Debra Wegman, 89 East Avenue, Rochester, New York 14649 or at such other place as RG&E may from time to time designate by notice to Licensee.

24. Licensee recognizes that RG&E may grant or have previously granted rights to other parties above, on or below the premises. Should any conflict arise, Licensee shall use their best efforts to resolve the same. If questions remain unresolved, RG&E shall be the sole arbiter.

25. This agreement is executed in duplicate; each party has one and each is an original for all purposes.

26. This agreement shall take effect only when signed by both parties and Licensee shall have complied with the insurance obligations set forth herein.

27. Licensee shall not record this License in the County Clerk's Office or any other place designated for recording or filing without the express written approval of RG&E.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed.

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: Debra A. Wegman
Debra A. Wegman
Supervisor, Real Estate

DANIELE SPC, LLC

BY: Anthony Daniele
Anthony Daniele

STATE OF NEW YORK):

SS:

COUNTY OF MONROE):

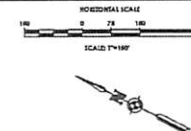
On this ____ day of August, 2018, before me the undersigned, personally appeared **ANTHONY DANIELE**, to me known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Kim C. Hicks
Notary Public, State of New York
Qualified in Monroe County
Registration # 01HI6327600
My Commission Expires July 13, 2019

Kim C. Hicks
Notary Public

APPROVALS: Kevin Becken 12/12/2017 – Yvette LaBombard 1/29/2018 - John Forbush 7/29/2018

AUBURN TRAIL REHABILITATION AND RELOCATION



PA
PASSERO ASSOCIATES
engineering architecture



Client:
Daniele Family Companies
2851 Monroe Ave
Rochester, NY 14618

PASSERO ASSOCIATES
140 West Main Street, Suite 200
Rochester, NY 14614
Phone: 585.425.1100
Fax: 585.425.1101
Principal/Designer: John F. Caruso, P.E.
Project Manager: Jean D. Cusack, P.E.
Designed by: Matthew T. Moore

| Revisions | | |
|-----------|---------|-------------------------|
| No. | Date | Description |
| 1 | 6/15/17 | REVISED FOR PDS |
| 2 | 6/15/17 | REVISED FOR TOWN GRANTS |
| 3 | 6/15/17 | REVISED FOR TOWN GRANTS |
| 4 | 6/15/17 | REVISED TRAIL MAP |

NOTES: 1. THIS DRAWING IS THE PROPERTY OF PASSERO ASSOCIATES. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. 2. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM PASSERO ASSOCIATES.

TRAIL MAP

WHOLE FOODS PLAZA

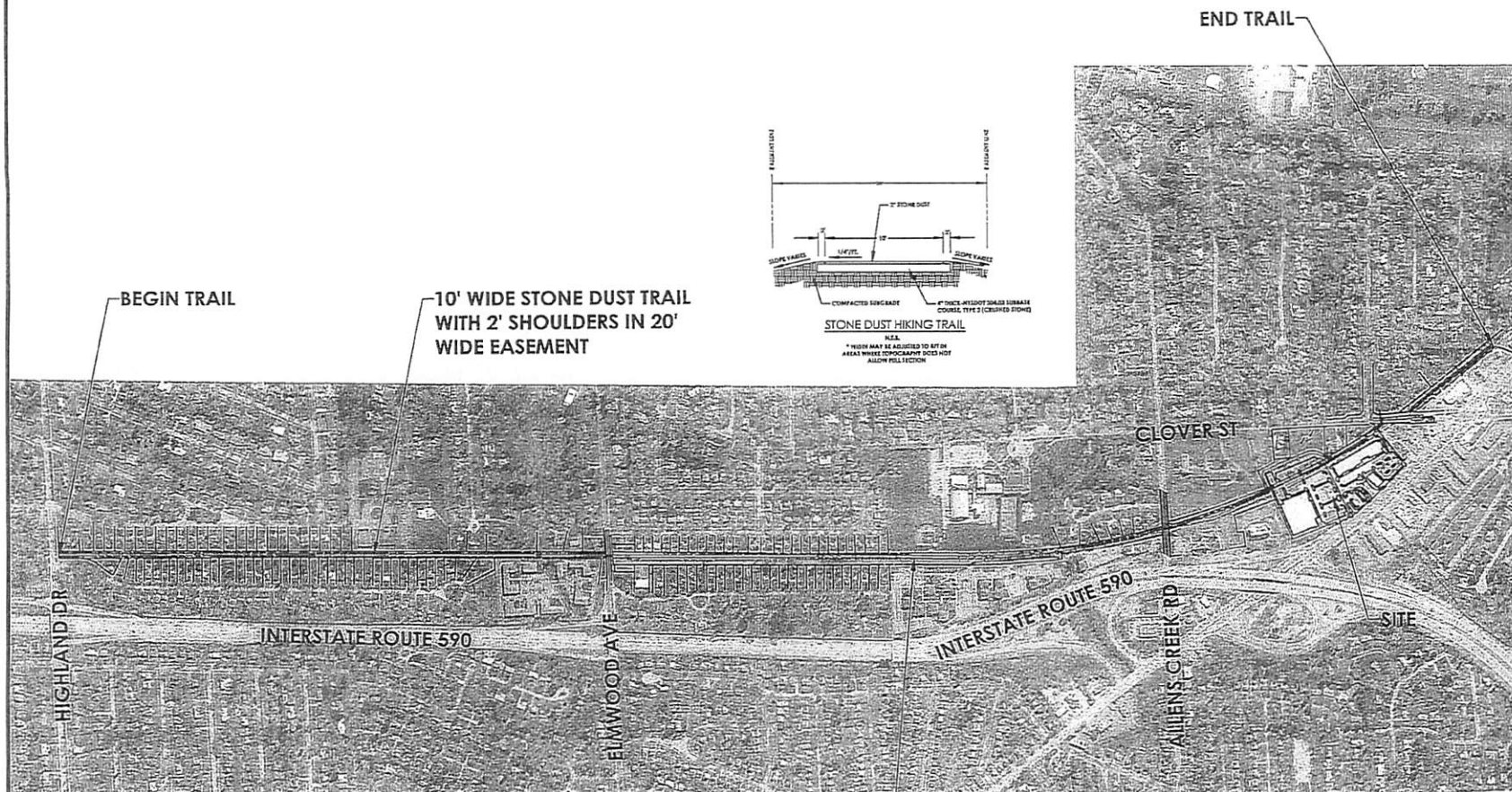
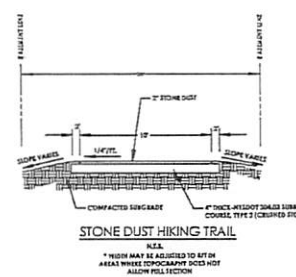
Location: 140 West Main Street, Suite 200
County: MONROE State: NEW YORK

Project No.: 20162290.0001

Drawing No.: C 301 Sheet No.: 1

Scale: 1" = 150'

Date: JUNE 2017



APPROXIMATE LOCATION OF
20' EASEMENT TO THE MONROE
COUNTY WATER AUTHORITY

DAVID M. BURROWS, ARCHITECT
64 ERIE CRESCENT
FAIRPORT, NEW YORK 14450
(585) 766-8220

October 1, 2020

Town of Brighton
Zoning Board of Appeals
3300 Elmwood Avenue
Rochester, New York 14618

Attn.: Rick DiStefano
Re: 257 Dunrovin Lane



Dear Mr. Di Stefano,

In reviewing the ZBA application for 257 Dunrovin Lane, I noticed a slight error; since the current distance from front of house to property line, at the closest point, is 61.6', and the proposed porch is 12', the actual requested setback should be 49.6' instead of 50' as indicated on the application. Note that since the house is angled to property lines, this distance increases to about 50'-10" at the opposite end of the porch.

To be sure the porch fits, the requested setback should be changed from 50' to 49'.

Thank you for considering this correction to the application.

Sincerely,

A handwritten signature in black ink, appearing to read 'David M. Burrows'.

David M. Burrows, Architect

Copy: Mark Anderson

1900 Bausch & Lomb Place
Rochester, New York 14604

P 585.987.2800 F 585.454.3968

Writer's Direct Dial Number: 585.987.2813
Writer's Direct Fax Number: 585.445.2313
Email: wrosenbaum@woodsoviatt.com



ATTORNEYS
woodsoviatt.com

1900 Main Place Tower
Buffalo, New York 14202

P 716.248.3200 F 716.854.5100

October 5, 2020

VIA EMAIL AND MESSENGER

Town of Brighton Zoning Board of Appeals
2300 Elmwood Avenue
Rochester, New York 14618
rick.distefano@townofbrighton.org



Re: Application 9A-04-20

Application of Save Monroe Ave., Inc., et al., appealing the issuance of a building permit (Starbucks Coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740/2750 Monroe Avenue ("SMA Appeal").

Application 10A-02-20

Application of Brighton Grassroots, LLC appealing the issuance of a building permit (Starbucks coffee) by the Town of Brighton Building Inspector (pursuant to Section 219-3) to the Daniele Family Companies, developer of the Whole Foods project located at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe Avenue, a portion of 175 Allens Creek Road and a portion of 2259 Clover Street ("BGR Appeal")

Dear Members of the Zoning Board of Appeals:

We represent M&F, LLC, Daniele SPC, LLC, Mucca Mucca LLC, Daniele Management LLC, and Mardanth Enterprises, Inc., collectively doing business as The Daniele Family Companies (hereinafter the "Developer"), who was recently issued a building permit by the Town of Brighton (the "Town") Office of the Building Inspector. We write in opposition to the appeals filed by Brighton Grassroots, LLC ("BGR") and Save Monroe Ave., Inc., 2900 Monroe Ave., LLC, Cliffords of Pittsford, L.P., Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Anne Boylan, and Stephen Deperrior (collectively "SMA") challenging the building permit issuance, and to provide the Town of Brighton Zoning Board of Appeals (the "ZBA") with information on certain of the arguments asserted in those appeals.

This supplements our September 23, 2020 letter to the ZBA concerning this matter.

October 5, 2020

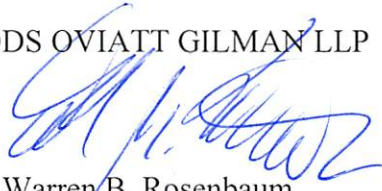
Page 2

We have reviewed the September 23, 2020 letter to the ZBA from Ramsey Boehner, Brighton Town Planner, submitted in opposition to the above-referenced appeals (the "Boehner Submissions"). The Developer concurs in all respects with the Boehner Submissions.

For all of the reasons set forth in the Developer's letter of September 23, 2020 and those contained in the Boehner Submissions, the above-referenced appeals should be denied and the Building Permit upheld.

Respectfully submitted,

WOODS OVIATT GILMAN LLP



Warren B. Rosenbaum

Please direct responses to Rochester Office

WBR/ps



300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 phone
585.563.7432 fax
www.zoglaw.com

BY EMAIL TO rick.distefano@townofbrighton.org
AND PDQ DELIVERY TO
BUILDING AND PLANNING DROP BOX
INSIDE ENTRANCE # 7

October 7, 2020

Town of Brighton Zoning Board of Appeals
2300 Elmwood Avenue
Rochester, NY 14618



RE: IN THE MATTER OF THE APPEAL OF BRIGHTON GRASSROOTS, LLC REGARDING THE
BUILDING PERMIT ISSUANCE

Dear Zoning Board of Appeals,

We represent Brighton Grassroots, LLC., in connection with the above referenced appeal. Enclosed are 10 copies of the 2nd Supplemental Affidavit of Mindy L. Zoghlin, Esq. to the Zoning Board of Appeals, and exhibits A-H along with the top page of the affidavit. The documents are to be hand delivered to the building and planning drop box inside entrance on 10/7/2020.

Please file these documents and return to me the stamped top pages for confirmation of filing using the postage pre-paid envelope provided. Thank you for your courtesy and cooperation in this matter.

Sincerely,

Julie Montana
Julie Montana

Cc Via Email: Mindy L. Zoghlin, Esq.
David Dollinger, Esq.

On Tuesday, October 6, 2020, 4:03 PM, Rob Burke <rburke@bkhs.org> wrote:

To whom it may concern,

We are writing on behalf of our neighbors Serge and Marisa Tsvasman, who are planning to build a garage addition to their home. Serge and Marisa were kind enough to invite us over and walk us through their plans, which we think are wonderful. We give our full approval to their project and wish them the best of luck.

Sincerely,

Robert Burke and Charis Lee
106 Oak Lane



RE: Public hearing

1 message

khensel1@rochester.rr.com <khensel1@rochester.rr.com>

Tue, Oct 6, 2020 at 5:35 PM

To: Rick DiStefano <rick.distefano@townofbrighton.org>

Hello Rick,

Here is my feedback regarding this variance. The document submitted by the contractor shows that the shed extends to the corner of the house. This is not the case. There is at least a 10 – 12 foot gap from the end of the shed to the corner of the house, allowing for plenty of room to place the generator given the specs you provided. Seems like the generator could be placed there and remain within code.

Thanks and call me if you have questions.

Kerstin Henseleit

585 313-7895.



300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 phone
585.563.7432 fax
www.zoglaw.com

VIA FIRST CLASS MAIL AND E-MAIL (rick.distefano@townofbrighton.org)

October 7, 2020

Rick DiStefano
Clerk / Executive Secretary to the Town of Brighton Zoning Board of Appeals
Town of Brighton, Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618



RE: ZBA Appeal – Brighton Grassroots, LLC

Dear Mr. DiStefano:

We represent Appellants Brighton Grassroots, LLC ("BGR" or "Appellants") in the above-referenced appeal related to the Whole Foods/ Monroe Avenue Plaza Redevelopment project (the "Project"). This letter supplements our Appeal dated August 19, 2020, for which the Town of Zoning Board of Appeals has scheduled a public hearing for October 7, 2020. Please ensure that BGR's submissions are made part of the record for the appeals related to this Project.

As we argue in our Appeal, the Amenity Agreement and Incentive Zoning Resolution for the Project require the Developer to obtain "all cross access and other easements necessary to implement and construct the AMP." However, the Cross-access easements over for 2799 Monroe Avenue and 2735 Monroe Avenue are invalid (and therefore the building permit on which they are based is invalid, too,) because, under the terms of the recorded mortgages for those premises, the owner does not have the power to grant easements over the property without the prior written consent of the mortgage holder. In the case of 2735 Monroe Avenue, which is owned by Mamasan's, that means that Mamasan's cannot grant the cross-access easement without the prior written consent of the Mortgagee, Monroe Assistance Fund, LLC.

In a September 23, 2020 letter from Ramsey Boehner and John Mancuso to the ZBA, Mr. Boehner alleges that the Town has no role in determining the validity of the cross-access easement because it is a "private agreement." Mr. Boehner is wrong. The Town Board's Amenity Agreement and Incentive Zoning Approval expressly require the Developer to submit to the Town all cross access and other easements necessary to implement the AMP and empower the Town to review and approve such easements. The further conditions of approval section of the Incentive Zoning Resolution likewise requires the Developer to provide and file access rights for cross-access and cross-parking easements before a building permit may be

issued. These approvals unequivocally give the Town the power and responsibility to determine whether the easements are valid and whether they "provide access rights for cross-access and cross-parking" prior to issuing a building permit.

Additionally, Boehner's argument that the Town has no role in evaluating whether the cross-access easements are adequate to construct and operate the AMP is contradicted by the actions of the Town's own employees, including the Town attorney and Building Inspector. Records produced by the Town reveal that they reviewed and evaluated the sufficiency of other private agreements related to this project, including other cross-access easements. These records include emails between the Developer, the Town Attorney (Mr. Gordon), and even Mr. Boehner, discussing the sufficiency of cross-access agreements between private parties (the Developer and the owners of the AMP properties)!

This completely contradicts the Town's position that it has no role in evaluating "private agreements." To the contrary, these emails, produced by the Town pursuant to a Court order as Town document 9869, show that the Town attorney and Mr. Boehner believed that the Town had the power to consider private agreements affecting the Developer's ability to construct and operate the AMP, and that they in fact did so with respect to the cross-access easements in this case. It would therefore be unfair for the Town to adopt the opposite position now. Indeed, it would be the very definition of arbitrary and capricious for the Town to reach a different legal determination as to its ability to consider the sufficiency of the cross-access easements now when, on the same facts, the Town reached the opposite conclusion earlier on in the same Project.

Accordingly, Boehner had the power and responsibility to examine the Mamasan's mortgage with Monroe Assistance Fund, LLC to determine whether it deprived Mamasan's of the power to grant the cross-access easements required for the AMP. His failure to do so, and his failure to determine that the Mamasan's Mortgage requires the consent of the first mortgage holder, which was not given, renders the Building Permit invalid.

For these reasons, and the reasons set forth in our Appeal and supplemental letters and affidavits, the ZBA must annul the Building Inspector's issuance of the Building Permit.

Thank you for your patient attention to this matter.

Sincerely,

Mindy L. Zoghlin

Mindy L. Zoghlin

cc w/encl.:David Dollinger, Town of Brighton Planning Board Attorney (by email to David@dollingerassociates.com)