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**B R I G H T O N**  
**Z O N I N G   B O A R D**  
**O F**  
**A P P E A L S**

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OCTOBER 7th, 2020  
at approximately 7:00 **p.m.**  
2300 Elmwood Avenue Zoom meeting  
Rochester, New York 14618

PRESENT:

- DENNIS MIETZ, Chairperson
- JEANNE DALE )
- KATHLEEN SCHMITT ) BOARD MEMBERS
- JUDY SCHWARTZ )
- ANDREA TOMPKINS WRIGHT )
- JENNIFER WATSON )
  
- DAVID DOLLINGER, ESQ.  
Town Attorney
  
- RICK DiSTEFANO  
Secretary

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, everyone. Welcome to the October meeting of the Brighton Zoning Board of Appeals. Thank you for attending and also thank you to Jeff and Rick for helping with the technical part of this so that we can again have a Zoom conference and go through our large agenda which is about 17 different cases that we're going to be talking about tonight.

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Let me again, as in our other couple Zoom meetings, ask everyone to try to be concise with questions. We don't want to certainly curtail anybody's ability to say what they need to say, but try to be as succinct as possible in deference to the amount of applications we have to cover tonight.

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Let's call the meeting to order. Can you call the roll, Rick?

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MR. DiSTEFANO: Please let the record show all members are present.

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CHAIRPERSON MIETZ: Okay, Rick. Just for the record was the meeting properly advertised?

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MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Brighton-Pittsford Post of October 1, 2020.

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CHAIRPERSON MIETZ: Okay, very good. We do have minutes of the August meeting. Is there any comments on

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those?

MS. SCHWARTZ: Yes. Member Judy, Page 25,  
Line 24, the middle word should be S-L-A-T-T-I-N-G.

Page 39, Line 12, the second to last word is  
where, W-H-E-R-E. And that's all I have.

CHAIRPERSON MIETZ: Okay. Anybody have  
anything else? Okay, how about a motion for the minutes?

MS. TOMPKINS WRIGHT: So moved.

(Second by Ms. Schwartz.)

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

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

CHAIRPERSON MIETZ: Okay, great. Thank you  
very much.

Rick, is there anything you want to talk about  
before we actually start the applications?

MR. DISTEFANO: No, not unless any of the  
members have any questions reading any of the applications.  
I did send over some communications today, so please keep  
your eye out for those and I don't know if anyone has any  
questions?

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3 CHAIRPERSON MIETZ: Okay, all right. So I  
4 guess we will begin with 9A-03-20, Rick.

5 APPLICATION 9A-03-20

6 9A-03-20 Application of RFM Morgan Properties,  
7 owner of property located at 2125 Monroe Avenue (Brighton  
8 Garden Apartments) for an Area Variance from Section 205-12  
9 allowing for the demolition of two carports (40 stalls)  
10 leaving the property with no covered parking spaces where 40  
11 covered parking spaces are required by code. All as  
12 described on application and plans on file. TABLED AT THE  
13 SEPTEMBER 2, 2020 MEETING - PUBLIC HEARING REMAINS OPEN.

14 MR. DiSTEFANO: This application was heard at  
15 the September 2nd, meeting and had been postponed to tonight.

16 CHAIRPERSON MIETZ: It has been postponed?

17 MR. DiSTEFANO: I'm sorry, it was postponed on  
18 September 2nd.

19 CHAIRPERSON MIETZ: I didn't think it was  
20 postponed.

21 MR. DiSTEFANO: It's on for tonight.

22 CHAIRPERSON MIETZ: Okay. Who do we have  
23 speaking for 9-03-20?

24 DAVID COX: David Cox for Passero Associates.

25 CHAIRPERSON MIETZ: Hi, David. Okay, if

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3 you're ready, we're ready.

4 DAVID COX: Yeah, I am. And I know you have a  
5 lot on the agenda so I will keep it short. The last time  
6 that I -- we went before the Board, there was some concern  
7 with some screening to the south, to that single family  
8 neighborhood to the south. So we went out there, we  
9 submitted some pictures of kind of what the landscaping looks  
10 like back there. And then we proposed a landscaping plan  
11 along that whole southern property line to really beef that  
12 up, evergreen-type species to provide four season screening  
13 for the property. So that was the major thing from that and  
14 we went out and provided that.

15 And then there was also a couple sections of  
16 fence that needed to be repaired and we have called that on  
17 our site plan for those specific areas to be repaired.

18 CHAIRPERSON MIETZ: Okay, good. Would you say  
19 that on a 12-month-a-year basis that would achieve the  
20 desired result?

21 DAVID COX: Absolutely.

22 CHAIRPERSON MIETZ: Okay, great. Do any of  
23 the Board members have any questions? I think we, this is  
24 what we specifically had asked for.

25 MS. SCHWARTZ: Judy, I do have to say I went

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3 out three times between our last meeting and this one, and I  
4 have to say that the garages really were not in as sad a  
5 state as the pictures that you submitted are. They had a few  
6 things in there that normally people would want stored in a  
7 garage, because I don't think they probably have that much  
8 storage space. But much of what I saw, I think there was a  
9 grill, is the kind of thing you would use outside. So to  
10 drag it from the inside or down in a basement or whatever,  
11 and out would be kind of cumbersome. But I found them to be  
12 okay.

13 The other thing I did was I drove around on  
14 New Crest, way down to the very end where the fence is. And  
15 my concern is that when those, if those garages go down a  
16 major portion of the fence is kind of, you know, has space in  
17 between. And so those lights I'm concerned about coming in  
18 down the street when people are coming home and pulling into  
19 those spots. So that's still a concern even though there may  
20 be plantings there, it's still a concern.

21 CHAIRPERSON MIETZ: Okay. Is there any other  
22 questions or comments at this point? We will certainly go  
23 over it in the debate later.

24 Okay, thank you, David.

25 DAVID COX: Thank you very much.

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3 CHAIRPERSON MIETZ: Okay. Is there anyone on  
4 the conference that would like to speak regarding this  
5 application? There being none, then the Public Hearing is  
6 closed.

7 APPLICATION 9A-04-20

8 9A-04-20 Application of Save Monroe Ave., Inc.  
9 (2900 Monroe Avenue, LLC, Cliffords of Pittsford, L.P.,  
10 Elexco Land Services, Inc., Julia D. Kopp, Mark Boylan, Ann  
11 Boylan and Steven M. Deperrior), appealing the issuance of a  
12 building permit (Starbucks Coffee) by the Town of Brighton  
13 Building Inspector (pursuant to Section 219-3) to the Daniele  
14 Family Companies, developer of the Whole Foods Plaza project  
15 located at 2740 / 2750 Monroe Avenue. All as described on  
16 application and plans on file. TABLED AT THE SEPTEMBER 2,  
17 2020 MEETING - PUBLIC HEARING REMAINS OPEN.

18 CHAIRPERSON MIETZ: Okay. Who do we have  
19 speaking on this application?

20 AARON SAYKIN: Thank you, I was -- my audio  
21 was blocked.

22 CHAIRPERSON MIETZ: Okay. Are you the only  
23 speaker on this one, sir?

24 AARON SAYKIN: I think so. Brighton Grass  
25 Roots has a matter on the agenda.

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3 CHAIRPERSON MIETZ: Can you hang on one second  
4 before you start? I just want to for the deference of  
5 everyone listening here just to have this one comment here.  
6 Is that, I just want to make sure everyone understands  
7 there's a very specific concern here as it relates to this  
8 application and we are not really reviewing the Whole Foods  
9 project as a whole. What we are reviewing is a very specific  
10 issue that obviously you all see on the application that was  
11 submitted.

12 So I would just ask that everyone focus on the  
13 issues that relate to that specifically and I will try to  
14 stop other kinds of discussion that really are not relevant  
15 to this. So I hope everyone would conform to that and then  
16 we'll move forward. So go right ahead.

17 AARON SAYKIN: Okay. And when you said I'm  
18 the only speaker, I don't know if members of the public are  
19 going to weigh in.

20 CHAIRPERSON MIETZ: Oh, no, I understand that.  
21 Okay, but go right ahead, though.

22 AARON SAYKIN: Okay, thank you. Mr. Chairman,  
23 members of the Board, I appreciate you taking a minute to  
24 listen to us and to follow up from our discussion last month.

25 There are two issues I want to talk about. I

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3 want to begin with the one that I think is the most alarming.  
4 Particularly in light of the response from Mr. Boehner and  
5 the Special Counsel to the Town, that is the issue of the  
6 cross access easements. And I think members of the Board are  
7 aware that these were required as part of the access  
8 management plan for the project. And as you know we have  
9 shown that there are multiple properties, in particular the  
10 two Mamasan's properties where the first mortgage holder has  
11 not consented to the issuance of that easement.

12 And here is why this is a huge problem. In  
13 reading the letter that was prepared and submitted on behalf  
14 of the Town and the developer, instead of acknowledging that  
15 this is a problem that they're going to somehow remedy, what  
16 they've done is they told the ZBA, well, just ignore it. You  
17 can stick your head in the sand, it's not our problem if  
18 those cross access easements are not worth the paper they are  
19 printed on because we as the Town don't get into that.

20 Well, that's alarming, number one, and number  
21 two, it's totally wrong. I'll explain why it's wrong in a  
22 second, but here's why it's alarming. As I've mentioned,  
23 these are required for the access management plan. One of  
24 the main concerns for this project and the portions of it,  
25 are the impacts on traffic. What's probably going to happen

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3 here, because we've presented and we've shown that there's  
4 been a letter from the holder of the first mortgage on those  
5 property saying that there's already been a default, they're  
6 going to challenge those easements, and they're either going  
7 to prevent them, prevent the developer from working on the  
8 access management plan on those portions of the property or  
9 they're going to go to court and there's going to be lawsuits  
10 and there's going to be resulting litigation anyway if this  
11 permit is affirmed and it's allowed to be issued.

12           Here's why it's wrong. Number one, as part of  
13 the incentive zoning approval, it actually says that the Town  
14 gets to review and approve the easements to make sure they  
15 are correct and valid. And we have evidence based on the  
16 documents that the Town has provided to all of us showing  
17 that its done so, in other instances. To do so in other  
18 instances and to not do so here is the very definition of  
19 arbitrary and capricious.

20           But that also ignores a more fundamental  
21 problem with this, which is the Town has a responsibility and  
22 a duty to make sure that the developer as the applicant for  
23 the permit actually demonstrates that it has valid cross  
24 access easements that will actually hold up. Where's the  
25 analysis of that? Instead what we have are letters from the

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3 developer and letters from the Town saying, well, you  
4 shouldn't pay attention to any of this.

5           Here's the problem. Several weeks from now,  
6 maybe months from now this is all going to blow up and people  
7 are going to ask, well, when the Town and then the ZBA after  
8 it did its independent review, did it simply just stick its  
9 head in the sand as Mr. Boehner and the developer are  
10 encouraging you do to in saying, well, it's not our problem  
11 if there's an issue or a dispute between the party that  
12 issued the easement and the first mortgage holder. We will  
13 have to worry about that later.

14           People are going to wonder why wasn't this  
15 issue addressed now? Why didn't the ZBA in its independent  
16 duty to evaluate what was done force the developer in  
17 confirming that it complied with the law, force the developer  
18 to demonstrate that these cross access easements are valid.  
19 Otherwise the Town Special Counsel and the developer are  
20 asking you to turn your head and to let this blow up later  
21 which is essentially what's going to happen. Because you've  
22 already got a letter, the Town is already on notice, and it's  
23 in the record for the ZBA from the first mortgage holder  
24 saying, you can't do this, this is not valid. And it should  
25 be incumbent upon the Town to require the developer to

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3 confirm that they're valid. There's nothing in there.

4           And as I said before, this is going to blow up  
5 in several weeks or months down the road. I believe it is  
6 the duty of the ZBA not to simply rubber stamp and accept  
7 what had been sent to it, but to actually force the developer  
8 to confirm that it can do this. And it can't do so, which is  
9 why they took in the long detailed letter, or letters the  
10 much shorter one from the developer, and one from the Special  
11 Counsel for the Town, they had all sorts of legal arguments  
12 on different issues. But on this they said, well, you can  
13 simply ignore it.

14           I would submit that the ZBA should not do that  
15 here and I hope that there's been no pressure put on the ZBA  
16 from the council, Special Counsel for the Town or from any  
17 Town officials to do anything short of its duty to  
18 independently investigate this.

19           The second issue I wanted to mention is the  
20 issue of phased construction. So we have a building permit  
21 here that has been issued with no idea when any other  
22 building permits would be issued or any construction on other  
23 parts of the project would begin. In direct violation of the  
24 requirement for this to be single-phased construction all of  
25 the environmental review required it, it was required as part

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3 of the incentive zoning and other approvals, single-phase  
4 construction.

5 In response the Special Counsel to the Town  
6 and the developer has said, oh, this really is single-phase  
7 construction, even though it's going to be spread out over  
8 Lord knows how long. And he said, well, you're actually  
9 confused with something that's know as segmentation. That's  
10 absolutely not true and those of you who are on the Board who  
11 are familiar with SEQRA and segmentation know that's not what  
12 this is.

13 Segmentation is when somebody reveals only a  
14 tiny portion of the project, and gets an approval for that,  
15 so they don't have to do an environmental review for the  
16 project as a whole. That's not what's going on here. What's  
17 going on here is that a single building permit for one of the  
18 five structures on the property had been issued allowing for  
19 the construction to go in phases.

20 To give you a sense of what was expected to be  
21 a reasonable construction timeline, Brighton Grassroots  
22 submitted an affidavit to you and I would encourage you to  
23 take a look at it. Where it contemplated that all of the  
24 building permits would be issued within two months of each  
25 other and that all the construction would be completed on all

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3 five buildings within two months of each other.

4 I ask you this, is the process that's being  
5 approved now at the planning level, is that going to allow  
6 for all the permits to be issued within two months of each  
7 other? The answer to that is no, because it's already been  
8 well over two months since this permit was issued. Is this  
9 contemplating completion of construction, within two months  
10 of each other? Absolutely not.

11 We are talking about permitting and  
12 construction that is going to stretch out now over years.  
13 That is phased, multi-phased phased construction. This is  
14 not single-phased construction. This was supposed to be done  
15 as single phased because that was the impact that was  
16 actually studied.

17 You know the interesting thing is why this  
18 happened in the first place. And I think it's fairly  
19 obvious, the developer cannot build any of the other  
20 buildings because they're too close to the Auburn Trail which  
21 is under litigation, which probably isn't going to be  
22 resolved any time soon. And there's probably going to be  
23 appeals, and there's all sorts of other litigation regarding  
24 the project.

25 So the developer, it appears to me was

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3 desperate to try to get something going and something built,  
4 and the Town for whatever reason acquiesced to that. In  
5 doing so, what they have done is they have green lit  
6 construction to occur over a period of years, not within a  
7 period of two months, which is what was clearly contemplated.  
8 This is not single-phased construction, by the Special  
9 Counsel's definition, single-phased construction could last  
10 over ten years.

11 How is that single-phased construction? It's  
12 not. They're trying to dress this up and scour their record  
13 and the other approvals to try to shoehorn this in and say,  
14 well, we contemplated doing different things, you know, at  
15 different times, but as all part of one process. Well,  
16 again, I would encourage you to look at the schedule that had  
17 been proposed that is attached to Brighton Grassroots'  
18 submission from earlier this week.

19 Two months, we are nowhere near that, and  
20 we're nowhere near that because they're trying to hurry up  
21 and get something built because they know they can't do  
22 anything on the rest of the properties because of all of the  
23 litigation.

24 With that, I thank you for your time. I do  
25 appreciate it and if there are any questions you would like

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3 me to answer I would be happy to do so. I do see some others  
4 who are appearing here that may say something in opposition  
5 and I would just ask if something comes up that I hadn't  
6 already addressed that I might have an opportunity to respond  
7 if needed. Thank you.

8 CHAIRPERSON MIETZ: Okay. So let's start with  
9 the Board members, Jeannie, do you have anything?

10 MS. DALE: Yeah, I do, thank you,  
11 Mr. Chairman, I do have a couple of questions. So one of the  
12 things stated had references to traffic. And so my first  
13 question is, how will the issuance of the building permit  
14 itself for the Starbucks, how would that increase traffic  
15 accidents?

16 AARON SAYKIN: Well, it certainly, it depends  
17 on what's done with respect to construction there, number  
18 one. But, number two, the key here is the access management  
19 plan. Okay? They can't proceed with that if they don't have  
20 the permission, if they don't have actual valid easements,  
21 and the whole idea was this was tied to the issuance of the  
22 permit. It was part of the incentive zoning approval.

23 And what's going to happen is when they try to  
24 actually implement that and construct that, they're not going  
25 to be able to because the first mortgage holder is going to

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3 stop them. He's actually, you know, he's already issued a  
4 notice saying that there was a default.

5 MS. DALE: Okay. Well, let me try to ask this  
6 in a slightly different way then. So, given the nature of  
7 the surrounding property uses, you know, hotels and  
8 restaurants, how will the issuance of the building permit for  
9 the Starbucks detrimentally or noticeably increase traffic to  
10 and around the project area and the adjacent neighborhoods?

11 AARON SAYKIN: The issuance of the permit  
12 alone?

13 MS. DALE: Yeah.

14 AARON SAYKIN: Well, it would depend on what  
15 vehicles are coming and going on the property. And it would  
16 also depend, it would certainly delay -- the absence of a  
17 valid easement would delay the developer from implementing  
18 the access management plan which was designed to mitigate  
19 traffic problems there. I guess what I'm saying is, if you  
20 begin the process of construction and building, without  
21 ensuring as was required under the incentive zoning approval,  
22 to make sure that the access management plan is also  
23 underway, then it's going to cause huge problems.

24 MS. DALE: Okay. Well, okay. So, again,  
25 we're talking about the surrounding properties and the nature

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3 of those surrounding properties, we're talking about  
4 restaurants, hotels, and the like. So how would the issuance  
5 of the building permits for Starbucks, how would that  
6 detrimentally or noticeably decrease the appellant's ability  
7 or the ability of their customers to safely and conveniently  
8 access the various businesses or homes?

9 AARON SAYKIN: It would depend on the  
10 circumstances. It would depend on the vehicles that are  
11 coming onto the site, that are allowed to come onto the site.  
12 It would depend on what they're doing with construction. I  
13 don't know -- I don't have a specific answer for you, but  
14 what I'm saying is that it would depend on the circumstances.

15 And also what I'm arguing is also that it is  
16 going to affect the access management plan. They cannot  
17 carry out the access management plan, which was part of the  
18 incentive zoning approval.

19 CHAIRPERSON MIETZ: Okay.

20 MS. TOMPKINS WRIGHT: This is Member Wright.  
21 I just wanted to interject something and just kind of, as  
22 long as we're talking about these access easements and what  
23 town personnel is required to do to confirm that these are  
24 valid. How far would you say, would you argue that it's  
25 their responsibility? Do they have to pull a title report

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3 and look for any mortgages on the property? Do they have to  
4 pull an organizational chart from the company and see who has  
5 signatory authority to confirm who signed the easement? I  
6 mean, where's the line that you think that they have to  
7 fulfill their requirements but don't have to go over?

8 AARON SAYKIN: Well, I think that's a fair  
9 question, but I want to point out what's actually occurred  
10 here, which is this: The Town actually has a letter from the  
11 first mortgage holder here, so it's not as though we're, you  
12 know, look, you know, I may have an opinion on the due  
13 diligence that the developer should have to do. But that's  
14 not even the question or the issue here. The question with  
15 the issue is, you actually have knowledge of this problem and  
16 the developer has not demonstrated that it's actually  
17 resolved this particular problem, which was the one that we  
18 raised in our papers.

19 So I would say this, that the line at minimum  
20 is where the Town and the ZBA have actual knowledge of a  
21 specific issue here, right? Where you have the first  
22 mortgage holder reaching out and issuing a default on these  
23 and that comes to your attention, I would say that you can't  
24 do what the Special Counsel to the Town and the developer are  
25 asking you to do, which is stick your head in the sand say,

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3 well, it's their problem.

4 I would say in an instance where you have  
5 somebody affirmatively raising something to you that the  
6 Board has a duty to require the developer to confirm that it  
7 can do that. In this case it can't. The reason we know it  
8 can't is it would have said otherwise in the long detailed  
9 papers if it could. Instead, the best it could come up with  
10 is, look, you don't really have to pay attention to this.  
11 And you know what, when this blows up later and causes a huge  
12 problem everybody is probably going to be asking why.

13 MS. TOMPKINS WRIGHT: So the argument isn't  
14 that it shouldn't have issued that permit, when it issued it.  
15 Because the time it issued it was a valid -- or it was a  
16 valid easement [inaudible] that appeared on its face to be,  
17 you know, perfectly, properly issued by the property owner.  
18 And at least in [inaudible] against the property owner and  
19 likely any future purchasers of the property, your argument  
20 is that months later, when they got a letter from a mortgage  
21 holder -- questioned to reverse the decision, not that it was  
22 issued improperly when it was issued.

23 AARON SAYKIN: I don't think it was months  
24 later, but my point is that when there's specific knowledge  
25 of this problem that the Town cannot simply stick its head in

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3 the sand, and number one.

4           Number two, it has a general duty to confirm  
5 that the developer has complied with all of the laws,  
6 including those pertaining to incentive zoning and the  
7 incentive zoning approval.

8           Number three, the incentive zoning approval  
9 actually says that the Town gets to review and approve the  
10 easements. I know the developer was aware of this issue and  
11 so the developer, maybe you should ask the developer why it  
12 handed this to the Town knowing that there was this issue and  
13 knowing there's a first mortgage holder out there.

14           CHAIRPERSON MIETZ: Okay. Andrea, do you have  
15 other questions?

16           MS. TOMPKINS WRIGHT: Yes. This kind of  
17 relates to some of what -- at the last meeting, not so much  
18 arguments you're presenting tonight, but there were some  
19 safety concerns present. One, there was concerns regarding,  
20 you know, construction fencing brought up by one of the  
21 Town's, I think it was one of the Town's members of the Town  
22 and just general safety concerns, in general with issuing of  
23 the building permit both generally and for just Starbucks  
24 building. Are you -- is the applicant arguing that there are  
25 safety concerns with issuing of these building permits

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3 specifically Starbucks, the whole permit, or with the fencing  
4 issue?

5 AARON SAYKIN: I think some of that had been  
6 raised actually by Brighton Grassroots. So, but certainly we  
7 would join in anything they said. But I wouldn't have  
8 anything specific to say on that beyond what had already been  
9 submitted.

10 MS. TOMPKINS WRIGHT: Okay. And one quick  
11 question about timing. I have seen the timeline, you know,  
12 what Brighton Grassroots argues was the timeline, but  
13 certainly in this environment we would anticipate that a  
14 timeline might get stretched a little bit. Is there a  
15 timeline that you think would be appropriate for it to not be  
16 considered, or your client would consider an appropriate  
17 timeline for it not to be considered phase construction, it  
18 would just be, you know, a process of construction?

19 AARON SAYKIN: Well, at the risk of answering  
20 your question with another question, I think the more  
21 appropriate question for the developer is, what's the  
22 timeline for the other buildings. And I think the answer  
23 you're going to get is, well, we don't know because it's all  
24 tied up. And it's probably going to take several years, even  
25 if they're successful in all of the litigations. And my

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3 point is only this, in a roundabout way of answering your  
4 question is, of course this is going to be phased because  
5 it's going to occur at different times over a period of  
6 years.

7 CHAIRPERSON MIETZ: Okay. Anything else,  
8 Andrea? Okay. Kathy, do you have anything?

9 MS. SCHMITT: I do, just a few questions. And  
10 first, thank you for coming and expressing this because it  
11 has helped me understand the papers a little bit better.  
12 While you didn't focus on it as much, in the papers there's a  
13 lot of talk about harm to the various groups if this building  
14 permit is allowed to go through. Could you talk to me a  
15 little bit about the harm that you and your group will be  
16 experiencing versus the general public?

17 AARON SAYKIN: Sure. Based on their proximity  
18 to the project -- well, I'll give you a perfect example with  
19 respect to the phased construction. One of the issues with  
20 respect to SEQRA for example, is they review and determine  
21 what the impacts of the project are going to be. And one of  
22 the things they talked about to impact -- or to mitigate the  
23 impacts of the project was construction in a single phase.  
24 It literally says that inside the review and the approval.

25 If this approval is allowed to occur, if these

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3 permits and the building is allowed to occur in multiple  
4 phases, the impacts of those construction, particularly for  
5 businesses and residents that live nearby, okay? The impacts  
6 of those are going to be different and more significant than  
7 the impacts that were already contemplated under the reviews.  
8 That's one example I can give you.

9 MS. SCHMITT: And can you let me know, is  
10 that -- are you arguing that this harm because of the phasing  
11 somehow affects your group in particular, or are you talking  
12 about kind of just generally Brighton residents driving down  
13 Monroe Avenue and Clover?

14 AARON SAYKIN: No. Specific to the  
15 individuals and businesses in close proximity to the site of  
16 the project. I mean, just construction alone is disruptive.

17 MS. SCHMITT: To the average person driving  
18 down Monroe, the business members on Monroe Avenue?

19 AARON SAYKIN: Well, I can give you a general  
20 example. If there's any kind of disruption in traffic or  
21 whatnot it can affect the adjoining businesses, it can affect  
22 the residents living nearby, and these are certainly close  
23 enough to be within the sufficient proximity in the zone of  
24 interest.

25 MS. SCHMITT: Has your group done any study --

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3 I'm just trying to find out if we know for sure that this is  
4 going to happen or if this is something you just feel is  
5 going to happen?

6 AARON SAYKIN: Well, I'm not sure what you  
7 mean.

8 MS. SCHMITT: Is there something that is  
9 this -- is what you are looking, the harm regarding this, if  
10 it was done what you say, in these phases over time, do you  
11 have anything substantive that shows that this really will  
12 create a harm?

13 AARON SAYKIN: Respectfully, the study was  
14 done by the Town and the developer under SEQRA about the  
15 impacts of it. And acknowledge that multi-phased  
16 construction would have impacts, and the way to mitigate  
17 those impacts was to have construction in a single phase.

18 So I mean, respectfully, that's already been  
19 cited.

20 MS. SCHMITT: And you were talking about the  
21 issue with regard to not having a signature of the first  
22 mortgage holder. And I was going through all of the papers  
23 last week and then this week again, and then today, and I was  
24 trying to find something that said you had to have the  
25 signature of the first mortgage holder. Do you have anything

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3 that says that is a requirement?

4 AARON SAYKIN: We have a letter from the first  
5 mortgage holder. I believe it's a contractual requirement  
6 for them to have that permission, and they don't have it.  
7 And again, the Town's been notified of this. You know, this  
8 isn't an instance where this is something that has just been  
9 randomly picked, the Town is actually on notice about this.  
10 And it's on notice that the first mortgage holder is going to  
11 exercise those rights.

12 CHAIRPERSON MIETZ: Okay.

13 MS. SCHMITT: Okay, thank you.

14 CHAIRPERSON MIETZ: All right, Kathy, thank  
15 you. Judy, do you have anything?

16 MS. SCHWARTZ: No. I was just kind of looking  
17 at the chart that has been sent out by the Town about, you  
18 know, what we're talking about, the cross easement.

19 So you feel that the mortgage holders are  
20 relevant with respect to issuing the building permit and the  
21 cross access easements? And also you feel that things are  
22 not sufficient to implement and construct the AMP, is that a  
23 fair summary of what --

24 AARON SAYKIN: Yeah, I think that's fair.

25 MS. SCHWARTZ: Okay.

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3 CHAIRPERSON MIETZ: Okay. Jen, do you have  
4 anything?

5 MS. WATSON: I'm trying to sort things out.  
6 Sometimes the word project is being used and I'm just curious  
7 if you could define what you mean by the project? Are we  
8 specifically talking about the permit for Starbucks here?

9 AARON SAYKIN: Well, so, yes, we're -- when  
10 I'm talking about these issues I'm talking about these issues  
11 that I've raised with respect to the Starbucks permit, which  
12 is what is before the ZBA.

13 When I'm talking about the project, I am  
14 talking about the overall construction of the project because  
15 it is supposed to be single-phased construction and that's  
16 why I'm referring to the project, generally. And I would  
17 respectfully submit that in issuing the building permit under  
18 the time frame and what's contemplated here, just for the  
19 Starbucks, that that's clearly indicative of a multi-phased  
20 construction for the entire project, if that makes sense.

21 MS. WATSON: It does, yeah. My other question  
22 has to do with, I'm wondering how does the issuance of the  
23 permit for the Starbucks specifically interfere with the use  
24 of the Auburn Trail, or does it?

25 AARON SAYKIN: You know, that's a good

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3 question. I think that's a little bit different. What  
4 really the issue is, I think that that property or that  
5 portion of the project is probably the furthest from the  
6 Auburn Trail on the site. But what we are saying is that  
7 they can't build the other buildings right now, they can't  
8 move forward around the rest of the plaza because all of that  
9 is tied up in litigation.

10 So I think the idea here was, and I think it's  
11 obvious that the developer comes to the Town and says, we  
12 need to get something going, we need to get one of these  
13 built. And the Town goes, okay, well, maybe this one isn't  
14 as tied up or isn't as difficult and so we'll let you do this  
15 one. But the problem is the end result of that is  
16 multi-phased or phased construction as opposed to a single  
17 phased, because nobody can give you a timeline.

18 Certainly not a timeline of completion within  
19 two months, right, which is what was contemplated. Nobody  
20 can give you that timeline for the rest of the buildings on  
21 site. And the rest of the buildings on site will be  
22 constructed over various times resulting in impacts, right,  
23 of construction over and over and over again in phases as  
24 opposed to what was considered and what was approved which  
25 was single-phase construction to mitigate the impacts of the

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3 project.

4 CHAIRPERSON MIETZ: Okay. Anything else, Jen?

5 MS. TOMPKINS WRIGHT: Can I just real quick,  
6 in your submittals there were also objections based on  
7 failure to get a letter of credit, failure to get New York  
8 State DOT permits. You haven't mentioned those tonight. Are  
9 you satisfied with the response of those or are you  
10 maintaining your objections to those issues as well?

11 AARON SAYKIN: We would only maintain  
12 objections to the extent that there would be problems with  
13 them. But we have been told subsequently that the letter of  
14 credit had been provided and shown that. We raise that, I  
15 want you to know, we raise that in good faith because as you  
16 probably saw, the Town was required to turn over, you know,  
17 essentially the entire file to us. And, you know, we all  
18 went through it and that letter of credit was not in the  
19 file. You know, and it was supposed to be everything related  
20 to it, so that's why we brought the claim.

21 Now, to the extent they've demonstrated to you  
22 that the letter of credit exists, and I think you've seen  
23 something obviously we would not pursue that anymore.

24 And, I'm sorry, what was the other -- oh, the  
25 DOT approval.

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MS. TOMPKINS WRIGHT: Yes.

AARON SAYKIN: My understanding is, that that did come or something to that effect came after the permit was issued although it did in fact come.

CHAIRPERSON MIETZ: Okay. Jen, did you have anything else? No.

MR. DOLLINGER: I have a couple questions.

CHAIRPERSON MIETZ: Okay.

MR. DOLLINGER: So, is this particular -- is the Starbucks property exempt from the litigation in some way, not involved in the litigation?

AARON SAYKIN: No, it should not. That's not true. I think that there was a calculation that maybe this was the farthest from the trail that this would be the easiest to do. And also, I think they probably want to open it quicker because next to the Whole Foods this is probably going to be the highest volume generator of traffic for the property.

MR. DOLLINGER: So but then, I don't understand that, in the, I mean, it seems to me that your argument that they can't continue to pull permits and do this in a short period of time is because the rest of the property is tied up in litigation. And I don't see that argument when

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3 this is involved in the litigation and they're pulling a  
4 permit on this one.

5 AARON SAYKIN: Well . . .

6 MR. DOLLINGER: How do you explain that?  
7 You're conjecturing that it's necessarily phased because  
8 there's so-called litigation involving the rest of the  
9 property. Seems to me the litigation is on this property too  
10 and they're not phasing on this property, they're going  
11 ahead.

12 AARON SAYKIN: Well, I'm curious as to what's  
13 going on, you know, with the other properties because we  
14 don't see any indication of any movement toward a permit on  
15 the other properties or construction on the properties. And  
16 I think, you know, candidly that speaks for itself.

17 MR. DOLLINGER: But we can, clearly the  
18 litigation isn't a complete impediment because we're doing it  
19 on this one, right? So my other question is, I'm not sure  
20 how you can imply, again, kind of in the same vein, kind of  
21 imply from the issuance of this permit a sequence? I mean,  
22 we really don't know it's conjecture, and I'm not sure, it's  
23 just conjecture where the next permit is going to be issued  
24 and such, that creates an idea that it might be phased or  
25 whatever. But all we have really in front of us now,

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3 correct, is just this permit, right?

4 AARON SAYKIN: That's correct, but this permit  
5 cannot be issued in this sense that the project cannot be  
6 constructed in phases. And this permit would allow that to  
7 happen. And --

8 MR. DOLLINGER: But why, that's my question.  
9 I mean, are you suggesting that we have to issue all of the  
10 permits for all the buildings at once?

11 AARON SAYKIN: No, not at the same exact time.  
12 But I think the estimate from Brighton Grassroots on what  
13 would be considered single-phased construction in terms of  
14 permit approval and completion was within a couple months of  
15 each other. And I think that gives a fairly good guidepost  
16 as to what was actually contemplated.

17 What we have here and respectfully, I don't  
18 think is conjecture, it's we have so little idea of when the  
19 other buildings are going to be built that they're not even  
20 talking about when that's going to occur. We're talking  
21 years down the road, otherwise they would have rolled this  
22 together and they haven't done that. They are trying  
23 desperately to get something built on the property. I would  
24 probably do the same thing, if I were in their shoes. It  
25 certainly makes sense. I can understand why the Town would

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3 want to show some momentum on it. I think, you know, maybe  
4 it's either well intentioned, but it's not legal the way they  
5 are doing it.

6 MR. DOLLINGER: But other than the arguments  
7 that you are making today, are there legal impediments to  
8 them pulling a building permit for one of the other  
9 buildings? I mean, other than the ones that you are  
10 presenting tonight, is there some further legal impediment  
11 that doesn't allow them to pull a permit for another  
12 building?

13 AARON SAYKIN: Well, there's legal and there's  
14 practical. Obviously legally they would have to comply with  
15 all of their requirements of the incentive zoning approval,  
16 et cetera. But there's also an issue of financing to pull  
17 the permits. And my sense is, they would have significant  
18 trouble getting financing for the construction of the whole  
19 project, right, while all of these lawsuits are pending.

20 And so, you go back and you ask yourself  
21 again, why are we doing this just this one building here that  
22 maybe can generate enough traffic and revenue at least to  
23 give us some money, you know, to keep going.

24 That's -- look, I think everybody can sort of  
25 sense what's truly going on here. And I think the reason why

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3 the response from the Town Special Counsel was so long is  
4 because they are concerned that we've raised very serious  
5 issues. And, you know, I've said this at the beginning and  
6 I'll say it again, I believe it is incumbent upon this Board  
7 to not only review what was done de novo, anew, as though you  
8 are doing it for the first time. But to force the developer  
9 to confirm that it's going to comply with the law and have  
10 the ability to do this including the fact that those cross  
11 access easements are actually valid.

12 MR. DOLLINGER: Well, with respect to the  
13 cross access easements, so the granting of the easement is  
14 just like a deed, right? It is a transfer of an interest in  
15 a real property, correct? And I'm just not clear on how you  
16 can argue that, so if I buy somebody's piece of property and  
17 it has a mortgage on it, my conveyance is somehow illegal or  
18 not effective, or not -- just because you transfer a property  
19 that has a mortgage on it, an easement is no different than a  
20 deed.

21 So if I transfer my deed to you and it has a  
22 mortgage on it, I don't see how that makes my transfer of my  
23 deed, you know, I transfer my house to Andrea, I don't see  
24 where the fact that it has a mortgage somehow vitiates the  
25 fact that I gave her the deed and she now owns my house.

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3 AARON SAYKIN: Because in this instance they  
4 do not have the legal contractual authority to actually do  
5 that conveyance without the approval. And that's what was  
6 indicated in the letter that the Town is aware of and had  
7 notice of.

8 MR. DOLLINGER: Yeah, correct. There's no  
9 question that that's a violation of their agreement. But if  
10 I have a right of first refusal on my property and I sell it  
11 to Andrea, and that violates that right of first refusal  
12 which I'm supposed to go and give my neighbor the opportunity  
13 to buy the property first, that doesn't make my deed to  
14 Andrea any less effective.

15 So I'm just not -- it seems to me, I guess my  
16 question is, how do you respond to the fact that, you know,  
17 it really is a contingent interest that the deed is effective  
18 as of the date of the delivery, and the fact that those  
19 easements have mortgages, it could be -- it doesn't vitiate  
20 the -- I can drive down these easements, right?

21 AARON SAYKIN: They can foreclose and  
22 extinguish it. And we should --

23 MR. DOLLINGER: Of course, that's true in  
24 every instance, but I can still drive down these easements,  
25 right? Is anybody -- you know, I can drive down these

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3 easements. In fact, no one -- can anybody prevent me?

4 Andrea gives me an easement next to my street, I'm going up  
5 and down that easement, I mean, is it somehow someone can  
6 prevent me from doing that?

7 AARON SAYKIN: Respectfully, sir, well, yes.  
8 But, respectfully, sir, here is the problem, this can be  
9 foreclosed on. We've already had notice of a default, and  
10 this is what I'm talking about when this is going to blow up  
11 and they actually don't have valid easements. When I said, I  
12 think I said a month ago they're not going to be worth the  
13 paper they're printed on, that's what I mean.

14 And it should, you know, the -- I understand  
15 maybe, and maybe I sense a little frustration on the part of  
16 the Town saying, well, gosh, we have to confirm this and we  
17 have to confirm that. I think the Board Member Wright was  
18 getting at that, right, when she was asking about that?

19 But what I would submit to you is, it  
20 shouldn't be the burden on the Town, the burden on the Town  
21 should be to put the developer through the paces, to confirm  
22 that all of this is kosher and in here it's not. You know,  
23 that's the bottom line.

24 CHAIRPERSON MIETZ: Thanks, okay. David, are  
25 you set?

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MR. DOLLINGER: Yes, all set, thank you.

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CHAIRPERSON MIETZ: Great. Is there any other Board members or staff that want to talk anymore about this application at this point?

6

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Okay. So then at this point let's see who in the Zoom audience, virtual reality here, would like to speak related to this application? Please make your feelings known if you would like to.

10

11

MR. DiSTEFANO: I think Mr. Boehner would like to speak.

12

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CHAIRPERSON MIETZ: Okay.

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15

RAMSEY BOEHNER: Good evening, I'm Ramsey Boehner, Town Planner. In attendance with me tonight is Mike Guyon, Commissioner of Public Works, and John Mancuso of the law firm of Weaver, Mancuso in Brighton.

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Chairman, in order to avoid duplication of our presentation of my responses to the allegations made in this application, and the Application 10A-02-20, I respectfully request that we have the opportunity to respond to both appeals during the hearing of 10A-02-20. Do you have a problem with that?

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CHAIRPERSON MIETZ: No. Only from the perspective that if you feel that the comments are relevant

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3 to both. As you can see, they are two separate applications.  
4 So we cannot hear them together, but if you want to do it  
5 that way and speak during 10A-02, that's fine.

6           RAMSEY BOEHNER: Both, they raise very similar  
7 comments from what I can see.

8           CHAIRPERSON MIETZ: Yes. In deference to time  
9 that would be fine.

10           RAMSEY BOEHNER: Okay.

11           CHAIRPERSON MIETZ: So are you holding at this  
12 point then?

13           RAMSEY BOEHNER: Yes, and we will hold to the  
14 later --

15           CHAIRPERSON MIETZ: Okay, that's great. Okay.  
16 So who else would like to speak regarding this application?

17           MR. DiSTEFANO: Mr. Rosenbaum.

18           WARREN ROSENBAUM: Yes. This is Warren  
19 Rosenbaum. Good evening, ladies and gentlemen of the Zoning  
20 Board of Appeals. I thank you for allowing me to make some  
21 comments. I'm a member of the firm of Woods, Oviatt, Gilman  
22 and we represent the developer with respect to these appeals.

23           We have received the letter of Mr. Boehner and  
24 all of these attachments to the letter and we find it to be  
25 very thorough, well reasoned, and as I indicated in my most

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3 recent letter to the Board, we concur in all respects with  
4 the -- with Mr. Boehner's position, concerning legality and  
5 the correctness of the issuance of the building permit for  
6 the Starbucks.

7           There are two points I want to emphasize some  
8 of which Mr. Saykin has touched upon, and some of which were  
9 raised by comments of members of the Board or staff. The  
10 first thing I wanted to address was the questions of the  
11 trail easements. I listened to what Mr. Dollinger had say,  
12 the Zoning Board's attorney and I completely agree with what  
13 Mr. Dollinger is saying. That is, those cross access  
14 easements are completely valid. There is nothing that  
15 Mr. Saykin has said either in his oral submissions or in the  
16 written submissions made by Mr. Saykin on behalf of his  
17 client, Save Monroe, including any -- the lack of any legal  
18 authority that would vitiate or call into question the  
19 validity of those easements. Nobody is challenging the fact  
20 that the easements were granted by the actual owners of the  
21 property that they had absolute right under law to grant  
22 rights to their property. There's no -- nobody has raised a  
23 question as to the content and the recording of those  
24 easements and the Town was rightly satisfied to receive them  
25 and accept them.

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3           Everything else that Mr. Saykin has to say  
4 with respect to those easements is speculation, as to what  
5 may or may not happen in the future. And the Town was  
6 correct in following the procedure that it adopted and  
7 accepted the easements.

8           So for those reasons and the legal authority  
9 cited both in Mr. Boehner's letter and in my letter, we would  
10 respectfully request the Board to deny that aspect of Save  
11 Monroe's appeal.

12           The other thing I wanted to talk about is the  
13 trail easements from RG&E. I didn't hear Mr. Saykin address  
14 those in particular in his oral presentation, but there was a  
15 question raised concerning the amenity agreement and whether  
16 or not it was necessary for the developer to obtain a  
17 recorded easement from RG&E for the trail before any building  
18 permits were issued.

19           And we agree with Mr. Boehner's presentation  
20 that the amenity agreements did not require the easements be  
21 recorded prior to the issuance of a building permit. And the  
22 Town rightfully issued the building permit for Starbucks.

23           I want to address one thing in particular that  
24 Mr. Saykin mentioned that I wasn't planning on talking about  
25 until Mr. Saykin raised the issue. Mr. Saykin has argued

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3 that this project in effect is taking place in multiple  
4 phases. And what he's pointing to is that a building permit  
5 was issued for Starbucks, but no other building permits have  
6 been issued and he argues, he concedes that the reason that  
7 the other building permits have not been issued and that  
8 perhaps the developer has not applied for the permits is  
9 because of the incessant litigation his client has  
10 commenced -- his client and BJAR has commenced against the  
11 developer.

12 So what he's saying is that you're not  
13 building this project fast enough and the reason you're not  
14 building this project fast enough is because of all the  
15 litigation we brought against you. So SMA, Save Monroe, is  
16 basically creating a catch 22 for us. The builder would love  
17 to be able to pull building permits for all the rest of the  
18 buildings on the project and paying whatever financing the  
19 developer might need for that purpose.

20 But as Mr. Saykin readily acknowledges, that's  
21 become problematic because of the litigation his client has  
22 commenced and others. So, Mr. Saykin and his client cannot  
23 create their own dilemma that they've created for the  
24 developer. So we would ask the Board to disregard that  
25 argument because they should not allow these litigants to

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3 create a catch 22 for the builder. I think the Town can  
4 recognize the dilemma that this litigation has created. And  
5 we ask the Board to affirm Mr. Boehner's determinations, the  
6 issuance of the Starbucks building permit, and in all  
7 respects deny the appeal from Save Monroe. That's all I have  
8 to say, unless there's a question.

9 CHAIRPERSON MIETZ: Thank you, Mr. Rosenbaum.  
10 Okay, is there anyone else who would like to speak please?  
11 Okay, Mr. Zoghlin there, I guess is.

12 JACOB ZOGHLIN: Hello, this is Jacob Zoghlin,  
13 I represent Brighton Grassroots. I'll be speaking on the BGR  
14 appeal and I would just like say that we support SMA in their  
15 appeal. And I will save my comments which also relate to  
16 SMA's appeal, until then, just as Mr. Boehner is doing.

17 CHAIRPERSON MIETZ: That would be great, thank  
18 you very much. That helps in deference of time here. Okay,  
19 thank you.

20 Is there anyone else who would like to speak  
21 regarding 9A-04-20?

22 DANNY DANIELE: Yes, Danny Daniele.

23 CHAIRPERSON MIETZ: Hi, Dan.

24 DANNY DANIELE: Just quickly, I want to add,  
25 the gentleman, I forget his name, from Buffalo representing

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3 the opposition, Mr. Saykin mentioned that we're phasing the  
4 project and we've only received the building permit for  
5 Starbucks. Obviously, they're trying to paint a picture of  
6 just Starbucks, what they don't want to tell you is the whole  
7 truth, which is unfortunate. And that's why I decided to  
8 come on.

9 If they were to take the time to look at the  
10 first permit they will see that it's the building for  
11 Starbucks, but more importantly it's a permit to do the  
12 entire site work for the full ten acres of the parcel. Which  
13 includes well over four million dollars worth of site work  
14 which is a process that takes about six to seven months.

15 And because of COVID, and because of the  
16 weather and everything else, obviously it's going to take  
17 some more time. The site work is probably the most difficult  
18 part of the project, which we've taken the considerable chunk  
19 out of that so far. Once we're complete with the site work  
20 putting up the other buildings literally takes less than  
21 90 days.

22 Of course, the gentleman from Buffalo doesn't  
23 understand as much perhaps as we do with construction, site  
24 work is the larger chunk of that. And the fact that he keeps  
25 on saying that we're phasing this project, just like anything

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3 else we do in our life, there might be different steps in  
4 getting the project done, but it is far from being phased.

5           And although the gentleman from Buffalo is  
6 saying that he has no idea when this project is going to get  
7 done, our hope is to have the entire project complete by  
8 summer of next year, and we have -- contrary to the gentleman  
9 from Buffalo who mentioned that he doesn't know if we have  
10 financing or he doesn't think we can get financing. We have  
11 full financing on the whole project.

12           Some of you may recall a few months ago,  
13 Wegmans was forced to make a statement that they're funding  
14 the opposition, and Mr. Saykin earlier said, I think your  
15 words, Mr. Saykin, were, you know, I think we can all sense  
16 what's really going on here.

17           And I think what we can sense is really going  
18 on here is we have multiple attorneys from Buffalo being  
19 represented from contributions from Wegmans who obviously  
20 doesn't want another grocery store in Rochester. And what  
21 their job is -- and they're doing a great job at it, in  
22 fairness -- is to pick apart every aspect of this project to  
23 delay it as much as they can hoping that either the developer  
24 will give up or the developer won't get financing.

25           And unfortunately for them, that hasn't been

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3 the fact. There are a tremendous amount of people in  
4 Rochester, specifically in Brighton that are very frustrated  
5 with the process that's commenced by this opposition, and  
6 what Wegmans has done, and they are also helping back us this  
7 project. So frankly, we have more backing on this project  
8 than any other project we've had before.

9 And just to reconfirm, the process will  
10 continue. It hasn't been delayed, other than the delays  
11 we've receive from this opposition group, and we continue to  
12 move forward and we will do that.

13 The Auburn Trail, the second portion of it is  
14 almost done, so residents will have that second option to use  
15 either trail. Hopefully we'll be able to get that open in  
16 the next week or two, believe it or not. The A&P, which is  
17 what he's talking about across the street, we're hoping to  
18 start construction on that momentarily.

19 I, frankly, have spoken with the mortgage  
20 holders that Mr. Saykin talks about who wants to foreclose,  
21 this, that, and the other. They may want to foreclose, I  
22 don't know the details, I haven't seen the letter. They may  
23 foreclose on the person who owns the property who's not  
24 paying them, but I can confirm that they absolutely would  
25 love to see this project across the street, Whole Foods, go

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3 forward because they understand that the value of their  
4 property will more than double and the very aspect of having  
5 those easements on their property, frankly, double the value  
6 of their property now that they'll have access to a traffic  
7 light, which would finally allow pedestrians and vehicles to  
8 make a controlled access left-hand turn in and out of the  
9 properties, which never existed before.

10 They've told me word for word that this was  
11 probably the best thing that could have happened to their  
12 property. So although Mr. Saykin might try and give you fear  
13 that they might foreclose on the project, and this, that, and  
14 the other, there's nothing they want more than to have the  
15 easements.

16 The gentleman that they spoke to is also  
17 friends with Howie Jacobson and the Wegmans Group, and I  
18 think he was asked to write -- I doubt he wrote that letter,  
19 I'm sure someone wrote it for him. But his comments directly  
20 to me was, I don't want to be the one stepping in front of  
21 this project. I'd love to see it go forward. And anything I  
22 can do to help please let me know.

23 CHAIRPERSON MIETZ: All right, I appreciate  
24 your comments, sir. Thank you very much.

25 DANNY DANIELE: You're welcome.

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3 CHAIRPERSON MIETZ: Okay. Who else do we have  
4 who would like to speak regarding this application? Okay.  
5 Very good. So I think we can close the Public Hearing at  
6 this point and move on to the next application.

7 AARON SAYKIN: Thank you very much.

8 APPLICATION 10A-01-20

9 10A-01-20 Application of Katherine Solano,  
10 owner of property located at 4 Cardiff Park, for an Area  
11 Variance from Section 207-10E(5) to allow a driveway  
12 expansion to be 2.8 ft. from a side lot line in lieu of the  
13 minimum 4 ft. required by code. All as described on  
14 application and plans on file.

15 CHAIRPERSON MIETZ: Okay, and who do we have  
16 for this application?

17 KATHERINE SOLANO: Hi, my name is Kate Solano  
18 and I want to start by thanking the Board for reviewing my  
19 application and for giving me time to speak this evening.

20 CHAIRPERSON MIETZ: Okay, please proceed.

21 KATHERINE SOLANO: Yes. So it's very straight  
22 forward, very simple. I had asked the Board to expand my  
23 driveway to allow for two cars to be parked side by side.  
24 But in order to do that with the minimum width needed for  
25 those two cars side by side, I would be encroaching slightly

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3 in on the four-foot code, which is required between the edge  
4 of the driveway and the neighbor, the adjacent neighbor's  
5 property line.

6 The edge of my driveway would be actually  
7 2.8 feet from the adjacent property line, of 12 Cardiff Park.  
8 I have received support from the owners of 12 Cardiff Park  
9 and they have signed an affidavit of support that was  
10 submitted with the application for the variance.

11 And also with the affidavit there was support  
12 from many other neighbors in the Rawlingswood mini  
13 neighborhood that we have here. And that's pretty much the  
14 extent of it.

15 In regards to the aesthetics of the expansion  
16 of the driveway, we are the last house on the dead end of  
17 Cardiff Park and directly to the right of where our driveway  
18 is, if you are facing the front of the house, there are  
19 hedges that are owned by 12 Cardiff Park, and they're about  
20 five feet tall. So they visually block the cars when they're  
21 parked in the driveway. So aesthetically it would not make a  
22 difference to the neighborhood, it would look the same.

23 CHAIRPERSON MIETZ: Okay, very good. I  
24 appreciate your comments.

25 Board members, questions for Ms. Solano?

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3 MS. TOMPKINS WRIGHT: Just so that it's on the  
4 record, the reason you can't expand on the other side is  
5 because of the location of your front door and your access  
6 into the home?

7 KATHERINE SOLANO: Yes, that's exactly right.  
8 Where the front steps are on the front porch is very, very  
9 close, it butts up almost directly to where the edge of the  
10 driveway is.

11 MS. TOMPKINS WRIGHT: Any concerns about  
12 runoff of water with the house right next to you, the  
13 neighbor's property line?

14 KATHERINE SOLANO: So it's an excellent  
15 question. We actually believe that we're actually making a  
16 positive impact on the environment by doing this, as there  
17 tends to be a lot of collected water in that area where the  
18 bushes are. It's kind of like a low base. So in the spring  
19 and whenever there's heavy rain, there is a lot of pooling  
20 water there and a lot of mud. So by putting the extended  
21 gravel it actually improves environmentally the space.

22 CHAIRPERSON MIETZ: Okay. Board members,  
23 questions?

24 MS. WATSON: I have one. Will this be a  
25 gravel driveway or an asphalt driveway?

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3 KATHERINE SOLANO: So as of right now, we are  
4 going to do the gravel, with the full intent in the spring to  
5 put in a new permit request to repave. Because we need to  
6 remove the existing driveway because it's in poor condition  
7 as well.

8 CHAIRPERSON MIETZ: Okay, all right. Other  
9 questions? Okay, very good. Thank you very much.

10 Is there anyone in the virtual world that  
11 would like to speak related to this application? There being  
12 none, then the Public Hearing is closed.

13 APPLICATION 10-02-20

14 10A-02-20 Application of Brighton Grassroots,  
15 LLC, appealing the issuance of a building permit (Starbucks  
16 Coffee) by the Town of Brighton Building Inspector (pursuant  
17 to Section 219-3) to the Daniele Family Companies, developer  
18 of the Whole Foods Plaza project located at 2740 /2750 Monroe  
19 Avenue. All as described on application and plans on file.

20 MR. DiSTEFANO: Mr. Chairman, I would just  
21 like to for the record, the applicant amended their  
22 application and has submitted two supplemental affirmations  
23 well past the application cut off date for this meeting. I  
24 suggest we receive and file that material tonight, I will  
25 then distribute it to the members.

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3 CHAIRPERSON MIETZ: That sounds reasonable, so  
4 proceed with that.

5 Okay, and who do we have speaking for  
6 10A-02-20?

7 JACOB ZOGHLIN: Good evening, members of the  
8 Board. My name is Jacob Zoghlin, I introduced myself earlier  
9 with respect to the application. I'm an attorney with the  
10 Zoghlin Group, and I represent Brighton Grassroots LLC in  
11 this appeal.

12 I'm going to give a little bit of a background  
13 on some of the injuries to Brighton Grassroots that will come  
14 from this in order to respond to some of the questions that  
15 came up in the SMA application.

16 So as I laid out in the papers submitted to  
17 the Board, BGR's members live in close proximity to the site  
18 of the Whole Foods Plaza Project and because of that close  
19 proximity they will be adversely impacted by this project in  
20 ways that are different from how the public at large will be  
21 impacted.

22 Many of those harms relate to the adverse  
23 traffic impacts, because as the developer admitted during the  
24 reviews for this project at the Town Board and Planning Board  
25 level, this project is going to draw unprecedented levels of

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3 traffic to the area.

4           And, as traffic engineers found during the  
5 Town Board and Planning Board reviews, this project will  
6 substantially create substantially more traffic along this  
7 stretch of Monroe Avenue, which already has some of the worst  
8 traffic in the town, and which has failing grades from the  
9 State Department of Transportation.

10           Concerns about traffic and parking were one of  
11 the most significant issues before the Town when this project  
12 was initially considered, which is why the Town Board and the  
13 Planning Board approvals expressly required the  
14 implementation of an access management plan, or an AMP. The  
15 access management plan was supposed to funnel traffic to the  
16 stoplight, allow for the sharing of access in parking between  
17 the north and south sides of Monroe Avenue, and mitigate the  
18 adverse impacts that the traffic was already going to cause.

19           So they determined that it was going to be a  
20 lot of extra traffic, so they said, you need to come up with  
21 something that will reduce the negative impacts of all that  
22 traffic. The AMP was their mitigation to those traffic  
23 impacts.

24           Now before I begin discussing the remaining  
25 details of our appeal, I'd like to take a minute to discuss

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3 some of the issues of how we got here. It has been  
4 particularly difficult because the Town Board and Planning  
5 Board have not been very forthcoming with information about  
6 this project. Which has led to some concerns, which I'm sure  
7 you've seen in the media and from members of the public about  
8 transparency, and that has reinforced the impression that the  
9 developer is getting some kind of special treatment.

10 So when this application was under review, the  
11 Town refused to disclose whether the developer had applied  
12 for the building permit that we're talking about here, and  
13 refused to provide those documents that formed the basis of  
14 the application, until a judge ordered them to do so.

15 Then, the Town failed to provide several of  
16 the documents related to this building permit by the court  
17 ordered deadline. As a result, we've been kind of working  
18 with one hand tied behind our back here. We've had to  
19 supplement the appeal multiple times, based on newly obtained  
20 evidence because of the drip, drip, drip that we got from the  
21 Town.

22 And then even after we filed the appeal, the  
23 Town continued to hide information from [inaudible] and both  
24 the Town and the developer when they submitted oppositions to  
25 these appeals, failed to CC BGR in those applications. We

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3 should at least get the submissions from the Town and from  
4 the developer that purport to oppose our appeal.

5           So that brings us to where we are tonight, to  
6 this hearing. As you know, on an appeal like this the Zoning  
7 Board of Appeals review of the building inspector's decision  
8 is de novo. Meaning the ZBA stands in the shoes of the  
9 building inspector and can make any decision the building  
10 inspector could have made.

11           The ZBA doesn't owe any deference to the  
12 building inspector's decision. It gets to make its own  
13 decision. So you may consider whether the developer's  
14 application for the building permit complied with the Town  
15 Code, complied with the Town Board incentive zoning  
16 resolution for this project, complied with the Planning Board  
17 site plan approval resolution, and whether it complied with  
18 the Town Board and Planning Board SEQRA findings. And,  
19 importantly, if any of those authorities directed you to  
20 consider other issues, you have the power and the duty to  
21 consider those too.

22           So my focus today will be on the four issues  
23 raised in the appeal. The first three relate to  
24 prerequisites for the project that were not satisfied, and  
25 therefore render the building permit illegal. Those

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3 prerequisites come in the form of the Town code and the  
4 various approvals I mentioned before, and they are laid out  
5 in detail in our papers.

6           The three prerequisites that render this --  
7 that were not satisfied and which render the building permit  
8 illegal, are, one, the invalid cross access easements for the  
9 AMP.

10           Two, the building inspector's failure to  
11 certify on each site plan that the project complies with the  
12 Town's comprehensive development regulations, i.e. the zoning  
13 code.

14           And three, the developer's failure to obtain  
15 all state and local approvals, which is a, I believe, it's a  
16 condition of the Planning Board site plan approval. I want  
17 to say 41, but it's in the papers.

18           And among those State and local approvals  
19 which were not provided, include State legislative approval  
20 under the public trust doctrine, and local resident approval  
21 in the form of a permissive referendum as required by New  
22 York State Town Law Section 64.

23           The last issue, the fourth issue, relates to  
24 express prohibitions that the Town violated by issuing the  
25 permit. So the permit does something that the law expressly

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3 prohibits them from doing. At the earliest stages of  
4 reviewing this project, the developer asserted in it's full  
5 environmental assessment form under SEQRA, that the project  
6 would be constructed in a single-build phase. The Town Board  
7 approved the project to be constructed in a single-build  
8 phase and both the Town Board and the Planning Board SEQRA  
9 findings statement for the project approved only construction  
10 in a single-build phase.

11 So the fourth issue that I will address  
12 demonstrates that the building permit is illegal because it  
13 authorizes construction of the project in multiple phases, as  
14 Mr. Saykin discussed with you. Even though the approvals for  
15 the project expressly prohibit multi-phased construction of  
16 the project.

17 I'm going to address each of these one by one.  
18 So first, the cross access easements for the AMP. As you  
19 know, the incentive zoning resolution requires the developer  
20 to implement an access management plan. The developer has to  
21 create a common rear access drive behind the plaza, the plaza  
22 across the street from the project, in order to funnel  
23 traffic from the plaza on the south side of the street, to a  
24 single point, that would allow it to interfere less with the  
25 additional traffic generated by the project. In other words,

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3 the AMP was crucial to the incentive zoning resolution  
4 amenity agreement because it helped address one of the major  
5 concerns of the project, the severe adverse traffic impacts.

6 And so, the Town Board expressly made  
7 implementation of the AMP a condition of approval.  
8 Therefore, a precondition to issuance of the building permit.  
9 Essentially, the AMP works by allowing traffic to move  
10 between the various properties on the south side and the  
11 north side of Monroe Avenue. So if the developer and the  
12 owners of the AMP properties don't give each other those  
13 mutual rights to drive across and park on those properties,  
14 or if those rights can be easily cut off or terminated, the  
15 access management plan fails.

16 And what we're talking about when we're  
17 talking about the access management plan failing, is that  
18 it's incapable of mitigating the adverse traffic impacts from  
19 the project. The ones that traffic engineers said were going  
20 to come and the ones that the developer said, look, we're  
21 going to have unprecedented levels of traffic. Well, the  
22 access management plan will make it so that those adverse  
23 traffic impacts are worse. That's why the access easements  
24 are so important is because they are what make the access  
25 management plan work.

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3 Now the cross access easements that the  
4 developer submitted in an attempt to satisfy this condition  
5 are legally insufficient because the recorded elements for  
6 2799 and 2735 Monroe Avenue do not include the consent of the  
7 first mortgage holders, as required by the underlying  
8 mortgage.

9 So if you look at Exhibit D of our submissions  
10 you will see at paragraph -- I'm sorry, at paragraph 1.11A,  
11 of the Mamasan's mortgage, there is a clause that, wherein  
12 Mamasan's gave up its right to grant easements or  
13 encumbrances of the property without the consent of the first  
14 mortgage holder. And so, as a result any conveyance of the  
15 cross access easement or any easement or interest in property  
16 over the Mamasan's parcel, 2735 Monroe, without the signature  
17 and approval of first mortgage holder is invalid as a matter  
18 of law because Mamasan's bargained away their right to make  
19 such a conveyance. They did it in exchange for a mortgage, a  
20 loan of almost, I think it was a half a million dollars.

21 So the specific language of the Mamasan's  
22 mortgage says, and I will read it because it's really  
23 important here. It says, neither the property nor any part  
24 thereof or interest therein shall be sold, conveyed, disposed  
25 of, alienated, hypothecated, leased, assigned, pledged,

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3 mortgaged, further encumbered or otherwise transferred, nor  
4 mortgager shall be divested of its title to the property or  
5 any interest therein, in any manner or way, whether voluntary  
6 or involuntary, in each case without the prior written  
7 consent of mortgagee, being first obtained, which consent may  
8 be withheld in mortgagee sole discretion.

9           So in this case Monroe Assistance Fund is the  
10 mortgagee, they're the ones who gave the loan. And Mamasan's  
11 is the mortgager, they're the ones who mortgaged the  
12 property. It's undisputed that the developer has not  
13 provided the Town with Monroe Assistance Fund's consent and  
14 therefore the cross access easement of the AMP is invalid  
15 under the plain language of the mortgage.

16           Additionally, in response to demands we made  
17 during litigation which are called notices to admit, the  
18 developer failed to deny the allegation that the cross access  
19 easements did not include the consent of Monroe Assistance  
20 Fund. So there's no dispute that this wasn't provided.

21           But to state it another way when Mamasan's  
22 mortgaged 2735 Monroe Avenue, they bargained away their right  
23 to grant the easement without the mortgagee's prior written  
24 consent. That restriction was recorded so it runs with the  
25 land, is enforceable and was in the chain of title. So the

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3 Town also had notice of it because it was recorded in the  
4 clerk's office. The developer's purported easement over that  
5 property is ineffective because it was only signed by  
6 Mamasan's, not by Monroe Assistance Fund. And so they  
7 plainly didn't have the legal authority to grant the  
8 easement.

9           So going back to one of the Board member's  
10 questions earlier. In order to transfer a property right you  
11 need to own the property, property right that you're  
12 transferring, and you need to have the authority to transfer  
13 it. This mortgage, undermined their authority to transfer  
14 their property interest. Because it said they can't do it  
15 without the prior written consent. So that's why the  
16 easement is invalid here.

17           If the Town illegally allowed the developer to  
18 construct the project without ensuring that these easements  
19 are valid it is taking a huge risk that the easements will be  
20 invalidated, thereby causing the access management plan to  
21 fail.

22           And they're also violating the law because  
23 they need according to the Town's own approval, the easements  
24 required to construct and implement the AMP. So to say a  
25 little bit more about the risks. If the Town goes forward

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3 without proper easements, it's exposing itself to two risks.  
4 One is, failure to comply with the terms of the mortgage,  
5 means that foreclosure will cut off after acquired cross  
6 access easements rights.

7           Mr. Saykin referenced that in, when discussing  
8 his appeal. It also means Mamasan's could, with the  
9 mortgagee's consent, sell the property or grant a conflicting  
10 interest to somebody else. And if they had the mortgage, the  
11 Monroe Assistance Fund's consent, then their -- then under  
12 the mortgage that person would have a superior property right  
13 to the developers because they were granted the property  
14 right by someone who had authority to make the conveyance.  
15 And they had the authority to make the conveyance because  
16 they received the approval.

17           So if that happened, again, you'd end up with  
18 the AMP failing. And if the AMP fails, this project becomes  
19 the traffic nightmare that everyone thought it was going to  
20 be from the beginning.

21           The building inspector, Mr. Boehner, submitted  
22 a letter demonstrating that he disagrees with our  
23 interpretation. In his submission Mr. Boehner argues that  
24 the easement is still valid even though its not disputed that  
25 the easements do not contain the first mortgage holder's

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3 consent. Ironically though he does not dispute the  
4 underlying fact that he did not obtain the mortgage.  
5 Instead, Mr. Boehner merely argues that those facts do not  
6 affect the validity of the easement. He argues that the  
7 unsatisfied mortgage condition merely renders cross access  
8 easement voidable rather than void.

9 That's just completely wrong, because he  
10 ignores the fact that by entering into the agreement  
11 Mamasan's bargained away its power to unilaterally convey  
12 such an easement without the mortgage holder's prior written  
13 consent.

14 The facts are important because they effect  
15 whether the easement was created at all. An effected  
16 easement cannot be made if the person making the easement  
17 doesn't own the land, or doesn't have the power to create the  
18 easement.

19 The Mamasan's mortgage therefore, effects  
20 whether this mortgage deprived Mamasan's of the power to  
21 create the easement in the first place. That's why the  
22 Mamasan's mortgage prevented the developer from entering into  
23 valid cross access easements. Therefore, the developer has  
24 not satisfied their requirement to obtain those easements  
25 prior to issuance of the building permit. Which is why the

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3 building permit must be satisfied.

4           The developer's letter in opposition to our  
5 appeal, advances a similar argument. The developer argues  
6 that there is no general requirement under the law that the  
7 holder of any mortgage can consent in order to render the  
8 easement enforceable.

9           The developer is wrong because he is  
10 mischaracterizing the issue. The question is not in a vacuum  
11 whether someone who owns property can create an easement over  
12 it. The question is whether when someone has intentionally  
13 and knowingly bargained away in writing their right to create  
14 an encumbrance of their property, in exchange for 480 or  
15 \$480,000, something of an enormous quantity of money.

16           If they bargain away their power to convey an  
17 interest in real property, then can they still convey it?  
18 The obvious answer is, no. Accordingly, because Mamasan's  
19 didn't have the authority to grant the easement -- I'm sorry,  
20 did not have the authority to grant the easement, it is  
21 invalid. The Town knew that Mamasan's didn't have the  
22 authority because the mortgage is in the chain of title and  
23 because they had a letter from the person who made the loan.

24           Mr. Boehner also argues on this issue that the  
25 Town has no role in determining the validity of the cross

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3 access easements because he alleges it's a private agreement.  
4 He is wrong on that too.

5 The Town Board's amenity agreement and  
6 incentive zoning approval, expressly require the developer to  
7 submit to the Town all cross access and other easements  
8 necessary to implement the AMP, and therefore empower the  
9 Town to review and approve such easements.

10 The further conditions of approval, part of  
11 the incentive zoning resolution, likewise requires the  
12 developer to provide and file access rights for cross access  
13 and cross parking easements before a building permit may be  
14 issued. These approvals by the Town Board unequivocally give  
15 the Town the responsibility to determine whether the  
16 easements are valid, and whether they provide access rights  
17 for cross access and cross parking prior to issuing a  
18 building permit.

19 Additionally, Mr. Boehner's argument that the  
20 Town has no role in evaluating the cross access easements and  
21 whether they're adequate in order to construct and operate  
22 the AMP is contradicted by his own actions and those of the  
23 Town's employees.

24 For example, the Town attorney and building  
25 inspector, in -- I'm sorry, records produced by the Town

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3 reveal that they reviewed and evaluated the sufficiency of  
4 other private agreements related to this project including  
5 private agreements related to cross access. The records  
6 include e-mails between the developer, the Town Attorney  
7 Mr. Gordon, and even Mr. Boehner himself, discussing the  
8 sufficiency of cross access easements between private parties  
9 including the developer and owners of the AMP property.

10 This completely contradicts the Town's  
11 position that it has no role in evaluating private  
12 agreements. To the contrary, these e-mails which were  
13 produced by the Town only pursuant to that court order, and  
14 were labeled by the Town as Bates Number 9869, which is  
15 different from the Bates Numbers assigned to the ZBA record.

16 I'm sorry, that's confusing. So the e-mails  
17 that the Town produced show that the Town attorney and  
18 Mr. Boehner believed that the Town had the power to consider  
19 the private agreements affecting the developer's ability to  
20 construct and operate the AMP. And that they in fact did so  
21 with respect to the cross access easements in this case. The  
22 very one which they're now saying they can't even consider  
23 because it's a private agreement.

24 It would therefore be unfair for the Town to  
25 adopt the exact opposite position now. Indeed, it would be

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3 the definition of arbitrary and capricious for the Town to  
4 reach a different legal determination as to its ability to  
5 consider the sufficiency of cross access easements, when on  
6 the same facts it reached the opposite conclusion earlier.

7 Accordingly, Boehner had the power and  
8 responsibility to examine the Mamasan's mortgage to determine  
9 whether it deprived Mamasan's of the power to grant the cross  
10 access easements for the AMP. Accordingly, he should have  
11 considered whether the Mamasan's mortgage and the failure to  
12 obtain Monroe Assistance Fund's consent effects the validity  
13 of the cross access easements including the one over at  
14 2735 Monroe.

15 His failure to do so and his failure to  
16 determine that the Mamasan's mortgage requires the first  
17 mortgage holder's consent, which was not given, renders the  
18 building permit invalid and requires that it be annuled.

19 With respect to the second issue regarding  
20 certification of the site plans, the Town code as part of the  
21 site plan review process imposes a building inspector  
22 certification requirement. Essentially, that's the  
23 opportunity for someone in the Town to go through the plans  
24 and determine whether they comply with the zoning code.

25 Essentially, the building inspector must

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3 review the plans and determine whether they comply or not.  
4 Town Code Section 217-12(a)(3), is where this requirement is  
5 found. It says that prior to issuance of a final site plan  
6 approval, and obviously therefore also prior to issuance of a  
7 building permit, the building inspector must certify on each  
8 site plan or amendment whether or not the plan meets the  
9 requirements of all comprehensive development regulation  
10 provisions. The failure to do so renders the plan and any  
11 building permit issued in reliance on that invalid.

12           So here, there's no question that the building  
13 inspector failed to make a certification, the building  
14 inspector certification prior to issuance of the final  
15 approved site plan, or prior to the final approved building  
16 permit. That fact alone should be sufficient to annul the  
17 building permit.

18           I have not heard the Town dispute the fact  
19 that Mr. Boehner did not make such written certification  
20 prior to issuance of the building permit. Instead, it seems  
21 that Mr. Boehner argues that such certification is not  
22 required. That's just wrong. It also contradicts the plain  
23 language of the Town Code, which says that the certification  
24 is required as part of the site plan review process. And  
25 therefore, the approvals cannot be granted without such

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3 certification.

4           Mr. Boehner's letter also alleges that prior  
5 to issuance of the building permit he confirmed the  
6 requirements of the comprehensive development regulations  
7 were met. Respectfully, he did not do that in writing. And  
8 we can't decipher what's inside of his head. These  
9 approvals, they have to be written down. And the  
10 certification is important enough for the Town to put in the  
11 Town Code, it's important enough for him to follow the letter  
12 of the law.

13           Mr. Boehner's letter does not allege that he  
14 certified that such requirements had been met, only that he  
15 confirmed them, whatever that's supposed to mean. He also  
16 doesn't attach a copy of such alleged confirmation. Again,  
17 it did not happen in writing. Instead, he's arguing that  
18 someone other than the building inspector, in this case the  
19 Town Engineer and Commissioner of Public Works determined  
20 that the site plan complied with comprehensive development  
21 regulations.

22           Boehner's letter also alleges that the  
23 Commissioner of Public Works signed the utility page in the  
24 site plan and he is arguing that that constitutes the  
25 certification required by the Town Code. That is just wrong.

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3 The site plan includes no certification whatsoever and it  
4 appears that Mr. Boehner is conflating a simple signature by  
5 the Commissioner of Public Works with a certification. And  
6 those things are different.

7 The signature of the Town Engineer for the  
8 Commissioner of Public Works is not the same as a  
9 certification. And the signature of the Town Engineer  
10 does -- or the Commissioner of Public Works does not satisfy  
11 the unequivocal Town Code requirement that the building  
12 inspector be the one to make the certification on the site  
13 plans.

14 It appears that Mr. Boehner now asks the ZBA  
15 to ignore the plan language of the Town Code by trying to  
16 convince you, the ZBA, that the building inspector  
17 certification requirement can be satisfied by an unsworn  
18 signature rather than a certification of any Town employee,  
19 rather than the building inspector, on a single page rather  
20 than on each page or amendment on the site plan.

21 Mr. Boehner's interpretation with all due  
22 respect, betrays the plan language of the Town Code and must  
23 be rejected. Mr. Boehner also tries to explain away the  
24 Town's noncompliance with the building inspector  
25 certification requirement. By essentially arguing that the

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3 ZBA should ignore the plan language of the code because,  
4 well, that's just not the way the Town operates in practice.  
5 He essentially admits that he is violating the Town Code for  
6 his or potentially the Town's convenience.

7           And while it may be the case that the Town  
8 does not strictly follow its own Town Code or the building  
9 inspector certification requirement, that does not make it  
10 right. That does not make it legal, nor does it obviate the  
11 Town of its duty to comply with the law.

12           Mr. Boehner apparently concedes though that he  
13 did not certify on each page or amendment of the site plan  
14 whether it complied with the zoning code. Again, this is  
15 sufficient to annul the building permit.

16           Accordingly, there's no doubt that the  
17 building inspector certification requirement was not  
18 completed and therefore we ask the Town to annul the building  
19 permit. Additionally, I'd like to add that the reason that  
20 this certification was not made is because it could not have  
21 truthfully been made. It would have been really easy for  
22 them to make the certification, but they couldn't and they  
23 didn't want to open up avenues to appeals to the ZBA because  
24 they are hoping that everything will be the same as what  
25 happened before the Town Board.

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3 Moving on to my third issue regarding the  
4 failure to obtain all required State and local approvals. I  
5 mentioned before the Condition 41 of the site plan approval  
6 from the Planning Board, required that the developer obtain  
7 all State and county -- I'm sorry, all State and local  
8 approvals.

9 In our supplemental affirmation we identified  
10 several categories of approvals that the developer failed to  
11 obtain. The basis of that is that during the litigation for  
12 this project BGR served notices to admit that the developer  
13 failed to obtain these approvals and the developer failed to  
14 deny those things. So with notices to admit if he failed to  
15 deny something within the time established by the notice, it  
16 is deemed admitted for purposes of the court proceeding.

17 It also appears that the developer failed to  
18 deny the allegations in BGR ZBA appeal. In response to our  
19 court order requiring the Town to turn over all documents  
20 related to the developer's application for the building  
21 permit, the Town failed to produce proof that the developer  
22 had obtained all required State and local approvals.

23 Accordingly, it's clear from these sets of  
24 behaviors, that the developer did not submit the proof that  
25 it had obtained all necessary State and local approvals prior

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3 to obtaining the building permit.

4 I'd also like to address a local approval  
5 required under New York State Town Law Section 642. That  
6 allows a town to convey or lease real property in the name of  
7 the town, only if the town subjects such conveyance to a  
8 permissive referendum, a vote by the town's people.

9 In other words, a town may convey an interest  
10 in real property only if it first obtains local approval by  
11 subjecting such conveyance to a vote. The New York State  
12 Comptroller's Office has determined that the release or  
13 abandonment of an easement, just like this, is considered a  
14 conveyance that must be subject to a permissive referendum.

15 Likewise, a New York State appellate court  
16 recently found that there was a question of fact as to where  
17 this project would result in abandonment of the pedestrian  
18 public pathway easement, part of the Auburn Trail that goes  
19 across the property. And the Court indicated that the Town  
20 would need to subject the project approvals to a permissive  
21 referendum and State legislative approval under the public  
22 trust doctrine, if the project would result in abandonment.

23 So I guess you might be wondering, well,  
24 what's abandonment? As a matter of law an easement may be  
25 abandoned through non-use coupled with an indication of an

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3 intent to abandon the easement, such as permitting others to  
4 interfere with it and interfere with the use for which it was  
5 created.

6 Accordingly, the crucial issue here is whether  
7 the project will interfere with the public's intended use of  
8 the existing trail easement in its current location. The  
9 project interferes with that use because it renders the  
10 easement's primary and incidental uses i.e., use of the  
11 easement area as a pedestrian pathway in park-like  
12 conditions, plus convenient.

13 Now the existing easement instrument expressly  
14 grants the town and the public the right to use the easement  
15 area for a perpetual pedestrian pathway. That's how we know  
16 what its purpose is. It's written down in plain English.  
17 The easement instrument also requires the Town to, quote,  
18 construct, operate, maintain repair and replace a pedestrian  
19 pathway which the Town shall require for public use across  
20 said land, end quote.

21 It further requires that upon completion of  
22 any construction, installation, maintenance or repair of any  
23 improvement the grantee, i.e., the Town, must restore the  
24 easement premises to a park-like condition. That's key,  
25 park-like condition.

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3 Thus, the purpose of the pedestrian easement  
4 instrument, the instrument that created the Town's easement  
5 over this land of the project site, the purpose of it is to  
6 allow the public to use the easement as a public pedestrian  
7 pathway in park-like conditions in perpetuity.

8 Here the Town is objectively indicating its  
9 intent to abandon the easement by granting approvals that  
10 allow the developer to interfere with the purpose for which  
11 the easement was created, by rendering the easement area less  
12 convenient for use as a public pathway in park-like  
13 conditions. That indication coupled with non-use of the  
14 easement constitutes abandonment and triggers the requirement  
15 that the abandonment be subject to a permissive referendum,  
16 i.e., local approval under New York State Town Law 642.

17 There's no doubt that the Town has a property  
18 interest in the pedestrian pathway easement that runs across  
19 the rear of the Whole Foods Plaza. It is also undisputed  
20 that as approved currently, the project will result in the  
21 construction of a 450-car parking lot, that some of the  
22 parking spaces and driving lanes will be placed directly on  
23 top of the existing pedestrian easements.

24 Accordingly, when the project is fully  
25 constructed, anyone traversing the property using the

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3 easement that was supposed to be for the Auburn Trail will  
4 need to dodge cars, go around parked vehicles, and avoid the  
5 tractor trailer turnaround at the rear of the Whole Foods  
6 building.

7           This is obviously going to interfere with the  
8 use of the easement as a pedestrian trail, and will  
9 absolutely interfere with the requirement that those portions  
10 of the easement be restored to park-like conditions.  
11 Accordingly, the build permit illegally authorizes an  
12 abandonment of the existing pedestrian trail easement without  
13 requiring the Town to obtain local approval through a  
14 permissive referendum, as required by Town Law 64, as  
15 required by Planning Board's requirement that they obtain  
16 these approvals before a building permit is issued.

17           If the project will interfere with the  
18 public's use of the existing pedestrian trail easement in its  
19 current location, or render it in any way less convenient,  
20 then the project results in abandonment of the existing  
21 easement. And so the ZBA must annul the building permit for  
22 failure to obtain local approval.

23           The other big approval that was not obtained  
24 is State legislative approval. This is what we call the  
25 public trust doctrine, it's a legal doctrine that's existed

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3 for around 100 years in New York and is all over the place in  
4 the US. Different states have different versions of it, but  
5 they're pretty similar.

6 The public trust doctrine prohibits local  
7 governments from alienating or substantially intruding upon  
8 park land without the express approval of the New York State  
9 legislature. Essentially, that means if, is you're going to  
10 take property that is considered park land, you cannot sell  
11 it or use it for non-park purposes without state legislative  
12 approval.

13 In the BGR appeal, in a related lawsuit, the  
14 Fourth Department found as I mentioned earlier, a question of  
15 fact as to whether the project results in abandonment of the  
16 pedestrian pathway easement.

17 Accordingly, just as in the permissive  
18 referendum analysis that I discussed previously relating to  
19 Town Law 64, just as in that analysis, if the project will  
20 substantially interfere with the pedestrian pathway easement,  
21 the easement that creates the Auburn Trail in the back of the  
22 Whole Foods Plaza property, if it substantially interferes  
23 with that easement, by rendering it less convenient for the  
24 public to use it as a pedestrian pathway in park-like  
25 conditions then the Town's approval constitutes an

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3 abandonment and therefore is not valid without prior  
4 legislative approval, which has not been granted.

5           Clearly, a 400-car parking lot, car drive  
6 lanes, and a tractor trailer turnaround, are incompatible  
7 with the trail being -- I'm sorry, with the Auburn Trail  
8 being a pedestrian pathway, or with it being in park-like  
9 conditions.

10           It is beyond any doubt that those  
11 surroundings, the parking spaces, the tractor trailer  
12 turnaround, those surroundings clearly render the easement  
13 area less convenient as a public pathway, and the creation of  
14 a different easement in a new location doesn't affect the  
15 analysis. They still need state legislative approval if  
16 they're going to burden this easement.

17           Accordingly, the site plan and building permit  
18 approvals by authorizing a substantial interference with the  
19 pedestrian easement which renders use of it less convenient  
20 results in abandonment of the easement without State  
21 legislative approval in violation of the public trust  
22 doctrine and Condition 41 of the site plan approval  
23 resolution. Thus, the building permit was illegally granted  
24 and must be annulled.

25           The last issue that I'm going to address

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3 relates to the phases issue, and I'll deal with it quickly  
4 because it was addressed pretty completely by Mr. Saykin.

5           The FEIS incentive zoning resolution, site  
6 plan approval, and SEQRA review all require the project to be  
7 constructed in the single-build phase, as does the access  
8 management plan. At every stage of this project the  
9 developer alleged the project would be built in a  
10 single-build phase. And this is important because  
11 single-phased construction has vastly different impacts than  
12 multi-phased construction.

13           That comes straight from the Department of  
14 Environmental Conservation, SEQRA handbook. Indeed the  
15 developer's own timeline confirmed that only a  
16 single-construction phase was approved. And that  
17 construction of all building would commence between January  
18 and March of this year and would be completed between July  
19 and August 30th, of this year. That didn't happen.

20           The building inspector violated the law in the  
21 Town's own conditions of approval by granting approvals for  
22 this project to be built in multiple phases, i.e., by  
23 granting the building permits piecemeal, despite the  
24 requirement that they be built in a single-phase.

25           It's clear that this is only approval for one

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3 phase of the project, because it's approval for the  
4 standalone Starbucks building, even though there are five  
5 buildings that are part of this project. And by project, I  
6 mean the Whole Foods Plaza as approved by the Town Board and  
7 Planning Board.

8           The Town hasn't issued any other building  
9 permits for the project, and there's no indication that any  
10 applications for those other building permits are  
11 forthcoming. Therefore, the issuance of only one building  
12 permit for a five building plaza improperly authorizes  
13 multi-phased construction.

14           And this whole discussion about, well, it's  
15 not phased, it's staged, or sequenced, these are distinctions  
16 without a difference. This is clearly being done in multiple  
17 steps over the course of a greater period of time than was  
18 represented by the developer.

19           The permit further authorizes the developer to  
20 relocate temporary fencing from the pedestrian easement, even  
21 though the construction of the project is not complete, and  
22 that would allow interference with the public's right to use  
23 the pedestrian easement that's part of the Auburn Trail in  
24 the rear of the plaza.

25           By authorizing the developer to construct only

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3 part of the project and to remove these protections before --  
4 to the Auburn Trail before construction is complete, the  
5 Town's illegally approved multi-phased construction.  
6 Accordingly the building permit was issued in violation of  
7 the Town's own approvals and must be annulled.

8 Thank you for allowing me an opportunity to  
9 present this appeal on behalf of Brighton Grassroots.

10 Brighton Grassroots has many members strong throughout  
11 Brighton's community and I want to take one moment to just  
12 respond to a comment that was made earlier.

13 We are not, you know, we have a legit interest  
14 here that we're trying to protect the members of Brighton  
15 Grassroots. This is not about Wegmans, this isn't about  
16 anyone else, this is about the people who live right in the  
17 vicinity of this project and how they'll be harmed by the  
18 shortcuts the developer is trying to take.

19 And unless there are any questions, I will  
20 rest on my papers and thank you for the time and attention  
21 today.

22 CHAIRPERSON MIETZ: Thank you, Jacob. Board  
23 members, questions for Mr. Z?

24 MS. TOMPKINS WRIGHT: This is Member Wright.  
25 I have a couple of questions. And some of them are echoing

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3 the same questions we asked the attorney representing Save  
4 Monroe Ave.

5                   What, with respect to the cross access  
6 easements, is your argument that the Town could have done a  
7 title search, reviewed every mortgage document for any cross  
8 access -- any easement that is submitted as part of any  
9 application, to confirm that it's not voidable in the future?  
10 Is that the argument that when it reviews those access  
11 easements to confirm that they do in fact provide for an  
12 element in the correct location and are signed ostensibly by  
13 the correct property owner, that they need to take those  
14 further steps to review every word of every mortgage, confirm  
15 that there's authority by the signatory on those documents,  
16 et cetera?

17                   JACOB ZOGHLIN: So, I think that the best way  
18 to think about this is to think about what someone needs in  
19 order to convey an interest in property. They need an  
20 ownership interest, and they need authority to convey. I  
21 think that especially in this circumstance with the Town  
22 Board expressly gave them authority to look at these  
23 easements, it's entirely reasonable to ask the Town when they  
24 are considering whether something is valid, to say, did you  
25 look at the chain of title to determine whether they own the

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3 property? Did you look at the chain of title to determine  
4 whether there's any encumbrances on the property that  
5 deprives them of authority to convey?

6 Because if they don't do that, then they have  
7 no way of knowing if the easement is valid. It's like if I  
8 were to go and try to sell your house, right? I don't own  
9 your house, and I have no authority to convey your house, so  
10 even if I wrote up something trying to convey it, it wouldn't  
11 be valid even if I recorded it, it wouldn't be valid.

12 MS. TOMPKINS WRIGHT: Right. But if I tried  
13 to sell you my house that I owned and I happened to have a  
14 private agreement with a third party where that third party  
15 said, you can't do this without my consent, vis-a-vis you and  
16 me, a recorded deed to my house would still be valid against  
17 me and against any further purchaser by you because it would  
18 be recorded on the record.

19 JACOB ZOGHLIN: If you had granted a mortgage  
20 to someone and as condition of the mortgage, so someone's  
21 giving you money, as a condition of getting that money you  
22 say, I will give up my power to transfer any interest in my  
23 property without your consent. And then that mortgage  
24 containing that clause is recorded in the county clerk's  
25 office, then anyone who goes and pulls records related to

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3 that property, that mortgage will show up. And they will  
4 read that mortgage and they will see that you do not have the  
5 authority to make a conveyance without the lender's consent.

6 MS. TOMPKINS WRIGHT: Let me just ask it this  
7 way then. If you run a title search on a property, you are  
8 purchasing a property and you run a title search and the  
9 title company pulls out what's on record in the property.  
10 They don't automatically declare easements, at least in my  
11 experience, they don't automatically declare easements  
12 invalid by reading the language of a mortgage that may or not  
13 restrict a property owner that requires consent and they may  
14 not have evidence of consent of that mortgage holder.

15 They will exclude coverage for any easements  
16 given by the property owner because they're recorded.  
17 Because on their face they are enforceable against the  
18 property owner.

19 JACOB ZOGHLIN: I think you may have a  
20 misunderstanding respectfully, about the effect of recording.  
21 Just because something is recorded doesn't render it valid.  
22 I mean, you know, there's the famous quote that a clerk's  
23 office has to record a ham sandwich if you tell them to. The  
24 determination of whether it's valid comes later. You can  
25 take all the things from the clerk's office from the title

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3 search, and you evaluate then to determine whether there's  
4 any that are invalid.

5 MS. TOMPKINS WRIGHT: Right, but the easement  
6 agreement executed by the property owner at the time that it  
7 was given that is recorded, would be deemed valid by a title  
8 company, in my experience as a real estate attorney. Would  
9 you disagree with that?

10 JACOB ZOGHLIN: I don't think it would be  
11 deemed valid if there was a recorded mortgage in the chain of  
12 title, that said that the owner of the property doesn't have  
13 the authority to convey the property without the mortgage  
14 lender's consent.

15 MR. DOLLINGER: We're really conflating terms  
16 here. Let me try -- I know where you're going, let me try  
17 this. So, if you look at that mortgage, which I've read, it  
18 has a default clause, right? It sets up a whole bunch of  
19 different potential defaults. One of which is a conveyance  
20 of an interest not without the permission of the mortgagee.  
21 That's a default, okay?

22 And the mortgage also sets out a series of  
23 typical -- Andrea would know -- typical remedies, there's a  
24 section, remedies upon default. And there's no remedy there  
25 that say, I can, you know, get back from someone who you

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3 sold -- there's no ability to crawl but claw back property  
4 that the owner, the mortgagor has sold or transferred to  
5 other people. That remedy just isn't in there.

6 The only remedy, as you pointed out, is the  
7 remedy to foreclose. And we don't use in real estate terms  
8 like valid. There is, you know, it's not that the deed is  
9 valid. I mean, there are voidable deeds, where you can go  
10 back and you can crawl back under certain circumstances. But  
11 this contractual relationship between the mortgagee and the  
12 mortgagor, is governed by the mortgage. And this mortgage  
13 has very specific remedies for defaults.

14 And this transfer would be a default, there's  
15 no question about that. Right, Andrea, you would agree?  
16 That's a default under the mortgage.

17 MS. TOMPKINS WRIGHT: Absolutely.

18 MR. DOLLINGER: That's a default under the  
19 mortgage and the mortgage holder has the specific remedies  
20 set out in the mortgage. And there is not, I can assure you,  
21 I read it one thing, and two, I've never seen it -- and I'm  
22 sure Andrea hasn't either -- some kind of claw back provision  
23 where I can get back from the person you sold some interest  
24 to, I can get it back. It's just not there.

25 I mean, if I bought this house for a million

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3 dollars, if I bought Mamasan's property for a million dollars  
4 and I gave Bea Walters a million dollars and I took a deed  
5 from her, that deed is going to be valid. The mortgage  
6 holder can foreclose against my interest because that  
7 transfer is still subject to that mortgage, but I have a  
8 valid deed. There's no -- valid doesn't even count, I own  
9 it.

10 So this argument to me seems really, I don't  
11 know, you're going to have to bolster my thought of valid  
12 deeds, and it just doesn't make follow through.

13 CHAIRPERSON MIETZ: Okay.

14 MS. TOMPKINS WRIGHT: And I think a larger  
15 concern too is whether or not a deed or an easement is  
16 voidable is an incredibly intricate process, that we simply  
17 cannot require towns in New York to read every single word of  
18 every single recorded document to confirm that it's not  
19 potentially voidable or it's not potentially a default under  
20 a mortgage, or someone doesn't have authority based from a  
21 third party to grant it.

22 Towns have to be held to some sort of a  
23 reasonable standard of review, and I don't see how even if  
24 your argument is correct, which I'm not sure I would agree  
25 with it, even if it was, I'm not sure you could hold the town

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3 to that kind of a review standard.

4 CHAIRPERSON MIETZ: Okay.

5 JACOB ZOGHLIN: So, so, the portion that I was  
6 citing from the mortgage was part of the covenants section of  
7 the mortgage, not the default section. And in the covenants  
8 sections they conveyed their power to grant any encumbrances  
9 of the property. And so, even though they are the owners,  
10 they bargained away their right to do so without the approval  
11 of the first mortgage holder.

12 So, frankly, they just didn't have authority  
13 to make the conveyance in the first place. It's not a matter  
14 of, you know, whether something was forged or fraudulently  
15 induced. You know, those forgery verse fraudulent induction,  
16 are the differences between void versus voidable. We don't  
17 even get there to the question of whether something is void  
18 or voidable, if the person who created the instrument didn't  
19 have the authority to convey the property interest. So  
20 analytically the authority to convey must come before.

21 CHAIRPERSON MIETZ: Okay. So we are getting  
22 off into a little bit of a debate here. I think at this  
23 point I would like to move on to the Board members as it  
24 relates to any other questions for Mr. Zoghlin here, so we  
25 can keep this proceeding moving? Is there anyone on the

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3 Board that would like to speak and ask any other questions?

4 MS. DALE: Yeah, thanks, Dennis, this is  
5 Jeanne again. I just wanted to repeat the questions that I  
6 had for the earlier opposition to the issuance of the  
7 building permit, since that's the matter at hand here.

8 I know that it was mentioned previously that  
9 part of the concern was increase in traffic. So my first  
10 question was, how will the issuance of the building permit  
11 for Starbucks increase traffic accidents?

12 JACOB ZOGHLIN: Thank you. Jeanne, I'm sorry,  
13 I don't know your last name and I want to address you  
14 respectfully?

15 MS. DALE: Oh, that's fine. It's Dale,  
16 D-A-L-E.

17 JACOB ZOGHLIN: D-A-L-E, thank you. So I saw  
18 that you asked the same question of Aaron earlier tonight,  
19 and I appreciate that because it gives me an opportunity to  
20 refocus this on the AMP. So your question is, how will the  
21 issuance of the building permit increase traffic, how does it  
22 impact people? It impacts people because, in a couple ways.  
23 One is by doing this without the cross access easements  
24 they're setting the AMP up to fail. And if the AMP fails,  
25 traffic is not going to be -- the adverse traffic impacts,

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3 that were identified during SEQRA review, will not be  
4 mitigated. Because the AMP is the primary mitigation for the  
5 adverse traffic impacts. And that's going to harm the people  
6 along Monroe, but more so BGR members because of their close  
7 proximity.

8 MS. DALE: So speculative regarding the AMP?

9 JACOB ZOGHLIN: No, it's not speculative,  
10 that's a finding, a legislative -- I mean, essentially it's a  
11 finding of the Town Board and of the Planning Board. That  
12 was part of their SEQRA review. I mean --

13 MS. DALE: I was saying for your comments  
14 about setting it up to fail.

15 JACOB ZOGHLIN: No. The Town has explained  
16 that the -- it's essentially, the AMP is a stool that's  
17 composed of these three easements, and if you take away any  
18 of the three elements, the stool tumbles over. Because if  
19 you don't have the easements then people from one parcel  
20 can't go to the other parcel, and then the other parcel to  
21 the light.

22 So it's not speculative. I mean, they don't  
23 have the legal right to go from one parcel to the traffic  
24 light, and that's the entire way that they're dealing with  
25 the traffic problem, that traffic engineers and the developer

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3 all determined were going to result if they didn't create an  
4 access management plan.

5 CHAIRPERSON MIETZ: Okay.

6 MS. DALE: So another one of my questions,  
7 because we're again, you know, talking about concerns for the  
8 neighbors and the restaurants and such, is given the nature  
9 of the surrounding property uses, so hotels and restaurants  
10 we're talking about here, how would the issuance of the  
11 building permit for Starbucks detrimentally or noticeably  
12 decrease the ability or the ability of customers, or  
13 appellants, for their safety and convenient access to the  
14 businesses and homes?

15 JACOB ZOGHLIN: So, I'm sorry, let me get my  
16 light. The first answer is really simple, I mean, the  
17 building permit by proceeding without all of the cross access  
18 easements for the AMP, are going to result in adverse  
19 traffic. And adverse traffic is the type of harm that courts  
20 recognize as being sufficient to establish standing,  
21 especially for adjacent property owners. People that live,  
22 you know, especially our clients, live very, very close to  
23 the proposed development.

24 The other issue where they'll be negatively  
25 affected is by the Auburn Trail. They're not going to have

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3 access in the same way to the pedestrian easement, that is  
4 part of the Auburn Trail going behind the Whole Foods  
5 property. They have a legal right under the easement to use  
6 that as a pedestrian pathway inn perpetuity in park-like  
7 conditions. And the depravation of that legal right is an  
8 injury.

9 We also have legal rights in seeing that the  
10 zoning code is enforced and courts have recognized the right  
11 to see laws enforced as being a valid right sufficient for  
12 standing as well.

13 MS. DALE: Thank you.

14 JACOB ZOGHLIN: Thank you.

15 CHAIRPERSON MIETZ: Okay. Board members, go  
16 ahead, Andrea.

17 MS. TOMPKINS WRIGHT: Yeah, sure. Just, you  
18 were obviously I'm sure listening when Mr. Daniele got up and  
19 spoke to kind of provide his argument with respect to timing  
20 on the project. One of, obviously, the bigger arguments is  
21 this is a phased construction that because they got one  
22 permit without a permit for the site work and the Starbucks,  
23 without also pulling permits for the rest of the building,  
24 that evidence is that this is the first phase of a  
25 multi-phased construction. He testified as part of this

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3 hearing that they're doing the site work now, it should take  
4 four to six months. They anticipate 90 days for construction  
5 of the additional buildings and anticipate being completed by  
6 summer of 2021. Would you suggest that if they met that  
7 timeline that it's still phased construction?

8 JACOB ZOGHLIN: I would say since they're  
9 pulling these permits one at a time, piecemeal, and that they  
10 have not shown any indication that they're going to apply for  
11 or pull or are prepared to do that for the other permits,  
12 that the facts as they currently exist, establish that it's  
13 phased. They've already started phasing it. They're doing  
14 one out of five, 20 percent of the buildings right now. I  
15 mean, call it a phase call it a stage, it's a distinction  
16 without a difference.

17 MS. TOMPKINS WRIGHT: Right. But even in  
18 their initial plan for this, they were not going to pull all  
19 of the permits at one time.

20 JACOB ZOGHLIN: They were going to do them, I  
21 think, within two or three months.

22 MS. TOMPKINS WRIGHT: Yeah. So, but they  
23 would have at least is it six months in Brighton to construct  
24 once it is building permit, or is it a full year? Rick, do  
25 you know? Obviously you know, sorry.

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MR. DiSTEFANO: Yes, it's a full year.

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MS. TOMPKINS WRIGHT: So --

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MR. DiSTEFANO: Then they can request extensions also.

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MS. TOMPKINS WRIGHT: Yeah. So even if they pulled all of their permits at the exact same time, they could still spread out construction over the time period that they're roughly talking about, at least testifying tonight. Is that fair to say, or, no?

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JACOB ZOGHLIN: I'm sorry, are you asking me or Rick?

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MS. TOMPKINS WRIGHT: Well, I guess, I'd like to know the applicant's theory on it. That if they pulled all of their permits, they could have still done one building, done some site work, waited six months, done a little bit more, and still been in full compliance with the process. Is that accurate?

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JACOB ZOGHLIN: I think if they had pulled all the permits according to the order and timeline approved by the Planning Board, then there would be less of a concern about phasing. But that's simply not what's happened. They're pulling them one at a time, without any indication that they're prepared to do the next one.

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3 And by the way, there's an agreement that's  
4 been signed off on by the court where if they are going to  
5 pull a building permit, they have to provide notice to the  
6 parties. And they have not provided notice of intent to pull  
7 any other building permits, as far as I'm aware.

8 So that just further indicates that they're  
9 just not in a position to do this right now, and that's why  
10 they're doing this in phases, one at a time.

11 MS. TOMPKINS WRIGHT: And then one more, just  
12 and I may have missed it, obviously, as you can imagine, this  
13 is a very voluminous package for the Board to review. Your  
14 arguments regarding the permissive referendum and the  
15 legislative approval, were they in your submissions or is  
16 that an argument you are making in your testimony only? I  
17 just wanted to make sure I was referencing the right parts of  
18 it.

19 JACOB ZOGHLIN: You know, there have been so  
20 many submissions as part of this case, I would have to check  
21 which ones. But I, my recollection is that they were part of  
22 the supplemental submission.

23 MS. TOMPKINS WRIGHT: Okay.

24 JACOB ZOGHLIN: So I believe the supplemental  
25 affirmation is where it's located, but I would need to look

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3 through my records to know that for sure, so I don't want to  
4 be unpolite by looking through documents while we are on the  
5 meeting tonight, unless you would like me to.

6 MS. TOMPKINS WRIGHT: No.

7 CHAIRPERSON MIETZ: No.

8 MS. TOMPKINS WRIGHT: Rick, did we get the  
9 supplemental filings before the meeting?

10 MR. DiSTEFANO: No. That was submitted well  
11 past the cut off date. There's no way you guys would have  
12 had time to do it.

13 CHAIRPERSON MIETZ: All right.

14 MS. TOMPKINS WRIGHT: Okay. I just wanted to  
15 make sure I wasn't -- we weren't supposed to be reading  
16 something else as well as part of this.

17 MR. DiSTEFANO: No, no.

18 MS. TOMPKINS WRIGHT: And then, it may have  
19 been you, again, it may have been another town's people, but  
20 some safety concerns were brought up last month. I asked the  
21 previous attorney for Save Monroe Avenue as well, there was a  
22 comment about construction fencing and a safety concern, kind  
23 of wanted to get some color on that, if that is an objection,  
24 if there is legitimate safety concerns about whether or not  
25 pedestrian easements are obstructed throughout that property?

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3 JACOB ZOGHLIN: Well, one of the biggest  
4 safety concerns, and this was mentioned I believe at the last  
5 meeting, was the fencing being taken down. And particularly  
6 there's another safety concern about the Auburn Trail  
7 easement because of the place that it's located. The  
8 existing Auburn Trail easement, if the project were fully  
9 developed would be right in the middle of the parking lot, in  
10 the turnaround aisles for the tractor trailers, and the drive  
11 lanes.

12 So in addition to the construction fencing  
13 coming down, there's the safety hazards associated with  
14 anyone lawfully using the pedestrian easements as a pathway  
15 in park-like conditions. So those are certainly safety  
16 concerns. And the concerns about the Auburn Trail and the  
17 easement are going to persist even after this project, if it  
18 is ultimately constructed, goes into operation.

19 MS. TOMPKINS WRIGHT: But that's specific to  
20 the issuance of the building permit, in general or is that  
21 specific to the approval of the project, the safety concerns  
22 with respect to the Auburn Trail?

23 JACOB ZOGHLIN: I didn't raise the safety  
24 concerns with respect to the Auburn Trail in relation to my  
25 appeal, I raised them in response to your question.

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3 MS. TOMPKINS WRIGHT: No, I appreciate that.  
4 I was just trying to make sure I wasn't conflating the issues  
5 there.

6 JACOB ZOGHLIN: Okay. Yeah, I don't want to  
7 go into something that I haven't briefed in my papers, but  
8 those are my opinions on the safety issues that you've asked  
9 about.

10 CHAIRPERSON MIETZ: Okay.

11 MS. TOMPKINS WRIGHT: Are their safety issues  
12 with respect to the issuance of the permit that aren't  
13 related to what was approved for the project as a whole? For  
14 instance, safety concerns with, aside from environmental,  
15 what's actually pedestrian or passers by safety concerns with  
16 issuing a building permit of only a portion of the property  
17 at one point instead of the whole project, things like that?

18 JACOB ZOGHLIN: I think the biggest safety  
19 concern that is specific to this, is -- okay. So, if the --  
20 so the Starbucks, let's say it's constructed and goes into  
21 operation, right, if the AMP is not in place at the time that  
22 the Starbucks goes into operation and use, then there's going  
23 to be safety concerns associated with that because of the  
24 increased traffic. And I think it's pretty common sense that  
25 where you have increase traffic statistically you will have

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3 increased accidents and safety concerns.

4           The Town Board clearly recognized that when  
5 they made the AMP a mitigation measure for the traffic. So I  
6 would say that proceeding with the Starbucks without  
7 complying with the requirement to ensure the AMP can be  
8 construction put into use, is a massive safety concern. And  
9 doing so in the face of the Town's recognition of that  
10 concern, wow.

11           MR. DiSTEFANO: I believe there is a condition  
12 within the incentive zoning that prior to the issuance of any  
13 C of O, that AMP has to be completed, but I don't think we  
14 will get into a traffic issue at that point.

15           CHAIRPERSON MIETZ: Okay. So let's move along  
16 with questions, Board Members, Kathy, Jen, Judy, any other  
17 questions for Mr. Zoghlin?

18           MS. SCHMITT: I have a few.

19           CHAIRPERSON MIETZ: Okay, Kath, go ahead.

20           MS. SCHMITT: All right. Hey, thanks so much  
21 for being here and answering some questions. As you know,  
22 this is a lot of papers to go through. You mentioned tonight  
23 a couple of times about the trail and how it needed to be a  
24 pathway with park-like conditions. I guess I'm wondering  
25 what that means in light of what I have always thought of

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3 that part of the trail, when I walk it is like. Because when  
4 I have walked it, it's a parking lot, and it's always been a  
5 parking lot. And you kind of skirt behind what used to be  
6 the bowling alley, and you walk around and you used to kind  
7 of go behind the Mario's tent and the employee parking lot,  
8 and then go through. Is that park-like conditions that  
9 you're talking about that are being changed?

10 JACOB ZOGHLIN: Hello, Ms. Schmitt and thank  
11 you for your question. So the park-like conditions language  
12 and the other language I referenced, that's not coming from  
13 my head. That's coming from the easement that was granted to  
14 the Town, that created the public pedestrian pathway that  
15 goes across the rear of the Whole Foods Plaza parcel. And it  
16 says that the Town has the duty to create and maintain the  
17 public pedestrian pathway. And it says that it needs to  
18 restore the pathway, whenever it does anything to it, to  
19 park-like conditions.

20 Now, if your comment is that currently your  
21 impression of that location is not park-like, that would go  
22 to whether the terms of the easement have been complied with.

23 Frankly, I have not been very pleased with how  
24 the Town has treated this particular easement. You know,  
25 it's part of what creates the Auburn Trail and gives you, as

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3 the public, the right to cross it. They have not been very  
4 good about maintaining it, and they've not been good about  
5 restoring it to pre -- I'm sorry, to park-like conditions.

6 That doesn't mean they don't have a legal  
7 obligation to do so under the easement. And that's not just  
8 effecting the Town's rights, it's effecting the public's  
9 rights.

10 MS. SCHMITT: And is it your understanding  
11 though, as part of this overall project that they are going  
12 to improve that part of the trail?

13 JACOB ZOGHLIN: Thank you for that question,  
14 because it's a really nitpicky issue. They are not going to  
15 improve that portion of the trail. They're going to create a  
16 new and different trail and that doesn't satisfy -- there's  
17 no exception to the public trust doctrine. You can't say,  
18 oh, that trail's better so they don't need to comply, they  
19 don't need state legislative approval, that's just not the  
20 law.

21 They're going to create a different trail in a  
22 different location using different easements, but they are  
23 not going to maintain the existing easement, in the existing  
24 location in park-like conditions as a pedestrian pathway in  
25 perpetuity.

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3 Therefore, the law of the State of New York  
4 for over a hundred years requires them to get state  
5 legislative approval. If it's no big deal, go to the state  
6 legislature.

7 MS. SCHMITT: And getting back to the building  
8 permit, can you explain how the building permit for Starbucks  
9 interferes with the use and enjoyment of the Auburn Trail?

10 JACOB ZOGHLIN: How -- so your question is how  
11 the building permit for the Starbucks impacts the Auburn  
12 Trail, is that your question?

13 MS. SCHMITT: Yeah, how does it interfere with  
14 it?

15 JACOB ZOGHLIN. So the approval from the  
16 Planning Board, Condition 41, required that all of these  
17 approvals be obtained, State and local approvals be obtained  
18 prior to the issuance of any building permit. So it is a  
19 condition of site plan approval that they obtain these  
20 approvals.

21 And the project as approved, of which this is  
22 based on, allows the Town to interfere with the Auburn Trail  
23 easement that's why -- that's how it's tied into the  
24 Starbucks building permit.

25 MS. SCHMITT: So it's the project itself not

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3 exactly the Starbucks permit; is that correct?

4 JACOB ZOGHLIN: Well, it is the Starbucks  
5 permit because the permit cannot be issued without the  
6 approval, right? It's a condition of site plan approval,  
7 before a building permit may be issued, for any of the  
8 buildings, they need these approvals.

9 So because the building is part of the project  
10 that was approved they need the approval from the Planning --  
11 I'm sorry, from the state legislature.

12 MS. SCHMITT: Okay. And one final question  
13 and I am still kind of circling back, trying to understand  
14 your client's injury and how it is different from the kind of  
15 harm to the public? I get that you're saying that there's  
16 adverse traffic, that the trail may not be as accessible, but  
17 I'm not seeing how that's different from the average -- if  
18 that's true, how that's different from the average Brighton  
19 resident.

20 JACOB ZOGHLIN: Proximity. I mean, if you are  
21 right next to a big project that's going to have massive  
22 project traffic impacts, you're going to be driving past it  
23 every single day. You know, the people on the other side of  
24 town maybe they drive past, maybe they don't, but the case  
25 law in this couldn't be clearer. People that are that close

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3 to a project, there's an inference that they're going to be  
4 affected by it.

5 I think that the traffic studies conducted by  
6 the Town Board and the applicant's contractor, you know,  
7 these things show that there's going to be massive traffic  
8 impacts. It's not at all a stretch to say those impacts are  
9 going to affect people that are close by.

10 Additionally, our clients, they regularly use  
11 the Auburn Trail in its current location, the pedestrian  
12 pathway. And so if there's any interference with that as a  
13 result of this project, that will affect them. It will  
14 deprive them of a recreational and aesthetic use, to which  
15 they have regularly exercised their rights.

16 And lastly, their rights to see the laws  
17 enforced in this specific instance, deem the laws enforced  
18 effects them more than people on the other side of town.  
19 Again, because of how close this project is.

20 MS. SCHMITT: So it's not your argument that  
21 somehow their property values are lower?

22 JACOB ZOGHLIN: That may be true, but, you  
23 know, I think -- I don't need to get that far to establish  
24 standing. You know, I think that certainly people have  
25 argued that it will lower property values, that may be the

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3 case, but the traffic impacts, the impacts to their  
4 aesthetics and recreational resources, the impacts of the  
5 Auburn Trail and their interests in seeing the laws followed  
6 are sufficient injuries as a matter of law to establish  
7 standing.

8 And I honestly don't even think the developer  
9 would dispute the standing issue or the Town, to be honest.  
10 Maybe they would, but I would be very surprised if they went  
11 that far.

12 MS. SCHMITT: Thank you.

13 JACOB ZOGHLIN: Thank you, Ms. Schmitt.

14 CHAIRPERSON MIETZ: Okay. So, Board members,  
15 any more questions please? Okay. So at this point then --

16 MR. DOLLINGER: Yes, can I ask a couple  
17 questions?

18 CHAIRPERSON MIETZ: Yes, David.

19 MR. DOLLINGER: Yeah, isn't it true that  
20 there's pending, that the public trust doctrine requirement  
21 for the public trust doctrine and the abandonment and all of  
22 those other requirements, those -- the requirements and the  
23 necessity for those things are being litigated at this time,  
24 correct?

25 JACOB ZOGHLIN: We've asserted claims under

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3 the public trust doctrine and permissive referendum, Town Law  
4 64.2 in our lawsuits.

5 MR. DOLLINGER: Right, and they're before  
6 Judge Ark now. I'm really not all that familiar with it, but  
7 aren't they?

8 JACOB ZOGHLIN: Yes. Those claims are alive  
9 and well. And Judge Ark has --

10 MR. DOLLINGER: There has been, it appears  
11 there has been no real determination that those things are  
12 required at this time.

13 JACOB ZOGHLIN: The Fourth Department,  
14 although not settling --

15 MR. DOLLINGER: In this particular instance.  
16 All right, but go on.

17 JACOB ZOGHLIN: The Fourth Department said  
18 that there was an issue of fact that precluded summary  
19 judgments against our public trust claim. So there's a  
20 question of fact as to there was an abandonment. Okay? So  
21 that means that the appellate division analytically  
22 determined first, that there's a property interest. Likely  
23 also determined that it was park land, although I don't want  
24 to speak for them, but analytically that's my understanding.

25 Therefore they said, well, we're reaching the

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3 question of whether it was abandoned. And if it was  
4 abandoned, then the Town must obtain state legislative  
5 approval under the public trust doctrine, and subject the  
6 approvals to permissive referendum under Town Law 64.

7 So the issue really is whether an abandonment  
8 occurred and if it occurred, then those requirements must be  
9 satisfied as a condition.

10 MR. DOLLINGER: So you would expect Ramsey to  
11 review all of that and make those determinations as part of  
12 the issuing this building permit?

13 JACOB ZOGHLIN: The ZBA's now the one in the  
14 position to -- and the --

15 MR. DOLLINGER: Even if we're looking at it de  
16 novo, I mean would you want us to substitute our judgment for  
17 the judgment of pending before the court?

18 JACOB ZOGHLIN: The Court hasn't made a  
19 judgment on those facts.

20 MR. DOLLINGER: That's what I'm saying.  
21 There's no determination made, but it looks like you're kind  
22 of requesting us to make that determination prior to -- I  
23 mean, that's my point. I mean, it seems --

24 JACOB ZOGHLIN: Well, the Zoning Board is, you  
25 know, in a position to look at uses. Do they think that a

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3 450 car parking lot, trailer tractor turnarounds, and drive  
4 lanes are consistent with a public pedestrian pathway in  
5 park-like conditions? I don't think that's a particularly  
6 difficult ask. If they think that those are in conflict,  
7 then they should ask, you know, tell the Town to go get their  
8 approvals that are required.

9 MR. DOLLINGER: And then, just one more last  
10 question. So, you cite in your papers Town Code  
11 217.12(e)(iii), that requires the building inspector prior to  
12 issuance of site plan approval to certify that each site plan  
13 and amendment thereof meets the requirements of the Town  
14 Code. But you put in there the parenthetical phrase, prior  
15 to the issuance of the final site plan approval, in  
16 parenthetically, and therefore also prior to the issuance of  
17 a building permit. Is that -- that's not in the statute,  
18 that's not in that ordinance, correct?

19 JACOB ZOGHLIN: I'm sorry, I -- can you repeat  
20 that?

21 MR. DOLLINGER: Yeah. It says you assert the  
22 Town Code 217 requires a building inspector prior to issuance  
23 of final site plan approval, and then you have a  
24 parenthetical phrase, and therefore also prior to issuance of  
25 a building permit to certify each site plan amendment. Is

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3 there a requirement specifically in any of the ordinances  
4 that says that the building inspector has to certify that the  
5 requirements of the comprehensive plan have been met prior to  
6 the issuance of the building permit or just prior to the  
7 issuance of a site plan approval?

8 JACOB ZOGHLIN: Again, analytically, this  
9 requirement is part of the site plan review and approval  
10 process. So you can't even issue a building permit until  
11 you've gone through that process, and you can't issue a site  
12 plan until you've gone through that process.

13 So analytically, you must get this building  
14 inspector certification prior to issuance of a building  
15 permit.

16 MR. DOLLINGER: The site plan, you're  
17 basically saying the site plan wasn't done correctly because  
18 it -- as part of this building permit application?

19 JACOB ZOGHLIN: Pardon me? The site plan --  
20 so it's interesting, he didn't do this when the site plan  
21 approval was pending either. And when we went to Mr. Boehner  
22 and asked for an interpretation of the code, which is  
23 essentially asking him to certify that the code had been met,  
24 he didn't respond. And then we filed the ZBA appeal asking  
25 the Zoning Board of Appeals to consider issues and the ZBA

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3 said, that we didn't have jurisdiction -- I'm sorry, that the  
4 ZBA didn't have jurisdiction because Boehner did not make any  
5 decision.

6           So, I mean, we are being told we can't appeal  
7 it either way, because Boehner refused to make a decision at  
8 the site plan approval, we asked him to make a determination,  
9 we applied for the interpretation, and then we appealed it to  
10 the ZBA, and the appeal was rejected.

11           So, you know, if the ZBA at that time took the  
12 position that we couldn't -- that we couldn't address the  
13 compliance with the zoning code issues at that time, and now  
14 the suggestion, Mr. Dollinger, that we can't raise the zoning  
15 code compliance now, that begs the question, well, when does  
16 the Town want us to raise the noncompliance with the zoning  
17 code? Thank you.

18           CHAIRPERSON MIETZ: Okay.

19           MS. TOMPKINS WRIGHT: Is there a specific  
20 harm, I mean, are you arguing that if he -- I know that your  
21 papers note that he couldn't have certified it because there  
22 were certain zoning violations, the Town has responded that  
23 as part of the incentive zoning approval there were no  
24 violations, it was in full compliance. So are you arguing  
25 that it wasn't in compliance or just that it was a failed

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3 signature? And if it's a failed signature, what's the  
4 necessary harm and remedy for that? Particularly, I think  
5 somebody alleged that most of these aren't signed, so that  
6 will beg the question how many permits need to be revoked for  
7 kind of a failure to follow a procedural step.

8 JACOB ZOGHLIN: I would to love get into the  
9 merits of what we think was not complied with, but there's  
10 not been a certification from the building inspector that we  
11 can appeal. And once he appeals it -- I'm sorry, once he  
12 makes a certification it will be a decision that we can  
13 appeal to the ZBA. Unfortunately, he's never made a  
14 certification in violation of the zoning code -- I'm sorry,  
15 the Town Code.

16 So we're not in a position to appeal because  
17 there's no -- there's not been a decision by Mr. Boehner  
18 because he's advocated his duty to review and certify whether  
19 or not the plans comply with the zoning code.

20 MS. TOMPKINS WRIGHT: So the harm is a lack of  
21 an ability to appeal them?

22 JACOB ZOGHLIN: I mean, the harm is it  
23 violates the law. It's expressly required. There's no  
24 ambiguity whatsoever.

25 MS. TOMPKINS WRIGHT: I meant the harm to the

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3 applicant.

4 JACOB ZOGHLIN: In addition to the traffic  
5 harms and the failure to follow the law? I mean, because  
6 failure to follow the law is a harm. Even if it's a  
7 procedural thing, the harms resulting from the project are  
8 the ones that give us a standing.

9 CHAIRPERSON MIETZ: Okay, all right. Are we  
10 set, Andrea? Okay, thank you.

11 So at this point then, let's see who in the  
12 audience would like to speak regarding this application?

13 And, what have we got, Ramsey?

14 MR. BOEHNER: Yes.

15 CHAIRPERSON MIETZ: Please proceed.

16 MR. BOEHNER: Once again, good evening. I am  
17 Ramsey Boehner, Town Planner, in attendance with me tonight  
18 are Mike Guyon, Commissioner of Public Works, John Mancuso,  
19 of the law firm of Weaver, Mancuso, Brightman.

20 I would like to thank the Chairperson and the  
21 Board for allowing me the opportunity to submit my letter to  
22 the in opposition to Application 9A-04-20, submitted by Save  
23 Monroe, and Application 10A-02-20 submitted by Brighton  
24 Grassroots and for the ability to be able to answer any  
25 questions the Board may have.

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3 I'd like to thank the Board for all your  
4 efforts on this matter, and for the matters that are before  
5 you. The letter that I submitted was prepared with the  
6 assistance of John Mancuso as Special Counsel with respect to  
7 both the Save Monroe appeal and the Brighton Grassroots  
8 appeal.

9 For the reasons discussed in the letter, the  
10 Town issued the building permit in accordance with the  
11 applicable laws, regulations, including the requirements of  
12 the Town's comprehensive development regulations and all  
13 approvals issued by the Town Board, the Town of Brighton, and  
14 the Town Planning Board. And accordingly the appeals should  
15 be denied and the issuance of the permit upheld.

16 I believe the letter speaks for itself, so I  
17 will not be presenting my response to the appeals in great  
18 detail. I would like to point out that we prepared a  
19 spreadsheet that summarizes our responses to the allegations  
20 presented in both appeals that I think you might find  
21 helpful.

22 Before I ask Mr. Mancuso to speak, I would  
23 like to say as the planner for Brighton for over 30 years  
24 I've dedicated myself as an employee of the Town of Brighton,  
25 the high ethical standards and to protect the safety, general

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welfare of our community.

In light of the tenancy on part of some people regarding this project to make false allegations against the Town and discredit Town employees, I understood that every effort needed to be made to assure the highest caliber of administration and review was conducted prior to the issuance of the building permit for the construction of the plaza.

It is important for me stress that of all applicable laws, regulations, and requirements of the comprehensive development regulations and conditions of the incentive zoning and planning approval were not met, I would not have issued that permit. There's no way I would have done it, not for this project or any other project. But given that controversy of this project, believe me, we are dotting our I's and crossing our T's.

I believe you will find after reviewing my letter that a thorough comprehensive and complete review was undertaken by the Town prior to the Town issuing the building permit for the project. And the Town issued the building permit in accordance with the applicable law and regulations, including the requirements of the comprehensive development regulations, the incentive zoning resolution, and the site plan approval. Also given that three separate conditional

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3 submissions have been made for this application, I'd like to  
4 request the opportunity to review those new submissions and  
5 any additional submissions that are made in the future and be  
6 granted the right to respond as part of the record to any  
7 allegations made in those submissions.

8 I now would like to ask that Mr. Mancuso be  
9 given an opportunity to address the Board regarding this  
10 matter. Once again, I would like to thank you for your  
11 effort and consideration and I will make myself available for  
12 any questions that the Board may have.

13 CHAIRPERSON MIETZ: Okay, thank you, Ramsey.

14 MR. BOEHNER: Thank you.

15 MR. MANCUSO: Good evening, members of the  
16 Board. Before I begin, just to echo Mr. Boehner's last  
17 statement, to the extent that the Board has any questions of  
18 Mr. Boehner, certainly I would yield before the Board at the  
19 point, otherwise I'm happy to provide my brief, hopefully,  
20 brief recitation of the arguments in support of Mr. Boehner's  
21 issuance of the building permit. So with that I will stop  
22 for one second and see if the Board would like to ask  
23 questions first.

24 CHAIRPERSON MIETZ: I think we can go ahead,  
25 John, and proceed.

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3 MR. MANCUSO: Thank you. As Mr. Boehner  
4 indicated, my name is John Mancuso, I'm Special Counsel to  
5 Mr. Boehner with respect to the defence of his issuance of  
6 the building permit.

7 Back when Mr. Boehner's statements for a  
8 moment, both of the appellants in this matter are wrongfully  
9 attacking the Town and Mr. Boehner with respect to the  
10 issuance of the permit with respect to the project,  
11 generally. And the idea that Mr. Boehner and the Town, and  
12 the Planning department have buried their collective heads in  
13 the sand or disregarded the laws of the Town and of the State  
14 of New York, with respect to this project, is baseless, and  
15 we submit, not supported by the law or the record in this  
16 case.

17 Mr. Boehner and his department as the record  
18 reflects thoroughly reviewed this project prior to the  
19 issuance of the building permit that's before this Board.  
20 Let's not forget that the site plan approval for this project  
21 was issue in September of 2018, and we sit here today in  
22 October of 2020 reviewing the issuance of a building permit.  
23 For two years almost, Mr. Boehner and the department  
24 evaluated project submissions. They went through 10,000  
25 pages of documents requesting additional information,

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3 submissions by the developer and others to ensure that this  
4 project, that this issuance of the building permit met every  
5 single requirement of the comprehensive development  
6 regulations, every requirement, every condition of the Town's  
7 approval, the incentive zoning approval, the conditions of  
8 site plan approval and the amenity agreement. And only after  
9 that exhaustive review by the Town did a building permit get  
10 issued for the construction of the Starbucks and the site  
11 development work for the project.

12 Now, to briefly respond to some of the  
13 arguments that have been made this evening. And again, I  
14 would defer to Mr. Boehner's submission because it obviously  
15 details all of the responses to every argument. But to focus  
16 on a couple of issues that have been addressed this evening,  
17 the first of which is the issue of the cross access easement.  
18 We've already heard multiple people speak with respect to  
19 this, I would concur in the recitations and arguments,  
20 statements made by Mr. Dollinger, and Mr. Rosenbaum.

21 This issue of the cross access easement  
22 validity is simply unsupported by New York law governing real  
23 property. These easements, and there's been no accusation of  
24 the contrary nor could there be, that these easements are not  
25 executed appropriately by someone with authority, being the

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3 property owners. No dispute that they don't own the  
4 property, that sign these easements, and conveyed a valid  
5 easement interest that the developer utilizing for a basis  
6 for supporting the access management plan improvements.

7 They are valid easements and whether or not  
8 there is some future circumstance that may or may not arrive  
9 with respect to those easements, whether it's a foreclosure  
10 or otherwise, is complete speculation. We simply do not know  
11 what will happen if there's a foreclosure, if there is not a  
12 foreclosure, if perhaps there is a foreclosure but they don't  
13 decide to foreclose those easements, that is certainly all  
14 plausible, but all speculation.

15 They are valid interests until determined  
16 otherwise. I agree with council, with the Board Member  
17 Ms. Wright in terms of the burden and issues associated with  
18 effectively having town and municipalities being abstracters  
19 and reviewing chains of title and reviewing every single word  
20 that is contained in a mortgage or any other instrument.  
21 Simply not supported by applicable law.

22 The conditions of those mortgages are private  
23 contractual agreements. The notion and accusation that  
24 Mr. Boehner and the Town disregarded review of those  
25 easements is not correct, that is not the arguments that are

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3 set forth in the papers. The arguments are that the  
4 mortgages themselves as private contractual agreements.

5 Obviously the Town received and reviewed those  
6 easements prior to deciding that is a substantive matter,  
7 they were sufficient to carry out the implementation of the  
8 access management plan improvements. And there is no  
9 argument for suggestion substantively speaking that there is  
10 any problem with those easements as prepared, as filed in the  
11 Monroe County Clerk Office's. The only issue seems to be one  
12 of an assumption a mistaken assumption that they are void  
13 from their inception and then simply not legally supportable.  
14 And so for that reason, that basis of objection on the cross  
15 access easement issue should be rejected.

16 Turning to the issue of the multi-phased  
17 construction argument that both Save Monroe Avenue and  
18 Brighton Grassroots have raised, there was a lot of  
19 discussion about the characterization or mischaracterization,  
20 as the case may be of the notion that this project is being  
21 constructed in multiple phases in violation of Town  
22 approvals. What is conveniently disregarded completely, from  
23 both arguments is the fact that the Town's review and the  
24 issuance of the building permit is dealing with a completely  
25 separate issue from that of SEQRA phasing, as that is to find

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3 under SEQRA law that was reviewed by the Town Board and  
4 subsequently rendered in the finding statement they issued.

5           What we're really talking about and what the  
6 building permit is speaking to, is construction sequencing.  
7 That is, the sequence by which a developer is going to move  
8 earth and construct the project site. Now, there is a  
9 sequencing plan that the Town reviewed and that the Town  
10 required of the developer to prepare in order to ensure that  
11 any disturbance of the project site, the regulation of storm  
12 water management, controlling of erosion, that these things  
13 were addressed as part of a sequencing plan. So that instead  
14 of effectively allowing the developer to go out and move  
15 earth, it was a complete, you know, completely unfettered  
16 discretion that there was a particular plan that the Town  
17 reviewed and approved to ensure that in sequence albeit, one  
18 phase of construction, but in sequences, within the project  
19 site itself that they move from one sequences to another to  
20 ensure that everything was protected from an environmental  
21 standpoint to regulate storm water and control erosion.

22           And that is supported by a litany of guidance  
23 from the Department of Environmental Conservation and is,  
24 frankly, standard construction protocol for a project of this  
25 type. And certainly, I would turn it over to Mr. Boehner or

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3 Mr. Guyon to the extent they wish to supplement or add to  
4 what I've indicated.

5 But that's what we're talking about. That's  
6 what the building permit has been issued and is why there is  
7 a sequencing plan in place. But it is not inconsistent in  
8 any way shape or form with any approval or the SEQRA review  
9 that was undertaken by the Town Board in connection with the  
10 project. Nothing prohibits the Town from imposing these  
11 requirements which are best practices for storm water  
12 management and soil erosion.

13 To move on to some of the other issues  
14 briefly, the issue of certification to echo Mr. Dollinger's  
15 question, it's contained in the site plan components of the  
16 Town Code. There's nothing in the components of the building  
17 permit section that require the building inspector to certify  
18 a site plan. Those issues are in front of the court  
19 currently, they have not been adjudicated. Their remedy is  
20 to deal with it in the challenge to the Planning Board site  
21 plan approval, but as it relates to the issue of the building  
22 permit, which is before this Board currently there's no  
23 requirement in the Town Code for a certification on site  
24 plan. That's a site plan requirement.

25 Additionally, the formal or substance and

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3 argument that effectively the process that was founded by the  
4 Town dating through several years in terms of reviewing  
5 substantive compliance of the comprehensive development  
6 regulations, and as explained in the building inspector  
7 submission culminating in the sign off and approval of the  
8 Commission of Public Works, with respect to the final plans  
9 that would lead to the issuance of the building permit, is  
10 the argument proffered is without merit and should be  
11 disregarded.

12                   Ultimately, the Commissioner of Public Works  
13 under the Town Code is, can be deemed the building inspector.  
14 And also as appointed, Mr. Boehner is a building inspector  
15 and many other people within his department to undertake  
16 certain roles on behalf of the Commissioner of Public Works  
17 to manage all things related to the zoning process in the  
18 Town.

19                   And so the process followed here,  
20 substantively speaking, is that a thorough review is  
21 undertaken, as detailed in the submission, and as part of the  
22 review by Mr. Boehner and the department they are checking as  
23 Mr. Boehner indicated, compliance with the comprehensive  
24 development regulations and every other aspect and  
25 conditional of approval that's associated with this project.

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3                   Until such time that they make that  
4 determination, and in that document it does reiterate that  
5 Mr. Boehner had in fact made that determination, there will  
6 not be a signature placed on those plans. And until and so  
7 Mr. Guyon's signature as a Commissioner of Public Works in  
8 reliance upon all of the hard work that was undertaken by his  
9 department, including Mr. Boehner, affixes his signature to  
10 the plan to represent that the plans are compliant with the  
11 Town's regulations and any and other applicable approvals, in  
12 order to allow for the eventual issuance of the building  
13 permit.

14                   In the absence of that signature, Mr. Boehner  
15 would not sign a building permit or issue it. And so that  
16 signature as is set forth on the plan, the utility plan, is  
17 the practice of the public works department and the Town  
18 certifying that it meets the requirements of the  
19 comprehensive development regulations. And I think the  
20 question that was posed by Ms. Wright is an appropriate one.  
21 In terms of understanding what are we really talking about?  
22 A signature on a page or substantive compliance?

23                   So, you know, with or without a signature to  
24 which there is a signature, the real issue is whether there's  
25 compliance with the comprehensive development regulations.

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3 And the only arguments that have been made have all been  
4 refuted in the submission in addition to some that haven't  
5 been raised, but the issues of compliance with use variances  
6 and the like are all without merit.

7 As explained, this is an incentive zoning  
8 project and so the Town Board has granted an incentive to  
9 give relief from those provisions of the code, such that no  
10 variances are necessary. And so the project is compliant,  
11 substantively speaking. And the argument to suggest to the  
12 contrary that a certification has not been undertaken is not  
13 supported by the record.

14 And so, with that, I will reserve to the  
15 extent that the Board has any additional questions of  
16 Mr. Boehner or Mr. Guyon or myself, I will turn it over back  
17 to the Board and/or Mr. Guyon or Mr. Boehner if they wish to  
18 add anything to this.

19 MR. BOEHNER: The only thing that I would add  
20 is that, it is clear in the incentive zoning resolution,  
21 anticipated multiple building permits being issued. And it  
22 was stating that with respect for the trail amenity, that the  
23 developer shall complete the construction of the trail within  
24 365 calendar days, on which the Town issued the first  
25 building permit for the project. And throughout those

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documents it did reference, and gave the idea that there were going to be multiple building permits issued for the construction of the buildings and that the plaza itself would be built in a single phase.

CHAIRPERSON MIETZ: Okay, all right. Now, did Mike Guyon want to say anything or are we okay there.

COMMISSIONER GUYON: Dennis, I think we're okay there. I think John covered it pretty well. You know, I can, regarding the phasing project, we certainly require any project of this magnitude develop a sequencing plan. I hear it referenced as a phasing plan, to ensure that we minimize the amount of disturbance on the site. It is required by the DEC, it allows us to best manage the erosion control and everything else on the site. So that's very, very common practice and it's a practice we used here.

CHAIRPERSON MIETZ: Very good, thank you.

Okay, let's move on to any other persons who would like to speak regarding Application 10A-02-20?

MR. BOEHNER: I think Judy wants to speak.

CHAIRPERSON MIETZ: I'm sorry?

MR. BOEHNER: I think Judy was trying to speak.

MS. SCHWARTZ: Yes, okay.

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3 CHAIRPERSON MIETZ: What do you need, Judy?  
4 You have to unmute your mic.

5 MS. SCHWARTZ: Okay. In point number four  
6 where you talk about the cross access easements are  
7 sufficient, is that a normal word or is there anything  
8 stronger that can be more reassuring, than just saying  
9 sufficient? To me that leaves a little bit of doubt in my  
10 mind.

11 CHAIRPERSON MIETZ: Judy, who are you  
12 addressing this to?

13 MS. SCHWARTZ: Probably Ramsey, it's on your  
14 sheet, your spreadsheet.

15 CHAIRPERSON MIETZ: Okay.

16 MS. SCHWARTZ: Point number four, the very  
17 last sentence, I am just concerned about the word sufficient.  
18 Is that normal lingo or is there something that can be more  
19 reassuring than just sufficient?

20 MR. BOEHNER: I'm not sure what word you would  
21 want. We found that the easements after review, as far as  
22 language and location were satisfactory, met all of our  
23 requirements, and complied with the intent of the Town Board  
24 condition of the incentive zoning.

25 So I would say it met the requirement of the

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3 incentive zoning conditions that were put on the project by  
4 the Town Board regarding the filing and review of those  
5 easements.

6 MS. SCHWARTZ: Okay. I guess I just wondered  
7 how sufficient sufficient is, so, okay.

8 MR. BOEHNER: It was very sufficient.

9 MS. SCHWARTZ: Okay. That makes me feel  
10 better.

11 CHAIRPERSON MIETZ: Okay. What else to we  
12 have as far as anyone interested in speaking regarding this  
13 application?

14 DANNY DANIELE: Here. I'll make it quick  
15 because I know there is a dozen people from the Town of  
16 Brighton looking to use the Zoning Board for what it's  
17 properly supposed to be used for, not for Wegmans funded  
18 lawyers to try and postpone grocery stores.

19 But the biggest point I want to make is the  
20 easement in the back of the property that everyone calls the  
21 Auburn Trail, that is a shared use easement, that is not a --  
22 and just because the other attorneys were not making this  
23 very clear -- it's not just an easement for the town and its  
24 pedestrians, it originally was train tracks, it belonged to  
25 then RG&E, then it was part of the businesses that were there

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3 and then it was part of the easement given to the Town.

4           So the businesses were there first, and just  
5 like you would see in many towns or cities, where you'd see a  
6 sidewalk be installed in the front of people's driveways,  
7 let's say, on the side of the road, and they put a sidewalk  
8 through your driveway. That doesn't mean you're no longer  
9 allowed to drive over your driveway. That means that that's  
10 a shared easement so that you can drive your car onto the  
11 road, and they also added a sidewalk for the pedestrians to  
12 use.

13           This easement that's back there, it's a shared  
14 use easement that's not only supposed to be for RG&E to come  
15 in with their trucks any time they want to fix the wires and  
16 trim the trees. But it was next given to the businesses for  
17 them to use, and it specifically says on there for the use  
18 for traffic, parking, movement. So there's nothing illegal  
19 with cars driving on there.

20           One of the Board members mentioned earlier  
21 that for years and years people have been walking through  
22 there going through parking lots. And the attorney made it  
23 seem, well, it should have been park land. No, that should  
24 have been a shared use easement. Just like you would see a  
25 sidewalk on your driveway, you don't turn that sidewalk into

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3 parkland.

4           That easement in the back of those properties  
5 is a shared use easement where you are allowed to park  
6 vehicles there, you're allowed to walk through it, and RG&E  
7 is allowed to do whatever they need to do. The businesses  
8 were there first, and then as a goodwill gesture while they  
9 did other items through construction, the businesses said to  
10 the Town, yes, I will allow an easement through my property  
11 so that people can walk through it to make a convenient  
12 passage for the Auburn Trail.

13           So I just want to make sure everyone is very  
14 clear that it doesn't get convoluted that any businesses  
15 around there, to when it was the bowling alley, or Mamasan's,  
16 or the animal hospital, or Mario's that somehow treaded upon  
17 this easement that they weren't allowed to. It was first  
18 businesses and then it was the Town's easement.

19           And for the past 25 years it has been shared  
20 very well between everybody. Not only is that going to  
21 continue, and unfortunately the attorney kind of misled you  
22 to think there were parking spaces that are going to be on  
23 this easement. There are no parking spaces on it. It's  
24 going to be very similar to the way it was before, only  
25 cleaner and better.

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3 And in addition to that, we've built a second  
4 trail that's literally ten feet away to start with. Which I  
5 believe most people would use unless you're someone being  
6 paid by Wegmans to walk through the parking lots than have  
7 taken the beautiful trail ten feet to the right.

8 So I just want to make that very clear. And  
9 for the rest of all this stuff, it's all in the courts. I  
10 think what the attorneys are trying to do is use this Board  
11 to make their case because they're losing in the courts so  
12 they're coming to you hoping to confuse you with all of their  
13 facts to make it seem like, oh my gosh, the Town screwed this  
14 whole thing up, when, in fact, that's not true.

15 And frankly, it's disgraceful for the amount  
16 of time and work the Town has put into this project to help  
17 the community, to raise tax base. They are using this town,  
18 this Board and unfortunately they're stealing the time away  
19 from all of these people who are on this meeting tonight.  
20 We're going into 10:00 p.m., everyone has got work to do, and  
21 they're using all of our time for their own agenda to stop  
22 competition and it's disgraceful. Let the courts decide, how  
23 the hell could you guys do it otherwise? Thank you very  
24 much.

25 CHAIRPERSON MIETZ: Okay. Thank you very

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3 much.

4           Jacob, I see you have a hand here. Rebuttals  
5 are not allowed as it relates to this part of it. If you  
6 have something new to add, that will be fine, if not, it is  
7 not fine. So go ahead.

8           JACOB ZOGHLIN: I'm not going to respond to  
9 Mr. Daniele. I will say that everything that we represented,  
10 we represented in good faith. The easements regarding the  
11 Auburn Trail are instruments that speak for themselves. And  
12 if the ZBA would like to review them or would like further  
13 briefing on the legal effect of those easements, I would be  
14 happy to provide them. But I don't think that we should be  
15 analyzing the legal effect of documents based on someone's  
16 memory or comments.

17           To close out, I would like to thank all of the  
18 Board members for their time tonight. I'd like to thank  
19 Ramsey Boehner and Mr. Mancuso, and all the other attorneys  
20 and Town's people who spoke tonight. I appreciate the  
21 opportunity to address you. Hope you have a good evening.

22           MR. ROSENBAUM: Mr. Mietz, this is  
23 Mr. Rosenbaum, I'd like to make one brief comment?

24           CHAIRPERSON MIETZ: Yes, go ahead.

25           MR. ROSENBAUM: Thank you. Again, this is

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3 Warren Rosenbaum from Woods, Oviatt, Gilman, attorneys for  
4 the developer. I wanted to, number one, to keep it short, I  
5 want to incorporate my reference into the record on this  
6 9A-04-20, I want to incorporate my reference, the statements  
7 I made in the prior application into the record on this  
8 application, that's number one.

9 Number two, I think what Mr. Zoghlin had to  
10 say regarding the access easements represents or demonstrates  
11 a fundamental misunderstanding of basic real estate law. And  
12 really descended into gibberish in my view. I think you have  
13 a very competent attorney for the Zoning Board of Appeals,  
14 Mr. Dollinger, who is a very experienced, knowledgeable real  
15 estate attorney. And I understand at least one of your Board  
16 members is also an experienced real estate attorney. I  
17 certainly would defer, I would ask the board to defer to  
18 their judgment in terms of whether or not those access  
19 easements are indeed valid easements.

20 Thirdly, I don't think that there's any  
21 question, that one of the Board members asked if the issuance  
22 of the building permit itself for Starbucks would impact  
23 traffic. The answer is obviously, no. The only thing that  
24 would impact -- have any impact on traffic is if there's  
25 actually traffic coming in and out of the Starbucks. And

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3 until there's actually a certificate of occupancy issued and  
4 customers start coming in and out of Starbucks, there  
5 obviously won't be any additional traffic.

6 And when the Town ultimately issues a  
7 certificate of occupancy someday, and I'm assuming that we  
8 will hear from our opponents again. They'll probably take an  
9 appeal of that to the Board as well. But unless and until a  
10 certificate of occupancy is issued, there's going to be no  
11 impact on traffic.

12 And lastly, I'd just like to ask once again  
13 that the appeals taken by Brighton Grassroots be in all  
14 respects denied, and the issuance of the building permit be  
15 in all respects upheld by the Zoning Board of Appeals. And I  
16 thank you for your time.

17 CHAIRPERSON MIETZ: Thank you, Mr. Rosenbaum.

18 Okay, is there anyone else who needs to speak  
19 regarding this application?

20 MR. MANCUSO: This is John Mancuso, if I could  
21 briefly just to clarify for the purposes of the record, as  
22 with Mr. Rosenbaum, I would like to request that the  
23 statements made by Mr. Boehner, myself, and Mr. Guyon in  
24 connection with this application be incorporated by reference  
25 into the earlier Save Monroe application as in joint response

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3 to both appeals.

4 CHAIRPERSON MIETZ: Okay, yes, that's fine.  
5 And we did acknowledge that earlier on when that request was  
6 made by Mr. Boehner, so we will make sure that's dually  
7 handled.

8 JACOB ZOGHLIN: I made a similar request with  
9 respect to the SMA in having our comments incorporated there  
10 and vice versa as well.

11 CHAIRPERSON MIETZ: Okay, all right. I think  
12 we can wrap this up at this point then. At this point we  
13 will close the Public Hearing and move along to the next  
14 application.

15 MR. BOEHNER: Everyone, thank you. Good luck  
16 with the rest of the night.

17 CHAIRPERSON MIETZ: Thank you.

18 Okay, Rick, you're up.

19 APPLICATION 10A-03-20

20 10A-03-20 Application of Chris and Nicole  
21 Fitzgerald, owners of property located at 177 Commonwealth  
22 Road, for 1) an Area Variance from Section 207-11A to allow  
23 an in ground swimming pool to encroach 4 +/- ft. into a front  
24 yard (Ashbourne Road frontage) where not allowed by code; and  
25 2) an Area Variance from Section 207-2A to allow a front yard

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3 fence to be 4 ft. in height in lieu of the maximum 3.5 ft.  
4 allowed by code. All as described on application and plans  
5 on file.

6 CHAIRPERSON MIETZ: Okay. Who do we have  
7 speaking for 10A-03?

8 CHRIS FITZGERALD: Hi, it's Chris Fitzgerald.

9 CHAIRPERSON MIETZ: Yes, and our apologies,  
10 Chris, for how long this has taken, so please proceed.

11 CHRIS FITZGERALD: Certainly. Basically, I've  
12 got a two-part request. As Mr. DiStefano indicated we're  
13 looking to put a pool in. If you are familiar with the  
14 property it is on a corner lot, so the Ashbourne frontage is  
15 also considered a front yard. As it extends beyond the line  
16 of the house there, the dash line.

17 So when we met with the pool installation  
18 company, and they did the layout. The layout looks like it  
19 will encroach a maximum of four feet to the edge of the pool  
20 beyond the property line, inside of the line of the house  
21 which is like the four-foot encroachment on that front yard.

22 And there's also an existing fence that's  
23 drawn on there. A picket fence that would be replaced, it's  
24 a three-and-a-half-foot fence, it would be replaced with a  
25 four-foot fence around the pool. But instead of having a

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3 fence within a fence, or losing a significant portion of our  
4 usable yard there, we were requesting that we be able to  
5 replace the three-and-a-half-foot fence with a four-foot  
6 fence to meet the pool requirement, but asking for the  
7 exception on the three and a half code requirement.

8 CHAIRPERSON MIETZ: Okay.

9 MR. DiSTEFANO: Just for the record, Chris,  
10 you understand that you cannot put that four foot high fence  
11 into the Ashbourne right of way?

12 CHRIS FITZGERALD: I do. I see, I recognize  
13 where it is and for the record I didn't install that fence  
14 there.

15 MR. DiSTEFANO: Understandable, but the four  
16 foot high fence will have to stop at your front property  
17 line, it cannot go into the Town right of way.

18 JACOB ZOGHLIN: Yes, got it.

19 CHAIRPERSON MIETZ: Okay. So questions for  
20 Chris by the Board members?

21 MS. SCHWARTZ: Chris, when I stopped over I  
22 was talking to Nicole. Are you going to have it kind of a  
23 wood color, a natural color to blend in with the vegetation  
24 there, the trees and such, or had you thought of a different  
25 color or what?

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CHRIS FITZGERALD: For the fence?

4

MS. SCHWARTZ: Yes.

5

6

CHRIS FITZGERALD: Oh, yeah. We are planning on wood. We don't know if it is cedar or pine at this point.

7

MS. SCHWARTZ: Okay, thank you.

8

9

CHAIRPERSON MIETZ: Other questions for Chris? Okay, Chris, thank you.

10

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12

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

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APPLICATION 10A-04-20

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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.

20

21

CHAIRPERSON MIETZ: Okay. Mr. and Mrs. Costello?

22

BRIAN COSTELLO: Correct.

23

24

CHAIRPERSON MIETZ: Hi. Go right ahead, Brian.

25

BRIAN COSTELLO: We are actually looking to

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1  
2  
3 construct a garage off the back of our house that actually  
4 connects to the current one-car garage that's there. And  
5 we're requesting a variance because it encroaches on the  
6 backyard which has a 60-foot limit. We are looking to just  
7 lower that limit to 40 feet because the garage is about  
8 20 feet.

9 CHAIRPERSON MIETZ: Okay. Just one quick  
10 question, did you look at any other alternatives of how to do  
11 a garage on the house, or is there any other things you  
12 considered besides this ultimate decision.

13 BRIAN COSTELLO: Yeah. We did look at  
14 another, we had drawings for another garage that would  
15 actually be on the driveway. But, due to the variance on the  
16 left side which is five feet from the neighbor's house. And  
17 also, the fact that it would require the same variance, we  
18 decided to attach it to the house which will be less  
19 intrusive on the yard and also a better view from the street.

20 CHAIRPERSON MIETZ: Okay, very good.

21 Board members, questions?

22 MS. SCHWARTZ: Yeah, Judy, I have a question.  
23 Is this going to go right up to where the rocks are before it  
24 dips down? Are you going to have to go out beyond where it  
25 dips?

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3 BRIAN COSTELLO: It will be at about a half a  
4 foot past where the rocks are.

5 MS. SCHWARTZ: Okay, thank you.

6 BRIAN COSTELLO: It won't go past the edge of  
7 the driveway though.

8 MS. SCHWARTZ: Okay.

9 CHAIRPERSON MIETZ: Other questions?

10 MS. WATSON: I have a question. I'm just  
11 wondering if you could describe for the record, the need for  
12 the second garage? Why are you building an addition?

13 BRIAN COSTELLO: To park my car.

14 MS. WATSON: There's an existing garage, so I  
15 take it there are two cars?

16 BRIAN COSTELLO: There are two cars.

17 MS. WATSON: And have you spoken with any of  
18 the neighbors?

19 BRIAN COSTELLO: Yeah, I've spoken to all of  
20 the neighbors.

21 MS. WATSON: And does anyone have any  
22 objections?

23 BRIAN COSTELLO: Not at all.

24 MS. WATSON: Thank you.

25 CHAIRPERSON MIETZ: Other questions? Good.

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2  
3 So is there anyone on the call that would like  
4 to speak regarding this application? There being none, then  
5 the Public Hearing is closed.

6 APPLICATION 10A-05-20

7 10A-05-20 Application of Marisa and Serge  
8 Tsvasman, owners of property located at 110 Oak Lane, for  
9 Area Variances form section 205-2 to allow a garage addition  
10 to extend 2.5 +/- ft. into the existing 12.6 ft. rear setback  
11 where a 60 ft. rear setback is required by code, and extend 3  
12 +/- ft. Into the existing 18.1 ft. side setback where an  
13 18.75 ft. side setback is required by code. All as described  
14 on application and plans on file.

15 CHAIRPERSON MIETZ: Okay. Who do we have  
16 speaking for 10A-05?

17 SERGE TSVASMAN: My name is Serge Tsvasman,  
18 I'm an employee of Design Works Architecture, but I'm  
19 presenting my personal home today. We would like to add a  
20 two-car garage to our existing home. Currently we have a  
21 one-car garage that was added to a one-car garage that was at  
22 some point turned into a mudroom and the feasibility of  
23 parking has been exhausted. So we are looking at an  
24 opportunity to make it logistically, more functional for our  
25 family.

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CHAIRPERSON MIETZ: Okay.

4

5

SERGE TSVASMAN: And no other alternatives actually would work and allow us to physical pull in a vehicle better than this arrangement at the moment.

6

7

CHAIRPERSON MIETZ: Okay.

8

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MR. DiSTEFANO: Serge, just for the record, if you can kind of explain the impacts to the rear of the property and to your neighbor's property?

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SERGE TSVASMAN: Sure. The rear of our property is a 20- or 25-foot concrete retaining wall that is a border between us and 490. So the property setback is actually not the retaining wall, it's actually depends on where you are in the yard, as you can see in the survey. We could be, you know, in this particular northwest corner we are -- there's an additional four feet to the wall, so we are not encroaching on any other property to the rear.

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I don't think it would affect any of your neighbors. I did get a note today that I forwarded on to Rick from lot six, which is our direct adjoining neighbor in support of the project. We had them over, and walked the site, and showed them what the implications would be and they were grateful and they don't have any issue.

CHAIRPERSON MIETZ: Okay.

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3 SERGE TSVASMAN: The side yard setback  
4 increment is an additional four feet, or actually closer to  
5 three feet additional into the nonconforming side yard.

6 CHAIRPERSON MIETZ: Okay. Board members,  
7 questions?

8 MS. SCHWARTZ: Are you going to incorporate  
9 the existing garage into space for the house and are you  
10 putting anything above the addition?

11 SERGE TSVASMAN: We are not proposing to put  
12 anything above. But we are going to incorporate some of the  
13 existing garage as a mudroom for our home, for circulation.

14 MS. SCHWARTZ: Okay.

15 CHAIRPERSON MIETZ: Okay, questions? Very  
16 good. Thank you, sir.

17 Is there anyone on the call that would like to  
18 speak regarding this application? There being none, then the  
19 Public Hearing is closed.

20 APPLICATION 10A-06-20

21 10A-06-20 Application of Christopher and  
22 Rebecca Hays, owners of property located at 41 Midland  
23 Avenue, for an Area Variance from Section 205-2 to construct  
24 a shed in a side yard in lieu of the rear yard as required by  
25 code. All as described on application and plans on file.

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CHAIRPERSON MIETZ: Okay.

4

5 REBECCA HAYS: Hi, everybody. Rebecca Hays,  
6 Chris Hays. Just, I think we can keep this pretty brief. We  
7 don't have a garage, so currently we don't have any storage  
8 for things like lawnmowers and other equipment, sporting  
9 equipment. As you can see from the survey we also do not  
10 have a rear yard. The house is almost on the back property  
11 line. So we are just proposing to install a shed in the side  
12 yard, but at the back of the property.

12

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We are the last house on a dead end street.  
The side the shed would go on is the side that there's nobody  
past us. The street behind us, Willard Avenue, the lot  
directly behind us is currently a house under construction.  
It's the last home in that new development on Willard Avenue.  
But they have the developer has already planted a row of  
trees on that property for privacy to us. So I don't think  
anybody will have a view of this shed. It will just serve  
our needs for storing things.

21

22

23

CHAIRPERSON MIETZ: Okay, very good. Do the  
Board members have any questions? Pretty straight forward.  
Great, thank you very much.

24

25

Is there anyone that would like to speak  
regarding this application? There being none, then the

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3 Public Hearing is closed.

4 APPLICATION 10A-07-20

5 10A-07-20 Application of Terry Zappia,  
6 Pierrepont Visual Graphics, Inc., agent, and MBC Canal  
7 Holdings, LLC, owner of property located at 140 Canal View  
8 Boulevard., for an Area Variance from Sections 207-10A(1) and  
9 205-8 to allow an awning to extend 12.2 ft. into the 75 ft.  
10 front setback required by code. All as described on  
11 application and plans on file.

12 CHAIRPERSON MIETZ: Okay.

13 TERRY ZAPPPIA: Hi, it's Terry Zappia,  
14 Pierrepont Visual Graphics. And I'd like to probably have  
15 Mike Zangy from Highland Hospital and University of Rochester  
16 speak on behalf of this awning that we want to extend out in  
17 front of the building.

18 Mike, are you there?

19 MICHAEL ZANGY: Yes, I am.

20 CHAIRPERSON MIETZ: Okay. So are you going to  
21 introduce the application, Terry, or is he going to?

22 TERRY ZAPPPIA: He was going to.

23 CHAIRPERSON MIETZ: Okay, very good. Sir,  
24 could you just give your name so that Rhoda can get it,  
25 please and your address?

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2  
3 MICHAEL ZANGY: Sure. Michael Zangy, director  
4 of real estate services for the University of Rochester  
5 Medical Center, the address is 135 Corporate Woods, Suite  
6 160.

7 CHAIRPERSON MIETZ: Okay, go ahead.

8 MICHAEL ZANGY: So we are asking for a  
9 variance to allow a canopy to be installed in the front yard  
10 of 140 Canal View Boulevard. This will encroach into the  
11 front setback requirement. The purpose of this canopy is for  
12 medical center staff to deliver medications to patients in  
13 that front driveway that you see there. And the reason for  
14 that is actually due to COVID.

15 We have gone to a new process where  
16 medications are delivered to patients at their cars so they  
17 don't have to enter the building, and potentially be exposed  
18 to other patients who could have COVID.

19 So the idea is to increase social distancing  
20 for the patients and these are cardiac patients who could  
21 actually be at very high-risk for COVID. And this is a  
22 process that we have implemented about four and a half, five  
23 months ago and it has been working well. But we know that  
24 inclement weather is coming up so we want to provide  
25 protection to our staff members who come out of that door at

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2  
3 the front to deliver those medications to the patient's car  
4 side. So that's our, what we would like to do and the  
5 purpose of that.

6 CHAIRPERSON MIETZ: So can we be assured that  
7 the size of this awning is the minimum necessary to serve  
8 this purpose.

9 MICHAEL ZANGY: Yes. It covers the sidewalk  
10 only.

11 CHAIRPERSON MIETZ: Okay. Board members,  
12 questions.

13 MS. WATSON: I have a question. I was just  
14 wondering if you could talk to traffic flow at all or is the  
15 idea that the cars would pull up parallel with the building  
16 so the staff would stay under the awning, or would staff need  
17 to go out to a parked vehicle? I'm just wondering if that  
18 has any impact on the number of parking spots including  
19 handicap parking?

20 MICHAEL ZANGY: So it's been working quite  
21 well. Currently they have a couple cones out in the  
22 driveway, so that indicates to the patients that they pull up  
23 right to the end of the sidewalk where the awning would  
24 terminate. There's not a lot of traffic in the front here,  
25 all the parking is in the back of the entry to the property

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2  
3 is in the back. So it's a pretty underutilized driveway, no  
4 parking would be impacted either.

5 CHAIRPERSON MIETZ: Great, thank you.  
6 Questions, Board members?

7 MS. TOMPKINS WRIGHT: This is Member Wright.  
8 You mention that this policy of delivering medications and  
9 the need for this awning was sort of spurred by COVID, but do  
10 you anticipate that this awning use will be long term, you  
11 know, post -- whenever the post-pandemic happens?

12 MICHAEL ZANGY: Yeah. It actually has been  
13 really a patient satisfier, just from a convenience  
14 standpoint. So we anticipate it remaining up permanently and  
15 this process continuing permanently.

16 CHAIRPERSON MIETZ: Okay. Other questions,  
17 please? Okay, thank you very much, appreciate it.

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

21 APPLICATION 10A-08-20

22 10A-08-20 Application of Mark Anderson and  
23 Randi Forman, owners of property located at 257 Dunrovin  
24 Lane, for an Area Variance from Section 205-2 to allow a  
25 screened porch to extend 10 ft. into the 60 ft. front setback

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required by code. All as described on application and plans on file.

CHAIRPERSON MIETZ: Who do we have for 10A-08?

MARK ANDERSON: Yes, Architect David Burrows is on the call tonight, David?

DAVID BURROWS: Yes, I am here.

CHAIRPERSON MIETZ: Okay. Who is speaking on behalf of this?

DAVID BURROWS: I am.

MARK ANDERSON: David?

DAVID BURROWS: Yes, I am here, can you hear me?

CHAIRPERSON MIETZ: Yes. Please proceed.

DAVID BURROWS: Okay, good. Sorry, I didn't know that. So anyway, I'm David Burrows, working with mark Anderson. Sorry for that confusion. Mark asked me to design a open porch that can be screened seasonally that will be in the front of the house. I believe the other drawings are attached with this. You can see the photographs of the house and the configuration of the proposed porch, the idea is to kind of help the front with formality and just kind of correct some of the asymmetry and call a little more attention to the front door. So the roofs work with the

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existing facade.

This has been before the Architectural Review Board and passed with conditions and those conditions have been addressed. The reason we're in front of the Zoning Board is there's a 60-foot front setback and we will be at somewhere between 49 and 50 feet at the closest part of the porch to the front property line. And that front property line is curved because this is a cul-de-sac or it's a curve in the road anyway. So we are still a good 50 feet from the front property line and hopefully done a good job of mitigating the impacts of the porch on the front yard. And I'd be happy to let Mark make his comments as well.

CHAIRPERSON MIETZ: Go ahead, Mr. Anderson.

MARK ANDERSON: Good evening. The porch is an area that we desired. We look at the back side of the house, the roof lines in the back would not accommodate the porch, so the front is sort of by default where we would need to put it. We did try to make it as appealing as possible. The Architectural Review Board suggested we keep the screens as open as possible and removable. We agreed to that and they also asked us to keep the door in the front of the existing door, of course, for aesthetics and we agreed to that. I think that's all I need to say.

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3 CHAIRPERSON MIETZ: Okay, great. So Board  
4 members, questions for these gentlemen?

5 MR. DiSTEFANO: I have a question. Are there  
6 any other structures close by that extend close to the front  
7 setback than what currently exists? Are you going to be  
8 matching some other structures or is this going to be the  
9 only one on the street or in close proximity?

10 MARK ANDERSON: In close proximity, there are  
11 no other front porches like this.

12 MR. DiSTEFANO: Any additions of any kind that  
13 extend closer to the road or is the frontage pretty uniform  
14 throughout?

15 MARK ANDERSON: The frontages are uniform  
16 throughout.

17 DAVID BURROWS: I could comment on that,  
18 however. There's a variety of house styles in the  
19 neighborhood. So it's not like there's any uniformity that  
20 this needs to conform to. I don't think it will stand out as  
21 usual in that it would have a front porch.

22 MR. DiSTEFANO: Yeah, I wasn't so much  
23 concerned about the porch itself, just the extension of ten  
24 feet into the setback, the uniformity of the setback that's  
25 along the street.

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3 DAVID BURROWS: Like Mark said, I don't know  
4 of any others in the immediate vicinity that would be as  
5 close as this.

6 CHAIRPERSON MIETZ: Okay, very good. Other  
7 questions by the Board please? Okay, very good, thank you  
8 very much.

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

12 APPLICATION 10A-09-20

13 10A-09-20 Application of Marco and Anna  
14 Frasca, owners of property located at 333 Rhinecliff Drive,  
15 for an Area Variance from section 205-2 to allow a 2 story  
16 addition to extend 2.3 ft. into the 9 ft. side setback  
17 required by code. All as described on application and plans  
18 on file.

19 CHAIRPERSON MIETZ: Okay.

20 DAVID BURROWS: David Burrows, Architect, for  
21 Marco and Anna Frasca who I believe are also on.

22 ANNA FRASCA: Yup, we're here.

23 DAVID BURROWS: Okay, good. I would like  
24 them, Marco and Anna, to basically describe the need for the  
25 variance and what they propose to have built, and then I'll

1 Brighton Zoning Board of Appeals 10/07/2020

2  
3 talk about some of the details.

4 CHAIRPERSON MIETZ: Okay. Go right ahead.

5 ANNA FRASCA: We have a three-bedroom, one and  
6 a half bath house today. And we would like to do an addition  
7 for adding a master bath, bedroom, closet and mudroom to the  
8 first floor. So we would like to push out one of the walls  
9 and we're allowed to go 1.3 feet today, and we're asking for  
10 an additional -- or, I'm sorry, we're allowed to go 1.7 feet  
11 and we're asking for an additional 2.3 feet to implement all  
12 of the designs that David has put together for us.

13 CHAIRPERSON MIETZ: Okay, very good. Go  
14 ahead, David.

15 DAVID BURROWS: Sure. So right, the allowed  
16 setback is a required setback is nine feet, it's presently  
17 10.7, we are adding four feet to the house and we'll end up  
18 with 6.7 feet for the side setback. The, I guess, the good  
19 thing about that is it's in the back of the house. It's  
20 very -- it's not close to the street, and it only impacts  
21 their neighbor's driveway and garage. And there's kind of a  
22 dead zone in that part of the shared border anyway because  
23 there's arborvitae up against it, there's really nothing  
24 happening back there. So this will really have no impact on  
25 the neighbor.

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3 And the reason that we're encroaching on the  
4 setback is to allow the depth of the car and room in the back  
5 of the garage for storage and room towards the houses for a  
6 mudroom. And that shows up on other plans that are included  
7 in this set.

8 CHAIRPERSON MIETZ: Okay.

9 DAVID BURROWS: If you needed to see the  
10 photographs, they're helpful. Because they show that there's  
11 really nothing, especially the bottom right photograph, that  
12 shows the area where the proposed addition is going to be  
13 built. And then the one on the top right is a street view,  
14 again you're not really going to see anything from the  
15 street.

16 MR. DiSTEFANO: Oh, in the bottom right photo,  
17 that's the detached garage of the neighbor's, correct.

18 DAVID BURROWS: Right. The top right and  
19 bottom right photographs are taken from the opposite corners  
20 of the yard, right along the property line.

21 CHAIRPERSON MIETZ: Okay.

22 MS. TOMPKINS WRIGHT: Quick question, this is  
23 Member Wright. Can you speak to why you can't go in the  
24 other direction, I think it's the northeast of the property  
25 further into where the blacktop and patio are?

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3 DAVID BURROWS: Sure. If you look at the  
4 floor plans, that might answer the question. Part of it is  
5 the site itself doesn't allow you to back up a car any  
6 tighter than it already is. But the other reasons are the  
7 way that it connects to the house, especially on the second  
8 floor plan.

9 And one of the goals was to build a master  
10 bedroom above the garage. So that top of the on the top left  
11 corner of the second floor plan shows the second floor lining  
12 up with the existing first face of the garage -- sorry, face  
13 of the first floor. And the back of the -- sorry, back of  
14 the second floor allows room for a hallway towards the top  
15 and the master bedroom suite itself. So just because of the  
16 way it connects to the existing house, we are kind of forced  
17 to go in this direction any way.

18 CHAIRPERSON MIETZ: Okay. Other questions for  
19 these folks?

20 MR. DiSTEFANO: David, you did check your  
21 local floor area and that all meets code?

22 DAVID BURROWS: Yes. I did the single-family  
23 zoning information form and we're under.

24 CHAIRPERSON MIETZ: Very good, okay. Thank  
25 you very much.

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

6 APPLICATION 10A-10-20

7 10A-10-20 Application of Jennifer Hanson,  
8 owner of properties located at 1050 and 1054 Highland Avenue,  
9 for an Area Variance from Section 205-2 to allow a side  
10 setback to be 11.8 ft. (13.8 ft to house foundation, 2 ft.  
11 bay window) after resubdivision of two properties into one,  
12 in lieu of the minimum 21.88 ft. required by code. All as  
13 described on application and plans on file.

14 CHAIRPERSON MIETZ: Okay. Who do we have on  
15 10A-10?

16 MR. DiSTEFANO: I don't see Jennifer here.

17 CHAIRPERSON MIETZ: So why don't we pass it  
18 and we will come back at the end and see.

19 APPLICATION 10A-11-20

20 10A-11-20 Application of the University of  
21 Rochester, owner of property located at 220 East River Road,  
22 for a Temporary and Revocable Use Permit pursuant to section  
23 219-4 to allow a mobile MRI scanner (trailer) to be on site  
24 for an 18 month period where not allowed by code. All as  
25 described on application and plans on file.

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3 CHAIRPERSON MIETZ: Okay. Who do we have on U  
4 of R?

5 DAN SAVAGE: This is Dan Savage with Passero  
6 Associates. We also have Walt Petit with University of  
7 Rochester Medical Center and Tim Harris, project manager with  
8 Passero Associates.

9 What we're asking for here is a temporary  
10 revokable permit to allow the university to install a mobile  
11 MRI trailer. Due to the pandemic they have a large backlog  
12 of MRI cases that need to be done. They have the  
13 availability to have this trailer for the next 6 to 18 months  
14 to help them work down the backlog. Trailer will be carted  
15 to the site, the site would be prepped with a concrete pad,  
16 and utilities that would come out of the existing imaging  
17 building to service the trailer.

18 There is a rear exit at the building.  
19 Patients would come into the front of the building, get  
20 processed, get in gowns, and then be transported by staff out  
21 the rear door, through an enclosed canopy to provide some  
22 comfort during the winter weather, and received to the MRI  
23 trailer. And once their procedure is done, they go back  
24 through the building and exit out the front of the building.

25 We did look at other options. This option

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3 here presented the closest connection to the building, again,  
4 to minimize the MRI patients and staff would have to traverse  
5 outside and in inclement weather. And after they no longer  
6 need the trailer, the trailer would be hauled away and the  
7 concrete pad would remain. The University is thinking they  
8 could put some picnic tables out for staff if they want to  
9 use that for lunches or whatever in the future.

10 CHAIRPERSON MIETZ: Okay, very good.

11 MS. DALE: This is Member Dale. I just had a  
12 question about the covering of the walkway, is that going to  
13 be lit, are there going to be sort of like sides to it? I'm  
14 just thinking about patients and if it's quite cold out and  
15 it gets dark at 4:00 p.m. in February?

16 DAN SAVAGE: Yes, that's a good question. It  
17 will be made out of flame resistant fabric and there will be  
18 lights strung inside the enclosure. They do anticipate  
19 running the MRI procedures approximately 12 hours a day. So  
20 they will need lights turned on inside of the canopy.

21 MS. DALE: So it's not just a covering. Are  
22 there sides as well?

23 DAN SAVAGE: There are sides, yes.

24 MS. DALE: Okay.

25 CHAIRPERSON MIETZ: Okay, other questions?

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3 MR. DiSTEFANO: A couple questions. Do you  
4 have -- you're removing a couple trees, do you have plans to  
5 relocate those trees?

6 DAN SAVAGE: Yes. We have ample opportunity  
7 around the building where we can replant those trees.  
8 They're fairly new and the university would like to use them  
9 in other locations on this site.

10 MR. DiSTEFANO: And the second question is,  
11 you are asking for 18 months. When do you expect this  
12 trailer to be located on site?

13 DAN SAVAGE: Well, the trailer is currently  
14 down at Noyes Hospital in Dansville. They are going to be  
15 using it into the month of November. If we're able to get  
16 approval from the Board, the University will see quickly to  
17 start preparing the site, ordering the canopy material, and  
18 get it ready for when it gets delivered from Noyes Hospital  
19 to this location.

20 MR. DiSTEFANO: Any idea when that's going to  
21 be? I mean, are -- like you have to prepare the site. You  
22 have to do some work before you put it there. Are you  
23 thinking by December 1st, just so this Board has an  
24 understanding of what they're granting the -- the time period  
25 they're granting it for?

1 Brighton Zoning Board of Appeals 10/07/2020

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3 DAN SAVAGE: I would say sometime in the month  
4 of December we would expect for the trailer to be hooked up  
5 on site.

6 MR. DiSTEFANO: And start using it?

7 DAN SAVAGE: Yes.

8 MR. DiSTEFANO: Thanks.

9 MS. DALE: Sorry, one more question. Being  
10 that you're requesting this because you have a backlog of  
11 patients and that's certainly understandable. Are you  
12 anticipating any issues with increased parking as there more  
13 patients coming to this location than perhaps would normally?

14 DAN SAVAGE: We don't think that's a concern  
15 because right now parking is reduced because of the pandemic  
16 and any increase from patients will be more than accommodated  
17 with the parking spaces that are on site.

18 MS. DALE: Thank you.

19 CHAIRPERSON MIETZ: Any other questions?  
20 Thank you very much.

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

24 APPLICATION 10A-12-20

25 10A-12-20 Application of FSI Construction /

1 Brighton Zoning Board of Appeals 10/07/2020

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3 Frank Imburgia, owner of property located at 3300 Brighton  
4 Henrietta Town Line Road, for extension of approved variances  
5 (9A-04-19, 10A-07-19 and JOA-08-19), pursuant to Section  
6 219-5F, required for the construction of a 10,000 sf office  
7 building. All as described on application and plans on file.

8 TIM HARRIS: Good evening, everybody. Tim  
9 Harris of Passero Associates here representing FSI  
10 construction and Imburgia Brothers Holdings. This project  
11 received three variances about a year ago for parking in the  
12 front yard, building encroachment into the front setback,  
13 encroachment into the EPOD. Since that time the developer  
14 hadn't received -- or has signed a tenant to occupy the  
15 building. They will be pulling building permits in the next  
16 month or two here, so they're all set up and ready to go.

17 The reason for the extension is to grant us a  
18 little bit of time to pull the building permits as the  
19 developer has just recently entered a contract with a tenant.

20 So just asking this Board for a short  
21 extension of the three variances previously granted about a  
22 year ago. With that, I can take any questions from the  
23 Board.

24 CHAIRPERSON MIETZ: Okay. So nothing has  
25 changed at all on the original plan or the variances that

1 Brighton Zoning Board of Appeals 10/07/2020

2  
3 were granted, correct? Mr. Harris, you have to take your  
4 mute off.

5 TIM HARRIS: There we go, it wouldn't let me  
6 at first. I apologize for that. You are correct, nothing  
7 has changed in the last year on the plans. Literally  
8 everything has stayed the same and we would like to move  
9 ahead with the plan as originally approved.

10 CHAIRPERSON MIETZ: Okay, very good. Any  
11 other questions for Mr. Harris? Thank you very much.

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

15 APPLICATION 10A-13-20

16 10A-13-20 Application of Ken Stavalore, Home  
17 Power Systems, agent and Sandy Haque, owner of property  
18 located at 290 Hibiscus Drive, for an Area Variance from  
19 Section 203-2.1B(6) to allow a standby emergency generator to  
20 be located in a side yard in lieu of the rear yard behind the  
21 house as required by code. All as described on application  
22 and plans on file.

23 CHAIRPERSON MIETZ: Mr. Stavalore?

24 KEN STAVALORE: There we go, I got unmuted.

25 CHAIRPERSON MIETZ: You're still awake, that's

Brighton Zoning Board of Appeals 10/07/2020

1  
2  
3 nice.

4 KEN STAVALORE: I appreciate it. Tonight I'm  
5 purposing to be able to place a generator on the side of the  
6 home here, obviously against the current code saying it needs  
7 to be placed in the rear of the house. Due to the uniqueness  
8 of this house, you can see it is an L-shaped building, and  
9 there's a pool there with concrete all around there. And we  
10 want to be able to meet any of the code requirements with a  
11 generator in the rear of the house, as well as a garden shed.

12 On the side for the proposed location of the  
13 generator, there is a large bush, evergreen, that in the  
14 front of it, you really cannot see the generator from the  
15 road. As well as on the left side of the property line, it  
16 is all heavy shrubs and shrubbery. And it would be very  
17 limited visibility from the house on the other side. That  
18 house is a great distance away. I would estimate it over a  
19 hundred feet.

20 In addition to that, the generator would not  
21 be to a side setback requirement there as well because  
22 there's a decent amount of distance between the house and the  
23 property line there. So willing to take any questions.

24 CHAIRPERSON MIETZ: Okay. Everybody is  
25 running out of gas, but do we have any questions for Ken

Brighton Zoning Board of Appeals 10/07/2020

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2  
3 because he needs to earn his paycheck.

4 MR. DiSTEFANO: Can you state for the record,  
5 what the decibel level on that generator would be?

6 KEN STAVALORE: Absolutely, sir, 65 decibels.

7 MR. DiSTEFANO: And that's at full load?

8 KEN STAVALORE: And that's at full load,  
9 correct.

10 MR. DiSTEFANO: And --

11 MS. SCHWARTZ: I'll give you -- sorry.

12 MR. DiSTEFANO: Go ahead, Judy.

13 MS. SCHWARTZ: I'll be quick. Also did you  
14 give consideration to the place because of the utilities  
15 being right there?

16 KEN STAVALORE: Absolutely. Yeah, that is  
17 very correct, Judy. And as you can tell the utilities are  
18 right there as well and it would be a further run for the  
19 homeowner to try to -- essentially, if we wanted to do it in  
20 the back we would have to trench and set the generator almost  
21 in the middle of the yard. Great question.

22 MR. DiSTEFANO: What is the size of this  
23 generator?

24 KEN STAVALORE: It is four foot long by  
25 twenty-five inches.

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3 MR. DiSTEFANO: No, I'm sorry, what's the  
4 kilowatts?

5 KEN STAVALORE: Oh, yes, 16 kilowatts.

6 MR. DiSTEFANO: And you fell you will have a  
7 minimum 10 foot setback from that lot line?

8 KEN STAVALORE: Yeah, we will have no issue  
9 hitting that.

10 CHAIRPERSON MIETZ: Okay, very good. Other  
11 questions?

12 MS. SCHMITT: Just one quick one. Can you  
13 just confirm that you're planning on keeping the landscaping  
14 that will be kind of hiding the generator from the street  
15 view?

16 KEN STAVALORE: Yes, absolutely. I've spoken  
17 with Mrs. Haque about that and she's in full agreement to  
18 keep that there. And she actually likes the fact that it's  
19 blocked there.

20 MS. SCHMITT: Thank you.

21 MS. TOMPKINS WRIGHT: And Member Wright,  
22 sorry, one more quick question. There was an e-mail sent, I  
23 believe yesterday from a neighbor of the property suggesting  
24 if the generator could be fit between the home and the garden  
25 shed? Can you speak to that?

1 Brighton Zoning Board of Appeals 10/07/2020

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3 KEN STAVALORE: Yes, absolutely. So with the  
4 current fire codes and the distance between the home and --  
5 there's a couple reasons that go into play with the current  
6 fire codes. The units themselves are rated 18 inches, but  
7 they have to be five feet from any windows or openings. And  
8 to place it in between the garden shed and the home there,  
9 would not meet that 18-inch requirement on either side for  
10 fire code.

11 And in addition to that, for serviceability  
12 obviously if there happened to be a major repair that needs  
13 to get done, with it in that tight space it would make it  
14 nearly impossible for us or for the homeowner.

15 MS. TOMPKINS WRIGHT: And what is that space?  
16 Only because we have an e-mail from a neighbor saying that  
17 it's at least a 10 to 12-foot gab.

18 KEN STAVALORE: Absolutely, that's a fair  
19 question. I don't have that exact number for you, but I  
20 don't believe it is 10 to 12-foot. It's hard, because it was  
21 not on the original map.

22 CHAIRPERSON MIETZ: Okay, all set? Okay,  
23 thank you very much.

24 Is there anyone else who would like to speak  
25 regarding this application? There being none, then the

1 Brighton Zoning Board of Appeals 10/07/2020

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3 Public Hearing is closed.

4 APPLICATION 10A-14-20

5 10A-14-20 Application of Sean and Lauryn  
6 McCabe, owners of property located at 3395 Elmwood Avenue,  
7 for an Area Variance form Section 205-2 to allow a garage  
8 addition to extend 2.5 ft. into the existing 36.1 ft. rear  
9 setback where a 60 ft. rear setback is required by code. All  
10 as described on application and plans on file.

11 CHAIRPERSON MIETZ: Okay.

12 SEAN MCCABE: Hi, good evening. It's Sean  
13 McCabe, I'm the homeowner at 3395 Elmwood. Thanks to the  
14 Board for hearing us tonight and I applaud you for your  
15 endurance. Are you able to hear me?

16 CHAIRPERSON MIETZ: Yes, go right ahead.

17 SEAN MCCABE: Okay. We are seeking a variance  
18 tonight for an addition for a two-car garage. We're not able  
19 to fit our vehicles in the existing garage that came along  
20 with the house when we bought it. Due to the orientation of  
21 our lot, we're on a flag lot and the orientation of the  
22 house, there's not really a better place on the property to  
23 put a garage without some serious site work and without  
24 reconfiguring the driveway.

25 This addition is going to be consistent with

1 Brighton Zoning Board of Appeals 10/07/2020

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3 the architecture of the house, and the residential nature of  
4 our neighborhood. And it won't be able to be seen from the  
5 road. I think only two of the neighbors will be able to see  
6 it.

7 Trying to think, it's the minimum variance  
8 necessary, just because of the location with making it work  
9 with the architecture of the house and the rest of the  
10 addition. This is the only spot it can go. And I believe  
11 the variance is actually smaller than the one that was  
12 previously granted in 2017.

13 CHAIRPERSON MIETZ: Okay. Questions for  
14 Mr. McCabe?

15 MR. DiSTEFANO: Can you just state for the  
16 record approximately how far away this garage addition would  
17 be to the nearest neighboring structure?

18 SEAN MCCABE: The nearest neighboring  
19 structure? I am not sure. I think it would be 500 feet.

20 MR. DiSTEFANO: Okay, thank you.

21 SEAN MCCABE: Could be slightly smaller than  
22 that but the neighbor behind us to the south, there's a row  
23 of arborvitae between the two homes so they would not be able  
24 to see it.

25 MR. DiSTEFANO: Quite a bit of distance.

1 Brighton Zoning Board of Appeals 10/07/2020

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3 SEAN MCCABE: Yes, correct. I can't see the  
4 map. I don't have it in front of me. I'm looking at the  
5 small version I've got on the screen. I don't even know if  
6 the neighbor's house is reflected on there.

7 CHAIRPERSON MIETZ: It doesn't look like it.

8 MR. DiSTEFANO: Okay.

9 SEAN MCCABE: Thank you.

10 CHAIRPERSON MIETZ: Any other questions for  
11 Mr. McCabe? Okay, thank you very much.

12 Is there anyone who would like to speak  
13 regarding this application? There being none, then the  
14 Public Hearing is closed.

15 APPLICATION 10A-15-20

16 10A-15-20 Application of John and Dina Wright,  
17 owners of property located at 3644 Elmwood Avenue, for an  
18 Area Variance from Section 205-2 to allow an addition to  
19 extend 3 ft. into the existing 52 ft. rear setback where a 60  
20 ft. rear setback is required by code. All as described on  
21 application and plans on file.

22 DINA WRIGHT: Hi, I'm Dina Wright, homeowner.  
23 Can you hear me?

24 CHAIRPERSON MIETZ: Yes, go right ahead.

25 DINA WRIGHT: Great. So we are proposing to

Brighton Zoning Board of Appeals 10/07/2020

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2  
3 build a small addition that's going to be a home office. As  
4 you can see in the plan it basically fills in a little dead  
5 space that was present in the original house. And we just  
6 wanted it to extend three feet beyond the original line of  
7 the house.

8           The original house was, I believe, 52 feet  
9 from the rear of the property. So it was already kind of  
10 less than the setback was required by code. I assume it was  
11 grandfathered in because it was an old house. But there  
12 is -- so we want to go an additional three to four feet. I  
13 guess the architect asked for four feet, even though we're  
14 only going three feet.

15           And there is nobody, there is no house behind  
16 us, directly behind us. That property in the back there is  
17 just scrub brush and trees. There's nobody -- nobody could  
18 see this from the road, it's -- so and on the right side of,  
19 you know, or as you're looking at it from the east side there  
20 is the parking lot for the Country Club of Rochester. So I  
21 don't think they would care either and there's a fence  
22 separating us.

23           The need for the office is that we have a  
24 three-bedroom house, there's four of us living in the house,  
25 my son is working partially doing homework for doing school

1 Brighton Zoning Board of Appeals 10/07/2020

2  
3 from home. And I am a professor and I'm teaching from home  
4 as well. So you know, with COVID, the need for a home office  
5 has really gotten to be much bigger than it used to be.

6 MS. TOMPKINS WRIGHT: This is Member Wright.  
7 Just had a quick question. Is it fair to say that based on  
8 the fact that this expansion is being tucked in between two  
9 portions of the house, there isn't another area of the house  
10 where it could be added that it would be less noticeable  
11 probably?

12 DINA WRIGHT: No, there isn't. This is really  
13 very, you know, nobody -- you can barely see it, I think,  
14 from anywhere once it would be completed.

15 CHAIRPERSON MIETZ: Okay. Other questions for  
16 the applicant? Okay.

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

20 I'm just going to ask again, Rick, is there  
21 anyone to speak for 10A-10?

22 MR. DiSTEFANO: I don't see the applicant  
23 online.

24 CHAIRPERSON MIETZ: Okay. Well, we can deal  
25 with that as we go through them. Okay.

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We have reached the end of the road here.  
Does anyone need a couple of minutes or do you want to just proceed?

MS. SCHWARTZ: Can we have a couple minutes?

MR. DiSTEFANO: Yeah, I think we ought to.

CHAIRPERSON MIETZ: Okay. It's 10:52, so why don't we say right at 11:00.

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## REPORTER CERTIFICATE

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

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

Dated this 16th day of January, 2021.

At Rochester, New York

Rhoda Collins  
Rhoda Collins

Brighton Zoning Board of Appeals 10/07/2020

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**B R I G H T O N**  
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**A P P E A L S**

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OCTOBER 7th, 2020  
at approximately 11:00 **p.m.**  
2300 Elmwood Avenue  
Rochester, New York 14618

**PRESENT:**

DENNIS MIETZ, Chairperson

JEANNE DALE )  
KATHLEEN SCHMITT )  
JUDY SCHWARTZ ) BOARD MEMBERS  
ANDREA TOMPKINS WRIGHT )  
JENNIFER WATSON )

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

(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

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2  
3 CHAIRPERSON MIETZ: All right, Rick. We'll  
4 start with 9A-03, which is the garages on Monroe  
5 Avenue. Okay.

6 So, let's try here, we've got a lot to do  
7 here, I want to try and finish this in an hour or  
8 so. Let's just move right along. If you have  
9 something to add then fine, okay?

10 Comments? Because I'm not going to go around  
11 one by one here. It's going to take us forever if  
12 we do that, so.

13 MR. DiSTEFANO: Well, I think from the last  
14 month we had like a 3/2 vote on this. Jennifer,  
15 you weren't here.

16 Now, with the new landscaping plan that was  
17 submitted, how do we, you know, I think Katherine  
18 and Judy you were not feeling good about it?

19 MS. SCHWARTZ: Right. I'd still deny it.

20 CHAIRPERSON MIETZ: Okay, All right.  
21 Kathleen?

22 MS. SCHMITT: Yeah, I have to say I do  
23 appreciate the additional landscaping, but I don't  
24 see from what they -- that provided that this  
25 wasn't as a result of their own creation and not

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3 either repairing or up keeping it, putting in some upkeep.  
4 And I don't see why they can't fix the roof for whatever the  
5 problem is.

6 CHAIRPERSON MIETZ: Okay. Then, I guess let's  
7 go through everyone else then. We've got two votes here to  
8 deny.

9 Andrea?

10 MS. TOMPKINS WRIGHT: I'm fine with it. I  
11 would approve it.

12 CHAIRPERSON MIETZ: Okay. Jen?

13 MS. WATSON: I regret not being a part of the  
14 conversation last month or having any minutes to review that  
15 I could find. So, I don't know the full discussion of the  
16 pros and cons, but I don't see anything glaring in it that I  
17 would deny it. So, it's a weak, yes.

18 CHAIRPERSON MIETZ: Okay, and Jeanne?

19 MS. DALE: I'm good with it.

20 CHAIRPERSON MIETZ: And I'm good with it also.

21 MS. SCHWARTZ: Sorry.

22 CHAIRPERSON MIETZ: No, somebody's got to do  
23 it though, because it was Judy. So we can't ask her to do  
24 that.

25 Anyone want to take a shot at this? Or we can

Brighton Zoning Board of Appeals 10/07/2020

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work together on it, I guess. We'll start it up here.

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3 APPLICATION 9A-03-20

4 9A-03-20 Application of RFM Morgan Properties,  
5 owner of property located at 2125 Monroe Avenue (Brighton  
6 Garden Apartments) for an Area Variance from Section 205-12  
7 allowing for the demolition of two carports (40 stalls)  
8 leaving the property with no covered parking spaces where 40  
9 covered parking spaces are required by code. All as  
10 described on application and plans on file. TABLED AT THE  
11 SEPTEMBER.

12 2, 2020 MEETING - PUBLIC HEARING REMAINS OPEN.

13 Motion made by Mr. Mietz to approve  
14 Application 9A-03-2- based on the following findings and  
15 facts.

16 **FINDINGS AND FACTS:**

17 1. The applicant reports that the garages are in poor  
18 condition and that minimal storage is required by tenants in  
19 the property and they are required to pay extra for these  
20 covered parking spaces.

21 2. If the parking structures are removed no negative effect  
22 would occur on the immediate neighborhood since it is a  
23 commercial neighborhood along Monroe Avenue and additional  
24 landscaping will buffet the property to the residential area  
25 behind it.

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3 CHAIRPERSON MIETZ: Help me out on one more  
4 thing here. What do you think, Rick?

5 MR. DiSTEFANO: I think we need a little  
6 something more to beef it up, to be honest with you.

7 CHAIRPERSON MIETZ: Yeah. That's what I'm  
8 just trying to think of what else we could use here.

9 MS. TOMPKINS WRIGHT: Did you comment --

10 CHAIRPERSON MIETZ: Go ahead, Andrea.

11 MS. TOMPKINS WRIGHT: Did you comment that  
12 it's not, you know, it's not substantial given the screening,  
13 doesn't produce an undesirable change due to the fact that  
14 the fence will be maintained and additional plantings, so  
15 that neighboring properties won't be affected by any of it.

16 Are both of those there?

17 CHAIRPERSON MIETZ: And we've got a little of  
18 that stuff. Maybe we could try something like, while parking  
19 is required for the residents of this apartment building,  
20 covered parking is not required.

21 MR. DiSTEFANO: No.

22 CHAIRPERSON MIETZ: No.

23 MR. DiSTEFANO: No. Parking, the covered --

24 CHAIRPERSON MIETZ: Oh, that's right. I  
25 forgot. No, I forgot about that, that's right.

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3 MR. DiSTEFANO: So, scratch that one. Don't  
4 put that down.

5 CHAIRPERSON MIETZ: Yeah, we can't do that. I  
6 remember now, yes. We talked about that last month.

7 Okay. We just need one more thing here, I  
8 think. Just.

9 MR. DiSTEFANO: I think what Andrea is kind of  
10 like on the substantial, not being substantial and I think  
11 what she was going with, we could add in there. I don't know  
12 if Rhoda got it down or not, Andrea.

13 MS. TOMPKINS WRIGHT: Oh, sure.

14 MR. DiSTEFANO: Dennis' first two, and then if  
15 you could add this is a third.

16 CHAIRPERSON MIETZ: Yup, yeah, that's fine.  
17 Andrea's was fine. It was a little --

18 MR. DiSTEFANO: Yeah. I just don't know, I  
19 think, if Rhoda got it down and if we could just polish that  
20 one up.

21 CHAIRPERSON MIETZ: Rhoda, do you want her to  
22 read it one more time?

23 THE COURT REPORTER: I'm good.

24 CHAIRPERSON MIETZ: Okay, okay. Just try it  
25 one more time, Andrea.

Brighton Zoning Board of Appeals 10/07/2020

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3. The requested variance is not substantial given the shrubbery screening, and the fence that will be maintained and the limited site lines from neighboring properties.

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CHAIRPERSON MIETZ: Okay.

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MR. DiSTEFANO: Conditions?

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CHAIRPERSON MIETZ: Okay. So condition one, this variance is based on the specific units to be removed in the location as noted on the plans submitted and testimony given.

7

8

9

MR. DiSTEFANO: I don't know if we need that one because these are the only one. All of them are being removed.

10

11

12

CHAIRPERSON MIETZ: Oh, okay. All right.

13

MR. DiSTEFANO: So, they're not going to have any on --

14

15

CHAIRPERSON MIETZ: Not going to have any question. Okay. So, number two then, what permits do we need?

16

17

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MR. DiSTEFANO: Number one, is we should condition it on getting Planning Board and Conservation Board approval for the landscaping plan.

19

20

CHAIRPERSON MIETZ: Okay.

21

22

MR. DiSTEFANO: The applicant shall receive Planning Board approval and Conservation Board approval in regards to the proposed landscaping plan.

23

24

CHAIRPERSON MIETZ: Okay.

25

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MR. DiSTEFANO: That's number one.

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CHAIRPERSON MIETZ: All right. Number two is the fence that is currently on the property shall be repaired --

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7

MR. DiSTEFANO: Shall be repaired and maintained --

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9

10

CHAIRPERSON MIETZ: Okay. What else do we need?

11

MR. DiSTEFANO: Repaired and maintained --

12

13

CHAIRPERSON MIETZ: And if the Planning Board's going to.

14

MR. DiSTEFANO: -- in perpetuity?

15

CHAIRPERSON MIETZ: Pardon me?

16

MR. DiSTEFANO: In perpetuity?

17

18

CHAIRPERSON MIETZ: Yeah, that's fine. And the landscaping I think if the Planning Board's gotta approve it, we don't need to suggest that they've got to do the landscaping for the plants, so.

19

20

21

MR. DiSTEFANO: Right.

22

23

CHAIRPERSON MIETZ: Okay, okay, I think that should do it.

24

25

MR. DiSTEFANO: And just those two. And, I mean, we certainly could say all necessary demolition permits

Brighton Zoning Board of Appeals 10/07/2020

shall be obtained.

CHAIRPERSON MIETZ: Okay. Well, they should have said that in the first one then. Okay. Go ahead.

MR. DiSTEFANO: Well, I wanted to say.

CHAIRPERSON MIETZ: Okay, okay, I'm just busting --

MR. DiSTEFANO: Planning Board and Conservation Board approval, fence, and then all necessary demo permits shall be obtained.

CHAIRPERSON MIETZ: All right. How about a second for this please?

MS. TOMPKINS WRIGHT: I'll second.

MS. DALE: I'll second.

MS. TOMPKINS WRIGHT: Sorry, Jeanne.

MS. DALE: It doesn't matter.

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**CONDITIONS:**

1. The applicant shall receive Planning Board and Conservation Board approval in regards to the proposed landscaping plan.

2. The fence that is currently on the property shall be repaired and maintained in perpetuity.

3. All necessary demolition permits shall be obtained.

(Second by Ms. Tompkins Wright.)

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

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

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3 CHAIRPERSON MIETZ: Okay. Then we move into  
4 the first of the Monroe Avenue adventures here. So, given, I  
5 think, the complexity of trying to put this together as well  
6 as, you know, there's various pieces of additional  
7 information that nobody can even remember which part it goes  
8 with and whatnot. So, you know, my thought here is that we  
9 table this again so that we can put together our, you know, a  
10 real succinct presentation. I'm open for, obviously,  
11 discussion not only about that, but about anything part of  
12 it. But I think the whole thing starts to come together and  
13 I think we'll do ourselves a better service to table this  
14 thing.

15 But, you know, would you like to entertain  
16 some discussion about it tonight, or how do you guys feel  
17 about it?

18 MS. TOMPKINS WRIGHT: I think we should  
19 discuss it tonight while everything is sort of fresh, and  
20 then I don't necessarily disagree because I have been writing  
21 this approval this afternoon and/or denial, like, putting  
22 facts on paper --

23 CHAIRPERSON MIETZ: Right, right.

24 MS. TOMPKINS WRIGHT: -- from this afternoon  
25 and tonight during the meeting. And it is a lot to make sure

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3 it's effectively communicated whichever way we go on it.

4 CHAIRPERSON MIETZ: Right.

5 MS. TOMPKINS WRIGHT: But I think, you know,  
6 we've spent a lot of time tonight on it. I don't think we  
7 should lose that and not talk about it at all.

8 CHAIRPERSON MIETZ: That's fine, that's fine,  
9 yeah. I think part of the problem is, there's a lot of  
10 conflicting information and it's not a question of suggesting  
11 who is right and wrong. You know, obviously we're going to  
12 have to come to that determination but, you know, I think  
13 what's going to have to go happen is to go back and really  
14 look at the presentations that were made on both sides of it.

15 I mean, I think all of us are pretty probably  
16 familiar with what the merit of all of this is or what these  
17 applicants are trying to accomplish here. But, you know, I  
18 guess the big question is, you know, did the town do it's  
19 job? Did it do it properly? And, you know, is there any  
20 suggestion that their issuance of this permit should be  
21 reversed?

22 So, okay. Who else would like to talk about  
23 this or what do you guys want to tell me?

24 MS. WATSON: If we were to table this would  
25 the Public Hearing remain open or would it be closed?

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3 MR. DiSTEFANO: No, I think we should, we  
4 should close the Public Hearing.

5 CHAIRPERSON MIETZ: It's already been closed,  
6 Rick.

7 MR. DiSTEFANO: Well, we close it and we keep  
8 it closed, Yes. We do not reopen the Public Hearing, we keep  
9 the Public Hearing closed.

10 CHAIRPERSON MIETZ: Right.

11 MR. DiSTEFANO: But, we do allow for maybe  
12 some additional information to be submitted. Because, again,  
13 we got very late submittals from the applicants, you know,  
14 the building inspector has not had an opportunity to review  
15 that stuff and to comment on that particular information  
16 that's come in.

17 So, I think it's -- we should allow that to  
18 happen. Maybe give him a two week period to get any  
19 additional information into us, which I can then distribute  
20 to you guys.

21 CHAIRPERSON MIETZ: Right.

22 MR. DiSTEFANO: And move from there.

23 David, what do you think on this?

24 MR. DOLLINGER: I agree completely, Rick.  
25 Exactly. You know, a response from the building inspector to

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3 the submissions, I think, I think there were two. I think  
4 Zoghlin had two submissions, didn't she? One on the 25th,  
5 and then one today?

6 MR. DiSTEFANO: Yes, Zoghlin submitted two  
7 additional --

8 MR. DOLLINGER: So the idea of giving Ramsey  
9 time to respond to that 25th submission and then the  
10 submission today is really reasonable, I think.

11 CHAIRPERSON MIETZ: Right.

12 MS. WATSON: My only concern is, you know,  
13 depending on what happens in this next month, are they -- is  
14 there going to be additional information to consider a month  
15 from now? That, we table again? And at what point --

16 MR. DiSTEFANO: At what point do we stop ping  
17 ponging back and forth?

18 MS. WATSON: Yes.

19 MR. DiSTEFANO: Well, that's why I say  
20 basically, we put a limit, two weeks it's done. We do not  
21 accept anything after a two-week period.

22 MR. DOLLINGER: Yeah, not only that, I mean, I  
23 think too, Rick, a limit on the issues a little bit too. I  
24 mean, I think it's --

25 MR. DiSTEFANO: Yeah, maybe that's what you

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3 want too.

4 MR. DOLLINGER: You know, Ramsey gets a chance  
5 to respond to the new issues raised in those too. But, you  
6 know, I'm not sure I want to give anybody time to make a  
7 general response to this one.

8 MR. DiSTEFANO: Okay.

9 MS. SCHWARTZ: Right.

10 MR. DiSTEFANO: I have no problem with that if  
11 we want to table it and limit the -- giving the, Ramsey, the  
12 opportunity to address the latest submittals by Grassroots,  
13 and that's it.

14 MR. DOLLINGER: Right. That's what I'm  
15 thinking.

16 MS. SCHWARTZ: Rick, will we still -- will  
17 these things that you sent to us this afternoon still be on  
18 the our Zoning Board older agenda? Because I didn't print  
19 them out yet. Can we still access them after tonight?

20 MR. DiSTEFANO: You'll be able to access  
21 everything, because it doesn't go away. It's up there on the  
22 site. If you go to -- I mean you'll be able to access it.

23 MS. SCHWARTZ: Tonight's meeting.

24 MR. DiSTEFANO: Also, I will put that other  
25 stuff in the mail to you guys, you know, tomorrow or Friday

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3 so that you will have it. The two other submittals.

4 MS. SCHWARTZ: Oh, okay.

5 MR. DiSTEFANO: So you will have some time  
6 with it.

7 MS. SCHWARTZ: Okay.

8 MR. DiSTEFANO: They did touch on most of the  
9 stuff in their presentation tonight. So, you can handle it  
10 that way, but I don't know, Dennis, and I don't know where  
11 you are going with the Board on this. I mean, we are going  
12 to have to craft findings. It's easier to craft findings if  
13 we know the direction to craft those findings.

14 CHAIRPERSON MIETZ: Right, yeah. Well, I  
15 think that, you know, again, I don't want to speak for  
16 anybody else here, but, you know, at this moment, I mean, I  
17 would -- I agree with what you are saying. However, you  
18 know, I think there's some a lot of convolution with this  
19 thing.

20 And, you know, personally I wouldn't feel  
21 confident at this moment saying what I really honestly feel  
22 about it.

23 MS. SCHWARTZ: Right.

24 MR. DiSTEFANO: Okay.

25 CHAIRPERSON MIETZ: So I think, you know, I

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3 think we are going to have to, you know, I know we can't  
4 really just drop hole and do things like that but, you know,  
5 I -- it just means that all of us are really going to have to  
6 do just that. You're going to have to go back and you're  
7 going to have to really read through this and listen to the  
8 testimony. You know, I mean, not listen to it, but, you  
9 know, consider the testimony that was given.

10 MR. DOLLINGER: Yeah. I question, I mean,  
11 does anybody has any questions of me?

12 CHAIRPERSON MIETZ: Sure.

13 MR. DOLLINGER: Look at some of these things,  
14 or Andrea, I mean, some of these things -- and I don't know  
15 if I'm jumping into, you know, but, you know, the efficacy of  
16 the easement because of the mortgage. I mean, I have a real  
17 opinion on that. And --

18 MS. TOMPKINS WRIGHT: I know.

19 MS. SCHWARTZ: Say that again, David, what did  
20 you say?

21 MR. DOLLINGER: Well, the efficacy of the  
22 easement, given the fact that it has a mortgage hovering over  
23 it. I mean, and I guess, I guess the problem is that it's a  
24 little bit -- and, again, I'll go in any direction anybody  
25 wants.

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3 But, it would be nice to have some sense of  
4 what people think about, you know, whether, you know, no, my  
5 feeling is -- because we don't have to make the final  
6 decision, but they bring up, like, five separate points. And  
7 the question is, you know, does -- what do people think about  
8 the idea of the easement, their easement argument? I mean,  
9 what do you think of that argument?

10 CHAIRPERSON MIETZ: Well, well here's, here's  
11 part of the problem.

12 MR. DOLLINGER: Or do that until later.

13 CHAIRPERSON MIETZ: Obviously, being a real  
14 estate person I have some knowledge and I know other people  
15 in the room do as well too. But, you know, it would probably  
16 be helpful, and please, if someone doesn't think it would be  
17 helpful, but, you know, there's really some legal points here  
18 that a nonlegal person is going to have difficulty, you know,  
19 extrapolating here.

20 You know, related to the merits of this  
21 easement or, you know, is it really a material problem that  
22 doesn't meet the test of what, you know, the approvals on  
23 this project required.

24 I mean, I guess if we asked you that, you  
25 would have a professional opinion about that, I guess. But,

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3 what are the points that we really need to consider for one  
4 to be able to determine it, I think is probably the bigger  
5 problem.

6 MR. DOLLINGER: Well, yeah, on that one. But  
7 than there's other ones too, I mean just a general sense of,  
8 you know, some of it's so complicated. The approval, that  
9 argument about the approvals, you know, the State approvals.

10 You know, and they do such a good job.  
11 Dennis, I guess you and I have talked about this. They do  
12 such a good job of kind of conflating the language.

13 CHAIRPERSON MIETZ: Yes.

14 MR. DOLLINGER: You know, I don't think the,  
15 for instance, I don't think that the amenity agreement or  
16 anything to do with the incentive zoning requires the State  
17 permits, it just requires the approvals.

18 CHAIRPERSON MIETZ: Right.

19 MR. DOLLINGER: And when you read this, you  
20 know, they're -- the way they conflate the language, it's  
21 really, you know, amazing. Its not a valid easement. What's  
22 a valid -- I've never heard the term valid easement. You  
23 know, it's really fascinating to me.

24 CHAIRPERSON MIETZ: Yeah. And, you know, it's  
25 also an interesting argument about, about the Auburn trail

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3 and the mitigate. And, you know, there's, you know, it's  
4 certainly it's clever, okay? But, I am not sure that it's,  
5 you know, we won't use the word valid because I think we beat  
6 that one to death.

7 But, you know, it's -- there are some  
8 interesting points to consider in that.

9 MS. TOMPKINS WRIGHT: I'll just give, I mean,  
10 I think it was obvious I felt very strongly about the cross  
11 access easement issue, because it's absolutely enforceable.  
12 And, you know, I stare at easements more than I ever want to,  
13 all along. And an easement by a property owner that's  
14 recorded would be considered enforceable. There'd be no way  
15 for the Town to ever research whether or not specutively in  
16 the future someone could argue that there wasn't, you know,  
17 --

18 CHAIRPERSON MIETZ: A valid easement.

19 MS. TOMPKINS WRIGHT: Be a breach of a  
20 mortgage because of it, or something. It would be completely  
21 unreasonably to ask a town to do those steps. I mean, it  
22 would be just as reasonable -- one of the comments I made was  
23 for them to ask for an organization, or do you confirm that  
24 whoever signed it wasn't a low level employee who didn't have  
25 authority to sign over an easement. That's just not how life

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works. So I feel really strongly that that's a bad argument.

MR. DOLLINGER: Yeah, bad. And the way he keeps conflating the authority, because there's a default clause in there, upon transfer of things. You know, that implies that you don't have the authority? I mean, that's just other word. But it's amazing --

MS. TOMPKINS WRIGHT: I think --

MR. DOLLINGER: -- and you're thinking, oh, wow, yeah. He doesn't have things, you know, it's crazy.

MS. TOMPKINS WRIGHT: Now --

MR. DOLLINGER: So --

MS. TOMPKINS WRIGHT: And even the fact that he even, you know, the attorney even said this is contained in the covenant section of a mortgage. A covenant section means these are the things that I will do or will refrain from doing. It's not a bargain and sale of your rights away.

MR. DOLLINGER: Right.

MS. TOMPKINS WRIGHT: It's agreeing that you wouldn't do something. And if you do it, you can be sued. And there are consequences to it, but it doesn't, you know, take away your rights to the --

MR. DOLLINGER: Right.

MS. TOMPKINS WRIGHT: -- the rest of the

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3 world.

4 CHAIRPERSON MIETZ: Right, okay. And then I  
5 think, you know, suggesting the rain cloud above the first  
6 mortgager, you know, had potentially foreclosing or whatever.  
7 I mean, that, that isn't really material in this decision  
8 either, other than trying to slant you away from it. So.

9 MR. DOLLINGER: What about the phasing? I  
10 mean, everybody else --

11 MS. DALE: I mean, I thought, I thought the  
12 whole argument about the phases and the staging and all to be  
13 a little nonsensical. I don't know.

14 MS. SCHWARTZ: And I looked at it as a matter  
15 almost of semantics in a way. And that to me, although they  
16 refuted it, to me, it was some borderline segmentation. But  
17 after listening to it, I still think that there's a question  
18 about the phasing.

19 CHAIRPERSON MIETZ: What question?

20 MS. SCHWARTZ: You know, I mean, all of the  
21 permits haven't been pulled, right?

22 CHAIRPERSON MIETZ: Right.

23 MR. DiSTEFANO: Right.

24 MS. SCHWARTZ: Okay. So, to me that should be  
25 that should be done, and --

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3 MS. WATSON: The fact that the really entire  
4 site work is part of this permit, I mean, that --

5 MS. SCHWARTZ: You do have to do that. You  
6 do, yeah.

7 MS. WATSON: That's the bulk --

8 CHAIRPERSON MIETZ: That thought, guys, here's  
9 the thing about the site work though. I mean a lot of it,  
10 that's an election, okay? So, you know, to say that you need  
11 to do all of this site work right now, okay, because that's  
12 not really entirely true. Okay.

13 And, then, the second thing is, that, you  
14 know, no one could have -- whoever would have contemplated  
15 that this type of a project, based on how many different  
16 buildings it is and what types of buildings, that you would  
17 be staging it every two months and having permits pulled and  
18 starting various pieces and parts of a plaza, is never really  
19 done. Okay?

20 So, that's kind of, if someone had that  
21 expectation, it was unreasonable to start with and nobody  
22 practically would do it that way. In other words, you  
23 wouldn't necessarily build this building and never start any  
24 of the others, but you wouldn't start all of them at the same  
25 time. Okay? So.

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3 MR. DOLLINGER: I don't see how you could  
4 possibly imply phasing. That's an argument for the second  
5 permit, you know what I mean? How can you argue phasing from  
6 the first permit?

7 If they wait a year, then they can come in for  
8 the second permit. I mean, I think you could come in and  
9 say, this is against the rules, you know, you're phasing.  
10 Okay, well, great, that's true. But how do you tell from the  
11 first permit? There's nothing probative about the first  
12 permit with respect to phasing. It's --

13 CHAIRPERSON MIETZ: Well, here's just a  
14 suggestion, I don't want to cut anybody off, but we still  
15 have quite a bit to do here. You know, it sort of sounds  
16 like the spirit of this is well, maybe, you know, the town's  
17 position isn't so bad on this thing.

18 But, maybe what we could do is, you know, kind  
19 of really review this thing and if somebody really has a  
20 feeling that there's a valid, I don't know if I can use that  
21 word.

22 MR. DOLLINGER: Yeah, that's a good idea.

23 CHAIRPERSON MIETZ: Yeah. Reason to say that  
24 maybe the applicants have something strong to say, then maybe  
25 we could you know do it by e-mail or is that able to be done,

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David, or is that a violation?

MR. DOLLINGER: Well, I guess I would prefer to hear, I mean, does anybody think any of arguments that were put out were particularly persuasive, by the applicant, by the two applicants?

MS. DALE: No.

MS. SCHMITT: No.

MS. SCHWARTZ: What was your question, David?

MR. DOLLINGER: Well, I just am questioning whether you found any of these arguments, you know, as we go ahead to try to craft something, found any of these -- any particular argument of the applicant did you find particularly persuasive?

MS. DALE: I didn't. And I thought, I thought Ramsey's doc, I mean, it was gigantic, but I thought it was -- I thought it did a really nice job. I also really liked that table that he included that had the different points in the response.

CHAIRPERSON MIETZ: Right, like a matrix there, yeah.

MS. DALE: Yeah. I thought, I thought that was, I thought that was very helpful. I also thought it was interesting at one point the -- I don't remember if it was

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3 Brighton Grassroots or Save Monroe Avenue, made a comment  
4 something about the fact that Ramsey's response was lengthy.  
5 It was somehow indicative of having a weak position or  
6 something, which I thought was strange.

7 CHAIRPERSON MIETZ: So, if the general  
8 sentiment is that we kind of feel, you know, we should move  
9 towards the direction of supporting the Town's position on  
10 this, is that fair here? Because we really got to get moving  
11 here.

12 MS. WATSON: I'd like to hear what member  
13 Wright was going to say.

14 CHAIRPERSON MIETZ: Go ahead.

15 MS. TOMPKINS WRIGHT: I was just wondering,  
16 both of the applicants made arguments that they did not, you  
17 know -- in their papers, that they did not make tonight. So,  
18 do we need to respond formally to those in our written  
19 findings? For instance, the letter of credit argument or the  
20 RG&E easement argument that really weren't focused on, but  
21 are discussed in the documents? Does our approval or denial  
22 need to find a finding of fact for each of those as well?

23 MR. DiSTEFANO: I think, Andrea, the stuff  
24 that they didn't touch on, that those are the simplest ones  
25 to do. They didn't touch on it because they know they

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3 weren't correct. I mean, the letters of credit, well,  
4 there's the letter of credit, you know, it's there. So, the  
5 ones they didn't touch on were ones that they know that they  
6 don't have any leg to stand on.

7 MR. DOLLINGER: But --

8 MR. DiSTEFANO: So I think those are very easy  
9 ones because they put it in their application that we  
10 address. Well, obviously, the letter of credits were issued.

11 MS. SCHWARTZ: Yeah, after --

12 MR. DiSTEFANO: And they're, they're com-,  
13 they're complaint is that, well, the town didn't give me all  
14 of this stuff in time, so that's why.

15 MS. SCHWARTZ: Right. But when --

16 MR. DiSTEFANO: The Town didn't call us and  
17 say, hey, we're issuing a permit now. You know, it's like --

18 CHAIRPERSON MIETZ: All right, okay.

19 MS. SCHWARTZ: Right. When they filed these,  
20 you know, when the two lawyers did for the neighborhoods and  
21 Monroe, there were no letters of credit. So they're,  
22 they're, so it was valid.

23 MR. DiSTEFANO: No, Judy, there were letters  
24 of credit.

25 MS. SCHWARTZ: From the get-go?

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3 MR. DiSTEFANO: They came and foiled the Town  
4 every single piece of -- every single piece of documentation  
5 regarding the building permits, they foiled. We're talking  
6 over, I don't know, 15,000 different pieces of information.  
7 How couldn't you turn all of that around immediately?

8 CHAIRPERSON MIETZ: Okay.

9 MS. DALE: So, the letters of credit are  
10 included in the response we got from Ramsey.

11 MR. DiSTEFANO: Right.

12 MS. SCHWARTZ: Right. But my question was,  
13 were they there when --

14 MR. DOLLINGER: Yeah, Judy, that was just a  
15 timing issue. When they, they requested all of the  
16 documents, the Town gave them a bunch of documents, they just  
17 didn't have included the letters of credit. So the  
18 petitioner assumed that there were no letters of credit, when  
19 there really were, we just hadn't included them.

20 MS. SCHWARTZ: Right, which is a fair  
21 assumption, I mean.

22 CHAIRPERSON MIETZ: Okay, right. But the fact  
23 of the matter is, the letters of credit are there. They have  
24 been posted.

25 MS. SCHWARTZ: Right.

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3 CHAIRPERSON MIETZ: But let's stop at that,  
4 okay?

5 MS. SCHWARTZ: Yep.

6 MS. SCHMITT: May I just throw out that there  
7 are other arguments that are in their papers that they did  
8 not address.

9 MR. DOLLINGER: I know. Some are pretty  
10 obscure. There's a couple weird ones in there. I know --

11 MS. SCHMITT: Yeah.

12 MR. DOLLINGER: -- I would -- we will need to  
13 address those, yes.

14 MS. SCHMITT: Okay, that was my point.

15 MR. DOLLINGER: Yeah. I don't, I don't -- I  
16 can't find them right now, but I remember reading them.  
17 They're weird. There are some odd ones that are just --

18 MS. SCHMITT: Well, like the argument -- I  
19 mean, one isn't odd, it's just in this reading of it, like  
20 the RG&E, the 90 days.

21 MR. DOLLINGER: Yeah, but there's some more  
22 weirder one.

23 CHAIRPERSON MIETZ: Yeah.

24 MS. SCHMITT: Yeah. Nope, there definitely  
25 are. I just wasn't comfortable saying if you didn't talk

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3 about it we don't have to address it.

4 MR. DiSTEFANO: I agree, Kathy. We need to  
5 address everything that they come through. I think some of  
6 them are going to be very straight forward.

7 CHAIRPERSON MIETZ: All right. So, how are we  
8 planning to do this, folks, because we've got to make some  
9 decisions here.

10 MS. SCHWARTZ: Can I ask one last question  
11 though? Wasn't -- and I thought this was true, didn't RG&E  
12 have ownership of the trail back there, the easement, because  
13 of the utilities?

14 MR. DiSTEFANO: RG&E's easement.

15 MS. SCHWARTZ: Okay.

16 MR. DiSTEFANO: But then they started -- it  
17 was their land. Then they just started selling off their  
18 land.

19 MR. DOLLINGER: But, you know, again --

20 MR. DiSTEFANO: You have to get an easement  
21 over it.

22 MR. DOLLINGER: To point out the nature of the  
23 thing. Sorry, but, you know, there's nothing in anything  
24 that said that they had to have the trail easements. And  
25 that's what's so kind of, again, you know, kind of bending

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3 and twisting. The approval simply says they have to submit a  
4 plan for the trail, it never says they have to have the  
5 easements prior to anything.

6 So, again, what they had us focusing on, oh,  
7 we didn't have the RG&E easements weren't sufficient, all  
8 that stuff. We don't need the RG&E easements to issue this  
9 permit. We simply need to have submitted the plans for the  
10 trail.

11 MR. DiSTEFANO: Then we would get the  
12 easements afterwards.

13 MR. DOLLINGER: And that says that  
14 specifically. And then, you know, before I think at some  
15 point we have to file the easements. But we don't -- but to  
16 issue the building permit, you don't need them.

17 MS. WATSON: So, it sounds like we're --  
18 there's some consensus here for which direction we would want  
19 to go. And the reason we are tabling it is to give us time  
20 to write it up and with regards to Ramsey's response, or --

21 MR. DOLLINGER: Well, in addition also, to be  
22 able to respond to the late submissions from the one group.  
23 Yeah, for both reasons, theoretically.

24 MS. WATSON: Okay.

25 MR. DOLLINGER: But more so, time to respond

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3 and time to make sure that we understand each other.

4 MS. WATSON: Okay.

5 MR. DOLLINGER: But I think I'm ready to -- I  
6 have enough information, a feeling for what we are doing, I  
7 think.

8 CHAIRPERSON MIETZ: Okay, all right. Because  
9 we're closing in on 12:00, guys, and we really don't run  
10 these meetings past 12:00, and we've got a lot of this stuff  
11 to finish.

12 So, if everyone's generally comfortable here,  
13 you know, not kind of brow beat anybody, but David's really  
14 got to help put some of this stuff together so that we can  
15 see it. But this is --

16 MR. DOLLINGER: Table them sequentially,  
17 Dennis?

18 CHAIRPERSON MIETZ: Yeah, that's fine, you  
19 know, somebody's just got to make a motion --

20 MR. DiSTEFANO: Yeah. And just as you are  
21 tabling it, just make the remark that we will allow the  
22 building inspector to address within two weeks any additional  
23 information that has come in from the appealing parties.

24 MR. DOLLINGER: Yeah, the issue is raised on  
25 that, yes.

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3 CHAIRPERSON MIETZ: Okay. So, Andrea, you  
4 have the first one please.

5 MR. DiSTEFANO: She's got them both.

6 MS. TOMPKINS WRIGHT: Yes, I -- thanks for  
7 that by the way.

8 MR. DiSTEFANO: I did it on purpose.

9 MS. TOMPKINS WRIGHT: I know you did.

10 I move table Application 9A-04-20 in order --  
11 and to keep the public hearing closed --

12 MR. DiSTEFANO: Well, yeah.

13 MS. SCHWARTZ: Closed.

14 MS. TOMPKINS WRIGHT: That's what I said. To  
15 keep the Public Hearing closed to allow the Town of Brighton  
16 building inspector to respond to any new information  
17 submitted by the applicant within two weeks of today's date.  
18 And, I think --

19 MR. DiSTEFANO: That's good enough.

20 MS. TOMPKINS WRIGHT: Yeah, I think so.

21 MR. DiSTEFANO: That's what we're tabling it  
22 for and then we'll come back and we'll make our decision at  
23 our next meeting.

24 MS. TOMPKINS WRIGHT: Okay. And then, after  
25 we do 10A-01-20, I'll do the exact same motion for

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Grassroots.

MR. DiSTEFANO: Yeah. This is for 9A-04-20.

MS. TOMPKINS WRIGHT: Yeah.

MR. DiSTEFANO: And then we'll do 10A-02.

MS. TOMPKINS WRIGHT: Yes, exactly.

MR. DiSTEFANO: So this is for 9A-04-20.

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APPLICATION 9A-04-20

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.

Motion made by Ms. Tompkins Wright to table Application 9A-04-20 and to keep the public hearing closed to allow the Town of Brighton building inspector to respond to any new information submitted by the applicant within two weeks of today's date.

(Second by Ms. Watson.)

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

(Upon roll call, motion to table carries.)

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CHAIRPERSON MIETZ: Okay. The next one is  
Cardiff Park --

MR. DiSTEFANO: You just want to go, do we  
just want to jump to 10A-02 since we --

CHAIRPERSON MIETZ: I don't care, fine. Let's  
just do it, go ahead.

MR. DiSTEFANO: Go ahead then.

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APPLICATION 10A-02-20

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.

Motion made by Ms. Tompkins Wright to table Application 10A-02-20 and keep the public hearing closed in order to permit the Town of Brighton building inspector to submit a response to any materials submitted by applicant within two weeks of today's date.

(Second by Ms. Dale.)

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

(Upon roll call, motion to table carries.)

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CHAIRPERSON MIETZ: Okay. So then, we move  
back over to Cardiff Park. This is the driveway expansion.  
Any objection?

MS. SCHWARTZ: No.

CHAIRPERSON MIETZ: Kathy.

MS. SCHMITT: All right.

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APPLICATION 10A-01-20

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.

Motion made by Ms. Schmitt to approve Application 10A-01-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The variance request is to widen the existing driveway so as to fit two cars side by side.
2. The expansion would be 2.8 feet from the property line where code requires a minimum of 4 feet.
3. The granting of this variance would not appear to result in any substantial detriment to nearby properties or otherwise adversely effect the character of the neighborhood as currently about 50 percent of the homes have double-wide driveways facing the street. Moreover, multiple neighbors have signed a letter in support of the variance request, including the neighbor most affected by the variance.
4. There's no evidence that there would be a negative impact

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on the health, safety and welfare of the neighborhood.

**CONDITIONS:**

1. The variance applies only to this application for widening the driveway and testimony provided and will not apply to future projects.

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MS. SCHMITT: Does it need building permits?

MR. DiSTEFANO: Number two is all necessary  
highway permits shall be obtained.

MS. SCHMITT: Highway permits, thank you.  
That's it.

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2. All necessary highway permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

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CHAIRPERSON MIETZ: Okay. The next one is Commonwealth Road, there's a --

MS. SCHWARTZ: Pool.

CHAIRPERSON MIETZ: Yeah. It's kind of a weird lot and I'm not sure what else you're really going to do there.

MS. SCHWARTZ: They can't. I know, it's very, very confining.

CHAIRPERSON MIETZ: Yeah.

MS. SCHWARTZ: Yeah.

CHAIRPERSON MIETZ: Okay. Does anybody object?

Okay, go ahead, Judy.

MS. SCHWARTZ: Okay.

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APPLICATION 10A-03-20

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 in ground 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.

Motion made by Ms. Schwartz to approve Application 10A-03-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. This is a corner lot which by its nature requires a variance for most modifications to the property as in this case where the side yard is the front yard by code.
2. The variance is minimal as it only encroaches 4 feet into the front yard setback. This is necessary because of the dimensions of the backyard being longer north to south and the front yard faces north.
3. The proposed pool will not really be visible during the season of use because of substantial vegetation on the north

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3 side of the property.

4 4. There currently is a three-and-a-half foot picket fence  
5 along Ashbourne that is unobtrusive because of the  
6 substantial vegetation. Therefore, there will be no  
7 perceived difference with the installation of the required  
8 4-foot fence.

9 **CONDITIONS:**

10 1. This variance only applies to the location of the  
11 proposed in-ground pool and the required 4-foot fence as  
12 presented in testimony and written application.  
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3 MS. SCHWARTZ: All necessary building and  
4 planning approvals must be obtained.

5 MR. DiSTEFANO: Can you say all necessary  
6 building permits shall be obtained?

7 MS. SCHWARTZ: Yes.

8 MS. WATSON: Second.

9 MR. DiSTEFANO: Do we need to, I don't know,  
10 do we need to be specific about the new fencing shall not be  
11 placed in the town right of way? Or don't you think that's  
12 necessary?

13 MS. TOMPKINS WRIGHT: It's illegal if they do,  
14 isn't it?

15 MR. DiSTEFANO: I mean, they can't do it,  
16 but --

17 CHAIRPERSON MIETZ: I mean, it's a requirement  
18 that you can't.

19 MR. DiSTEFANO: Yeah.

20 CHAIRPERSON MIETZ: I don't think you need to  
21 state it.

22 MR. DiSTEFANO: Okay, all right. Who had the  
23 second?

24 MS. WATSON: I did.  
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2. All necessary building permits must be obtained.

(Second by Ms. Watson.)

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

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

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CHAIRPERSON MIETZ: Okay. The next one is over on Pelham Road, that's the garage addition. Any issues here?

Jennifer.

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APPLICATION 10A-04-20

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.

Motion made by Ms. Watson to approve Application 10A-04-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The proposed variance is the minimum needed to provide a second garage bay in that the addition is for a single car with the smallest footprint possible.
2. The proposed addition will not result in a substantial change in the character of the neighborhood or pose a detriment to nearby properties. Other houses in this neighborhood have similarly situated rear setbacks or similar additions. Also, the proposed addition will not be front facing or easily visible from the street.
3. No alternative garage placement exists that would not require a variance. The proposed location is the least visible and the most pragmatic as compared to the other

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options that the applicants explored.

**CONDITIONS:**

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

2. All necessary permits and approvals shall be obtained.

(Second by Ms. Schwartz.)

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

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

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CHAIRPERSON MIETZ: Okay. And next is Oak Lane where the gentleman is trying to put a garage addition there into the setback. Any issues there?

Jeanne.

MS. DALE: No issues there and this is mine.  
Okay.

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3 APPLICATION 10A-05-20

4 10A-05-20 Application of Marisa and Serge  
5 Tsvasman, owners of property located at 110 Oak Lane, for  
6 Area Variances form section 205-2 to allow a garage addition  
7 to extend 2.5 +/- ft. into the existing 12.6 ft. rear setback  
8 where a 60 ft. rear setback is required by code, and extend 3  
9 +/- ft. into the existing 18.1 ft. side setback where an  
10 18.75 ft. side setback is required by code. All as described  
11 on application and plans on file.

12 Motion made by Ms. Dale to approve Application  
13 10A-05-20 based on the following findings and facts.

14 **FINDINGS AND FACTS:**

15 1. The applicant is seeking to add a new two-car garage  
16 versus their existing one-car garage, and the applicant's  
17 home has non-conforming setbacks.

18 2. The difficulty necessitating the variance request cannot  
19 be solved in another manner not requiring a variance as the  
20 existing driveway is along the west property line and there  
21 is no other location on the lot that would work for a two-car  
22 garage.

23 3. The existing rear and side yards have existing  
24 non-conforming setbacks and the applicant's request for the  
25 proposed 24-foot garage width is the minimum necessary for a

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two-car garage and would be an additional 2.6 feet into the rear setback and an additional 3.12 feet into the side yard setback.

4. The variance if approved will not result in a substantial change in character to the neighborhood or detrimentally affect surrounding properties as several nearby homes are similarly close to the highway concrete wall and the nearest adjacent neighbor's home will still be over 60 feet away from the propose structure. Two-car garages are typical for many homes on the street.

**CONDITIONS:**

1. Approval granted based upon application submitted and testimony given.

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MR. DiSTEFANO: Two, all necessarily  
Architectural Review Board approvals and building permits  
shall be obtained.

MS. DALE: Thank you.

MS. TOMPKINS WRIGHT: That's why I seconded  
it.

MR. DiSTEFANO: Is that why?

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2.  
2. All necessarily Architectural Review Board approvals and  
building permits shall be obtained.

(Second by Ms. Tompkins Wright.)

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

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

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3 CHAIRPERSON MIETZ: And the next one is the  
4 small shed over on Midland Avenue. Any objections there?

5 MS. SCHMITT: Dennis, I'd like to point out  
6 that while we had the meeting up, that there's a chat.

7 MS. TOMPKINS WRIGHT: Yes.

8 MS. SCHMITT: Message that was placed from a  
9 neighbor, Ian Sylinski. While it's not the most clear, to me  
10 it looks as if he is saying he doesn't like it because he can  
11 see it. I'm adding the word, he doesn't like it.

12 MS. WATSON: I don't think there's a value  
13 judgment, I think he was just correcting the record because  
14 she said nobody could see it. I didn't read the comment as  
15 objecting, because he never said that he objected.

16 MS. SCHMITT: No. I just said that it is  
17 written in a way you can't really tell what the point is.  
18 But, he is saying that he can see it. And I took that as a  
19 negative, but it could just as easily be a correction.

20 CHAIRPERSON MIETZ: Okay. Was anyone  
21 concerned about that or?

22 MS. SCHWARTZ: No.

23 MS. TOMPKINS WRIGHT: Even if he had to, where  
24 else would they possibly put a shed?

25 CHAIRPERSON MIETZ: And they don't even have a

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3 garage.

4 MS. SCHWARTZ: There's no yard, no.

5 MS. WATSON: It's probably better than having  
6 stuff spill out all over your yard.

7 MS. SCHWARTZ: No garage, I mean, you know.

8 CHAIRPERSON MIETZ: Okay. Let me get going  
9 here. All right.

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APPLICATION 10A-06-20

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.

Motion made by Mr. Mietz to approve Application 10A-06-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The house was built adjacent to the rear property line which would not allow for a rear yard shed.
2. Since the house has no garage or garage structures, a shed is required to meet the needs of the applicant to store lawn equipment, et cetera.
3. Placing the shed in the side yard at the same elevation to the house will be in keeping with other structures within the neighborhood.
4. No negative effect on the character of the neighborhood will result from the approval of this variance since the distance from the street and vegetation mitigate its location.

**CONDITIONS:**

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1. Based on testimony given and plans submitted as to the specific location of the shed.

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CHAIRPERSON MIETZ: And what do they need for permits, Rick. I don't know.

MR. DiSTEFANO: All necessary building permits shall be obtained, number two.

CHAIRPERSON MIETZ: Okay.

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2. All necessary building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

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3 CHAIRPERSON MIETZ: Okay. The next one is the  
4 COVID awning for Canal View here.

5 MS. WATSON: I don't have a problem with it,  
6 but my only question is whether or not it's considered a  
7 sign. Because it's got a great big logo on the front.

8 MR. DiSTEFANO: Yeah, you know, they need sign  
9 review for it, but it meets code for additional signage on  
10 that side of the building. I mean, the building has a couple  
11 sign variances, but those are for variances that are in the  
12 parking lot side of the building. When you look at this,  
13 they meet the -- they meet the sign requirements for the  
14 front of that building with the logo on it.

15 , I mean, you guys don't like it, you can have  
16 them take the logo off.

17 MS. SCHWARTZ: Wouldn't it have been nice to  
18 include it though in the application?

19 MR. DiSTEFANO: It was included. Oh, they  
20 actually took one off the side. It was included in the  
21 elevation. The elevation --

22 MS. SCHWARTZ: In his presentation he didn't  
23 say anything.

24 CHAIRPERSON MIETZ: He didn't address it at  
25 all, Rick.

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MS. SCHWARTZ: No.

MR. DiSTEFANO: Right. But they did have on that side elevation and we told them they better get rid of that or they're going to need a variance. So they got rid of that one.

CHAIRPERSON MIETZ: Well, I guess what we can do is we can condition this thing if we want to approve it subject to them obtaining the Architectural Review Board approval for the signage. Because, without it then they could put it up but not with the U of R thing on it.

MS. SCHMITT: I mean, could I just point out, it is a practical thing. If I'm driving up and I'm coming to kind of a drive up medication for my heart and I'm nervous about the pandemic, I would want to know that that's where I'm supposed to be.

MS. WATSON: I don't have a problem with it, I just wanted to make sure it wasn't violating anything.

MR. DiSTEFANO: No, we looked into it.

CHAIRPERSON MIETZ: Okay.

MS. SCHMITT: All right.

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APPLICATION 10A-07-20

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 Boulevard., 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.

Motion made by Ms. Schmitt to approve Application 10A-07-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The variance request is to allow an awning to extend 12.2 feet into the 70-foot 5-foot front setback required by code.
2. The proposed awning will allow for curbside delivery of medications to cardiac patients during inclement weather and allow for appropriate social distancing during the current COVID-19 pandemic.
3. The applicant had explored alternative means of delivering medications to its clients but determined that this was the best solution as it did not require a change to the drive lane.

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3 4. The granting of this variance will not produce an  
4 undesirable change in the character of the neighborhood or be  
5 a detriment to nearby properties, as the property in question  
6 is a commercial space. Some of which have canopies and/or  
7 awnings similar to what is being requested in this  
8 application.

9 5. There's no evidence that there would be a negative impact  
10 on the health, safety, and welfare of this development.

11 **CONDITIONS:**

12 1. The variance applies only to the awning as described in  
13 the application and testimony provided and will not apply to  
14 future projects.  
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3 MS. SCHMITT: I don't -- I couldn't think of  
4 another building permit that you needed, so that's the only  
5 condition I had.

6 MR. DiSTEFANO: Oh, just put the standard, all  
7 necessary Architectural Review Board approvals, and building  
8 permits shall be obtained.

9 MS. SCHMITT: Thank you.

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

(Second by Ms. Schwartz.)

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

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

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3 CHAIRPERSON MIETZ: Okay. The next one is  
4 that partially screened porch on the front of the house on  
5 Dunrovin Lane. Any objections there?

6 Okay, Judy.

7 MS. SCHWARTZ: No, Rick what's that for?

8 MR. DiSTEFANO: I personally don't like it,  
9 but that's nothing.

10 MS. SCHWARTZ: Okay. Yeah, but I love my  
11 front porch, so I'm partial.

12 MR. DiSTEFANO: You know, I'd rather see an  
13 open front porch.

14 MS. SCHWARTZ: Okay, okay.  
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Brighton Zoning Board of Appeals 10/07/2020

APPLICATION 10A-08-20

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.

Motion made by Ms. Schwartz to approve Application 10A-08-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. Though the variance seems substantial, 10 feet into the required 60 feet front setback, the result will not change the character of the area as the house is on a pie-shaped lot with a more expansive width thus minimizing the new front setback.
2. In order to provide practical usage of the proposed porch the dimension of the 12-foot depth is required.
3. The proposed porch will add character to the house and blend well as all materials will match the existing.
4. The rear of the house does not lend itself to a porch, so it's in the front and will be open with an open look as much as possible.

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**CONDITIONS:**

1. This variance only applies to the proposed porch as presented in testimony and written application being in particular an open/screened porch.

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3 MS. SCHWARTZ: Two, all necessary planning and  
4 building permits must be obtained.

5 MR. DiSTEFANO: Can I just be a little  
6 specific on the porch itself?

7 MS. SCHWARTZ: Sure.

8 MR. DiSTEFANO: And can we say something like  
9 only to a screen/open porch?

10 MS. SCHWARTZ: Yeah, well, that's why I said  
11 it was going to be open as much, but okay.

12 MR. DiSTEFANO: I just want to make it a  
13 condition, so at some point in time somebody doesn't decide  
14 they're going to enclose the whole thing.

15 MS. SCHWARTZ: Okay. So a third condition  
16 would be that this porch --

17 MR. DiSTEFANO: No.

18 MS. SCHWARTZ: -- must be a screened, open  
19 porch?

20 MR. DiSTEFANO: The first condition. Just  
21 kind of when you're saying it, just make a fact that it's --  
22 just be more specific with on your first condition.

23 MS. SCHWARTZ: Okay. This variance only  
24 applies to the proposed porch as presented in testimony and  
25 written application being an open screened porch.

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MR. DiSTEFANO: In particular, shall be --

MS. SCHWARTZ: In particular, shall be an open  
screened porch.

MR. DiSTEFANO: An open/screened porch.

MS. SCHWARTZ: All right. Rhoda, I hope you  
got that.

MR. DiSTEFANO: I think we want to, and also,  
number two, all necessary Architectural Review Board  
approvals and building permits --

MS. SCHWARTZ: Oh, sure, because it's in the  
front of the house, right.

MR. DiSTEFANO: Right.

MS. SCHWARTZ: Thank you forgot that one.

MR. DiSTEFANO: Can I have a second?

MS. SCHMITT: I do.

MS. TOMPKINS WRIGHT: I can.

MR. DiSTEFANO: I'm sorry, Andrea?

MS. TOMPKINS WRIGHT: Kathleen can have it.

MR. DiSTEFANO: Oh, Kathleen got it.

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2. All necessary Architectural Review Board approvals and building permits must be obtained.

(Second by Ms. Schmitt.)

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

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

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CHAIRPERSON MIETZ: And the next one is  
Rhinecliff, with the two-story addition. Any issues there?

Okay, Andrea.

Brighton Zoning Board of Appeals 10/07/2020

APPLICATION 10A-09-20

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.

Motion made by Ms. Tompkins Wright to approve Application 10A-09-20 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 2.3 foot extension into the side setback will be relatively shielded by view both by passersby and by the property owner due to a line of shrubbery along the south side of the property.

2. The requested variance is not substantial given for the shrub screening and the fact that the property will still maintain a side setback of 6.7 feet.

3. The benefit sought by the applicant cannot reasonably be achieved by any other method. Applicant testified as to the need to extend the house and garage, needs the location in

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part due to limited circulation of vehicles parking in the garage, and in part due to the location of the garage and where it connects to the home.

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.

**CONDITIONS:**

1. The variance granted herein applies only to the addition described in the location as depicting on the application and in testimony given.

2. All necessary permits and Architectural Review Board approvals must be obtained.

(Second by Ms. Watson.)

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

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

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3 CHAIRPERSON MIETZ: Okay. The next one is the  
4 person who didn't show, do you want to just hold it over or  
5 what?

6 MR. DiSTEFANO: You know, normally I would  
7 say, yeah, we very rarely do something without an applicant  
8 presenting the project. But there's really nothing changing  
9 other than erasing the lot line here. I mean, it's not like  
10 they're building anything, it's not like they're --

11 CHAIRPERSON MIETZ: Right.

12 MR. DiSTEFANO: -- it's not like they're doing  
13 anything other than --

14 CHAIRPERSON MIETZ: Okay.

15 MS. WATSON: If I can just ask one question  
16 that I would have asked the applicant? Is the interpretation  
17 correct that if they weren't combining those two lots their  
18 current setback is code compliant, right?

19 MR. DiSTEFANO: Yes, I believe so.

20 MS. WATSON: Okay.

21 MR. DiSTEFANO: It has to be 15 percent of 72.

22 MS. WATSON: That's what I calculated.

23 MR. DiSTEFANO: So it does meet code.

24 MS. SCHWARTZ: So we don't need to save it,  
25 you can take care of it, or what?

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3 MR. DiSTEFANO: Well, we either have to table  
4 it for representation or you guys have to make a decision on  
5 it.

6 MS. SCHWARTZ: Oh, okay.

7 MR. DiSTEFANO: I mean, normally we don't do  
8 anything without having representation.

9 MS. SCHWARTZ: Yeah.

10 MR. DiSTEFANO: This is one of these cases  
11 where there's nothing really to be said because nothing is  
12 changing on the lot other than the removal of the lot line.

13 David, are you out there?

14 MR. DOLLINGER: Yeah, I'm here.

15 MR. DiSTEFANO: What do you think about this  
16 application if we were to make a decision without the  
17 applicant having presented it?

18 MR. DOLLINGER: It wouldn't -- I don't see who  
19 you're prejudicing.

20 MR. DiSTEFANO: So you wouldn't have a problem  
21 with us making a decision?

22 MR. DOLLINGER: No, I don't. I don't think  
23 so, I just don't think anybody's prejudiced by it. Who's  
24 going to complain?

25 MR. DiSTEFANO: Nobody.

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3 MR. DOLLINGER: Right. And, you know, it was  
4 a long meeting, it's COVID, I mean, people could, you know.

5 CHAIRPERSON MIETZ: All right. Let's do it.

6 MS. WATSON: Yeah. I was just assuming we  
7 were.

8 CHAIRPERSON MIETZ: Go ahead, Jennifer.  
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Brighton Zoning Board of Appeals 10/07/2020

APPLICATION 10A-10-20

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.

Motion made by Ms. Watson to approve Application 10A-10-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. As a single lot at 1050 Highland Avenue the existing structure meets the Town Code side setback requirement of 15 percent of the lot width. Combining the two lots together increases the overall lot width and thereof increases the required side setback.
2. The proposed variance will not result in any change in the character of the neighborhood or pose a detriment to nearby properties. The setback of the existing structures are not changing and no additional structures are being built.
3. The applicants are requesting a variance for the sole

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3 purpose of ensuring their existing home complies with Town  
4 Code after the two lots are combined. No alternatives exist  
5 to complete the lot consolidation without a variance and this  
6 difficulty was not self-created.  
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MS. WATSON: Conditions.

MR. DiSTEFANO: I don't think you need any conditions, to be honest with you.

MS. WATSON: None at all?

MR. DiSTEFANO: I can't -- what are we conditioning?

MS. WATSON: All right.

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(Second by Ms. Schwartz.)

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

(Upon roll call, motion to approve carries.)

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CHAIRPERSON MIETZ: Okay. The next one is the pet scanner over at U of R, or the MRI scanner, I'm sorry.

MS. DALE: Okay, that's me. I assume everybody is fine.

CHAIRPERSON MIETZ: Yeah, go ahead.

MS. DALE: Okay.

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APPLICATION 10A-11-20

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.

Motion made by Ms. Dale to approve Application 10A-11-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The request is to install a temporary MRI trailer next to the existing building. A temporary covered walkway will connect the trailer entrance to the building for patient transfer. The trailer and walkway covering will be removed within 18 months of installation.

2. The applicant plans to use the trailer facility to enable them to clear a backlog of patients created by the pandemic and who could not receive or complete necessary medical imaging.

3. Granting of the request will not result in a substantial change in character or be detrimental to surrounding properties. Any increase of traffic due to the use of the trailer will be offset by declines in traffic due to large

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portions of the workforce working remotely and the MRI trailer will not be located near any homes, roadways, or public uses.

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3 MR. DiSTEFANO: You might also want to say,  
4 Jeanne, that the trailer isn't taking up any parking.

5 MS. DALE: Oh, that's a good point. Thank  
6 you, okay. How about --

7 MR. DiSTEFANO: I think you can just continue  
8 that one.

9 MS. DALE: Yes. Also, the proposed trailer  
10 will not reduce parking on site.

11 MR. DiSTEFANO: Since it is.

12 MS. DALE: Since it is located --

13 MR. DiSTEFANO: Outside of the parking area.

14 MS. DALE: Thank you. That was very helpful.  
15 Also, the proposed trailer will not eliminate any parking  
16 spaces as it is located out -- as it is planned to be located  
17 outside of the parking area.

18 MR. DiSTEFANO: There you go.

19 MS. DALE: Thank you for your help.  
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Also, the proposed trailer will not eliminate any parking spaces as it is planned to be located outside of the parking area.

**CONDITIONS:**

1. Insulation of the temporary MRI trailer and covered walkway is to be installed at the location shown in the application and shall be removed within two years.

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3 MS. DALE: I don't know if they need any of  
4 the other things.

5 MR. DiSTEFANO: Do we want to put a condition  
6 on there that they got to replant these trees?

7 MS. DALE: Oh, thank you, thank you. They did  
8 say they would, so, okay.

9 MR. DiSTEFANO: Yeah, they did say they would  
10 and I'm not saying they won't, but I don't think it hurts  
11 to --

12 MS. DALE: No, sure, we'll go trees. Okay.  
13 Number two, applicant shall replant any displaced trees on  
14 the property.

15 MS. SCHWARTZ: Second, Judy.

16 MR. DiSTEFANO: I just want -- I'm not adding,  
17 but I just want to go back and verify number one, trailer and  
18 awning shall be located as per plans. And you want to say  
19 shall be removed within the two-year period?

20 MS. DALE: Well, they said --

21 MR. DiSTEFANO: I don't mind the two years if  
22 you want to give them two years. I don't have a problem with  
23 it.

24 MS. DALE: No, that's true. They'd asked for  
25 18 months, right?

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MR. DiSTEFANO: They asked for 18 months.

MS. DALE: I would just as soon give them two years because with the pandemic and who knows and, but I don't feel strongly about it. If you guys ask for 18 months, we can just give them 18 months.

MR. DiSTEFANO: Guys, what do you think? Do you want to say two years or eighteen months?

MS. SCHWARTZ: I would do two.

MR. DiSTEFANO: I get a little -- my only feeling is, I hate giving people more than what they asked for.

MS. DALE: Okay, then go with 18 months.

CHAIRPERSON MIETZ: Let's go with the 18, because that's normally what we do. We don't add usually.

MS. SCHWARTZ: The only thing is, if they can't get picked up in time, you know?

MR. DiSTEFANO: Well, we're not going to be that stringent about it, Judy.

MS. SCHWARTZ: All right.

CHAIRPERSON MIETZ: Let's move on.

MR. DiSTEFANO: If it goes 19 months, I'm not going to go out there and whack them on the wrist, all right?

MS. SCHWARTZ: Okay.

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3 DAN SAVAGE: Rick, will this be an ARB  
4 approval?

5 MR. DiSTEFANO: I don't think so, because  
6 we're going to cover the canopy as part of the temporary and  
7 revokable use permit.

8 DAN SAVAGE: Okay.

9 MR. DiSTEFANO: So, no, I wouldn't. Because  
10 the canopy is going to go when the trailer goes.

11 DAN SAVAGE: Great, thank you.

12 MR. DiSTEFANO: If they want to make the  
13 canopy permanent, then they'll have to come in and get a  
14 permit for it, and also, get ARB approval.

15 CHAIRPERSON MIETZ: Okay.

16 MS. SCHWARTZ: But they're keeping the  
17 concrete pad and you're all right with that?

18 MR. DiSTEFANO: Yeah, because there's really  
19 nothing, they could put a concrete pad there now without any  
20 needed approvals.

21 MS. SCHWARTZ: Okay.

22 MR. DiSTEFANO: Who got the second on that?  
23 I'm sorry.

24 MS. SCHWARTZ: I did, Judy.  
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2.  
2. Applicant shall replant any displaced trees on the property.

(Second by Ms. Schwartz.)

(Ms. Schmitt, yes; Ms. Watson, yes; Mr. Mietz, yes; Ms. Tomkins Wright, yes; Ms. Schwartz, yes; Ms. Dale, yes.)

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

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CHAIRPERSON MIETZ: Okay. The next one is  
just to extend the building permit on Town Line Road.

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APPLICATION 10A-12-20

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 JOA-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.

Motion made by Mr. Mietz to approve  
Application 10A-12-20 based on the following findings and  
facts.

**FINDINGS AND FACTS:**

1. The applicant has obtained a user for the proposed building and is finalizing construction plans.
2. No changes in the original plans or the variances approved in 2019 have occurred.
3. By the testimony the applicant is intending to begin construction in the fall of 2020.

**CONDITIONS:**

1. Based on testimony given and plans resubmitted.

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3 MR. DiSTEFANO: Can we just say that all  
4 previous conditions shall apply? Just all previous  
5 conditions shall apply, that one?

6 CHAIRPERSON MIETZ: Okay.  
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2. All previous conditions shall continue to apply.

(Second by Ms. Schwartz.)

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

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

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3 CHAIRPERSON MIETZ: Okay, thank you. The next  
4 one is Hibiscus for the generator. Any issue there?

5 MS. SCHWARTZ: No. It makes sense, I mean,  
6 the utilities are right there. And when I stopped, she made  
7 a very valid point that where it's placed it's further from  
8 the neighbor than if it were in the backyard. I mean, it's  
9 quite a distance from the --

10 CHAIRPERSON MIETZ: Yeah.

11 MS. SCHWARTZ: You know, on the side --

12 CHAIRPERSON MIETZ: Yeah, okay, the driveway  
13 thing. Okay, all right.

14 Kathy.  
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APPLICATION 10A-13-20

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.

Motion made by Ms. Schmitt to approve Application 10A-13-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The variance request is to allow a generator to be placed on the north side yard where the code requires generators to be placed in the backyard.

2. There is not sufficient room to place a generator in the backyard due to an existing pool, electrical lines, and a shed. The granting of this variance would not appear to result in any substantial detriment to nearby properties or otherwise adversely affect the neighborhood as the proposed generator is smallish in size being 48 inches by 25 inches by 29 inches, and will be well hidden by existing trees and vegetation.

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4. There's no evidence that there would be a negative impact on the health, safety and welfare of the neighborhood.

**CONDITIONS:**

1. The variance applies only to this application for placement of a generator on the north side yard and testimony provided regarding the same and will not apply to future projects.

2. The homeowner shall continue to maintain landscaping around the generator so as to shield it from the street.

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3 MS. SCHMITT: And I wasn't sure how to phrase  
4 this one, but all requirements as to how far away from the  
5 house, windows, doors, and vents must be complied with.

6 MR. DiSTEFANO: Just all necessary building  
7 permits shall be obtained. That's how we identify that.

8 MS. SCHMITT: Okay. Okay.

9 MR. DiSTEFANO: So number three is all  
10 necessary building permits shall be obtained.

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3. All necessary building permits shall be obtained.

(Second by Ms. Watson.)

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

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

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CHAIRPERSON MIETZ: And then we've got the first of the final two, on Elmwood Avenue. The first one is the garage addition. Any issues there?

Judy.

MS. SCHWARTZ: Okay.

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APPLICATION 10A-14-20

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.

Motion made by Ms. Schwartz to approve Application 10A-14-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. This variance of two and a half feet into the existing 36.1 feet rear setback is minimal, even though a 60-foot setback is required by code.
2. There will be no change to the character of the neighborhood as the garage will not be visible from the street as this is a flag lot.
3. There is no other option to achieve the desired result for the applicant without a variance due to the existing garage and orientation of the property.

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3 MS. SCHWARTZ: The construction of the  
4 existing garage was permitted with a variance when the home  
5 was constructed in 1983. The term of that variance -- the  
6 terms of that variance do not apply to any further additions.

7 MR. DiSTEFANO: Judy, I don't know if that's a  
8 true fact.

9 MS. SCHWARTZ: Well, well, he told --

10 MR. DiSTEFANO: I don't know when they built  
11 the house whether or not it got a variance or, you know.

12 MS. SCHWARTZ: When I went out that's what --  
13 that's what Sean had said.

14 MR. DiSTEFANO: They got a -- they got a  
15 variance for that addition a couple years ago.

16 MS. SCHWARTZ: All right. I will leave it  
17 out.

18 MR. DiSTEFANO: Yeah. Take that whole finding  
19 out.

20 MS. SCHWARTZ: Okay. We'll scratch it, okay.  
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**CONDITIONS:**

1. This variance only applies to the rear setback of two and a half feet as stated in testimony and written application.

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3 MS. SCHWARTZ: And two, all building and  
4 planning approvals must be obtained.

5 MR. DiSTEFANO: All necessary building permits  
6 shall be obtained.

7 MS. SCHWARTZ: All right. All necessary, I  
8 leave that word out, sorry.

9 MR. DiSTEFANO: Can I have a second?

10 MS. TOMPKINS WRIGHT: I'll second.

11 MR. DiSTEFANO: Who got that, I'm sorry?

12 MS. TOMPKINS WRIGHT: That was me.

13 MR. DiSTEFANO: That was you?

14 MS. TOMPKINS WRIGHT: Andrea.

15 MR. DiSTEFANO: Yep.  
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2. All necessary building permits shall be obtained.

(Second by Ms. Tompkins Wright.)

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

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

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3 CHAIRPERSON MIETZ: Okay. And the last one is  
4 the last one on Elmwood Avenue is the addition going into the  
5 rear setback, you know, filling in that little places.

6 MS. SCHWARTZ: Yeah. That's smart, yeah.

7 CHAIRPERSON MIETZ: Yeah.

8 MS. TOMPKINS WRIGHT: Okay.  
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APPLICATION 10A-15-20

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.

Motion made by Ms. Tompkins Wright to approve Application 10A-15-20 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The granting of the requested variance will not produce a undesirable change in the character of the neighborhood or be a detriment to nearby properties. The proposed home expansion extends only an additional three to four feet into the already existing rear setback and due to the location will be unnoticeable from any public right of way or from any residential neighbors and likely not noticeable from any commercial business as well.

2. The requested variance is not substantial given that it represents less than a seven percent increase in the setback's current nonconformity.

3. The benefit sought by the applicant cannot reasonably be

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3 achieved by any other method. And in fact, an expansion of  
4 the home in any other location is likely to have a greater  
5 effect visually to nearby properties.

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

9 **CONDITIONS:**

10 1. The variance granted herein applies only to the addition  
11 described in and in the location as depicted on the  
12 application and in the testimony given.  
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3 MS. TOMPKINS WRIGHT: And number two, all  
4 necessary permits and Architectural Review Board approvals  
5 must be obtained.

6 MR. DiSTEFANO: No Architectural Review Board  
7 is required for this, so just all necessary building permits  
8 shall be obtained.

9 MS. SCHWARTZ: It's in the back, that's why.

10 MR. DiSTEFANO: Right. It can't be seen from  
11 the road.

12 MS. TOMPKINS WRIGHT: Got it, okay.  
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2. All necessary building permits shall be obtained.

(Second by Ms. Schwartz.)

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

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

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MR. DiSTEFANO: Thank you, everybody.

CHAIRPERSON MIETZ: Thank you.

MR. DiSTEFANO: I will kind of, again, warn you, I have a feeling November's going to be another trying month. We had some use variance situations that we're going to be dealing with, so it could be, you know, a challenging month also.

MS. WATSON: Rick, is there ever a time limit on applications or a cap on the number --

\* \* \*

## REPORTER CERTIFICATE

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

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

Dated this 16th day of January, 2021.

At Rochester, New York

Rhoda Collins  
Rhoda Collins