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

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.

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.

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

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

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

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

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

APPLICATION 9A-03-20

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

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

CHAIRPERSON MIETZ: It has been postponed?

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

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

MR. DiSTEFANO: It's on for tonight.

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

DAVID COX: David Cox for Passero Associates.

CHAIRPERSON MIETZ: Hi, David. Okay, if

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you're ready, we're ready.

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

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

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

DAVID COX: Absolutely.

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

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

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

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

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

Okay, thank you, David.

DAVID COX: Thank you very much.

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

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. Deperrrior), 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.

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

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

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

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

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

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

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

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

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

There are two issues I want to talk about. I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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five buildings within two months of each other.

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

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

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

So the developer, it appears to me was

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

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

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

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

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

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

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

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

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

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

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

AARON SAYKIN: The issuance of the permit alone?

MS. DALE: Yeah.

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

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

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

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well, it's their problem.

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

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

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

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the sand, and number one.

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

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

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

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

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

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

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

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

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

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

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

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

If this approval is allowed to occur, if these

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

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

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

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

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

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

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

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

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

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

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

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

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that says that is a requirement?

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

CHAIRPERSON MIETZ: Okay.

MS. SCHMITT: Okay, thank you.

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

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

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

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

MS. SCHWARTZ: Okay.

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

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

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

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

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

AARON SAYKIN: You know, that's a good

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

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

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

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project.

CHAIRPERSON MIETZ: Okay. Anything else, Jen?

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

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

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

And, I'm sorry, what was the other -- oh, the 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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this is involved in the litigation and they're pulling a permit on this one.

AARON SAYKIN: Well . . .

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

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

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

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correct, is just this permit, right?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

CHAIRPERSON MIETZ: Okay.

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.

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?

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

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

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

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

RAMSEY BOEHNER: Okay.

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

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

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

MR. DiSTEFANO: Mr. Rosenbaum.

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

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

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

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

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

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

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

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

I want to address one thing in particular that Mr. Saykin mentioned that I wasn't planning on talking about 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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create a catch 22 for the builder. I think the Town can recognize the dilemma that this litigation has created. And we ask the Board to affirm Mr. Boehner's determinations, the issuance of the Starbucks building permit, and in all respects deny the appeal from Save Monroe. That's all I have to say, unless there's a question.

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

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

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

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

DANNY DANIELE: Yes, Danny Daniele.

CHAIRPERSON MIETZ: Hi, Dan.

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

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

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

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

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

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

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

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

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

And unfortunately for them, that hasn't been

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

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

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

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

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

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

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

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

DANNY DANIELE: You're welcome.

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

AARON SAYKIN: Thank you very much.

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.

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

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

CHAIRPERSON MIETZ: Okay, please proceed.

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

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

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

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

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

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

Board members, questions for Ms. Solano?

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

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

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

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

CHAIRPERSON MIETZ: Okay. Board members, questions?

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

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

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

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

APPLICATION 10-02-20

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.

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

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

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

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

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

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

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

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traffic to the area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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building permit must be satisfied.

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

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

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

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

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

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

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

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

For example, the Town attorney and building 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

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

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

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

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

Essentially, the building inspector must

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

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

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

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certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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to obtaining the building permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The last issue that I'm going to address

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

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

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

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

It's clear that this is only approval for one

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

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

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

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

By authorizing the developer to construct only

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And the mortgage also sets out a series of typical -- Andrea would know -- typical remedies, there's a section, remedies upon default. And there's no remedy there 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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dollars, if I bought Mamasan's property for a million dollars and I gave Bea Walters a million dollars and I took a deed from her, that deed is going to be valid. The mortgage holder can foreclose against my interest because that transfer is still subject to that mortgage, but I have a valid deed. There's no -- valid doesn't even count, I own it.

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

CHAIRPERSON MIETZ: Okay.

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

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

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to that kind of a review standard.

CHAIRPERSON MIETZ: Okay.

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

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

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

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

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

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

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

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

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

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

MS. DALE: So speculative regarding the AMP?

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

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

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

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

MS. DALE: Thank you.

JACOB ZOGHLIN: Thank you.

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

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

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

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

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

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

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

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

MS. TOMPKINS WRIGHT: So --

MR. DiSTEFANO: Then they can request extensions also.

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?

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

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?

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

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

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

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

MS. TOMPKINS WRIGHT: Okay.

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

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

MS. TOMPKINS WRIGHT: No.

CHAIRPERSON MIETZ: No.

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

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

CHAIRPERSON MIETZ: All right.

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

MR. DiSTEFANO: No, no.

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

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

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

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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increased accidents and safety concerns.

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

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

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

MS. SCHMITT: I have a few.

CHAIRPERSON MIETZ: Okay, Kath, go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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exactly the Starbucks permit; is that correct?

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

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

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

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

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

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

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

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

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

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

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

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

MS. SCHMITT: Thank you.

JACOB ZOGHLIN: Thank you, Ms. Schmitt.

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

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

CHAIRPERSON MIETZ: Yes, David.

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

JACOB ZOGHLIN: We've asserted claims under

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

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

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

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

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

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

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

Therefore they said, well, we're reaching the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

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

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

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

MS. TOMPKINS WRIGHT: I meant the harm to the

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applicant.

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

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

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

And, what have we got, Ramsey?

MR. BOEHNER: Yes.

CHAIRPERSON MIETZ: Please proceed.

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

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

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

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

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

Before I ask Mr. Mancuso to speak, I would like to say as the planner for Brighton for over 30 years I've dedicated myself as an employee of the Town of Brighton, 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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submissions have been made for this application, I'd like to request the opportunity to review those new submissions and any additional submissions that are made in the future and be granted the right to respond as part of the record to any allegations made in those submissions.

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

CHAIRPERSON MIETZ: Okay, thank you, Ramsey.

MR. BOEHNER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, the formal or substance and

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

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

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

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

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

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

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

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

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

MR. BOEHNER: The only thing that I would add is that, it is clear in the incentive zoning resolution, anticipated multiple building permits being issued. And it was stating that with respect for the trail amenity, that the developer shall complete the construction of the trail within 365 calendar days, on which the Town issued the first 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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CHAIRPERSON MIETZ: What do you need, Judy?
You have to unmute your mic.

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

So I would say it met the requirement of the

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

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

MR. BOEHNER: It was very sufficient.

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

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

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

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

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

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

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

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

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parkland.

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

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

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

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

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

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

CHAIRPERSON MIETZ: Okay. Thank you very

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much.

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

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

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

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

CHAIRPERSON MIETZ: Yes, go ahead.

MR. ROSENBAUM: Thank you. Again, this is

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

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

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

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1
2
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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to both appeals.

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

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

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

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

CHAIRPERSON MIETZ: Thank you.

Okay, Rick, you're up.

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

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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.

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

CHRIS FITZGERALD: Hi, it's Chris Fitzgerald.

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

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

JACOB ZOGHLIN: Yes, got it.

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

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

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CHRIS FITZGERALD: For the fence?

MS. SCHWARTZ: Yes.

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

MS. SCHWARTZ: Okay, thank you.

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

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

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.

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

BRIAN COSTELLO: Correct.

CHAIRPERSON MIETZ: Hi. Go right ahead, Brian.

BRIAN COSTELLO: We are actually looking to

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

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

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

CHAIRPERSON MIETZ: Okay, very good.

Board members, questions?

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

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

MS. SCHWARTZ: Okay, thank you.

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

MS. SCHWARTZ: Okay.

CHAIRPERSON MIETZ: Other questions?

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

BRIAN COSTELLO: To park my car.

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

BRIAN COSTELLO: There are two cars.

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

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

MS. WATSON: And does anyone have any objections?

BRIAN COSTELLO: Not at all.

MS. WATSON: Thank you.

CHAIRPERSON MIETZ: Other questions? Good.

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

APPLICATION 10A-05-20

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

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

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

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CHAIRPERSON MIETZ: Okay.

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.

CHAIRPERSON MIETZ: Okay.

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?

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.

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

CHAIRPERSON MIETZ: Okay. Board members, questions?

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

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

MS. SCHWARTZ: Okay.

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

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

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.

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CHAIRPERSON MIETZ: Okay.

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

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.

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

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

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Public Hearing is closed.

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.

CHAIRPERSON MIETZ: Okay.

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

Mike, are you there?

MICHAEL ZANGY: Yes, I am.

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

TERRY ZAPPPIA: He was going to.

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

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

CHAIRPERSON MIETZ: Okay, go ahead.

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

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

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

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

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

MICHAEL ZANGY: Yes. It covers the sidewalk only.

CHAIRPERSON MIETZ: Okay. Board members, questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

MARK ANDERSON: The frontages are uniform throughout.

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

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

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

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

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

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.

CHAIRPERSON MIETZ: Okay.

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

ANNA FRASCA: Yup, we're here.

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

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talk about some of the details.

CHAIRPERSON MIETZ: Okay. Go right ahead.

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

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

CHAIRPERSON MIETZ: Okay.

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

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

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

CHAIRPERSON MIETZ: Okay. Other questions for these folks?

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

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

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

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

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.

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

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

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

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.

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

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

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

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

We did look at other options. This option

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

CHAIRPERSON MIETZ: Okay, very good.

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

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

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

DAN SAVAGE: There are sides, yes.

MS. DALE: Okay.

CHAIRPERSON MIETZ: Okay, other questions?

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

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

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

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

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

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

MR. DiSTEFANO: And start using it?

DAN SAVAGE: Yes.

MR. DiSTEFANO: Thanks.

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

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

MS. DALE: Thank you.

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

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

APPLICATION 10A-12-20

10A-12-20 Application of FSI Construction /

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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.

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

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

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

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

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

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

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

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

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.

CHAIRPERSON MIETZ: Mr. Stavalore?

KEN STAVALORE: There we go, I got unmuted.

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

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nice.

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

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

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

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

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because he needs to earn his paycheck.

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

KEN STAVALORE: Absolutely, sir, 65 decibels.

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

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

MR. DiSTEFANO: And --

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

MR. DiSTEFANO: Go ahead, Judy.

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

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

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

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

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

KEN STAVALORE: Oh, yes, 16 kilowatts.

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

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

CHAIRPERSON MIETZ: Okay, very good. Other questions?

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

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

MS. SCHMITT: Thank you.

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

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

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

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

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

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

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

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Public Hearing is closed.

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.

CHAIRPERSON MIETZ: Okay.

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

CHAIRPERSON MIETZ: Yes, go right ahead.

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

This addition is going to be consistent with

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

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

CHAIRPERSON MIETZ: Okay. Questions for Mr. McCabe?

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

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

MR. DiSTEFANO: Okay, thank you.

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

MR. DiSTEFANO: Quite a bit of distance.

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

CHAIRPERSON MIETZ: It doesn't look like it.

MR. DiSTEFANO: Okay.

SEAN MCCABE: Thank you.

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

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

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.

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

CHAIRPERSON MIETZ: Yes, go right ahead.

DINA WRIGHT: Great. So we are proposing to

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1
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

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

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

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

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

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

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

MR. DISTEFANO: I don't see the applicant online.

CHAIRPERSON MIETZ: Okay. Well, we can deal 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.

* * *

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

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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

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

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

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

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

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

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

CHAIRPERSON MIETZ: Okay, All right. Kathleen?

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

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

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

Andrea?

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

CHAIRPERSON MIETZ: Okay. Jen?

MS. WATSON: I regret not being a part of the
conversation last month or having any minutes to review that
I could find. So, I don't know the full discussion of the
pros and cons, but I don't see anything glaring in it that I
would deny it. So, it's a weak, yes.

CHAIRPERSON MIETZ: Okay, and Jeanne?

MS. DALE: I'm good with it.

CHAIRPERSON MIETZ: And I'm good with it also.

MS. SCHWARTZ: Sorry.

CHAIRPERSON MIETZ: No, somebody's got to do
it though, because it was Judy. So we can't ask her to do
that.

Anyone want to take a shot at this? Or we can

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work together on it, I guess. We'll start it up here.

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APPLICATION 9A-03-20

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

2, 2020 MEETING - PUBLIC HEARING REMAINS OPEN.

Motion made by Mr. Mietz to approve Application 9A-03-2- based on the following findings and facts.

FINDINGS AND FACTS:

1. The applicant reports that the garages are in poor condition and that minimal storage is required by tenants in the property and they are required to pay extra for these covered parking spaces.

2. If the parking structures are removed no negative effect would occur on the immediate neighborhood since it is a commercial neighborhood along Monroe Avenue and additional landscaping will buffet the property to the residential area behind it.

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CHAIRPERSON MIETZ: Help me out on one more thing here. What do you think, Rick?

MR. DiSTEFANO: I think we need a little something more to beef it up, to be honest with you.

CHAIRPERSON MIETZ: Yeah. That's what I'm just trying to think of what else we could use here.

MS. TOMPKINS WRIGHT: Did you comment --

CHAIRPERSON MIETZ: Go ahead, Andrea.

MS. TOMPKINS WRIGHT: Did you comment that it's not, you know, it's not substantial given the screening, doesn't produce an undesirable change due to the fact that the fence will be maintained and additional plantings, so that neighboring properties won't be affected by any of it.

Are both of those there?

CHAIRPERSON MIETZ: And we've got a little of that stuff. Maybe we could try something like, while parking is required for the residents of this apartment building, covered parking is not required.

MR. DiSTEFANO: No.

CHAIRPERSON MIETZ: No.

MR. DiSTEFANO: No. Parking, the covered --

CHAIRPERSON MIETZ: Oh, that's right. I forgot. No, I forgot about that, that's right.

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MR. DiSTEFANO: So, scratch that one. Don't put that down.

CHAIRPERSON MIETZ: Yeah, we can't do that. I remember now, yes. We talked about that last month.

Okay. We just need one more thing here, I think. Just.

MR. DiSTEFANO: I think what Andrea is kind of like on the substantial, not being substantial and I think what she was going with, we could add in there. I don't know if Rhoda got it down or not, Andrea.

MS. TOMPKINS WRIGHT: Oh, sure.

MR. DiSTEFANO: Dennis' first two, and then if you could add this is a third.

CHAIRPERSON MIETZ: Yup, yeah, that's fine. Andrea's was fine. It was a little --

MR. DiSTEFANO: Yeah. I just don't know, I think, if Rhoda got it down and if we could just polish that one up.

CHAIRPERSON MIETZ: Rhoda, do you want her to read it one more time?

THE COURT REPORTER: I'm good.

CHAIRPERSON MIETZ: Okay, okay. Just try it one more time, Andrea.

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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.

MR. DiSTEFANO: Conditions?

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.

MR. DiSTEFANO: I don't know if we need that one because these are the only one. All of them are being removed.

CHAIRPERSON MIETZ: Oh, okay. All right.

MR. DiSTEFANO: So, they're not going to have any on --

CHAIRPERSON MIETZ: Not going to have any question. Okay. So, number two then, what permits do we need?

MR. DiSTEFANO: Number one, is we should condition it on getting Planning Board and Conservation Board approval for the landscaping plan.

CHAIRPERSON MIETZ: Okay.

MR. DiSTEFANO: The applicant shall receive Planning Board approval and Conservation Board approval in regards to the proposed landscaping plan.

CHAIRPERSON MIETZ: Okay.

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MR. DiSTEFANO: That's number one.

CHAIRPERSON MIETZ: All right. Number two is the fence that is currently on the property shall be repaired --

MR. DiSTEFANO: Shall be repaired and maintained --

CHAIRPERSON MIETZ: Okay. What else do we need?

MR. DiSTEFANO: Repaired and maintained --

CHAIRPERSON MIETZ: And if the Planning Board's going to.

MR. DiSTEFANO: -- in perpetuity?

CHAIRPERSON MIETZ: Pardon me?

MR. DiSTEFANO: In perpetuity?

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.

MR. DiSTEFANO: Right.

CHAIRPERSON MIETZ: Okay, okay, I think that should do it.

MR. DiSTEFANO: And just those two. And, I mean, we certainly could say all necessary demolition permits

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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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CHAIRPERSON MIETZ: Okay. Then we move into the first of the Monroe Avenue adventures here. So, given, I think, the complexity of trying to put this together as well as, you know, there's various pieces of additional information that nobody can even remember which part it goes with and whatnot. So, you know, my thought here is that we table this again so that we can put together our, you know, a real succinct presentation. I'm open for, obviously, discussion not only about that, but about anything part of it. But I think the whole thing starts to come together and I think we'll do ourselves a better service to table this thing.

But, you know, would you like to entertain some discussion about it tonight, or how do you guys feel about it?

MS. TOMPKINS WRIGHT: I think we should discuss it tonight while everything is sort of fresh, and then I don't necessarily disagree because I have been writing this approval this afternoon and/or denial, like, putting facts on paper --

CHAIRPERSON MIETZ: Right, right.

MS. TOMPKINS WRIGHT: -- from this afternoon and tonight during the meeting. And it is a lot to make sure

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it's effectively communicated whichever way we go on it.

CHAIRPERSON MIETZ: Right.

MS. TOMPKINS WRIGHT: But I think, you know, we've spent a lot of time tonight on it. I don't think we should lose that and not talk about it at all.

CHAIRPERSON MIETZ: That's fine, that's fine, yeah. I think part of the problem is, there's a lot of conflicting information and it's not a question of suggesting who is right and wrong. You know, obviously we're going to have to come to that determination but, you know, I think what's going to have to go happen is to go back and really look at the presentations that were made on both sides of it.

I mean, I think all of us are pretty probably familiar with what the merit of all of this is or what these applicants are trying to accomplish here. But, you know, I guess the big question is, you know, did the town do it's job? Did it do it properly? And, you know, is there any suggestion that their issuance of this permit should be reversed?

So, okay. Who else would like to talk about this or what do you guys want to tell me?

MS. WATSON: If we were to table this would the Public Hearing remain open or would it be closed?

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MR. DiSTEFANO: No, I think we should, we should close the Public Hearing.

CHAIRPERSON MIETZ: It's already been closed, Rick.

MR. DiSTEFANO: Well, we close it and we keep it closed, Yes. We do not reopen the Public Hearing, we keep the Public Hearing closed.

CHAIRPERSON MIETZ: Right.

MR. DiSTEFANO: But, we do allow for maybe some additional information to be submitted. Because, again, we got very late submittals from the applicants, you know, the building inspector has not had an opportunity to review that stuff and to comment on that particular information that's come in.

So, I think it's -- we should allow that to happen. Maybe give him a two week period to get any additional information into us, which I can then distribute to you guys.

CHAIRPERSON MIETZ: Right.

MR. DiSTEFANO: And move from there.

David, what do you think on this?

MR. DOLLINGER: I agree completely, Rick. Exactly. You know, a response from the building inspector to

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the submissions, I think, I think there were two. I think Zoghlin had two submissions, didn't she? One on the 25th, and then one today?

MR. DiSTEFANO: Yes, Zoghlin submitted two additional --

MR. DOLLINGER: So the idea of giving Ramsey time to respond to that 25th submission and then the submission today is really reasonable, I think.

CHAIRPERSON MIETZ: Right.

MS. WATSON: My only concern is, you know, depending on what happens in this next month, are they -- is there going to be additional information to consider a month from now? That, we table again? And at what point --

MR. DiSTEFANO: At what point do we stop ping ponging back and forth?

MS. WATSON: Yes.

MR. DiSTEFANO: Well, that's why I say basically, we put a limit, two weeks it's done. We do not accept anything after a two-week period.

MR. DOLLINGER: Yeah, not only that, I mean, I think too, Rick, a limit on the issues a little bit too. I mean, I think it's --

MR. DiSTEFANO: Yeah, maybe that's what you

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want too.

MR. DOLLINGER: You know, Ramsey gets a chance to respond to the new issues raised in those too. But, you know, I'm not sure I want to give anybody time to make a general response to this one.

MR. DiSTEFANO: Okay.

MS. SCHWARTZ: Right.

MR. DiSTEFANO: I have no problem with that if we want to table it and limit the -- giving the, Ramsey, the opportunity to address the latest submittals by Grassroots, and that's it.

MR. DOLLINGER: Right. That's what I'm thinking.

MS. SCHWARTZ: Rick, will we still -- will these things that you sent to us this afternoon still be on the our Zoning Board older agenda? Because I didn't print them out yet. Can we still access them after tonight?

MR. DiSTEFANO: You'll be able to access everything, because it doesn't go away. It's up there on the site. If you go to -- I mean you'll be able to access it.

MS. SCHWARTZ: Tonight's meeting.

MR. DiSTEFANO: Also, I will put that other stuff in the mail to you guys, you know, tomorrow or Friday

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so that you will have it. The two other submittals.

MS. SCHWARTZ: Oh, okay.

MR. DiSTEFANO: So you will have some time with it.

MS. SCHWARTZ: Okay.

MR. DiSTEFANO: They did touch on most of the stuff in their presentation tonight. So, you can handle it that way, but I don't know, Dennis, and I don't know where you are going with the Board on this. I mean, we are going to have to craft findings. It's easier to craft findings if we know the direction to craft those findings.

CHAIRPERSON MIETZ: Right, yeah. Well, I think that, you know, again, I don't want to speak for anybody else here, but, you know, at this moment, I mean, I would -- I agree with what you are saying. However, you know, I think there's some a lot of convolution with this thing.

And, you know, personally I wouldn't feel confident at this moment saying what I really honestly feel about it.

MS. SCHWARTZ: Right.

MR. DiSTEFANO: Okay.

CHAIRPERSON MIETZ: So I think, you know, I

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2
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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But, it would be nice to have some sense of what people think about, you know, whether, you know, no, my feeling is -- because we don't have to make the final decision, but they bring up, like, five separate points. And the question is, you know, does -- what do people think about the idea of the easement, their easement argument? I mean, what do you think of that argument?

CHAIRPERSON MIETZ: Well, well here's, here's part of the problem.

MR. DOLLINGER: Or do that until later.

CHAIRPERSON MIETZ: Obviously, being a real estate person I have some knowledge and I know other people in the room do as well too. But, you know, it would probably be helpful, and please, if someone doesn't think it would be helpful, but, you know, there's really some legal points here that a nonlegal person is going to have difficulty, you know, extrapolating here.

You know, related to the merits of this easement or, you know, is it really a material problem that doesn't meet the test of what, you know, the approvals on this project required.

I mean, I guess if we asked you that, you would have a professional opinion about that, I guess. But,

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what are the points that we really need to consider for one to be able to determine it, I think is probably the bigger problem.

MR. DOLLINGER: Well, yeah, on that one. But than there's other ones too, I mean just a general sense of, you know, some of it's so complicated. The approval, that argument about the approvals, you know, the State approvals.

You know, and they do such a good job. Dennis, I guess you and I have talked about this. They do such a good job of kind of conflating the language.

CHAIRPERSON MIETZ: Yes.

MR. DOLLINGER: You know, I don't think the, for instance, I don't think that the amenity agreement or anything to do with the incentive zoning requires the State permits, it just requires the approvals.

CHAIRPERSON MIETZ: Right.

MR. DOLLINGER: And when you read this, you know, they're -- the way they conflate the language, it's really, you know, amazing. Its not a valid easement. What's a valid -- I've never heard the term valid easement. You know, it's really fascinating to me.

CHAIRPERSON MIETZ: Yeah. And, you know, it's also an interesting argument about, about the Auburn trail

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and the mitigate. And, you know, there's, you know, it's certainly it's clever, okay? But, I am not sure that it's, you know, we won't use the word valid because I think we beat that one to death.

But, you know, it's -- there are some interesting points to consider in that.

MS. TOMPKINS WRIGHT: I'll just give, I mean, I think it was obvious I felt very strongly about the cross access easement issue, because it's absolutely enforceable. And, you know, I stare at easements more than I ever want to, all along. And an easement by a property owner that's recorded would be considered enforceable. There'd be no way for the Town to ever research whether or not specutively in the future someone could argue that there wasn't, you know, --

CHAIRPERSON MIETZ: A valid easement.

MS. TOMPKINS WRIGHT: Be a breach of a mortgage because of it, or something. It would be completely unreasonable to ask a town to do those steps. I mean, it would be just as reasonable -- one of the comments I made was for them to ask for an organization, or do you confirm that whoever signed it wasn't a low level employee who didn't have 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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world.

CHAIRPERSON MIETZ: Right, okay. And then I think, you know, suggesting the rain cloud above the first mortgager, you know, had potentially foreclosing or whatever. I mean, that, that isn't really material in this decision either, other than trying to slant you away from it. So.

MR. DOLLINGER: What about the phasing? I mean, everybody else --

MS. DALE: I mean, I thought, I thought the whole argument about the phases and the staging and all to be a little nonsensical. I don't know.

MS. SCHWARTZ: And I looked at it as a matter almost of semantics in a way. And that to me, although they refuted it, to me, it was some borderline segmentation. But after listening to it, I still think that there's a question about the phasing.

CHAIRPERSON MIETZ: What question?

MS. SCHWARTZ: You know, I mean, all of the permits haven't been pulled, right?

CHAIRPERSON MIETZ: Right.

MR. DiSTEFANO: Right.

MS. SCHWARTZ: Okay. So, to me that should be that should be done, and --

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MS. WATSON: The fact that the really entire site work is part of this permit, I mean, that --

MS. SCHWARTZ: You do have to do that. You do, yeah.

MS. WATSON: That's the bulk --

CHAIRPERSON MIETZ: That thought, guys, here's the thing about the site work though. I mean a lot of it, that's an election, okay? So, you know, to say that you need to do all of this site work right now, okay, because that's not really entirely true. Okay.

And, then, the second thing is, that, you know, no one could have -- whoever would have contemplated that this type of a project, based on how many different buildings it is and what types of buildings, that you would be staging it every two months and having permits pulled and starting various pieces and parts of a plaza, is never really done. Okay?

So, that's kind of, if someone had that expectation, it was unreasonable to start with and nobody practically would do it that way. In other words, you wouldn't necessarily build this building and never start any of the others, but you wouldn't start all of them at the same time. Okay? So.

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MR. DOLLINGER: I don't see how you could possibly imply phasing. That's an argument for the second permit, you know what I mean? How can you argue phasing from the first permit?

If they wait a year, then they can come in for the second permit. I mean, I think you could come in and say, this is against the rules, you know, you're phasing. Okay, well, great, that's true. But how do you tell from the first permit? There's nothing probative about the first permit with respect to phasing. It's --

CHAIRPERSON MIETZ: Well, here's just a suggestion, I don't want to cut anybody off, but we still have quite a bit to do here. You know, it sort of sounds like the spirit of this is well, maybe, you know, the town's position isn't so bad on this thing.

But, maybe what we could do is, you know, kind of really review this thing and if somebody really has a feeling that there's a valid, I don't know if I can use that word.

MR. DOLLINGER: Yeah, that's a good idea.

CHAIRPERSON MIETZ: Yeah. Reason to say that maybe the applicants have something strong to say, then maybe 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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Brighton Grassroots or Save Monroe Avenue, made a comment something about the fact that Ramsey's response was lengthy. It was somehow indicative of having a weak position or something, which I thought was strange.

CHAIRPERSON MIETZ: So, if the general sentiment is that we kind of feel, you know, we should move towards the direction of supporting the Town's position on this, is that fair here? Because we really got to get moving here.

MS. WATSON: I'd like to hear what member Wright was going to say.

CHAIRPERSON MIETZ: Go ahead.

MS. TOMPKINS WRIGHT: I was just wondering, both of the applicants made arguments that they did not, you know -- in their papers, that they did not make tonight. So, do we need to respond formally to those in our written findings? For instance, the letter of credit argument or the RG&E easement argument that really weren't focused on, but are discussed in the documents? Does our approval or denial need to find a finding of fact for each of those as well?

MR. DiSTEFANO: I think, Andrea, the stuff that they didn't touch on, that those are the simplest ones to do. They didn't touch on it because they know they

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weren't correct. I mean, the letters of credit, well, there's the letter of credit, you know, it's there. So, the ones they didn't touch on were ones that they know that they don't have any leg to stand on.

MR. DOLLINGER: But --

MR. DiSTEFANO: So I think those are very easy ones because they put it in their application that we address. Well, obviously, the letter of credits were issued.

MS. SCHWARTZ: Yeah, after --

MR. DiSTEFANO: And they're, they're com-, they're complaint is that, well, the town didn't give me all of this stuff in time, so that's why.

MS. SCHWARTZ: Right. But when --

MR. DiSTEFANO: The Town didn't call us and say, hey, we're issuing a permit now. You know, it's like --

CHAIRPERSON MIETZ: All right, okay.

MS. SCHWARTZ: Right. When they filed these, you know, when the two lawyers did for the neighborhoods and Monroe, there were no letters of credit. So they're, they're, so it was valid.

MR. DiSTEFANO: No, Judy, there were letters of credit.

MS. SCHWARTZ: From the get-go?

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MR. DiSTEFANO: They came and foiled the Town every single piece of -- every single piece of documentation regarding the building permits, they foiled. We're talking over, I don't know, 15,000 different pieces of information. How couldn't you turn all of that around immediately?

CHAIRPERSON MIETZ: Okay.

MS. DALE: So, the letters of credit are included in the response we got from Ramsey.

MR. DiSTEFANO: Right.

MS. SCHWARTZ: Right. But my question was, were they there when --

MR. DOLLINGER: Yeah, Judy, that was just a timing issue. When they, they requested all of the documents, the Town gave them a bunch of documents, they just didn't have included the letters of credit. So the petitioner assumed that there were no letters of credit, when there really were, we just hadn't included them.

MS. SCHWARTZ: Right, which is a fair assumption, I mean.

CHAIRPERSON MIETZ: Okay, right. But the fact of the matter is, the letters of credit are there. They have been posted.

MS. SCHWARTZ: Right.

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CHAIRPERSON MIETZ: But let's stop at that,
okay?

MS. SCHWARTZ: Yep.

MS. SCHMITT: May I just throw out that there
are other arguments that are in their papers that they did
not address.

MR. DOLLINGER: I know. Some are pretty
obscure. There's a couple weird ones in there. I know --

MS. SCHMITT: Yeah.

MR. DOLLINGER: -- I would -- we will need to
address those, yes.

MS. SCHMITT: Okay, that was my point.

MR. DOLLINGER: Yeah. I don't, I don't -- I
can't find them right now, but I remember reading them.
They're weird. There are some odd ones that are just --

MS. SCHMITT: Well, like the argument -- I
mean, one isn't odd, it's just in this reading of it, like
the RG&E, the 90 days.

MR. DOLLINGER: Yeah, but there's some more
weirder one.

CHAIRPERSON MIETZ: Yeah.

MS. SCHMITT: Yeah. Nope, there definitely
are. I just wasn't comfortable saying if you didn't talk

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about it we don't have to address it.

MR. DiSTEFANO: I agree, Kathy. We need to address everything that they come through. I think some of them are going to be very straight forward.

CHAIRPERSON MIETZ: All right. So, how are we planning to do this, folks, because we've got to make some decisions here.

MS. SCHWARTZ: Can I ask one last question though? Wasn't -- and I thought this was true, didn't RG&E have ownership of the trail back there, the easement, because of the utilities?

MR. DiSTEFANO: RG&E's easement.

MS. SCHWARTZ: Okay.

MR. DiSTEFANO: But then they started -- it was their land. Then they just started selling off their land.

MR. DOLLINGER: But, you know, again --

MR. DiSTEFANO: You have to get an easement over it.

MR. DOLLINGER: To point out the nature of the thing. Sorry, but, you know, there's nothing in anything that said that they had to have the trail easements. And that's what's so kind of, again, you know, kind of bending

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and twisting. The approval simply says they have to submit a plan for the trail, it never says they have to have the easements prior to anything.

So, again, what they had us focusing on, oh, we didn't have the RG&E easements weren't sufficient, all that stuff. We don't need the RG&E easements to issue this permit. We simply need to have submitted the plans for the trail.

MR. DiSTEFANO: Then we would get the easements afterwards.

MR. DOLLINGER: And that says that specifically. And then, you know, before I think at some point we have to file the easements. But we don't -- but to issue the building permit, you don't need them.

MS. WATSON: So, it sounds like we're -- there's some consensus here for which direction we would want to go. And the reason we are tabling it is to give us time to write it up and with regards to Ramsey's response, or --

MR. DOLLINGER: Well, in addition also, to be able to respond to the late submissions from the one group. Yeah, for both reasons, theoretically.

MS. WATSON: Okay.

MR. DOLLINGER: But more so, time to respond

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and time to make sure that we understand each other.

MS. WATSON: Okay.

MR. DOLLINGER: But I think I'm ready to -- I have enough information, a feeling for what we are doing, I think.

CHAIRPERSON MIETZ: Okay, all right. Because we're closing in on 12:00, guys, and we really don't run these meetings past 12:00, and we've got a lot of this stuff to finish.

So, if everyone's generally comfortable here, you know, not kind of brow beat anybody, but David's really got to help put some of this stuff together so that we can see it. But this is --

MR. DOLLINGER: Table them sequentially, Dennis?

CHAIRPERSON MIETZ: Yeah, that's fine, you know, somebody's just got to make a motion --

MR. DiSTEFANO: Yeah. And just as you are tabling it, just make the remark that we will allow the building inspector to address within two weeks any additional information that has come in from the appealing parties.

MR. DOLLINGER: Yeah, the issue is raised on that, yes.

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CHAIRPERSON MIETZ: Okay. So, Andrea, you have the first one please.

MR. DiSTEFANO: She's got them both.

MS. TOMPKINS WRIGHT: Yes, I -- thanks for that by the way.

MR. DiSTEFANO: I did it on purpose.

MS. TOMPKINS WRIGHT: I know you did.

I move table Application 9A-04-20 in order -- and to keep the public hearing closed --

MR. DiSTEFANO: Well, yeah.

MS. SCHWARTZ: Closed.

MS. TOMPKINS WRIGHT: That's what I said. 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. And, I think --

MR. DiSTEFANO: That's good enough.

MS. TOMPKINS WRIGHT: Yeah, I think so.

MR. DiSTEFANO: That's what we're tabling it for and then we'll come back and we'll make our decision at our next meeting.

MS. TOMPKINS WRIGHT: Okay. And then, after 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. Deperrrior), 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

side of the property.

4. There currently is a three-and-a-half foot picket fence along Ashbourne that is unobtrusive because of the substantial vegetation. Therefore, there will be no perceived difference with the installation of the required 4-foot fence.

CONDITIONS:

1. This variance only applies to the location of the proposed in-ground pool and the required 4-foot fence as presented in testimony and written application.

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MS. SCHWARTZ: All necessary building and planning approvals must be obtained.

MR. DiSTEFANO: Can you say all necessary building permits shall be obtained?

MS. SCHWARTZ: Yes.

MS. WATSON: Second.

MR. DiSTEFANO: Do we need to, I don't know, do we need to be specific about the new fencing shall not be placed in the town right of way? Or don't you think that's necessary?

MS. TOMPKINS WRIGHT: It's illegal if they do, isn't it?

MR. DiSTEFANO: I mean, they can't do it, but --

CHAIRPERSON MIETZ: I mean, it's a requirement that you can't.

MR. DiSTEFANO: Yeah.

CHAIRPERSON MIETZ: I don't think you need to state it.

MR. DiSTEFANO: Okay, all right. Who had the second?

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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APPLICATION 10A-05-20

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

Motion made by Ms. Dale to approve Application 10A-05-20 based on the following findings and facts.

FINDINGS AND FACTS:

1. The applicant is seeking to add a new two-car garage versus their existing one-car garage, and the applicant's home has non-conforming setbacks.

2. The difficulty necessitating the variance request cannot be solved in another manner not requiring a variance as the existing driveway is along the west property line and there is no other location on the lot that would work for a two-car garage.

3. The existing rear and side yards have existing non-conforming setbacks and the applicant's request for the proposed 24-foot garage width is the minimum necessary for a

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. 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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CHAIRPERSON MIETZ: And the next one is the small shed over on Midland Avenue. Any objections there?

MS. SCHMITT: Dennis, I'd like to point out that while we had the meeting up, that there's a chat.

MS. TOMPKINS WRIGHT: Yes.

MS. SCHMITT: Message that was placed from a neighbor, Ian Sylinski. While it's not the most clear, to me it looks as if he is saying he doesn't like it because he can see it. I'm adding the word, he doesn't like it.

MS. WATSON: I don't think there's a value judgment, I think he was just correcting the record because she said nobody could see it. I didn't read the comment as objecting, because he never said that he objected.

MS. SCHMITT: No. I just said that it is written in a way you can't really tell what the point is. But, he is saying that he can see it. And I took that as a negative, but it could just as easily be a correction.

CHAIRPERSON MIETZ: Okay. Was anyone concerned about that or?

MS. SCHWARTZ: No.

MS. TOMPKINS WRIGHT: Even if he had to, where else would they possibly put a shed?

CHAIRPERSON MIETZ: And they don't even have a

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garage.

MS. SCHWARTZ: There's no yard, no.

MS. WATSON: It's probably better than having
stuff spill out all over your yard.

MS. SCHWARTZ: No garage, I mean, you know.

CHAIRPERSON MIETZ: Okay. Let me get going
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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CHAIRPERSON MIETZ: Okay. The next one is the COVID awning for Canal View here.

MS. WATSON: I don't have a problem with it, but my only question is whether or not it's considered a sign. Because it's got a great big logo on the front.

MR. DiSTEFANO: Yeah, you know, they need sign review for it, but it meets code for additional signage on that side of the building. I mean, the building has a couple sign variances, but those are for variances that are in the parking lot side of the building. When you look at this, they meet the -- they meet the sign requirements for the front of that building with the logo on it.

, I mean, you guys don't like it, you can have them take the logo off.

MS. SCHWARTZ: Wouldn't it have been nice to include it though in the application?

MR. DiSTEFANO: It was included. Oh, they actually took one off the side. It was included in the elevation. The elevation --

MS. SCHWARTZ: In his presentation he didn't say anything.

CHAIRPERSON MIETZ: He didn't address it at 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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4. The granting of this variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties, as the property in question is a commercial space. Some of which have canopies and/or awnings similar to what is being requested in this application.

5. There's no evidence that there would be a negative impact on the health, safety, and welfare of this development.

CONDITIONS:

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

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MS. SCHMITT: I don't -- I couldn't think of another building permit that you needed, so that's the only condition I had.

MR. DiSTEFANO: Oh, just put the standard, all necessary Architectural Review Board approvals, and building permits shall be obtained.

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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CHAIRPERSON MIETZ: Okay. The next one is that partially screened porch on the front of the house on Dunrovin Lane. Any objections there?

Okay, Judy.

MS. SCHWARTZ: No, Rick what's that for?

MR. DiSTEFANO: I personally don't like it, but that's nothing.

MS. SCHWARTZ: Okay. Yeah, but I love my front porch, so I'm partial.

MR. DiSTEFANO: You know, I'd rather see an open front porch.

MS. SCHWARTZ: Okay, okay.

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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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MS. SCHWARTZ: Two, all necessary planning and building permits must be obtained.

MR. DiSTEFANO: Can I just be a little specific on the porch itself?

MS. SCHWARTZ: Sure.

MR. DiSTEFANO: And can we say something like only to a screen/open porch?

MS. SCHWARTZ: Yeah, well, that's why I said it was going to be open as much, but okay.

MR. DiSTEFANO: I just want to make it a condition, so at some point in time somebody doesn't decide they're going to enclose the whole thing.

MS. SCHWARTZ: Okay. So a third condition would be that this porch --

MR. DiSTEFANO: No.

MS. SCHWARTZ: -- must be a screened, open porch?

MR. DiSTEFANO: The first condition. Just kind of when you're saying it, just make a fact that it's -- just be more specific with on your first condition.

MS. SCHWARTZ: Okay. This variance only applies to the proposed porch as presented in testimony and 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.

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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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CHAIRPERSON MIETZ: Okay. The next one is the person who didn't show, do you want to just hold it over or what?

MR. DiSTEFANO: You know, normally I would say, yeah, we very rarely do something without an applicant presenting the project. But there's really nothing changing other than erasing the lot line here. I mean, it's not like they're building anything, it's not like they're --

CHAIRPERSON MIETZ: Right.

MR. DiSTEFANO: -- it's not like they're doing anything other than --

CHAIRPERSON MIETZ: Okay.

MS. WATSON: If I can just ask one question that I would have asked the applicant? Is the interpretation correct that if they weren't combining those two lots their current setback is code compliant, right?

MR. DiSTEFANO: Yes, I believe so.

MS. WATSON: Okay.

MR. DiSTEFANO: It has to be 15 percent of 72.

MS. WATSON: That's what I calculated.

MR. DiSTEFANO: So it does meet code.

MS. SCHWARTZ: So we don't need to save it, you can take care of it, or what?

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MR. DiSTEFANO: Well, we either have to table it for representation or you guys have to make a decision on it.

MS. SCHWARTZ: Oh, okay.

MR. DiSTEFANO: I mean, normally we don't do anything without having representation.

MS. SCHWARTZ: Yeah.

MR. DiSTEFANO: This is one of these cases where there's nothing really to be said because nothing is changing on the lot other than the removal of the lot line.

David, are you out there?

MR. DOLLINGER: Yeah, I'm here.

MR. DiSTEFANO: What do you think about this application if we were to make a decision without the applicant having presented it?

MR. DOLLINGER: It wouldn't -- I don't see who you're prejudicing.

MR. DiSTEFANO: So you wouldn't have a problem with us making a decision?

MR. DOLLINGER: No, I don't. I don't think so, I just don't think anybody's prejudiced by it. Who's going to complain?

MR. DiSTEFANO: Nobody.

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MR. DOLLINGER: Right. And, you know, it was a long meeting, it's COVID, I mean, people could, you know.

CHAIRPERSON MIETZ: All right. Let's do it.

MS. WATSON: Yeah. I was just assuming we were.

CHAIRPERSON MIETZ: Go ahead, Jennifer.

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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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purpose of ensuring their existing home complies with Town
Code after the two lots are combined. No alternatives exist
to complete the lot consolidation without a variance and this
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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MR. DiSTEFANO: You might also want to say, Jeanne, that the trailer isn't taking up any parking.

MS. DALE: Oh, that's a good point. Thank you, okay. How about --

MR. DiSTEFANO: I think you can just continue that one.

MS. DALE: Yes. Also, the proposed trailer will not reduce parking on site.

MR. DiSTEFANO: Since it is.

MS. DALE: Since it is located --

MR. DiSTEFANO: Outside of the parking area.

MS. DALE: Thank you. That was very helpful. Also, the proposed trailer will not eliminate any parking spaces as it is located out -- as it is planned to be located outside of the parking area.

MR. DiSTEFANO: There you go.

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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MS. DALE: I don't know if they need any of the other things.

MR. DiSTEFANO: Do we want to put a condition on there that they got to replant these trees?

MS. DALE: Oh, thank you, thank you. They did say they would, so, okay.

MR. DiSTEFANO: Yeah, they did say they would and I'm not saying they won't, but I don't think it hurts to --

MS. DALE: No, sure, we'll go trees. Okay. Number two, applicant shall replant any displaced trees on the property.

MS. SCHWARTZ: Second, Judy.

MR. DiSTEFANO: I just want -- I'm not adding, but I just want to go back and verify number one, trailer and awning shall be located as per plans. And you want to say shall be removed within the two-year period?

MS. DALE: Well, they said --

MR. DiSTEFANO: I don't mind the two years if you want to give them two years. I don't have a problem with it.

MS. DALE: No, that's true. They'd asked for 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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DAN SAVAGE: Rick, will this be an ARB approval?

MR. DiSTEFANO: I don't think so, because we're going to cover the canopy as part of the temporary and revokable use permit.

DAN SAVAGE: Okay.

MR. DiSTEFANO: So, no, I wouldn't. Because the canopy is going to go when the trailer goes.

DAN SAVAGE: Great, thank you.

MR. DiSTEFANO: If they want to make the canopy permanent, then they'll have to come in and get a permit for it, and also, get ARB approval.

CHAIRPERSON MIETZ: Okay.

MS. SCHWARTZ: But they're keeping the concrete pad and you're all right with that?

MR. DiSTEFANO: Yeah, because there's really nothing, they could put a concrete pad there now without any needed approvals.

MS. SCHWARTZ: Okay.

MR. DiSTEFANO: Who got the second on that?
I'm sorry.

MS. SCHWARTZ: I did, Judy.

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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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MR. DiSTEFANO: Can we just say that all previous conditions shall apply? Just all previous conditions shall apply, that one?

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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CHAIRPERSON MIETZ: Okay, thank you. The next one is Hibiscus for the generator. Any issue there?

MS. SCHWARTZ: No. It makes sense, I mean, the utilities are right there. And when I stopped, she made a very valid point that where it's placed it's further from the neighbor than if it were in the backyard. I mean, it's quite a distance from the --

CHAIRPERSON MIETZ: Yeah.

MS. SCHWARTZ: You know, on the side --

CHAIRPERSON MIETZ: Yeah, okay, the driveway thing. Okay, all right.

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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MS. SCHMITT: And I wasn't sure how to phrase this one, but all requirements as to how far away from the house, windows, doors, and vents must be complied with.

MR. DiSTEFANO: Just all necessary building permits shall be obtained. That's how we identify that.

MS. SCHMITT: Okay. Okay.

MR. DiSTEFANO: So number three is all 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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MS. SCHWARTZ: The construction of the existing garage was permitted with a variance when the home was constructed in 1983. The term of that variance -- the terms of that variance do not apply to any further additions.

MR. DiSTEFANO: Judy, I don't know if that's a true fact.

MS. SCHWARTZ: Well, well, he told --

MR. DiSTEFANO: I don't know when they built the house whether or not it got a variance or, you know.

MS. SCHWARTZ: When I went out that's what -- that's what Sean had said.

MR. DiSTEFANO: They got a -- they got a variance for that addition a couple years ago.

MS. SCHWARTZ: All right. I will leave it out.

MR. DiSTEFANO: Yeah. Take that whole finding out.

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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MS. SCHWARTZ: And two, all building and planning approvals must be obtained.

MR. DiSTEFANO: All necessary building permits shall be obtained.

MS. SCHWARTZ: All right. All necessary, I leave that word out, sorry.

MR. DiSTEFANO: Can I have a second?

MS. TOMPKINS WRIGHT: I'll second.

MR. DiSTEFANO: Who got that, I'm sorry?

MS. TOMPKINS WRIGHT: That was me.

MR. DiSTEFANO: That was you?

MS. TOMPKINS WRIGHT: Andrea.

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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CHAIRPERSON MIETZ: Okay. And the last one is the last one on Elmwood Avenue is the addition going into the rear setback, you know, filling in that little places.

MS. SCHWARTZ: Yeah. That's smart, yeah.

CHAIRPERSON MIETZ: Yeah.

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

achieved by any other method. And in fact, an expansion of the home in any other location is likely to have a greater effect visually to nearby properties.

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 and in the location as depicted on the application and in the testimony given.

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MS. TOMPKINS WRIGHT: And number two, all necessary permits and Architectural Review Board approvals must be obtained.

MR. DiSTEFANO: No Architectural Review Board is required for this, so just all necessary building permits shall be obtained.

MS. SCHWARTZ: It's in the back, that's why.

MR. DiSTEFANO: Right. It can't be seen from the road.

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