
BRIGHTON
ZONING BOARD OF APPEALS
MEETING

May 5, 2021
At approximately 7 p.m.
Brighton Town Hall Zoom Meeting
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON

EDWARD PREMO)	
JEANNE DALE)	
KATHLEEN SCHMITT)	
ANDREA TOMPKINS WRIGHT)	Board Members
JENNIFER WATSON)	
JUDY SCHWARTZ)	

JEFF FRISCH

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, NY 14020

1 MR. FRISCH: All right, everybody, before we
2 start the meeting there is a few things that I'll ask.
3 One is to keep your video off before your case is
4 called. It's just to help manage everybody in the
5 room. And then when it's your turn to speak or if
6 you're speaking on behalf of a -- one of projects,
7 there's a raise hand button in the -- In Zoom and
8 we'll ask you to raise your hand to unmuted. And then
9 we'll take you in order that we see people's hands
10 raised.

11 So there's -- if you're on the computer
12 there's a reactions button on the bottom. You can
13 click that and there's a raise your hand feature.
14 Some other times it's in the participants name and you
15 have to click on the name. And then you can choose to
16 raise your hand. And so that's kind of how that
17 works.

18 So that's that. Please keep your video off
19 until it's your turn to speak. And if your video's
20 on, I'll probably turn it off just so it's easier to
21 manage that way. And we'll get the meeting started.

22 CHAIRMAN MIETZ: Okay. All right. Very
23 good. Okay. At this point then I did like to welcome
24 everybody to the May meeting of the Brighton Zoning
25 Board of Appeals.

1 Rick, I'd like to begin the meeting. Is
2 there anything you would like to say before we call
3 the roll?

4 MR. DiSTEFANO: Just that the meeting was
5 advertised in the Brighton-Pittsford Post of April
6 29th, 2021. I'll ask any of the members if they have
7 any questions regarding any of the applications?

8 CHAIRMAN MIETZ: Okay. Very good. Then
9 there being no questions, let's go ahead and call the
10 roll please.

11 (Whereupon the roll was called.)

12 MR. DiSTEFANO: Led the record show all
13 members are present.

14 CHAIRMAN MIETZ: Okay. So let me just give
15 you an idea of how we'll run this meeting tonight.
16 Tonight we have seven applications that we need to get
17 through tonight. What we'll do is that we will --
18 when your application is called, then we'll announce
19 who is going to speak for the applicant. You will go
20 ahead and speak. The Board Members may very well ask
21 questions.

22 Once that part of the meeting is finished,
23 then I will ask if there's anyone on the Zoom
24 conference that would like to speak regarding the
25 application. They will be allowed to do so. Once

1 that is completed, then we will close the public
2 hearing and move on to the next application.

3 When we're finished with all of those, then
4 we may take a couple of minutes break if necessary.
5 If not, we'll move forward and begin the
6 deliberations. You're welcome to say and listen to
7 the deliberations. We do not allow any
8 cross-discussion between applicants and the Board
9 Members during the deliberations. If you choose not
10 to stay and listen to the discussions, then you can
11 call Rick DiStefano in the building office tomorrow
12 during normal business hours and he can let you know
13 what happens related to your particular application.

14 Okay, so we do have minutes from the March
15 meeting. So I guess we're going to take a shot at
16 those. Does anyone have any comments about those
17 minutes? Judy, go ahead.

18 MS. SCHWARTZ: Judy, yes. On page -- hold
19 on -- page 7, line 8 the first word should be
20 "S-E-Q-R-A." The same thing is true for page 31, line
21 23. And the same thing is true for page 41, line 21,
22 the last word. That's it.

23 CHAIRMAN MIETZ: Okay. Does anyone else
24 have any other comments about the March minutes?
25 Okay. If there are none can I have a motion please?

1 MR. PREMO: Move to approve the minutes as
2 amended.

3 MS. TOMPKINS WRIGHT: Second.

4 CHAIRMAN MIETZ: Okay.

5 MR. DiSTEFANO: Motion to approve with
6 corrections.

7 (Mr. Premo, aye; Ms. Schwartz, aye;
8 Ms. Tompkins Wright, aye; Ms. Dale, aye; Mr. Mietz,
9 aye; Ms. Watson, aye; Ms. Schmitt)

10 (Upon roll call, motion to approve carries.)

11 CHAIRMAN MIETZ: Okay. Rick, when you're
12 ready, then let's read the first application please.

13 **Application 12A-05-20**

14 Application of Clover Park Properties, LLC,
15 contract purchaser, and the Baptist Temple, Inc. owner
16 of property located at 1075 Clover Street, for a Use
17 Variance from Chapter 203, Article IA to allow for
18 church building to be converted into professional and
19 medical office use in a residential RLA District where
20 not permitted by code. All as described on
21 application and plans on file.

22 MR. DISTEFANO: And I'll also add
23 application 12A-06-20, which is the same property
24 owner, same applicant. That application has been
25 withdrawn by the applicant.

1 CHAIRMAN MIETZ: Okay. Very good. So who
2 do we have speaking for 12A-05-20?

3 MR. GOLDMAN: My name is Jerry Goldman. I'm
4 the attorney and agent for Clover Park Properties,
5 LLC, who is the co-applicants for the Use Variance
6 which is before you this evening.

7 Principal speaker in addition to me is going
8 to be John August who is an immediate neighbor to the
9 south and one of the principals of Clover Park
10 Properties. John has asked me to allow him a few
11 minutes at the very beginning to express his thoughts
12 and the history. And then I will get into the
13 rudiments and details of the Use Variance itself.

14 MR. GORDON: Before -- I'm sorry,
15 Mr. Goldman. This is Ken Gordon interrupting. Before
16 we begin with your presentation, there's just a couple
17 of announcements I wanted to make as part of the
18 record. First, with respect to SEQRA, I wanted the
19 record to reflect that the Brighton Town Planning
20 Board has declared itself as lead agency. And for
21 this action, which is an unlisted action under SEQRA,
22 the Brighton Planning Board adopted a negative
23 declaration. And this Board is bound by that negative
24 declaration and will not be making a separate SEQRA
25 determination. It is bound by the negative

1 declaration that has already been determined by the
2 lead agency for this matter.

3 Secondly, I did want to point out that we
4 have two members who will not be participating in this
5 public hearing or in the deliberations regarding this
6 public hearing. Andrea Wright and Ed Premo are both
7 conflicted out on this matter as a result of the
8 advocacy by the Harter Secrest Firm. And therefore
9 they will not be part of the Zoning Board of Appeals
10 for purposes of the hearing or decision making.

11 That does not reduce in any way the number
12 of votes that would be needed for approval of this Use
13 Variance. The proponent would still need to get four
14 members of the Zoning Board of Appeals to approve the
15 Use Variance application in order for it to be
16 approved. It's just that we'll be proceeding with
17 only five members with respect to this matter. So
18 those are the matters. And I'm sorry for
19 interrupting. I just wanted to get that out.

20 CHAIRMAN MIETZ: No. That's fine, Ken.

21 MR. GOLDMAN: Thank you.

22 CHAIRMAN MIETZ: Okay. Jerry, before you
23 begin could you and John just give us your proper
24 addresses please, before you begin.

25 MR. GOLDMAN: Sure. My business address is

1 1900 Bausch and Lomb place in the City of Rochester.
2 My home address is 59 Branchwood Lane in the Town of
3 Brighton. So as a Brighton resident I'm always happy
4 to appear before the Board in my hometown. John can
5 provide his own address.

6 CHAIRMAN MIETZ: Sure. That'd be great.

7 MR. AUGUST: Good evening. My name is John
8 August and my wife Jane and I live at 1151 Clover
9 Street.

10 CHAIRMAN MIETZ: Okay. Great, John.

11 MR. AUGUST: Excuse me? Can you hear me,
12 Dennis?

13 CHAIRMAN MIETZ: Yes. We're good.

14 MR. AUGUST: Very good. We've lived here
15 for 24 years and hope to stay another 20 years at
16 least. We are directly to the south of the Baptist
17 Temple. We share a 400-foot property line with the
18 Baptist Temple. My children grew up playing football
19 and soccer on the lawns with other neighborhood
20 children.

21 The church unfortunately has declined in
22 membership considerably since I moved into the area.
23 It's a trend with many religious organizations --
24 normal -- and it's pre-COVID attendance was 20 to 30
25 attending members prior to COVID. COVID, of course,

1 has exasperated their situation even more. A large
2 campus is expensive to maintain and a real financial
3 burden on the congregation.

4 My wife and I, like many in the area, like
5 to spend a lot of time in our backyard. A
6 neighborhood use that's quiet during nights and
7 weekends would be ideal. Our project converts the
8 church to a high-end office building. We hope to
9 offer a beautifully manicured, incredible green campus
10 with ample parking, high-end interior amenities and
11 finish. We truly believe this would be a great
12 compliment area use for our neighborhood, one that
13 would have the least impact on us and our fellow
14 neighbors.

15 I apologize for the delay in getting in
16 front of this Board. We have numerous changes to the
17 plan through the process. At the outset, which was
18 about 13 months ago, I tried my best to inform the
19 neighbors of the plan and answer any questions they
20 had. I sent out or hand delivered 140 letters to the
21 immediate neighbors with as much detail as I had. I
22 went door-to-door to the single family homes that
23 directly bordered the property on Council Rock,
24 Highland Avenue and Clover Street.

25 We advertised two public meetings to be held

1 at the Baptist Temple and a total of about 50 total
2 attended the two meetings. We stayed as long as
3 people had questions. We then held a third additional
4 meeting for a group that expressed concerns and had
5 engaged attorneys. Mostly Country Club Apartments
6 owners and three single-family homes across Clover
7 Street from the church. We listened to the concerns,
8 most regarding traffic and new parking spaces we had
9 added along Clover Street.

10 A month later we reconvened one last time
11 when we presented changes to the plan. These included
12 the removal of the Clover Street parking and the
13 removal of the 10,000 foot addition. Without the
14 addition, 40 parking spots were eliminated along with
15 the related estimated 40 trips on and again off the
16 lot daily. This is a significant reduction in traffic
17 generated by the project. We were told at this final
18 meeting, for the first time by one of the homeowners,
19 that he would only accept -- he would not accept
20 anything other than the residential use. This was how
21 the meeting was left.

22 Tom Borshoff who owns numerous rental units
23 and Country Club Apartments and I continue to meet
24 over the next two months trying to gain an agreement
25 that he could sell to his group. Ultimately we were

1 unable to reach an agreement.

2 At that point we revised our application and
3 resubmitted the smaller plan to the Planning Board and
4 commenced the traffic study. We decided to move
5 forward without the addition. It should be stated the
6 addition fit on the site with all required parking,
7 without any significant encroachment onto the front
8 lawn area. The Planning Board had reviewed the plan
9 with the addition and felt that it worked well.

10 The removal of the 10,000 feet lessened the
11 project's square footage by 25 percent. Any impact on
12 the neighbor -- neighborhood should also be reduced by
13 that same 25 percent. As you might expect, it lessens
14 the financial return by at least an equivalent
15 percentage. We feel that we're asking for the minimum
16 relief we can ask for and still have a viable project.
17 Removing the addition means that there will be no
18 major exterior work done at the site. There will be
19 minor paving, upgraded lighting and installation of
20 new doors and windows. Those will be visible to the
21 neighborhood and that will be all. All other work
22 will be interior and no disruption to the area.

23 Beyond any financial investment I have two
24 main motivations as a direct neighbor and a
25 neighborhood advocate. Number one, maintain this

1 beautiful gateway into Brighton, the huge hardwood
2 trees along Highland and Clover and the nearly two
3 acres of space are unique and should be preserved.
4 This no pseudo-pocket park has been here longer than
5 most of us have been Brighton residents.

6 If developed as a permitted use, which is
7 single family homes, at best a remnant of the
8 park-like area might remain intact. It would never be
9 the same and certainly would change the character of
10 our beautiful neighbor.

11 Number two, if the existing church needed to
12 be demolished -- which is absolutely necessary if it's
13 redeveloped for it's permitted use -- to demolish you
14 first need to remove the asbestos, which is time
15 consuming, difficult and very expensive. Then the
16 demo would begin. This is wrecking-ball type
17 demolition. This is a rock-solid building and much
18 bigger effort than taking down a home. Cite work
19 would then go and then construction. We estimated
20 that it's approximately a two-year total construction
21 period from start to the finish. Noisy, dusty,
22 construction traffic, all I think would be a huge
23 impact on the quality of life of anyone who lives near
24 it.

25 The Baptist Temple has been long -- has been

1 here longer than most of us. It's been a great
2 neighbor to the community, always allowing the
3 neighborhood to enjoy it's facility. They deserve a
4 fair return for their property that they cannot get
5 for the permitted use. With that they can continue
6 their long existences as a house of worship. Major
7 delay in finding an acceptable use would be crippling
8 for this congregation and its nearly 200-year history.

9 I respectfully ask that you grant this use
10 variance to the Baptist Temple and I will now turn
11 things back over to Jerry Goldman. Thank you very
12 much.

13 CHAIRMAN MIETZ: Okay. John, thank you.

14 MR. GOLDMAN: Thank you, John. With that
15 introduction, we'll go into the main case for the Use
16 Variance that we have. I'll give a little bit of
17 background and embellish a little bit on what Ken
18 Gordon had said relative to the status of the
19 environmental review and the overall status of the
20 development at the location that we're dealing with.

21 We have been in front of the Planning Board
22 and have talked to them about the site plans and about
23 the site. The Town's normal process in dealing with
24 applications for Use Variances is to go before the
25 Planning Board first and that is what we had done.

1 The Planning Board had opted for a coordinated review
2 under SEQRA and the Zoning Board did sign off on that
3 coordinated environmental review.

4 The Planning Board did absorb all the
5 information which was brought in and issued as Ken
6 pointed out a negative declaration at their last Board
7 meeting, which frankly gives us our clearance, if you
8 will, to have the Zoning Board deal specifically with
9 the Use Variance application as before you.

10 Now, we have done something else as well.
11 As John pointed out he has eliminated the additions of
12 the building, which was slated to be on the northwest
13 corner of the building on the Highland Avenue
14 frontage. The net result of that as John pointed out
15 is the reduction of parking and, what we think right
16 now, is a better site plan. But in addition to that
17 it eliminated the variance -- and Area Variance, which
18 was required for this development as Rick pointed out
19 a little bit earlier. So number two on the agenda was
20 taken off and that became unnecessary.

21 All that being the case, what we have right
22 now is basically the use of the existing building and
23 the reconfigured parking and a little bit of a better
24 parking situation. We also have a daycare, which has
25 been occupying this particular property -- or part of

1 the property for quite a while. That daycare is
2 slated to stay at least in the short term of the
3 property -- of the use of the property even as the
4 variance is granted. And that should provide some
5 continuity for the people who have kids in the
6 daycare. At some point in the future that daycare
7 would be eliminated and would be replaced by offices.

8 The request that we have is for an office
9 use which with a portion of the office use, about a
10 quarter, 8,000 square feet, to be low-impact medical,
11 no clinics, no urgent cares, nothing of that sort
12 which has a high intensity. Basically medical
13 office -- envisioning medical offices of the type that
14 you would see for a doctor that would have either a
15 primary or secondary location. We're finding now that
16 a lot of doctors are conducting a lot of telemedicine
17 and don't even have as many trips into the site
18 itself.

19 Traffic was an additional issue to be dealt
20 with. And in taking a look at by the Town, traffic
21 impact analysis was provided. It was also provided to
22 the County and State. The Town insisted that both the
23 County and state be involved. The County clearly is
24 involved because we are at the intersection of two
25 County roads, but the Town also referred us to the

1 State to make sure there's no impacts on the East
2 Avenue and Clover Street intersection.

3 Both the County and the State came back and
4 said that they did not see any traffic issues with the
5 proposal and the Town staff did not either. And the
6 net result was that there was a finding of no
7 significant environmental impact, which is what a
8 negative declaration is dealing specifically with the
9 traffic.

10 So with all that background we come to you
11 this evening with our Zoning Board of Appeals
12 application. You've received a fair amount of paper
13 from us. We had an amended letter of intent dated
14 April 21, 2021, with a lot of additional information
15 supporting it. We also did a supplemental letter on
16 May 4th which was delivered -- which was delivered to
17 you. Kind of pales in comparison to the weight of the
18 paperwork which has come in from the two attorneys,
19 one who is representing -- according to the letters
20 representing the condominiums, the Country Club
21 condominiums and the second neighbors [sic] who
22 represent neighbors on the other side of Clover
23 Street.

24 So we have a lot of interplay between their
25 two letters. They're sharing the same appraisal

1 report that has been done on their behalf. We'll be
2 talking a little bit about that as part of our
3 application as well.

4 As the Board knows having dealt with Use
5 Variance applications, there are four major elements
6 that need to be dealt with as part of a Use Variance.
7 The first is that the property owner cannot realize a
8 reasonable return for permitted uses. The second
9 standard that has to be dealt with is whether property
10 is unique. The third is whether the property will
11 change the essential character of the neighborhood.
12 And the fourth standard is whether the hardship, the
13 economic hardship is self-created.

14 We have provided our position relative to
15 that in our letters and in your information. So I'm
16 not going to go through all that again. Given the
17 fact that you've received all this information within
18 the last couple weeks, our supplemental letter and
19 certainly the other submissions, it's our
20 understanding and we believe the Board will likely
21 table this application for consideration of all the
22 documentation and what you're going to hear from the
23 public at tonight's meeting. And we'll be prepared to
24 address some of the issues point-by-point that have
25 been raised by the opponents. There are a couple we

1 are going to bring up as part of our main conversation
2 here, mostly corrections and not get into a whole lot
3 of argument because we know we don't do back and forth
4 when it comes to these types of things.

5 So as you know the property itself is a 4.8
6 acre parcel of property located at the southwest
7 corner of Clover Street and Highland Avenue.
8 Certainly no other -- certainly no other property in
9 this area is like it. It also has the church building
10 which, as John pointed out, was constructed in 1964
11 and I'm sure predates most, if not all, residents'
12 involvement with this corner and with their property.

13 So we took a look at it. And as John
14 pointed out -- and perhaps I can just expound on it a
15 little bit -- John's a little bit defensive relative
16 to the use of this property being the most immediate
17 adjacent neighbor to it. You can see his pool in the
18 picture on the far left side of the -- of the picture
19 which is up on the screen. John, of course, is in
20 support of the application. And in addition to that,
21 there's a letter of support from Luke Dutton who is
22 the owner of the real property immediately adjacent to
23 the Highland Avenue -- Highland Avenue driveway. And
24 there are some 20 other neighborhood letters in
25 support of this application. So while you're going to

1 hear from the attorneys and some of the neighbors,
2 understand that there's not a single voice and a
3 single mind relative to this. So we should consider
4 what's going on here on the merits of what has to be
5 considered by the Board.

6 The first standard that we have to consider
7 is whether the current property owner can realize a
8 reasonable return for permitted uses. And I also need
9 to point out at this stage that the Harter Secrest
10 letter does cite to the Town Code standard, which was
11 written in 1992, I believe. And the State Law was
12 amended to provide that you don't have to have proof
13 of no return to the applicant or deprivation of any
14 return to the applicant. But the question is whether
15 the applicant can realize a reasonable return.

16 From a legal point of view the State Law
17 does control. There's Case Law that says that local
18 municipalities cannot alter the State Laws. So we
19 have to review under the State Law standard. Under
20 our argument for reasonable return we took into
21 account a number of -- a number of factors with regard
22 to it.

23 We started on with an appraised value of the
24 property. The appraised value of the property was
25 determined by the Bruckner, Tillett Firm, which is

1 well known and well respected in our community, and
2 came out at an appraised value of \$940,000. An
3 earlier appraisal, I believe, was done on behalf of
4 the church and showed a higher value. But, again,
5 another correction is that the letter states on a
6 couple of occasions that the \$940,000 is our contract
7 price or purchase price. It is not our purchase
8 price. Our purchase price is higher. It's different.
9 And that is a show of John's commitment to this
10 property. He's willing to pay over what the market
11 was in order to be able to -- or the appraised
12 value -- to be able to secure this property for what
13 he believes is a more benign use at the end of the day
14 on the site.

15 The reality of it is that if you take a look
16 at what is there already -- and I will point out if
17 this were a vacant piece of land, certainly this Use
18 Variance application would look a whole lot different.
19 That is not the case. We are dealing with an existing
20 building, which has a lot of issues that need to be
21 rectified before it is repurposed. One of the biggest
22 issues that would have to be dealt with if we were to
23 have single family residential development on this
24 site, would be the demolition of the building.

25 As John pointed out the demolition of the

1 building entails, first, asbestos abatement, then the
2 actual demolition. There's a substantial cost which
3 is documented in our papers that talk about the cost
4 to a essentially bring this property to neutral, if
5 you will, to a point where a developer could develop
6 it, but if someone were to buy this property and were
7 to try to develop it for a single family residential,
8 they would need to go and to do all of that work and
9 to spend all of that money. And it's a substantial
10 amount of money. And as John pointed out it is also
11 very disruptive in terms of what would go on the site.
12 Not to mention that if this were to be developed for
13 single family residential use, the build out would not
14 be immediate. It would over the course of years and
15 that will be continual disruption that would be going
16 on this corner for a long period of time.

17 But we engaged initially -- John engaged
18 piece by piece and took a look at the site costs and
19 the development costs. So that's reflected in the
20 papers that we had originally submitted. Knowing that
21 your neighbors were going to be -- going to be
22 providing additional information, John also engaged
23 Arena Construction, in fact, tried to interest them,
24 in fact, into developing this property. And -- and
25 they came back with the findings that are attached to

1 our May 4th letter. In particular they put a little
2 bit more meat on the bones with regard to some of the
3 costs that are involved. But, according to them at
4 least, the numbers that they came out with turned out
5 to be pretty close to what our numbers were. And that
6 was to develop this site and to build houses under the
7 current market would -- we would have to see a
8 purchase price in excess 1.3 million per house in
9 order to be able to obtain any return from this
10 property.

11 That being -- that being the case we also
12 engaged very early on Jamie Columbus who is a broker
13 who has done a lot of work in this immediate area, in
14 the Houston Barnard neighborhood and in -- and
15 throughout this part of Brighton to give her opinion
16 as to whether residences at that level could sell.
17 And in our materials there is a letter from Judy --
18 not Judy. That was her mother. From Jamie who
19 indicates that, in fact, that price is out of market.

20 We also have provided additional information
21 to show there have been very few houses which have
22 sold in the million plus range in the Brighton area.
23 It's very unusual. There's going to be some talk
24 about our hot housing market and our market is hot.
25 But the housing market right now is hot for houses in

1 the mid-range. They aren't necessarily hot for excess
2 prices in this type of use in this type of area. And
3 any showing of what house values and costs and
4 everything else from 2018 to 2020, you can throw out
5 window at this point because basically what we have is
6 a pre -- or post-COVID market where supply chains have
7 been disrupted, where costs have gone up, lumber costs
8 have gone up, metal costs have gone up, literally
9 every cost of building materials have gone up. I
10 don't even know if we're building right now the \$235 a
11 square foot number is a valid number for us to work
12 with on this -- on this particular site or for any new
13 construction of -- of the type that we are talking
14 about here. So in reality our numbers do show that it
15 would -- it would be literally impossible to obtain a
16 return for permitted uses.

17 The marketing of the property has been
18 somewhat unique as well and there's a full section of
19 that in our materials. Todd Myers who is from Keller
20 Williams had the listing on this and actively worked
21 with the church for a long time to try to get interest
22 in the property. What he did do is something a little
23 bit different and that is that he had a closed bidding
24 process for a period of time. And if you read his
25 materials carefully, and I'll just state in excerpts

1 from what he said, the property appeared in 47,200
2 individual searches for properties within the market.
3 It was viewed by 1,940 individual buyers online.

4 There is some discussion that we've heard
5 about, well, residential brokers weren't necessarily
6 in the loop. Until the point where you're talking
7 about residences, the market that we would be talking
8 about for single family residences and development of
9 this would be developers. And developers were the
10 people who took a look at this and took a pass on it.
11 And that's literally -- that's literally where we
12 were. The interest which was generated by Todd Myers
13 and his efforts were some churches.

14 One was a megachurch which proceeded
15 probably further than anyone else. And that one would
16 have required a much larger parking lot, would have
17 required a loss of green space, drainage issues and
18 everything else. It would have been far more intense
19 use than what we are talking about here.

20 Smaller churches took a look at it, took a
21 pass on it because of the expense and overhead
22 involved with regard to it. There were some long-term
23 offers -- not offers, but interest for retail
24 commercial, which, of course, would be more
25 objectionable to everybody, especially John the

1 immediate next door neighbor. There was no interest
2 that we were able to ascertain from any residential
3 builders or residential developers on the site. But
4 suffice it to say that within the development
5 community, this clearly was known to be available.

6 Part of the reason why there was not a sign
7 out front was fear of disruption of the existing
8 tenants which really were the financial lifeblood of
9 this particular use. If they thought the property was
10 going to get sold out from under them, it could create
11 some serious problems in the short term. And
12 therefore the marketing was conducted in a way to hit
13 the target market of people who may be interested in
14 this -- in this site for development, but not
15 necessarily putting out -- putting out a sign, which
16 could be disruptive.

17 The ability to secure a reasonable return is
18 clearly impacted by the uniqueness of this property
19 which is the second standard. For anyone to say that
20 a 4.8 acre property in central Brighton that has a
21 31,200 square foot building on it is not unique as
22 opposed to others similarly situated in the zoning
23 district, you know, that's kind of -- I don't even
24 have to make that argument too strong and too long.
25 There are some people that may say, okay. Well, the

1 building was there and that's the church's problem.
2 Okay. Take it away and you still have a 4.8 acre
3 piece of property. It is not typical and is unique to
4 any within the other zoning districts, certainly in
5 this area.

6 The essential character of the neighborhood
7 is the third consideration. And our argument on
8 essential character of the neighborhood is one which
9 was actually adopted as part of the negative
10 declaration by the Planning Board. One of the key
11 features of this site is the maintenance of a large,
12 large tree green area on the corner of Highland and
13 Clover. Everyone in the neighborhood is familiar with
14 it. Everyone who drives by is familiar with it. It's
15 striking. It's striking that there is that kind of
16 open area that is available.

17 Our -- our intention is to maintain that
18 green area intact, to keep all the trees intact,
19 except those that may be diseased, but the trees would
20 be maintained. And people have had the ability and
21 even in weather -- weekends like this past weekend,
22 people have been out enjoying that green area. The --

23 I should point out that there is a plan
24 which is part of the opponent's submission which
25 provides for a green area. I haven't measured it out,

1 but eyeballs on it would indicate that that green area
2 is -- is smaller and obviously would change the
3 character of that corner substantially more than
4 maintaining this building and it's current parking
5 which would be internal to the site.

6 It should be pointed out also that in terms
7 of effect, office uses typically are a week-day use
8 primarily, sometimes a Saturday-morning type of use,
9 rarely if ever on Sundays and probably not on Sundays
10 at all. Whereas some of the specialty permitted uses
11 such as churches, schools have off-hours activities
12 during the week, sometimes have very, very strong peak
13 parking demands. We're very comfortable that our
14 parking demands are never going to exceed our capacity
15 under -- under the Town Code.

16 So we feel very comfortable that, in
17 essence, keeping this building here with a -- with a
18 high-class office use with a modicum of medical will
19 not change the character of this neighborhood.
20 Everything around the perimeter remains the same and
21 we believe that in reality this is the best way to
22 preserve the existing neighborhood character in this
23 area.

24 The hardship has not been self-created and
25 that's the fourth standard we have to deal with.

1 There's a lot of -- there's a lot of discussion
2 relative to, well, the church has enjoyed this
3 property for almost 60 years now. So, therefore, you
4 know they really shouldn't be able to claim any sort
5 of hardship with regard to this property. And I guess
6 that argument is kind of born out by the -- by the
7 particular appraisal which was provided which -- the
8 opponents appraisal shows that the value of the
9 property is \$269,000. I'm kind of concerned. Even
10 the smell test would tell me that a 4.8 acre parcel
11 property in Central Brighton is more than \$269,000.

12 But the methodology that was used we would
13 certainly be addressing in a written reply if -- if
14 that becomes necessary. Because essentially the
15 number was backed into in order to -- in order to
16 support the argument that single family residential
17 was the right use and appropriate and a use you could
18 have for this property.

19 Clearly it's self-created. We have a
20 situation where the church is losing money. It's been
21 shown for the last three years that they are losing
22 money despite their best efforts. Their abilities to
23 sustain is not related specifically to them, but is
24 related to a number of considerations, one of which is
25 declining church population. But it's also a product

1 of the maintenance of the -- maintenance of a fiscal
2 plan. It's just difficult to do. The best way to
3 stabilize this property is to consider use of the
4 property for a use that we consider to be relatively
5 benign and consistent on the site which we think will
6 have minimum impacts on the neighborhood itself.

7 I already saw, I believe it was a neighbor,
8 who said, "When's this going to stop?" And we had a
9 chance to talk. So I'm going to cut my comments short
10 at this point. I see John's face. I don't know --
11 John, do you want to add anything or anyone else in
12 our group want to add any thoughts before we turn back
13 to the Board for questions?

14 MR. AUGUST: I'm fine, Jerry. Thank you.

15 MR. GOLDMAN: Okay. That having been said I
16 think at this point we would like to entertain any
17 questions that the Board may have and we will take
18 notes and listen to -- to the neighbors and attorneys
19 comments that we get on this application. So thank
20 you.

21 MS. DALE: Hi, Jerry. This is Jeanie Dale.
22 If you don't mind, I have a question.

23 MR. GOLDMAN: Yes, Jean.

24 MS. DALE: My question has to do with the
25 congregation and whether they are planning to open up

1 a new location somewhere? Are they moving into
2 another church? Are they closing all together? Or
3 what is -- what is the plan for the congregation as it
4 stands today?

5 MR. GOLDMAN: I think John may be in the
6 best position to answer that because he has been in
7 regular contact with the church. John, do you want to
8 weigh in on --

9 MR. AUGUST: Yes. I was able to unmute
10 myself. Thank you. They intend to find another
11 location and try to grow the congregation. I've
12 entered into an agreement that they can stay For up to
13 six months just to come in and hold a Sunday morning
14 service for their congregation, not to exceed 30 or 40
15 people. I will be as flexible as I can for them to
16 try -- to do anything I can accommodate their ability
17 to find another home and start to re-grow their
18 congregation.

19 MS. DALE: Thank you.

20 MS. SCHWARTZ: This is Judy Schwartz. My
21 question is for John. I'm curious, how much square
22 footage does the daycare center use?

23 MR. AUGUST: They use just a little under
24 8,770 feet, Judy.

25 MS. SCHWARTZ: Okay. And how much asbestos

1 work will have been to be done on the interior when
2 you change it? Or is there not an issue?

3 MR. AUGUST: No. It is an issue. There's a
4 substantial amount of work that will have to be done,
5 much of it can be encapsulated in place and it offers
6 no issues. Where we have to bring air conditioner
7 ducts, things through the ceiling, the plaster -- this
8 was built in the 60s -- asbestos would have to be
9 remediated. Any lines through any walls would have to
10 be remediated prior.

11 The floor of the church is in outstanding
12 shape. I think even the opponent's appraisal said it
13 was above average quality construction and it's in
14 fine shape. So things like asbestos floor tiling, it
15 is not dryable in place -- can be covered in place
16 with New York State -- with the DEC regulations and
17 can be left in place. We will have a fair amount of
18 remediation though as we remodel some of the classroom
19 wings.

20 MS. SCHWARTZ: Final question. In light of
21 the fact that there will be an asbestos issue, in
22 light of the fact that you're going to reconfigure
23 space for offices, I did a little thinking out of the
24 box. You could keep the building as is. And what
25 about having condominiums and -- and a gym and, you

1 know, even maybe an office if somebody wanted to have
2 a home office out of their condo. Did you ever
3 consider something like that which would keep it
4 closer to a residential zoning?

5 MR. AUGUST: That's -- because of the issues
6 with the asbestos in the existing building, a
7 residential, that would take more penetrations, more
8 air conditioning, more water into it than an office
9 would. And penetrations for bathrooms, toilets, et
10 cetera would probably ramp up the asbestos abatement
11 to a decent amount.

12 Condos, of course, are not allowed either
13 and are allowed under the Zoning would need relief as
14 well. So we did look hard. We take a look at number
15 one having someone renovate the existing building for
16 condominiums. And we had another survey done to tear
17 that building down and build condominiums. We
18 estimate that the max amount of variances is 32 to 34
19 units. Again, purchase price and demolish, yeah,
20 that's all, Judy, that the -- when it comes to the
21 single family homes, six homes are what will fit on
22 this without variances.

23 So we didn't go far towards the condominiums
24 because it appeared we had similar problems. The cost
25 of buying the property, abating the asbestos was great

1 enough that it put the cost per unit up awfully high
2 where I -- we can submit. We didn't really think we
3 were going to discuss condominiums. But we had a
4 survey IA done by one of the leading renovators of
5 buildings like this that we could provide that showed
6 it was kind of a no-starter for them to either tear it
7 down and put the 33 or 34 units up or to renovate that
8 existing building with condominiums, should we have
9 the Zoning approval to do that.

10 MS. DALE: So, Mr. August, another question
11 for you. Do you know if anyone approached the
12 existing childcare center to see if they would be
13 interested in expanding?

14 MR. AUGUST: I have talked to them. For a
15 while it was kind of quiet. Their efforts to market
16 the property -- and the daycare is their largest
17 tenant and the most important at any time for them.
18 I've talked to them to ensure we have no immediate
19 plans to remove them and whenever, if that was
20 necessary they would have more than ample notice to
21 make certain that all their people could be relocated.

22 MS. DALE: No. My question was if they were
23 willing to expand and their monthly payments would,
24 you know, increase.

25 MR. AUGUST: At this point -- at this point

1 due to COVID, they are not using the capacity of what
2 they are leasing. I think they are rated for around
3 90 some children. They don't have that many now.
4 I've talked to the owner. She has a daycare out in
5 Webster. We've talked about this location. It fits
6 extremely well with their demographics. Separates to
7 two locations. Didn't indicate to me any desire to
8 try to expand. And I know not in the immediate future
9 because they are really in a little more space since
10 COVID then they are even able to utilize.

11 MR. GOLDMAN: If I can add one other thing,
12 Jeanie. The daycare use itself is ancillary. I'm not
13 even sure there's a conditional use -- a conditionally
14 permitted use in this district. As a matter of fact,
15 I don't think schools are. So an expansion of the
16 daycare from its current square footage would likely
17 require a Use Variance from the Zoning Board. So
18 we're back -- we're essentially back in the same box
19 relative --

20 MS. DALE: So from -- I'm just thinking that
21 it would be a different view, I think, if the
22 congregation who plans to stay together and just
23 relocate to another location, if the congregation can
24 stay and this remains a church and the daycare
25 expands, and I think as a Board member I would -- I

1 would be okay if they said, you know, we'd like to be
2 able to have more children there, being that that's
3 been existing for quite some time and certainly fits
4 more in character with the neighborhood. That would
5 not be a concern to me if the daycare --

6 MR. AUGUST: We found --

7 MS. DALE: I feel like it could be at least
8 a partial solution.

9 MR. GOLDMAN: The traffic study and doing
10 the code analysis, we find that the daycare's pretty
11 intensive for parking needs even though they're only
12 in -- around 7,700 feet, normally that would be, I
13 think, 28 parking spots under general office. I
14 believe that requirement for the space now is an
15 additional 16 feet.

16 MS. DALE: I don't know. We would have to
17 look at that, but my inclination on hand is that
18 additional children at an existing daycare center
19 would not have more parking needs than a medical
20 facility.

21 MR. AUGUST: That's the Code. I -- one per
22 employee in a shift plus I think one for every five or
23 six children could count -- but the church I don't
24 think -- I believe, Jean, that the church explored
25 every means before they determined they had to move.

1 They've had a long relationship with the daycare. I
2 can follow up both with the operators of the daycare
3 as well as the church to find out if they were ever
4 offered the opportunity to expand.

5 MS. DALE: And other churches -- you know,
6 if this particular congregation is not interested in
7 staying at this location, maybe you could talk a
8 little bit about efforts to find a different
9 congregation that might be interested in this space.

10 MR. GOLDMAN: One thing. There were --

11 MS. DALE: I saw conflicting -- I saw some
12 conflicting information in the materials between what
13 you presented and what else we received surrounding
14 marketing efforts. So I thought maybe if you
15 explained it briefly that that would be helpful. I
16 didn't know about specific marketing out to other
17 worship opportunities.

18 MR. AUGUST: Excuse me, Jean. From -- my
19 standpoint is the purchaser of the property. I wasn't
20 involved in the marketing. I did get involved as I
21 got in with the neighbors and encouraged them. Many
22 of them had strong ties to single family developers.
23 Some are developers themselves and through the last
24 six months I've said publicly to that group at any one
25 of our public hearings that if -- again, if someone

1 can show that they can get a decent return and wants
2 to build single family homes commensurate with that
3 neighborhood, then I certainly have no issue --

4 MS. DALE: But as part of this application
5 surrounding the burden of proof, do you not present in
6 your application that all efforts have been made in
7 order to show the hardship and that it's just not
8 possible for satisfactory a return to be achieved?
9 And so I -- I don't really follow your statement that
10 you wouldn't know if -- about the marketing efforts.

11 MR. AUGUST: Who the variances are going to
12 Jerry and -- with the marketing. I just came on as
13 the purchaser.

14 MS. DALE: Okay. I'm sorry. Then I should
15 be directing my --

16 MR. AUGUST: The marketing had been done by
17 the time I had come onto the scene.

18 MS. DALE: Oh, okay. Okay.

19 MR. GOLDMAN: Right. And I think -- I'm not
20 sure where the conflict is in what you're seeing, but
21 the August 28th letter, which is our Exhibit B, sets
22 forth from Todd Myers what the marketing had been to
23 religious uses. There are three different levels,
24 megachurches, existing small congregations and
25 religious organization -- and smaller religious

1 organizations for both worship and to house and
2 educate congregants. The -- and as I stated, and
3 hopefully it wasn't conflicting, the megachurch
4 people, the one that showed some interest in this
5 site, had actually made a deal and are going into the
6 Lyric Opera building which is on East Avenue in the
7 city. I don't know if you're familiar with it. It's
8 a very, very large building. And they're going in
9 there. I think it was the First Church of Christ
10 Scientists if I'm not mistaken. But I'm not sure what
11 the prior use was.

12 The small congregations took a look at it.
13 And the problem that we have is that a building of
14 this size is tough to repurpose for that type of use
15 or even for more daycare use. You know, there usually
16 is a critical mass in size that daycares go to. You
17 know, I think the 9,000 square feet -- or 7,000 square
18 feet -- 7,700 roughly whatever John said the daycare
19 is now, is within the range. Usually I see them
20 between the 7,700 to perhaps 12,000 square feet or
21 something like that. You don't necessarily see the
22 mega-daycares that are 30,000 square feet or 25,000
23 square feet.

24 This church is very -- gotten very small
25 right now, which is unfortunate, but that's kind of

1 where it is.

2 MS. WATSON: Hi, this is Jeane Watson. Is
3 my mic working?

4 MR. GOLDMAN: Yup. You're on.

5 MS. WATSON: Excellent. My question has to
6 do with how the use is going to be changing from what
7 has been there aside from the church. So I'm aware
8 there were nonprofits and businesses and community
9 organizations leasing space in the building for some
10 time and what is your vision for -- specifically what
11 do you envision being there and how does that compare
12 to what's been there?

13 MR. GOLDMAN: I think what we visioned is a
14 professional office building -- is a professional
15 office use and that is because a lot of the other
16 small uses, which are in there right now which are
17 populating part of it, are essentially a stopgap for
18 the church to try create -- to create some additional
19 cash and some additional cash flow.

20 I would tell you, from my perspective, and
21 this is a personal perspective now, being familiar
22 with synagogues, churches and everything else, their
23 peaks of use or far worse than anything an office use
24 is going to have. It's -- first of all off-peak type
25 of traffic is on Sundays. It's on Saturdays if they

1 were synagogues. It's nights. It's times that would
2 be more disruptive to neighborhoods, I think, then
3 even these types of uses. I think when churches first
4 started out, a lot of it was, okay. We're going to
5 have heavy prayer on Sunday mornings. We're going to
6 have some activities. But it was clearly focused
7 around times that were not as disruptive to
8 neighborhoods.

9 I mean, office use, strangely enough, is
10 more into the type of use which is almost friendly to
11 neighborhoods to the extent it doesn't create
12 conflicts with people enjoying their houses. But
13 that's my perspective.

14 MS. WATSON: This is a follow up. I guess I
15 wanted to know how many -- how many offices? How many
16 businesses? What is the anticipated flow of the
17 number of people coming and going? And how does that
18 compare to what's there? Because, like you said, that
19 daycare used -- may have a more intense people coming
20 and going.

21 MR. GOLDMAN: Right. Our anticipation is it
22 would be a normal office use. But the Town Codes
23 provide for parking ratios. We were at the Town
24 parking ratios which we believe exceed what our need
25 is going to be. More and more we're finding offices

1 don't need that much and a lot of municipalities are
2 actually reducing the amount of parking because they
3 realize that there is not as much traffic that goes in
4 with offices. You know, I know I'm doing half of my
5 work at home and half at the house. So that's --
6 that's one less car half time.

7 In terms of what the difference is between
8 what's there and now, one thing that's pretty
9 interesting is I had gone there during the week and
10 during the day and there are a lot of cars in that
11 parking lot during the week right now. So I can't
12 really estimate what the difference would be.

13 You know, the church -- or the auditorium
14 has 300 plus seats. You know, and to that extent when
15 and if there were to be a use that would really be
16 utilizing that, it would probably far outstrip the
17 parking in the parking lot even though it is a
18 specially permitted use. I mean, it's just a reality
19 of what it is. Offices have a tendency to be more
20 measured in terms of what their parking use and
21 parking demands are and I think are more friendly.

22 CHAIRMAN MIETZ: Okay.

23 MS. SCHWARTZ: I don't think, Jerry -- and
24 Jen, correct me if I'm wrong -- but I interpreted her
25 question as to how many offices, different offices?

1 MS. WATSON: Yeah. I was really curious
2 about, you know --

3 MR. GOLDMAN: Sorry, Jennifer.

4 MR. AUGUST: I could probably speak to that.
5 You know, when you're trying to fit -- fill a big
6 building like this, you're going to try to reach out
7 and find a major tenant, a law firm, insurance agent,
8 something like that the sanctuary space will be
9 spectacular, but it's big and grandeur and really
10 requires a large tenant. Conversely the couple
11 classroom wings that are very narrow, those will
12 probably get split up to smaller offices, 1,500 to
13 2,500 feet. They just need to get -- because they're
14 thin, some of the corridors are only 40-feet wide from
15 wall to wall, you can't make them too long and thin.
16 They really aren't attractive.

17 So the -- I would guess if we were lucky, we
18 may end up with five tenants or seven tenants to maybe
19 a high of 15 tenants. Our company just purchased a
20 building at 441 East Avenue which was a -- used to
21 belong to the Jewish Community Federation down by
22 Sibley Place. And we were able to immediately find an
23 insurance agent to take and be our primary. It's a
24 22,000 foot building. They're moving into
25 approximately 15,000 right off the bat. The back will

1 be filled with a smaller tenant. We even talked to
2 Graceland Church who bought across the street is
3 occupying the Lyric Theater to come in and use that
4 for some auxiliary offices. So the main tenant we
5 know who is looking around Rochester will drive the
6 main space. The rest will be filled and I expect as I
7 went door to door and talked to a lot of people in the
8 neighborhood who expressed interest in opening a
9 smaller separate office for their own use near their
10 home.

11 The neighbors on Council Rock which are,
12 along with me, I think are the most affected, none of
13 those people -- they all seem content and they told me
14 they endorsed the property. Two asked me if they
15 could get a fence cut in the future so they could go
16 through the fence if they should put their office
17 there someday. I think that we'll find that this
18 place is a local office for a lot of local people,
19 Brighton people to occupy. And certainly will get a
20 lead tenant in there of decent size, at least 10,000 I
21 would guess.

22 MS. SCHWARTZ: We didn't talk about
23 deliveries and things of that sort and trash pick up
24 and so on. And is it going to be strictly office?
25 There would be no like cafe or anything for tenants to

1 use?

2 MR. AUGUST: We may -- because we will call
3 it a Class A office building, we want to have as many
4 amenities to kind of match the surrounding area. And
5 it's a beautiful area for anyone to consider making
6 that their home to work everyday. We expect that
7 there will be joggers and we'll probably put a shower
8 in there, make certain that people have an ability to
9 get out, exercise through the neighborhood, come back
10 and take a shower. We expect we'll have a -- some
11 sort of food cafeteria -- not cafeteria -- kitchen
12 that the tenants could use, not for the public. It
13 won't be open. It would just be for the people to
14 keep their own things in -- we have some cooking
15 equipment in there from the church -- and provide for
16 themselves on site and sit outside and eat their
17 meals.

18 No retail, nothing -- and retail, to your
19 point, Judy, of deliveries it takes more of a constant
20 flow of replenishing materials than an office does.
21 With the exception of really office supplies, you
22 might have a Mason truck or a Staples truck stop by, I
23 can't imagine any deliveries.

24 As far as the dumpsters, we'll put a fully
25 enclosed dumpster close to the building. You'll see

1 we've added the screening to make sure it is -- will
2 be screened adequately. It's not screened now from
3 Highland Avenue. So don't need much dumpster for a
4 space like that. It'll likely be cleaned daily by one
5 firm that will do the service for all the people, take
6 everyone's garbage out. But I think we have a 6 yard
7 dumpster there anticipated for the entire complex
8 which would be probably emptied twice a week.

9 MS. SCHWARTZ: So the only food then would
10 be that brought in by the tenants.

11 MR. AUGUST: Correct. And prepared for
12 themselves.

13 CHAIRMAN MIETZ: Okay. More questions for
14 John or Jerry? From the Board Members?

15 MR. AUGUST: Thank you for your time.

16 CHAIRMAN MIETZ: Okay. Very good. Thank
17 you, John. Thank you, Jerry.

18 Okay. At this point then I would like to
19 know who might be interested in addressing the Board
20 as it relates to this application. If you could raise
21 your hand please? You might have to help me a little,
22 Jeff, because I'm not sure I can see everything.

23 MR. FRISCH: Yeah. I think Nick Wood will
24 be first.

25 CHAIRMAN MIETZ: Okay. Very good.

1 MR. WOOD: Can you hear me? Sorry. I'm
2 trying to start my video but I'm getting a message
3 that I can't start the video because the host has
4 stopped it.

5 CHAIRMAN MIETZ: Okay. See what we can do.

6 MR. FRISCH: There we go.

7 MR. WOOD: Okay.

8 CHAIRMAN MIETZ: Okay, Mr. Wood. Please
9 give us your name and address and what's your purpose.
10 Go ahead.

11 MR. WOOD: Nick wood from the law firm
12 Boylan Code. Address is 5 -- 145 Culver Road in
13 Rochester. I, along with co-counselor Jared Lusk from
14 Nixon Peabody, represent the Country Club Condominium
15 Board of managers. We're appearing in opposition to
16 the application for the Use Variance.

17 We have submitted a letter to the Board
18 yesterday that sets out in detail numerous reasons why
19 the Use Variance should be denied. I want to take
20 this opportunity to just highlight a few of those
21 reasons. Before I get started I mentioned Jared Lusk.
22 And he and I along with Paul Silvestri from Harter
23 Secrest who represent a number of the neighbors, out
24 of respect for everyone including the Board's time
25 have discussed coordinating our comments this evening

1 so we try not to repeat one another. And with that in
2 mind I would ask if that following my comments, John
3 Rynne who did an appraisal that we submitted with our
4 materials is here, whether he can address the Board.
5 And then following him, Mr. Lusk and then Mr.
6 Sylvestri, just in terms of sort of keeping our
7 presentation all together and in conserving overall
8 time.

9 CHAIRMAN MIETZ: Okay. Very good.

10 MR. WOOD: Thank you. So we've heard a lot
11 of background already about the project and just to
12 make clear it's to convert an existing church building
13 into a commercial office building, but it doesn't
14 include just professional offices. It also includes
15 medical offices and that's medical offices with
16 patient visits. So there's been a lot of talk about
17 the professional offices, but again, those medical
18 offices and patient visits are an important part of
19 the project.

20 The -- as the Board I'm sure knows, the
21 property is currently in a residential district. And
22 it's not only in a residential district, but it's in
23 residential low density A district. Permitted uses
24 are only single family detached dwellings, Town of
25 Brighton municipal buildings, family childcare homes

1 meaning child care provided in homes subject to
2 certain conditions home occupation. So occupation
3 right in somebody's house.

4 It does include, I want to point out, a
5 number of conditional uses and one of those
6 conditional uses is, in fact, daycare centers. There
7 was some discussion about that earlier whether daycare
8 centers were a conditionally permitted use in this
9 district. And as I read the Zoning Code they
10 certainly are.

11 In any event, as the Board knows since
12 commercial offices aren't permitted in district a Use
13 Variance is required, and the standard to obtain that
14 Use Variance is very high. It's a strict standard.
15 And one of the reasons for that is because a Use
16 Variance essentially defeats the expectations of
17 persons who acquired property in a residential
18 district in reliance on the fact that they were in a
19 residential district and all the properties were
20 subject to those restrictions. So a Use Variance, you
21 know, much different than an Area Variance really
22 defeats the expectations of the people that live in
23 the area.

24 And another thing for the Board to consider
25 in addition to the specific requirements of the Use

1 Variance, which I am -- Jared Lusk and Paul Sylvestri
2 will into -- is that this project is to put a
3 commercial use in a residential district at a time
4 when I think it's common knowledge that residential
5 inventories are fairly limited -- you know, demand
6 significantly exceeds supply at this point. Yet this
7 project is going to convert land that's owned as
8 residential to a commercial use.

9 Having said that, I'll move to the
10 requirements for a Use Variance. I won't go over all
11 of them specifically. I'm sure the Board is familiar
12 with them. But the first one I want to talk about is
13 the first requirement and that is that the applicant
14 has to demonstrate that the applicant can't realize a
15 reasonable rate of return, provided that the lack of
16 return is substantial as demonstrated by competent
17 physical -- I'm sorry -- competent financial evidence.

18 One thing that is very important for the
19 Board to keep in mind is that in analyzing the
20 reasonable rate of return is from the perspective of
21 the current owner, not the developer. So there's been
22 a number of references already, I think, to the
23 developer purchasing the property whether it's a
24 purchase price or an appraised value that they
25 received and then doing an analysis from there to come

1 ultimately to the conclusion that the property can't
2 be developed for single family homes. But that's not
3 the analysis, whether some purchaser can come and buy
4 the property for a certain amount. Again, it's
5 whether the owner can realize a return.

6 So I'm going to address some of those issues
7 and then later on Jared Lusk will address some of the
8 reasonable rate of return issues as well. And I'm
9 also going to briefly address the uniqueness
10 requirement and the self-created requirement.

11 So as I mentioned it's from the owner's
12 perspective that we have to look at this from. And
13 the -- that -- the main error that that results in in
14 terms of the redevelopment analysis that the applicant
15 has provided, is that the applicant includes the
16 price, as I mentioned, that it is paying. That's
17 substantially -- either it is paying or it's an
18 appraisal price. But in any event, that substantially
19 increases the overall development costs when you look
20 at it, development of single family homes.

21 So that is not relevant and should not be
22 included when you're looking at that analysis. And
23 we've cited Case Law in our letter to the Board that
24 fully supports that point. So that alone really makes
25 cost of redevelopment submitted by the applicant

1 inapplicable here.

2 The second -- the second main issue that we
3 see with the cost of residential redevelopment that is
4 submitted by the applicant is that they submit a
5 construction cost of \$235 per square foot. And that
6 was initially -- there was a letter from Woodstone
7 Builders that, although it was a little vague as to
8 exactly what it was referring to, but was offered in
9 support of the \$235 as being the cost for
10 construction. We went on Woodstone's website and
11 included materials with our letter that would show
12 that they are selling homes for \$235 a square foot.
13 So it's sort of inescapable conclusion that if they're
14 selling homes for what is about \$235 per square foot,
15 that includes all the site acquisition and development
16 costs, sales commission and profit. Yet here what's
17 been done is that \$235 square foot amount has been
18 added on top of the site acquisition and the
19 development costs.

20 And the other point there is that when you
21 look at the houses that are on the Woodstone
22 website -- again we submitted, there was three of
23 them -- they're typically a little smaller than the
24 houses that have been proposed -- that are
25 contemplated in the proposal that we've offered to the

1 Board as an example of six house redevelopment that
2 could be done economically feasible here. And we've
3 also submitted information that indicated that as the
4 house -- size of the house goes up, the per square
5 footage amount goes down. So we think it's actually
6 event -- that the amount is -- the \$235 is even high.

7 Lastly the applicant has sort of arbitrarily
8 chosen 4,000 square foot custom homes to do their
9 analysis. And one, when you use a custom home, I
10 suppose you could make a construction cost anything
11 you want because you can put anything you want in the
12 house and you could make it, you know, those
13 construction costs as expensive as, you know, somebody
14 might want them to be. And then when you translate it
15 to a \$4,000 square foot house, that of course is going
16 to increase the overall construction cost. If the
17 houses are smaller, the overall construction costs are
18 going to -- are going to go down as well.

19 So the end result of all of that is that the
20 applicants then claim that house here can't sell for
21 \$1.3 million. But all of the underlying materials
22 that supports that is not really applicable. So the
23 fact that a broker may say that a house can't be sold
24 here for 1.3 million is irrelevant because that's not
25 the price that a house would have to be sold for in

1 order to make a single family development be
2 economically viable.

3 The next point I want to touch on is the
4 marketing efforts that were made by the Baptist
5 Temple. And I know there's already been some
6 discussion about what exactly that entails. I would
7 refer to the Board just in -- maybe you've done this
8 already, but if you read the letter from the broker
9 pretty specifically, it, I think, is pretty clear that
10 the property was only listed for two months from May
11 12th to July 12, 2019. When I read the letter, and I
12 think others agree, there's talk about it -- them
13 wanting to start selling the property in 2018, but for
14 the period prior to when it was listed in May of 2019,
15 they were, according to the letter, in discussions
16 with one particular church -- which apparently, I
17 guess, is the church that has bought Lyric Theater --
18 those fell through. Then it was listed for two
19 months. Then the offers that came in were -- and
20 there was sort of a strange process. It was sealed
21 bids, not a lot of information put out around
22 parameters, you know, a sales price.

23 After that two-month listing period, they
24 then signed a contract with that same church that had
25 discussions with and we're under contract for a period

1 of time. And then that -- the church canceled the
2 contract. And it appears at that time they went to
3 John August.

4 So the conclusion, again, is it really was
5 only listed for two months. And that we would submit
6 just is not sufficient to establish diligent efforts
7 to sell the property, which are required under the
8 Case Law, and particularly the Case Law that was
9 submitted -- cited in the letter from Harter Secrest.

10 And that two month listing period is
11 actually to be contrasted with the appraisal that the
12 applicant submitted from Bruckner Tillett, which
13 refers to a marketing time of one year. So their own
14 materials suggest it should have been a much longer
15 time and a better way of marketing it.

16 There was also a question about whether
17 there was marketing specifically to potential
18 churches. Again, I'd refer the Board to the letter
19 from the broker. He refers to there being, I think,
20 some interest from churches, but I did not see any
21 reference in there to any specific marketing efforts
22 to churches. And you read the letter. I just looked
23 at that now while the discussion was going on, but
24 nothing jumped out to me specifically.

25 And, you know, lastly the -- the church, I

1 guess, didn't want to upset its tenants, but it
2 didn't -- and they've acknowledged they didn't even
3 put a for sale sign out in front of the property to
4 get interest from people that were driving by. We've
5 got letters from two real estate brokers that they are
6 right in the area, who stated they weren't aware the
7 property was for sale.

8 With respect to the appraisal that the
9 applicants have submitted, again, they're contention
10 that they haven't been able to sell the property, but
11 their own appraisal indicates that they should, in
12 fact, be able to sell the property, as is, for
13 940,000. Now again, that's important because it's not
14 what a developer -- whether the developer who pays
15 940,000 or maybe something more than that, can then
16 turn around and get an adequate return. That's not
17 the analysis. It's whether the Baptist Temple can get
18 a reasonable return. They're the ones whose rights
19 are at issue.

20 And again, it's the applicants appraisal.
21 We think there are some flaws with it particularly
22 with respect to some of the comparables, at least one,
23 Lyric Theater, being comparable -- being used as a
24 comparable even though it is in a district that allows
25 for all sorts of other uses including entertainment

1 uses.

2 But putting that aside, that appraisal
3 values the property as of February 3, 2021, as is, for
4 940,000. And in it's own -- in the document in the
5 appraisal in its definition of market value states
6 that the most probable price which a property should
7 bring in a competitive and open market under all
8 conditions requisite to a fair sale. It's dated March
9 11, 2021. So that's after the attempts by Baptist
10 Temple to sell the property. So it should presumably
11 be taking those into account in determining the
12 appraised value and still come to the conclusion that
13 that's what it should be able to sell for provided a
14 reasonable time is allowed for exposure in the open
15 market. So again, that certainly, as it stated in the
16 letter -- I mean, if they got -- if Baptist Temple got
17 a quarter of that, they would get a reasonable return
18 for the property.

19 So we think based on the evidence that has
20 been submitted by the applicant themselves they not
21 only have shown they can't get a reasonable return,
22 but have shown that the Baptist Temple can get a
23 reasonable return.

24 In spite of that, we took it upon ourselves
25 to get our own appraisal because one of the key

1 elements, as we've talked about -- and the first
2 element is the applicant demonstrated they can't get a
3 reasonable return from all permitted uses. Again,
4 it's not that they might be able to get a higher
5 return from some other use, that they might be able to
6 get a Use Variance for. It's -- you got to look at
7 the permitted use. And we've submitted an appraisal
8 that indicates they can get a reasonable return from a
9 permitted use and that is sell the property for use as
10 single family residences.

11 The -- that appraisal was done by Brian
12 Murphy. It shows that the value today of the
13 property, as is, is \$269,000 for sale to be developed
14 as a six lot residential subdivision, which is
15 permitted in the Town's Zoning ordinance. There was a
16 drawing with the appraisal by engineer Larry
17 Heininger, who I believe is on the call if anybody has
18 any questions for him. I actually had some difficulty
19 getting into the Zoom meeting. So I don't know if he
20 may have as well. But I believe he's here if the
21 Board has any questions about the plan.

22 John Rynne is at the meeting as well. He'll
23 describe the methodology of his appraisal. But as
24 indicated, he concludes that it's worth \$269,000
25 because that's what a developer, a site developer

1 could purchase it for, incur the environmental and
2 demolition costs that the applicant actually has
3 submitted. So we've accepted those. And then other
4 site development costs. And then based on an analysis
5 of sales of comparable vacant lots in the area, that
6 the developer could sell that land for residential
7 development at a profit.

8 It's notable that the development, that six
9 home development that we've submitted, leaves a
10 seventh lot at the corner empty. So it preserves that
11 area as an open space and overall it has significantly
12 more open space than exists currently on the site.
13 And it saves all of the trees that are there but one.
14 So it's in compliance with Zoning. It keeps the
15 property residential. It keeps it green. In fact,
16 you could have made the analysis even more beneficial
17 to the Baptist Temple by adding a seventh house, but
18 in the interest of being conservative in the
19 development and keeping it open space, we didn't do
20 that.

21 So then, as I said, the analysis is the
22 return to the Baptist Temple. \$269,000 under that
23 analysis to the Baptist Temple is absolutely a
24 reasonable rate of return for them. They bought the
25 property back in 1963. They developed it for their

1 own specific use. They've used it for over 50 years
2 for their uses. So any cost that they have had
3 initially put into the building or put in over time,
4 they have recovered for the use of their premises.
5 And on top of that, as a religious organization,
6 they've been exempt from property taxes, which in
7 looking at what the taxes would otherwise be -- allows
8 them, at least in recent years, to save \$80,000
9 annually in property taxes.

10 So Jared Lusk is going to address some of
11 the other return issues in particular with some of the
12 other uses that could be potentially put on the
13 property. But again, the reasonable rate of return
14 requirement has not been satisfied.

15 Secondly I want to address the second
16 requirement which is the alleged hardship of the
17 property in question is unique and does not apply to a
18 substantial portion of the district or neighborhood.
19 A key part of the uniqueness requirement has to focus
20 on the uniqueness of the property itself and not the
21 owner. The Use Variance can't be granted to ease the
22 personal difficulties of the land owner. Based on
23 that principle there's nothing unique about the
24 property. The church's -- the church may have a
25 decline in congregation, but in the context of the

1 Case Law, that's really a personal difficulty of the
2 Baptist Temple and not related to the property. And,
3 in fact, there's examples of churches in the area
4 whose congregations are growing.

5 And with the respect to the property itself
6 and the building, we've also cited in our letter a
7 number of examples of properties in the area where
8 buildings have been torn down and new residences have
9 been constructed. So there's nothing unique about
10 that. There's numerous examples in the area where
11 that's happened.

12 And lastly, the uniqueness can't be a result
13 of the owner's actions. Since Baptist Temple is the
14 one that designed and built the building the
15 applicants now claim is unique, any uniqueness is
16 self-created. And that is also the reason the
17 Board -- that requirement has not been met and the
18 Board should deny the variance.

19 So that's a good segue into my last point
20 which is the hardship being self-created. So first
21 and foremost, I think the more important point here,
22 and we've cited numerous cases in our letter to the
23 Board supporting this and I'll quote from one of those
24 cases, is that hardship is self-created for zoning
25 purposes where the applicant for a variance acquired

1 the property subject to the restrictions from which it
2 seeks relief. So I made a FOIA request to the Town.
3 And I went up to Town Hall. They were just made
4 available, I think it was, on Monday. The zoning maps
5 that were adopted in 1956 and there was also a zoning
6 map adopted in 1962, both of those show the property
7 zoned at that time as Class A Residential. So it was
8 zoned as Class A Residential when Baptist Temple
9 acquired the property.

10 So since Baptist Temple acquired the
11 property subject to the restrictions from which it
12 seeks relief, under the Case Law its hardship has been
13 self-created. They were aware of that zoning when
14 they went into the property. They decided to build
15 this structure, which, you know, suited their own
16 purposes. They constructed it with asbestos in it.
17 They constructed it maybe in a, you know, particular
18 way, but they knew or should have known when they went
19 in, based at least on my reading of those zoning maps
20 and it being zoned as residential, that was -- that a
21 commercial use wouldn't be allowed, again, based on
22 what the zoning maps indicate.

23 So -- and -- and the -- it's important to
24 note that the applicants have not claimed in their
25 application otherwise. They've not come in and said

1 that, no, when we bought this property, it was --
2 commercial uses were -- when Baptist Temple bought the
3 property, commercial uses were allowed and the zoning
4 changed over time and while were weren't a commercial
5 use or were not grandfathered when we bought it,
6 should have been -- we thought we would at one point
7 point be able to use it for commercial uses. They
8 haven't made that claim.

9 So on that basis alone I think the Case Law
10 establishes that it was self-created. The point that
11 has been made or that they argue for the fact or the
12 claim that it's not self-created is because, in their
13 application at least, the physical characteristics of
14 the building, the fact that's it on the corner of two
15 county roads, and the increasing amount of in-facility
16 religious observance. And the physical
17 characteristics of the building, I already stated,
18 it's hard to see, but a use that could not -- or a
19 hardship could not be more self-created when they're
20 the ones that built the building that they're now
21 claiming is causing hardship.

22 With respect to the roads, one of them's a
23 Town road, but they were on that corner when they
24 purchased the property. Those roads weren't put in
25 afterwards. And with respect to the declining

1 congregation, again, that goes back to a personal
2 difficulty that Baptist Temple is having. We cited a
3 number of examples in our letter of churches that seem
4 to be growing.

5 So on all of those -- for all of those
6 reasons we believe that -- and we think the evidence
7 is clear that the -- any hardship, and we don't think
8 there is any, is self-created. So having said all of
9 that since we submitted an appraisal here, and we have
10 John Rinds here, I do want to turn it over briefly for
11 John Rynne to go through and explain to the Board the
12 methodology h that he used in his appraisal. And he
13 also had a little difficulty getting on Zoom. He was
14 down in another conference room in my office. So he's
15 in my office. And I'm going to switch seats with him
16 now.

17 MR. RYNNE: Good evening, everybody. I'm
18 John Rynne. I'm the president and owner of Rynne
19 Murphy and Associates, Inc. It's a real estate
20 appraisal and consulting firm that started in 1984.
21 I've been a real estate appraiser and consultant for
22 48 years. I also am a licensed New York State real
23 estate broker. I'm a certified general real estate
24 appraiser certified by New York State. I'm a member
25 of the Appraisal Institute, NAI member and a SRA

1 member which is a Senior Residential Appraiser. I've
2 had numerous experiences with subdivision appraisals,
3 in the hundreds. And I've actually had experience
4 with economic hardship cases also for a period of 35
5 or 40 years. And economic hardships are very
6 difficult to prove.

7 And my appraisal that I submitted shows
8 that. I was hired by Country Club Condominiums to
9 analyze a six-lot subdivision. The lots -- the
10 hypothetical that these would be approved and
11 constructed to be developed with single family homes
12 at a later date. The lot sizes were approximately
13 anywhere from 0.51 acres to -- 0.53 acres and rose to
14 0.91 acres. And four of the lots had access from
15 Clover Street. Two of the lots will have access from
16 Highland -- Highland Avenue.

17 The bottom line is as far as what I was able
18 to do by a subdivision model that I've used hundreds
19 of times is to abstract out a residual value for the
20 Baptist Temple in the amount of \$269,000. Now, that's
21 obviously less than what the assessment is of the
22 Temple, less than what the Bruckner appraisal is.
23 However, in the economic hardship cases I have seen,
24 if the return is positive, and in this case it is,
25 \$269,000, even though it's less than -- and let's say

1 the Bruckner appraisal is valid and does sell at
2 930,000 as church -- the \$269,000 does represent a
3 positive return.

4 The subdivision method that I used simply
5 takes into consideration -- it kind of works
6 backwards. It starts out with finished lots and I --
7 it subtracts from that development costs and also
8 holding costs of a subdivision. And in -- during a
9 time period of -- a holding period would be two years.
10 My study indicated that the absorption period for
11 those lots as of vacancy and put to the highest and
12 best uses, single family homes, would be over a
13 two-year period.

14 So you got two -- you got two cash flows.
15 You got year one and year two. You got revenue for
16 these lot sales in year one, finished lot sales in
17 year two, and subtracting from that would be
18 development costs and holding costs for years one and
19 two which would result in what would be called a sales
20 net operating income. That would have to be
21 discounted for the present value of a dollar. As you
22 know, a dollar in the future is less than it is today.

23 I'll give you an example. If someone were
24 to give you a -- let's say \$1.10. In one year from
25 now the present value of that \$1.10 would only be

1 worth a dollar if the rate of return was 10 percent.

2 So all those things went into my appraisal
3 in getting to the residual value of \$269,000. In
4 order to estimate what the value of the finished lots
5 would be, I used four comparable sales, three of which
6 were in the Town of Brighton and one was in the Town
7 of Pittsford. And on pages -- I don't if the Board
8 has the appraisal in front of them, but on pages 28
9 through 40, is what's called the sales comparison
10 approach. And in that sales comparison approach it
11 outlines what those finished lots would be on an
12 individual basis, each of the six lots.

13 On page 41 there is a chart in the
14 right-hand column that shows what the lot values --
15 finished lot values would be along with what the size
16 of each lot was. As an example, Lot 1 I had a value
17 of \$165,000; Lot 2, \$195,000. You'll notice Lot 2 and
18 3 were 0.91 acres and they were substantially back off
19 Clover Street for privacy, plus they were larger. So
20 they warranted a price of \$195,000 each. And then
21 going down the line, Lot 4 was \$169,000; Lot 5 was
22 \$170,000; Lot 6 was \$185,000. Four of the lots, Lots
23 1 through 4, will have access off Clover Street. And
24 Lots 5 and 6 will have access off Highland Avenue.

25 So part of the -- part of the subdivision

1 analysis is -- to start out is to get what those
2 finished lots would be worth if sold over a two-year
3 period. The next step would be to outline what the
4 expenses are, holding cost and development cost. And
5 on page 46 -- 45 and 46 I've outlined the basis of the
6 expenses of the holding cost and also the development
7 cost. On page 45 it outlines pretty specifically
8 where the -- some of these holding costs are and some
9 of the development costs are. As an example holding
10 cost would be real estate taxes. Earlier in this
11 report I outlined that these finished lots would be
12 assessed at about \$150,000 based upon the tax rate per
13 thousand. The holding cost per lot for real estate
14 taxes would be \$6,000.

15 As another example, insurance -- insurance
16 market estimates would be \$3,500 in year one, \$2,500
17 in year two because in year one there's projecting I
18 think four lots sales and in year two, two lot sales.
19 So in year two holding costs are going to be less
20 because in year one, four of the lots are going to be
21 sold.

22 One of the biggest expenses, obviously, are
23 development costs. And the biggest development costs
24 which are located on page 46 include demolition,
25 regrading and environmental. That's going to total

1 \$477,000. That's by far the biggest development cost.

2 The other development costs are in the form
3 of tree removal, private drive costs, et cetera,
4 separate electric. One of the reasons the development
5 costs aren't higher is that the utilities are -- the
6 lots are going to be very close to Highland Avenue and
7 Clover Street. And therefore a lot of the lots in the
8 marketplace are sold to builders who will pay for
9 these lots -- the lot values I outlined as an example.
10 I compensated in my lot values recognizing the fact
11 that Mr. Smith Builders buys Lot 6, Lot 6 is near
12 Highland Drive and it's going to be sold as is. And
13 the builder will be -- the builder of the house will
14 be responsible for hooking up to the street utilities.

15 So a lot of development costs are less than
16 a typical subdivision where you have to run a lot of
17 sewer and other utilities into -- deep into a parcel.

18 So on page 51 is a summary basically of the
19 whole -- whole subdivision model. And on page 51
20 you'll see that this is a model that is typical of
21 subdivision methodology that I've used hundreds of
22 times in doing subdivision appraisals for 30 or 40
23 years. And it's very concise and simple in a lot of
24 respects. At the top of page 51 you'll see there's --
25 over -- since this subdivision will be sold -- will

1 extend more than one year, I put in a periodic price
2 increase on an annual basis of 2 percent. I also as a
3 consequence of selling these lots, factored in
4 marketing and commissions at 7 percent, legal and
5 accounting at 1 percent, miscellaneous at 1 percent,
6 developer's profit at 13 percent. Now, this
7 developer's profit would only be for -- only be for
8 the sites.

9 This model was set up hypothetically that
10 the site developers is going to put these lots on the
11 market after development and sell them to separate
12 home builders. The 13 percent represents profit only
13 to the developer of the site. So additional profit to
14 the home builders that buy the sites at a later date.
15 And a lot of times the profit on vacant sites that are
16 going to be controlled by the home builder, they take
17 a little less profit on the sites in order to get a
18 bigger return on the house -- house development.

19 So on the top third of the page you'll see
20 year one and year two. And you'll see four lot sales
21 in year one that total sales revenue of \$689,000. In
22 year two there are two lot sales that total \$397,800.
23 In year one there are, between holding costs and
24 developments costs, \$592,750 with a net sales
25 operating income of \$96,250. In year two the sales

1 revenue is \$397,800. The holding cost and other
2 expenses in year two are \$173,000, net sales operating
3 income of \$224,292.

4 Since we have to be concerned -- in any
5 subdivision analysis we have to be concerned about the
6 time value of money. The example I gave you \$1.10 a
7 year from now is only worth a dollar today. That is
8 also considered here. Where I discount the \$96,250 by
9 a present worth factor of 0.9284 which the present
10 worth of \$96,250 today is 89 -- only \$89,366 for year
11 two. The discount is over 80 percent of the \$224,292.
12 And so the present value of that \$224,292 that's going
13 to be received in year two will be discounted down to
14 \$179,526.

15 When you tabulate both of those together,
16 the present worth is \$269,000. And \$269,000
17 represents a residual value. That's the value to a --
18 to -- assuming that you have a six lot subdivision,
19 it's been approved for a six lot subdivision, and
20 hypothetically it will be developed into a six lot
21 subdivision, the value of the property at that point
22 is \$269,000.

23 Again that's less than the Bruckner
24 appraisal. However, it does represent a positive
25 return. If you have any other questions I'd be happy

1 to answer them.

2 CHAIRMAN MIETZ: Okay, John. Thank you very
3 much. That's a lot of detail for folks to have to go
4 over.

5 MR. RYNNE: That's why I figure I'd cut it
6 short.

7 CHAIRMAN MIETZ: Okay. Thank you for the
8 detailed information. We appreciate it. Okay. So is
9 that all that's going to be speaking? We got to keep
10 ourselves rolling here.

11 MR. LUSK: No. It's Jared Lusk. I'm going
12 to speak --

13 CHAIRMAN MIETZ: Sorry, Jared. Go ahead.

14 MR. LUSK: I did send a message to the host,
15 Mr. DiStefano, asking to put on page 190 of 293 of the
16 online packet which was the subdivision development.
17 I asked him that about 20, 30 minutes ago. Is there
18 anyway that we could put that up so that the Board can
19 see the subdivision plan that's contemplated and was
20 discussed?

21 MR. DiSTEFANO: No, Jared. We don't have
22 that available on the screen right now. So the Board
23 Members have it. They have it in their packet and I
24 think we can move on from there.

25 MR. LUSK: Okay. Thank you very much. At

1 least, again, we're seeing the rendering of the
2 existing church and just wanted to be able to see the
3 rendering of the alternative design that the -- we had
4 invested in. Thank you.

5 Again, I'm here to just speak briefly
6 regarding some additional economics. And again, with
7 respect to -- with the retirement of my partner Tom
8 Grinder, I believe Mr. Goldman is the dean of the land
9 use and zoning bar in Rochester. I'm not sure how
10 happy he is about that, but he's certainly been around
11 a long time and I respect him dearly.

12 With his application however, I think it's
13 important that you take a long hard look at it. And
14 you as a Board have put out application forms that
15 require dollars and cents proof that's consistent with
16 the State Law. And I really think it's important for
17 this Board to take a long hard look at what was
18 submitted because I think that's what is important.
19 That's what the applicant has provided, not what we're
20 saying, but what they have provided. And I think when
21 you look at the income and expense statement for the
22 three previous years that were provided by Mr. Goldman
23 and the church, it indicates the total investment in
24 the property.

25 And in the year 2019, this is on the

1 middle -- bottom of the first page of the income and
2 expense statement for 2019, it says total investment,
3 it's left blank, meaning there was three lines through
4 that. Looking at that presumably they have -- they've
5 either depreciated or they have no additional capital
6 cost associated with it. Again, going back to 2018,
7 the total capital improvements were \$8,405. And in
8 2017 we list the capital improvement total of
9 \$216,560. If we -- the information that we know
10 that's in the record before the Board, 8,400 plus 216
11 equals approximately \$225,000 of total capital
12 investment.

13 I think it's important to also look at those
14 same documents and look at the income for the church.
15 And each -- and I'll focus -- in each year it's
16 approximately \$118,000 in revenue from rent from the
17 different groups. Primarily I'll focus on the Kids
18 First Childcare. They're about \$85,260 and roughly --
19 it's roughly 84 to \$85,000 a year in rent that they're
20 receiving from the property.

21 I think it was Jean, one of the Board
22 Members -- sorry if I have the name wrong --
23 suggested, have you thought at all about expanding the
24 existing childcare use? If you take out -- if you
25 look at all of their expenses associated with the

1 building, that's again listed in their forms, the
2 dollar and cents proof that's required for the Use
3 Variance, I think you'll see that the expenses that
4 they claim to be approximately \$30,000 in the whole in
5 the day-to-day operations of the facility. But one of
6 the large expenses of that is the church -- on page --
7 the last page on each report is the church sexton
8 which approximately \$40,000 in expense. Again, if the
9 church sexton wasn't there, if they moved and the
10 building owner was able to at least lease an
11 additional portion, not even all of it, of additional
12 church for daycare or another permitted use, that they
13 would certainly appreciate more revenue and again the
14 building would make money.

15 But again, I think that's important to
16 understand that even taking the data that's been
17 provided by the -- by the applicant himself indicates
18 that there's an opportunity for economic return from
19 the property. Just as importantly I think Mr. Goldman
20 and Mr. August and their development analysis have
21 each taken the opportunity to tell us how little money
22 they can make and make no economic return because
23 they -- of the sales price, I think in each of the
24 documents that's been referred to, of \$940,000.

25 Again. That is -- that's a fantastic -- and

1 I understand how it's difficult to make money with a
2 sales price of \$940,000. But the fact is the property
3 may not be worth \$940,000. In fact, as Mr. Rynne
4 indicated it's worth 269,000. And, you know, although
5 every owner of a piece of property would love to get
6 the highest value they can for property, again, it's
7 important that this Board consider, as the law
8 requires, that it consider a reasonable return for
9 each and every lawful use.

10 It is -- it is itself zoned as a residential
11 zone. The value of a residential home lot is very
12 different than a commercially zoned property that
13 would allow offices on it. And so for Mr. August to
14 present an offer that is contingent upon him receiving
15 a Use Variance for a higher use that isn't permitted,
16 therefore it seems preposterous to me that the Board
17 would entertain a Use Variance application to allow
18 a -- that is so much higher than what is the permitted
19 use when their application materials haven't even
20 considered A, the expansion of the existing childcare
21 use or an allowed use, residential use, that was zoned
22 in 1963 when they approved it.

23 So although the church would love to get --
24 I'm sure get \$940,000 for the property because it's a
25 commercial or additional church use, they're not

1 entitled and the ZBA cannot by law grant a Use
2 Variance if there is a viable other economic use that
3 is a permitted use. So just because you want to get
4 \$940,000 for your property, doesn't mean you can get
5 it. And just because you can't, doesn't mean you
6 should be entitled to a Use Variance. And.

7 So with that I will turn it over to Mr.
8 Sylvestri.

9 MR. SYLVESTRI: Good evening, everyone. Are
10 you able to hear me?

11 CHAIRMAN MIETZ: Yes.

12 MR. SYLVESTRI: Can everyone see me?

13 CHAIRMAN MIETZ: Go right ahead.

14 MR. SYLVESTRI: Thank you. My name is Paul
15 Sylvestri. I'm an attorney at Harter, Secrest and
16 Emery. And I represent John and Erica Stanton
17 (phonetic) who live at 2 Marvin Park, Kristin Vanden
18 Brul who lives at 4 Marvin Park, and Doctors Jonathan
19 Friedberg and Laura Calvi who own a house at 1128
20 Clover Street. The Stanton's and the Friedberg's
21 property are directly across from the Baptist Temple.
22 Ms. Vanden Brul lives next to the Stanton's.

23 So for the reasons detailed in our letter
24 and letters submitted by Mr. Woods, our clients are
25 opposed to the proposed Use Variance. Mr. Goldman at

1 the beginning of all of this covered the criteria
2 applicants must show to obtain a Use Variance. Just
3 as a very important reminder, each and every criteria
4 has to be met.

5 To be respectful of everyone's time, my
6 comments are just going to be focused on the fact that
7 the requested Use Variance will, in fact, change the
8 essential character of the neighborhood to the
9 detriment of the neighbors, but to the advantage of
10 the developer. Mr. Goldman earlier mentioned the
11 SEQRA review made by the Planning Board as lead
12 agency. And he made a statement that, based on the
13 environmental impact review, determination by that
14 Board was made that there was no significant impacts
15 to the character of the neighborhood. I would argue
16 first and foremost it's important that this Board
17 understand it has its own criteria to follow and I
18 believe that the criteria you need to apply for a Use
19 Variance that whether or not there is going to be a
20 alteration of the essential character of the
21 neighborhood is a different type of criteria than what
22 the Planning Board needed to decide in order to make
23 their SEQRA determination which was more a criteria of
24 whether or not there's a significant impact to the
25 environment over all which tends to focus more on

1 traffic and those types of impacts than the quality,
2 if you will, and intensity of the use of property.

3 Nevertheless, again this Board has its own
4 criteria, it has its own obligations to make its own
5 decisions as to whether or not impacts to the
6 neighborhood have -- are significant here and change
7 the essential character of the neighborhood.

8 The project is going to introduce commercial
9 office and even more importantly medical office uses
10 into an older, quite well established residential
11 neighborhood of single family homes. Keep in mind
12 that this property is, in fact, zoned low density
13 residential when you're deliberating. The Stantons,
14 they lived in their homes for 21 years. Ms. Vanden
15 Brul has lived in her home for 17 years. The
16 Friedbergs and Calvis have lived in their home for 14
17 years. Now, they've recently moved from that
18 property, but they still are owners of the house.

19 All of them have purchased these homes with
20 only residential use in mind. They never imagined
21 that the property across the street from them would
22 turn into office space, in particular medical office
23 space which will have a steady stream of cars in and
24 out throughout the day. They wouldn't also have spent
25 many thousands of dollars improving and renovating

1 their homes over these many years if they knew what
2 was going to be happening tonight and if this should
3 become a successful project. They are greatly
4 concerned about what the proposed project will do not
5 only to the character of their neighborhood, but the
6 quiet enjoyment of their properties and the impact
7 this project is going to have on their property
8 values.

9 As the New York Court of Appeals case stated
10 called the Douglasson case, which is cited in my
11 letter, the developer here has little to lose and much
12 to gain in this proposed change from low density to
13 commercial and medical office while the long standing
14 residents lose the character of their neighborhood
15 they that reasonably relied upon would never change in
16 such a fashion.

17 Mr. Goldman in the application claims the
18 character of the neighborhood will not change simply
19 because the look of the property will stay relatively
20 the same. But far more than looks impact character.
21 The actual property use, the kind of use, has a very
22 significant impact as well. Actually Mr. Goldman even
23 made some statements about this about how churches can
24 have large amounts of people, large amounts of traffic
25 from time to time when there are services, when there

1 are special events. Well, in fact, you know churches,
2 places of religion are a traditional and integral part
3 of a neighborhood for those very reasons. They serve
4 as gathering places for our community, gathering
5 places for a neighborhood. They are part of the vital
6 character of that neighborhood. Those community
7 events, they're not detriments, they are actually
8 pluses for the neighborhood. And, of course, the
9 Baptist Temple has served that purpose for more than
10 50 years.

11 This is why churches are frequently allowed
12 use in a neighborhood zone and traffic generated by
13 such uses are tolerated in such areas. Commercial
14 office and medical office use is far different and far
15 more impactful to the residential neighborhood and
16 it's character, of course, in a bad way. Medical
17 office use in particular will have a steady stream of
18 cars throughout the day. A single peak hour analysis
19 in the morning and the evening does not at all capture
20 the intensity of the use and the impacts that it will
21 have.

22 The application lacks any information on
23 traffic flow throughout the entire day. What happens
24 at lunch hour when all those people in the office run
25 out to grab a bite to eat and start returning all at

1 the same period of time?

2 To get some sense of intensity of use one
3 can just look at Merriton's Trip generation data for
4 the proposed use. So for the proposed use it's going
5 to generate 38 times more traffic in the AM peak hour
6 and 21 times more traffic in the p.m. peak hour than a
7 six lot subdivision would. Of course there's going to
8 be glare from headlights going in and out of the site.
9 And as Mr. Goldman did reference earlier, the use is
10 going to require some changing of the lighting scheme
11 which is going to create more light spillage which is
12 noted in the Town engineer's report that was part of
13 the Planning Board application and package and I got
14 to think is also part of the record in front of the
15 Zoning Board.

16 A commercial atmosphere is going to be
17 created for what's been an old, very pleasant single
18 family residential neighborhood for -- for eons. A
19 neighborhood with some larger lots and some grand
20 older homes that have been there for over hundreds of
21 years including the historic stone Tollen home down
22 the street. The character of this neighborhood drew
23 our clients to it. And it's going to be detrimentally
24 altered for years to come by placing an office
25 building on it.

1 Mr. Goldman made some comments before about
2 the great disruptions that construction activity would
3 have over a two-year period of time if this was to be
4 made into the single family homes. Well, that
5 two-year period of time of construction activity and
6 impact will pale in comparison to the forever use of
7 an office building at this property.

8 While there may be a potential economic
9 upside for the applicant here, the cost of that upside
10 is going to be borne by our clients and the other
11 neighbors from the lost property values because of
12 this proposed change.

13 While we're sympathetic to the Baptist
14 Temple's desire to sell the property and mitigate
15 their further expenses, this fact has no bearing on
16 the appropriateness of granting a Use Variance. As
17 stated in the Joyce case, again, cited at the end of
18 my letter, I'll give you a quote, "The financial
19 situation or pecuniary hardship of single owner does
20 not warrant the exercise of the power -- referring to
21 the power of the Use Variance -- thus to effect the
22 property of other owners and public generally."

23 So for all the reasons that were stated
24 tonight by Counsel Mr. Lusk, Mr. Woods, the appraisal
25 results of Mr. Rynne that you heard tonight, the

1 applicants have failed to meet their burden of proof
2 and this Use Variance should be denied. Thank you
3 very much for your time in listening to us.

4 CHAIRMAN MIETZ: Okay. Very good. Thank
5 you very much. Okay. At this time is there anyone
6 else that would like to speak regarding this
7 application? Please indicate by raising your hand if
8 there is. Okay.

9 MR. FRISCH: I don't see anybody.

10 CHAIRMAN MIETZ: Okay. Good. All right --

11 MR. FRISCH: Wait. There is somebody.

12 CHAIRMAN MIETZ: Okay. Well, then -- all
13 right. Go ahead Ms. Vanden Brul.

14 MS. Vanden Brul: Thank you. I just wanted
15 to add that --

16 CHAIRMAN MIETZ: First -- excuse me, Ms.
17 Vanden Brul, can you just give us your name and
18 address.

19 MS. Vanden Brul: I'm going to. My name is
20 Kristin Vanden Brul. I'm at 4 Marvin Park. I've been
21 a real estate agent in this community for about 37
22 years. My position is that I believe that there is
23 a -- the property could be very popular for future
24 homeowners. We do not have any -- there are really no
25 lots or areas in the community right now that people

1 can build on. The most recent subdivision was done on
2 Willard Avenue which is off of Highland Avenue closer
3 to Highland Hospital in that area. And that sold out
4 in a reasonable amount of time.

5 There was talk before about price range and
6 the ability to sell houses. Willard Avenue is not as
7 desirable of a corner -- or a street as this location.
8 This property's located in an area where homes are
9 selling, you know, anywhere from 300 to well over a
10 million. There's house sales in that area that --
11 some of them are -- there's often private sales. If
12 you want to live in the Brighton School District, your
13 only opportunity is to own an older home and many
14 people that come into our community from out of town
15 are -- prefer not to have an older home, a house built
16 in the 1920s. They're always looking for something
17 new. And obviously there's not too many opportunities
18 in Brighton.

19 So I do feel that there's definitely a
20 market for those. I'm in that market every day. I
21 look at one of the houses that sold on Willard for
22 \$801,000. You know, I think any of us that know the
23 area know that's a very high price tag for that. Most
24 of the homes in that area sell for, you know, 2, 3 --
25 actually some of them do less than 2 and \$300,000.

1 But someone was willing to invest 800,000 in that
2 area. Obviously on the corner of Highland and Clover
3 in an area where price range -- and even Mr. August's
4 house is worth substantially more than the houses
5 around the Willard Avenue house.

6 So I -- and there's question about the \$235
7 a square foot. I think that you could -- if you did
8 research as, you know, I've done and even out in --
9 way out in Pittsford sells their homes at \$226 a foot.
10 And, you know, actually this location is better than
11 many of the areas that he's building at this point.
12 So I'm -- you know, definitely believe that there is a
13 market for residential real estate in this area. I
14 believe if you look at the marketing that was done
15 back in 2019 by Keller Williams, they really didn't
16 speak at all about the fact that it's zoned
17 residential. They were promoting a church for sale
18 when really it's more than a church that's for sale.
19 It's property in an R-1 district. And they didn't
20 address that at all in any of their marketing
21 materials. So I just felt it was important to add
22 that.

23 CHAIRMAN MIETZ: Okay. Very good. I
24 appreciate it. Thank you. Okay. Who do we have?
25 Let's see. Couple more people to speak.

1 MR. FRISCH: Yup. Jared first and then --

2 CHAIRMAN MIETZ: Okay. Go ahead.

3 MR. LUSK: I'm sorry. In my rush to be
4 brief I neglected to indicate a very important point.
5 As Mr. Rynne indicated in his appraisal report as a
6 residential property as a permitted use, the
7 property -- pardon me -- is valued at \$269,000. I
8 would like the Board to know, and I'm sure Mr. Goldman
9 is aware, this afternoon our client presented a bona
10 fide purchase offer to Mr. Spaul -- not Mr. Spaul,
11 Mr. Stall the trustee noted in the application in the
12 amount of \$269,000, cash offer, willing to deposit the
13 \$269,000 with my law firm to close the property, no
14 contingency for a Use Variance permitted. So, again,
15 as you listen to Mr. Rynne and what a reasonable
16 value, a reasonable return on the property there is a
17 bona fide offer on the table to the land owner for
18 that exact amount in cash.

19 CHAIRMAN MIETZ: Okay. Very good. All
20 right. Very good. All right. Who else do we have?
21 I think there was someone else who had a hand in. Did
22 you see it Jeff?

23 MR. FRISCH: Yeah. They took their hand
24 down. But if they want to speak again, put your hand
25 up. Somebody else?

1 CHAIRMAN MIETZ: All right. Go ahead.

2 MR. HEININGER: Hello. This is Larry
3 Heininger. For some reason I can't get on video, but
4 that's fine. And I'm disappointed you're not able to
5 put up the rendering of the six lot sub. But what I
6 wanted to add here is we keep hearing about six, 4,000
7 square foot homes. And I did a little toggling around
8 with our plat map today. And in order to build 4,000
9 square foot per code, lots have to be 36,702 square
10 feet. So if you take that required area and you put
11 it on the Clover Street frontage including the park,
12 the lots would have to be 182.41 wide and 201.21 deep.
13 The flag lots 2 and 3 would lose 29.38 feet of depth.
14 It would have to make up the required area with an
15 additional width of 43 feet to 221.61.

16 In addition, the depth of the building pads
17 on Lots 2 and 3 would reduce from a depth of 75 feet
18 to 45 feet. So they would become compromised. The
19 northward creep of the property lines of 2 and 3 would
20 remove 78.42 feet from the back of Lot 6 and that
21 would remove 14,565 square feet from Lot 6. So the
22 new area would be 15,946 square feet, which is well
23 under the RLA 231.25. So there's basically no way you
24 could build -- have six lots sized for 4,000 square
25 foot homes. Never having seen any kind of concept

1 done by any engineering group is basically a paper
2 exercise that doesn't stand up.

3 So I worked through a few iterations from
4 3,900 square down to 3,700 square foot lots. And you
5 can build them, including the park. The three lots
6 which we are not proposing to do. The three on Clover
7 Street would be 31,491 and you could build 3,700
8 square foot houses. Lots 2 and 3 would be the Town
9 minimum for flag lot of 34,688 and you could build a
10 house of 3,885 which is actually shown on our
11 rendering. And then Lot 6 up on Highland on the west
12 side there would be 36 -- 33,627 and allow 3,821
13 square foot house.

14 So the latest -- in closing, the latest
15 rendering that we did that uses the Highland Street
16 entrance for the driveway of Lot 6 and the northern
17 existing entrance of the church property for Lot 5,
18 Lots 1 and 4 which is on Clover to the south, you
19 could build 3,226 square feet on the back lots, on the
20 flag lots, which have to 50 percent bigger than the
21 minimum. Those could be 3,885, same number I put out
22 a few minutes ago. Lot 5 would be 3,227 square feet
23 and Lot 6 would be 3,647 square feet.

24 So you could develop six plots with -- since
25 I live in an older Brighton home like my grandparents

1 1,350 square feet, even the smallest one at 3,226
2 would be about two and a half times what's worked for
3 my family for over 38 years. And that's it.

4 CHAIRMAN MIETZ: Okay. Larry, thank you
5 very much. Is there anyone else who would like to
6 speak regarding this application?

7 MR. FRISCH: There is, yeah.

8 CHAIRMAN MIETZ: Go ahead. Who do we have?

9 MR. FRISCH: I asked him to unmute.

10 MR. HANNA: I was on.

11 MR. FRISCH: We can hear you.

12 MR. HANNA: Can you hear me?

13 CHAIRMAN MIETZ: Go ahead.

14 MR. HANNA: My name's Tim Hanna. I live at
15 2660 Highland Number 2. I'm the president of the
16 Community Country Club Condominium Association. I
17 have 18 years in the banking business with Citibank
18 Community Savings, Rush Community Savings. I've been
19 in the residential development business since 1994.
20 In a meeting, public meeting, we had with John, a Zoom
21 meeting, I asked John if he had any prior real
22 estate residential real estate development experience.
23 And he said he had absolutely none. And I said that
24 what they submitted indicated to me based on my
25 experience that they didn't have that type of

1 experience. And after reviewing what they submitted
2 again, that really hasn't changed.

3 I would characterize it as very superficial,
4 not a lot of detail. He had very qualified people
5 like Jeff Smith and Jamie Columbus, but it lacked
6 objectivity. He didn't ask Jeff Smith for his
7 opinion. He basically told Jeff Smith what does it
8 cost to build a custom house, 4,000 feet on a slant?
9 And Jeff obviously is very familiar with Brighton.
10 He's built seven homes on Willard Avenue. And lots
11 for the more part substantially smaller than what the
12 six lot layout would be.

13 And it would be helpful -- I mean, Larry
14 touched on a lot of the details. We went into it in
15 terms of the engineering and the layout. And when you
16 look at the layout, what we were trying to accomplish
17 is to create a unique neighborhood based on the size
18 of the lots, the park-like setting on the primary
19 corner there and the location in terms of access to
20 the major highways, to the Strong and Highland medical
21 facilities and the Brighton schools.

22 I believe the neighborhood where Jeff was --
23 and Willard Avenue prior to his houses is primarily a
24 quarter million dollar neighborhood. There is a
25 short -- there is an underserved residential vacant

1 lot market in Brighton. However, there is not to the
2 best of my knowledge an underserved office market. In
3 fact, Brighton probably has a glut of vacant office
4 space. Thank you for your time.

5 CHAIRMAN MIETZ: Okay. Thank you very much.
6 Okay. Is there anyone else that would like to speak
7 regarding this application?

8 MR. FRISCH: You can raise your hand or you
9 can send me a message.

10 CHAIRMAN MIETZ: Okay. Do we see anybody
11 else?

12 MR. FRISCH: I do not see anybody.

13 CHAIRMAN MIETZ: Okay. At this point we'll
14 wrap this part up and close the public hearing. All
15 right. We can move to the next application, Mr.
16 DiStefano.

17 MR. DiSTEFANO: Do we have all our members
18 back? Andrea and Ed, are you back on?

19 MR. PREMO: Yup.

20 MS. TOMPKINS WRIGHT: Yes.

21 MR. DiSTEFANO: Great.

22 CHAIRMAN MIETZ: All right.

23 **Application 5A-01-21**

24 Application of Best Construction of Wayne
25 County, agent, and Ellen McCauley, owner of property

1 located at 1129 Highland Avenue, for an Area Variance
2 from Section 205-2 to allow an enclosed entryway
3 addition to extend 8 feet into the existing 39.5 front
4 setback where a 60 feet front setback is required by
5 code. All as described on application and plans on
6 file.

7 CHAIRMAN MIETZ: Okay. And who do we have
8 speaking?

9 MR. FRISCH: Ellen was on the call earlier,
10 but she left and she sent us an email, to Rick and I
11 and a bunch of other people.

12 MR. PREMO: Yes, Dennis. This is Ed Premo.
13 I guess she got frustrated waiting.

14 CHAIRMAN MIETZ: Okay. Rick, do you want
15 hang onto and see if she comes back or what --

16 MR. DiSTEFANO: We can hang onto it for
17 tonight and if not, we'll just table it for the
18 applicant's --

19 MR. PREMO: Dennis, this is Ed Premo. I was
20 involved with this one and when I looked at the
21 property I don't know if that's enough --

22 CHAIRMAN MIETZ: I don't think so, Ed.

23 MR. PREMO: Okay.

24 CHAIRMAN MIETZ: No. Okay. Let's move on,
25 Rick. Then we'll hold it. We can talk about it

1 during the deliberations.

2 **Application 5A-02-21**

3 Application of the Country Club of
4 Rochester, owner of property located at 2935 East
5 Avenue, for a temporary and Revocable Use Permit
6 pursuant to Section 219-4 to erect a tent and hold up
7 to six outdoor weddings and club special events for
8 the year 2021. All as described on application and
9 plans on file.

10 CHAIRMAN MIETZ: Okay. And who do we have
11 speaking please?

12 MR. SMITH: Michael Smith, general manager
13 and chief operator of the Country Club of Rochester,
14 also Brighton resident at 245 Brooklawn Drive.

15 CHAIRMAN MIETZ: Okay, Mike. Go ahead.

16 MR. SMITH: Thank you, everyone, for
17 allowing us this opportunity. We're looking to get
18 blanket coverage for the season. We have multiple
19 events coming up this year that require tents. We
20 have submitted, I believe, all the proper paperwork in
21 order to do so. The largest tent size we're looking
22 at is a 60 by 130 on our property. As you can see
23 where the tent would be located right next to the
24 clubhouse.

25 We -- you know, we have applied for tents in

1 the past, but are looking to do more of a blanket
2 coverage for the year.

3 CHAIRMAN MIETZ: Okay. All right. Very
4 good. Any questions by the Board Members?

5 MS. SCHWARTZ: Yes. Schwartz. There seems
6 to be an awning up more on the main building, a
7 striped awning.

8 MR. SMITH: Yes, ma'am.

9 MS. SCHWARTZ: Is that permanent part of it?

10 MR. SMITH: There is a permanent awning that
11 is on the club that is white -- I'm sorry -- green and
12 white. The tent would be on the lower terrace area
13 that would not be connected to the building.

14 MS. SCHWARTZ: Okay.

15 CHAIRMAN MIETZ: Very good. Other
16 questions?

17 MS. SCHMITT: Mike, real quick. In your
18 application I thought it said that the tent could be
19 up for three days. Would that be typical or would it
20 be for the individual use?

21 MR. SMITH: It typically runs about 3 days.
22 If you think about the size of it, it takes a full day
23 to put it up. And if you -- so if we're to put it on
24 Thursday or Friday for a Saturday event, usually it's
25 a day before, then you have the event and then it's a

1 day to take it down. So that's why we submitted three
2 days.

3 MS. SCHMITT: Okay. So you're thinking the
4 event is a day.

5 MR. SMITH: All the events will be one day;
6 correct.

7 MS. SCHMITT: Thank you.

8 MR. SMITH: Yup.

9 MS. TOMPKINS WRIGHT: This is Member Wright.
10 The application requests six events in the year. How
11 many events did you -- forget 2020 obviously, which is
12 the year that didn't happen -- previous to that how
13 many events did you hold that would have had an
14 outdoor tent?

15 MR. SMITH: Usually it's about six to eight.
16 We kept it at six. You know, that's what we have.
17 You know, keep in mind too with COVID, you know,
18 restrictions and mandates still in place the --
19 sometimes the need to have an outdoor tent is part of
20 the reason why some of these weddings and even our
21 club events have gone this route. Because we are
22 looking obviously to provide enough spacing and social
23 distancing and that just provides us that relief.

24 MS. TOMPKINS WRIGHT: Thank you.

25 CHAIRMAN MIETZ: Okay. Any other questions

1 for Mr. Smith? Okay. Thank you, Mike. All right.
2 Is there --

3 MR. SMITH: Thank you.

4 CHAIRMAN MIETZ: -- anyone on the call who
5 would like to speak regarding this application? Okay.
6 There being none, the public hearing is closed.

7 MR. SMITH: Thank you for your time.

8 CHAIRMAN MIETZ: Okay.

9 **Application 5A-03-21**

10 Application of Robert Orlando and Sandra
11 Kyle-Orlando, owners of property located at 151
12 Brookside Drive, for an Area Variance from Section
13 205-2 to allow a sunroom addition to extend 14 feet
14 into the existing 56 feet rear setback where a 60 feet
15 rear setback is required by code. All as described on
16 application and plans on file.

17 CHAIRMAN MIETZ: All right. And who do we
18 have speaking for this?

19 MR. ORLANDO: Good evening, Mr. Chairman,
20 Zoning Board Members. My name is Bob Orlando. I
21 reside at 151 Brookside Drive and we are requesting an
22 Area Variance for the rear of our home to construct a
23 sunroom. The room would roughly be between 160 and
24 170 square feet. The windows in the sunroom would
25 match the existing windows in our home. The siding

1 will match the existing siding on our home. The
2 roofing will match the existing roofing at our home.
3 The roof lines of the sunroom will match the existing
4 roof lines of our home. So hopefully nothing will
5 look out of character.

6 Behind our home to the south we have a small
7 tree line on the property line. And then there is a
8 field with trees. And beyond that is a field with
9 woods. And there's roughly a home about 800 to 1,000
10 square feet beyond those woods. I have -- I have
11 spoken to both of our next door neighbors, one at 145
12 Brookside Drive, one at 161 Brookside Drive. Neither
13 of them had any objections to what we are proposing.
14 I have also spoken to the property behind us. It's
15 906 Allens Creek. His name is Jeff Kline and he was
16 nice enough to come over and he had no objections and
17 he mentioned that he was sure that our addition would
18 be in keeping with the neighborhood, which it will be.

19 The home next door to us at 161 Brookside
20 Drive in January of 2000, they were issued an Area
21 Variance for the rear of their property and their
22 current distance from the rear of the property to
23 their property line is 37.9 feet. Also there are
24 numerous homes in the area -- and I really don't know
25 how the Zoning Laws change over the years, but it

1 seems like there are numerous homes in the area where
2 their rear setback is than 60 feet, one of the them in
3 particular is the home across the street, which --
4 hope that's better -- which they have a family room on
5 the back of their home and it's roughly 25 to 30 feet
6 from their rear property line.

7 We have a detached garage on our property as
8 possibly somebody stopped over and saw which is 25
9 feet from the property line. There was no other way
10 to achieve this -- this Area Variance that we are
11 requesting since we could not construct an addition on
12 our sides because of side setbacks. And we could not
13 achieve an addition in the front of the house because
14 it would be out of character.

15 We are asking for the minimum amount of
16 square footage which is roughly 160 to 170 square
17 feet. The way we determined it is we have a room in
18 our home that's roughly that size and we rearranged
19 furniture in the house and felt that that would be
20 minimum square footage that we needed. Now, I guess
21 an argument could be made, well, couldn't you build it
22 a hundred square feet or 75 square feet. And, I mean,
23 anything can be built, but the problem is that the
24 price of construction does not correlate to the square
25 footage. So if we built it -- it was built a third of

1 the square footage less, unfortunately, we'd probably
2 only save 10 percent on the price and it might not be
3 feasibly -- or financially -- economically feasible
4 for us to do it.

5 If an Area Variance is granted, we will not
6 change the physical neighborhood conditions. The
7 proposed sunroom is only visible from the back of our
8 home. It is not visible from the front. I've spoken
9 to all the neighbors surrounding us. Nobody has
10 seemed to have any objections. Environmentally, we
11 will only be disturbing some soil around the house to
12 put some piers in. The rain water will basically
13 remain the same. It will be shed the same way. The
14 rain water will not be shed on the neighbors'
15 property. So hopefully the -- environmentally we will
16 not change anything.

17 The current condition was not self-created.
18 These were existing conditions when he purchased the
19 home in 2012. We like the neighborhood. That's why
20 we purchased the property. And, in fact, we even
21 considered after a while moving because we did have a
22 sunroom on a previous home and we enjoyed it
23 immensely. We got to utilize the spring a lot more
24 and the fall a lot more. And we were hoping that if
25 the Area Variance is granted, we can do the same with

1 our property at 151 Brookside. Thank you very much.

2 CHAIRMAN MIETZ: Thank you. Board Members,
3 questions please. Any questions?

4 MS. SCHWARTZ: Yes. How long have you lived
5 in the residence? I don't know if I missed that.

6 MR. ORLANDO: It will be nine years in
7 August.

8 MS. SCHWARTZ: Thank you.

9 MR. ORLANDO: You're welcome.

10 CHAIRMAN MIETZ: Any other questions? Okay.
11 Thank you very much, Mr. Orlando.

12 MR. ORLANDO: Thank you, Mr. Chairman.

13 CHAIRMAN MIETZ: Is there anyone in the Zoom
14 conference that would like to speak? Okay. There
15 being none, then the public hearing is closed.

16 **Application 5A-04-21**

17 Application of Christopher Brandt,
18 architect, and Courtney and Kevin Cotrupe,
19 owners of property located at 85 Council Rock Avenue,
20 for an Area Variance from Section 205-2 to allow a
21 front porch to extend 13.35 feet into the existing
22 51.8 foot front setback where a 60 foot front setback
23 is required by code. All as described on application
24 and plans on file.

25 CHAIRMAN MIETZ: Okay.

1 MR. BRANDT: Okay. So the project we have
2 before you that we're requesting the Area Variance for
3 is for the --

4 MR. DiSTEFANO: Introduce yourself to the
5 Board Members.

6 MR. BRANDT: I'm sorry. I'm Chris Brandt,
7 project architect, working with the homeowners
8 Courtney and Kevin Cotrupe on their proposed front
9 porch project that we're reviewing here tonight.

10 CHAIRMAN MIETZ: And just an address for the
11 record, Chris.

12 MR. BRANDT: For Bero Architecture is 32
13 Winthrop Street, Rochester, New York 14607.

14 CHAIRMAN MIETZ: Okay. Please proceed.

15 MR. BRANDT: So the project that is before
16 you tonight is for the demolition and replacement of a
17 front entry porch that's currently 12 foot wide 6'7
18 deep. And that current porch is in poor condition and
19 it's in a style and design that's incompatible with
20 the house and surrounding neighborhood. As is stated
21 in the application the front porch does not comply
22 with the front yard setbacks as the front yard
23 setbacks for the RLA zoning district requires 6 feet
24 front yard setbacks in the district.

25 I'd be remiss to note so the -- this area,

1 Council Rock Avenue, predates the Brighton Zoning Code
2 which was first enacted in 1924. And all of the homes
3 on Council Rock have a consistent setback all of which
4 is sort of encroached into the standard 60 foot
5 setback.

6 So the proposed project that we have is
7 seeking to largely recreate the front porch that had
8 originally been on the house when it was built back in
9 1910. And this block of Council Rock Avenue between
10 Highland and East Avenue had several similar homes
11 that were all built concurrently by the same realty
12 company and likely the same architects of which 85
13 Council Rock is one of them. And a number of these
14 houses including 55, 67, 80, and 95 Council Rock
15 Avenue Feature prominent single story front porches
16 that are a part of their original character and
17 design.

18 And we shared a more detailed outline in the
19 memo that should have been submitted and shown before
20 you showing the historic photographs of several of
21 those properties including 85 Council Rock documenting
22 the size, form and configuration of those porches. 85
23 Council Rock notably is the only house that those five
24 all built between 1910 and 1911 that has loss its
25 original front porch.

1 So what we think is generally it's in
2 keeping with the neighborhood character and is a good
3 match for the surrounding homes. As a quick general
4 review of the other similar concurrently constructed
5 homes on Council Rock Avenue, 55 Council Rock Avenue
6 has an approximate setback to the 35 feet away. That
7 porch is roughly 13 feet by 18 feet. So 13 feet deep
8 by 18 feet wide. 67 Council Rock has an approximate
9 38 foot setback that's approximately 10 foot by 16
10 feet. 80 Council Rock Avenue which is directly across
11 the street from 85, its porch is roughly 14 feet by 14
12 feet and has a 36 foot setback from right of way. And
13 lastly 95 Council Rock, our neighbor to the south has
14 approximately a 38 foot setback from the right of way
15 with a porch of approximately 10 foot by 20 feet.

16 So the proposed porch that we have, which is
17 roughly 12 foot by 12 foot square is sort of right in
18 the exact same grouping as part of the overall area as
19 well as the projection from the building. In fact,
20 it's a little bit on the lower end in comparison to
21 some of the other larger porches that are original to
22 these concurrently built homes.

23 So the need for this variance is -- was not
24 self-created. And as I stated before, the RLA
25 district requirements that were enacted after these

1 homes were built caused all these houses in block to
2 not be in conformance with both the area and the
3 setback requirements in this district. And in
4 addition to this, the non-historic current porch is in
5 very poor condition and is in need of replacement,
6 which any project on the front of the building would
7 require an Area Variance for the desire for creating a
8 porch. I think that's it for me. Happy to take
9 questions.

10 CHAIRMAN MIETZ: Okay. All right. Okay.
11 Does that --

12 MS. TOMPKINS WRIGHT: Member Wright.

13 CHAIRMAN MIETZ: Yes. Go ahead Andrea.

14 MS. TOMPKINS WRIGHT: Just a quick question.
15 I think I may misheard you, but I think you said
16 something about their somewhat consistent setback on
17 all the homes on this road. That consistent setback
18 is somewhere in the 34 to 38 --

19 MR. BRANDT: That -- that -- that variation
20 is an approximate measurement to the foundation wall
21 of the porches. The main mass of the house is they
22 all have a very consistent setback that --

23 MS. TOMPKINS WRIGHT: Okay.

24 MR. BRANDT: -- is similar -- let me get the
25 plan a little bit closer. Give me one second. So

1 that setback to the main mass of the house right now
2 is 51 feet 9 inches to the front wall of the house.
3 That is consistent with all of these homes that were
4 built concurrently by the same builder. The porches
5 vary in their size and sale. And we're more in the
6 medium to lower end as far as the overall area and
7 projection compared to some of the larger porches that
8 were built at the time.

9 MS. TOMPKINS WRIGHT: And many of those
10 larger porches all built at the same do extend as far
11 as your proposing extending into this setback?

12 MR. BRANDT: Correct. And further.

13 MS. TOMPKINS WRIGHT: Okay. Thank you.

14 CHAIRMAN MIETZ: Other questions please.
15 Anything?

16 MS. COTRUPE: I would just like to add, this
17 is Courtney and Kevin Cotrupe, Mr. Chairman and the
18 Board thank you very much for considering the variance
19 for this. Just to complete the thought, this is
20 something that's not out of vanity. It's really out
21 of necessity. The existing porch is in disrepair and
22 there are safety concerns. We have two small children
23 ages six and eight. And we would love nothing more
24 than to sit on a nice good porch to watch them play in
25 the front yard.

1 So it's our intention to be able to restore
2 the house to its original intent of 1910 craftsman
3 style to mimic the neighborhood and really maintain
4 the integrity of the porch with this design. And many
5 thanks to Bero Architecture for helping us do that.
6 So thank you for your consideration.

7 CHAIRMAN MIETZ: Okay. Great. Thank you.
8 Okay. Any other questions? Okay. At this point
9 we'll then wrap -- find -- if anyone else would like
10 to speak regarding this application? Okay. There
11 being none, the public hearing's closed.

12 MR. BRANDT: Thank you.

13 CHAIRMAN MIETZ: Thank you.

14 MR. DiSTEFANO: The next two applications
15 are the same property so I'll read them together.

16 **Application 5A-05-21**

17 Application of the Country Club of
18 Rochester, owner of property located at 2935 East
19 Avenue, for 1) an Area Variance from Section
20 207-10D(3) to allow for the construction of three (3)
21 clay tennis courts in a front yard in lieu of the rear
22 yard as required by code; and 2) an Area Variance from
23 Section 207-2A to allow fencing, surrounding said
24 tennis courts, to range in height from 4 feet to 16
25 feet in lieu of the maximum front yard fence height of

1 3.5 feet allowed by code. All as described on
2 application and plans on file.

3 **Application 5A-06-21**

4 Application of the Country Club of
5 Rochester, owner of property located at 2935 East
6 Avenue, for an Area Variance from Section 203-2.1B(2)
7 to allow a shed to be located in a front yard in lieu
8 of the rear yard as required by code. All as
9 described on application and plans on file.

10 CHAIRMAN MIETZ: All right. Who do we have
11 speaking on behalf of 2935 East Avenue?

12 MR. SPENCER: Good evening. This is Andrew
13 Spencer with BME Associates. Can you hear me?

14 CHAIRMAN MIETZ: Yes, sir.

15 MR. SPENCER: Okay. Again, my name is
16 Andrew Spencer with BME Associates, address at 10
17 Liftbridge Lane, Fairport, New York 14450, also a
18 Brighton resident at 124 Woodgate Terrace.

19 With us this evening as well on the call is
20 Rick Holfoth on the line and he is the golf course
21 superintendent at the Country Club of Rochester. I
22 would like to touch on both of the variance requests
23 in general together. So I will be making some
24 comments on both applications that are before you this
25 evening.

1 The Country Club of Rochester desires to put
2 in three clay tennis courts on an area of the site
3 that is currently the ice rink. It is a paved area,
4 which is just to the east of the existing paved tennis
5 courts and directly to the west of the elevated paddle
6 tennis courts facility at the club. The intent of the
7 project is to remove the existing ice rink and the
8 existing wooden shed which is a watershed for the ice
9 rink and replace it with the three clay tennis courts.
10 The tennis courts will be approximately 83 feet from
11 the northern property line running along the north of
12 the access drive coming into the club.

13 We are also proposing the installation of a
14 shed which will be placed approximately 130-185 feet
15 from the property line to the southwest corner of the
16 clay tennis courts. And the use of that shed is for
17 equipments, nets and things of that nature that are
18 utilized for maintenance of the clay tennis courts.
19 So we do have an existing shed that is close to the
20 property line which will be removed and replaced with
21 a shed that is further from the property line.

22 There is also an existing tense hut which is
23 right to the west of the northern boundary of the clay
24 tennis court and that is to remain with this project.
25 We're looking for a variance to allow the clay tennis

1 courts in the front yard basically because of the
2 arrangement of the property. The clubhouse is further
3 to the west of the property, which is on the corner of
4 Elmwood and East Avenue. And because of that
5 configuration a majority of this site is front yard.
6 But as you see and if you've been to the club before,
7 there are existing other facilities on the area with
8 similar characteristics, the existing paved tennis
9 courts and the paddle tennis courts each of which are
10 fenced. The existing tennis courts have a fence
11 height of approximately 10 feet in height and the
12 paddle tennis courts have fence height ranging from 15
13 to 17 feet in height depending on where you are on the
14 property.

15 We're looking to propose a 16 foot high
16 fence along the southern boundary of the clay tennis
17 courts to mitigate for any errant golf balls that
18 could be coming in from the T-box of the particular
19 hole which is just to the south. This is a landing
20 zone for some people that do slice the ball. Balls
21 have been found in the ice rink previously and almost
22 all the way up to the roadway on occasion.

23 So the 16 feet is being requested to -- for
24 safety of those that are playing tennis as well as to
25 stop golf balls from going further away from the golf

1 hole itself.

2 For the public record, just do want to make
3 you aware that we did provide a letter of intent dated
4 April 12, 2021. We did outline reasons that believe
5 the variance should be approved. I would just briefly
6 touch on a few of these items. We do not believe that
7 the installation of the tennis court here and granting
8 of the variance will produce an undesirable change in
9 the charter. We have very similar uses in this area
10 and it is consistent with those uses.

11 Whether this could be achieved by some other
12 method by the club, the tennis court per Town Code
13 needs to be in a rear yard. The parking area for the
14 golf course is to the west of the existing clubhouse
15 and takes up a majority of the space in that area. To
16 situate a tennis court to the west of the club in the
17 rear yard would disassociate these other similar uses.
18 As I said that tennis building is to remain and that
19 is the hub for the use of both the paved tennis courts
20 and the use of the clay tennis courts.

21 We do believe that the shed is also a
22 requirement because it will hold the rollers and the
23 cleaners and sweepers for the clay tennis courts. And
24 that needs to be in relative close proximity to this
25 use. Now, we do have -- the applicant does not

1 believe that this variance is substantial. Again, as
2 it relates to the other existing similar uses that
3 this is going next to, it is the same exact
4 characteristic as a tennis court and there's tennis
5 courts immediately adjacent. And this is the minimum
6 variance to request for location of the tennis court
7 and the shed in the front yard. We need both of these
8 items together and as I stated previously, they're all
9 grouped together between the paddle tennis and the
10 paved tennis courts.

11 And the 16-foot height fence is the minimum
12 that is necessary due to the golf balls that are
13 coming in from the course and for protection of those
14 that are playing tennis. We have a 4-foot section of
15 fencing along the western edge and eastern edge of the
16 tennis court, 10-foot high fence section being
17 proposed along the northern boundary of the new clay
18 tension courts and a 16 foot to the south. The 10
19 foot high fence along the northern boundary is to stop
20 any errant tennis balls from going out into that
21 access drive.

22 We do not believe this will have any adverse
23 impact on the physical characteristics of the
24 property. As I stated we are taking away a paved ice
25 rink area. We're replacing it with the clay tennis

1 courts. There are no adverse conditions caused by the
2 installation of the tennis courts. There is adequate
3 area to discharge the runoff onto the fairway of the
4 golf course and then drain off to some lower portions
5 of land to the east of this location within the
6 property itself.

7 And I think that covers it. I won't belabor
8 this much more than I need to. I'd be more than
9 happy -- oh, the one thing I do want to say,
10 Mr. Chairman. There were some letters and emails that
11 were provided from the residents just to the north
12 that were all in support of this project. The Country
13 Club of Rochester did work with them, reviewed the
14 plans, made some adjustments and they are in support
15 of putting clay tennis courts in this location. With
16 that I would answer any questions you may have. Thank
17 you.

18 CHAIRMAN MIETZ: Okay. Thank you. Okay.
19 Are there any questions for Mr. Spencer? Pretty
20 straight forward. Okay. Thank you very much. All
21 right. Is there anyone on the call who would like to
22 speak regarding this application? Okay. There being
23 none the public hearing is closed.

24 MR. SPENCER: Thank you very much.

25 CHAIRMAN MIETZ: Thank you. All right.

1 Would you like friends to forge along here or does
2 anyone need a couple minutes?

3 MR. GORDON: Dennis, before we stop with the
4 public hearings, I did invite Ms. McCauley to rejoin
5 our meeting if she wanted to have her matter heard.
6 Can we just have Jeff check to see if she's rejoined?

7 MR. FRISCH: I do not see her.

8 MR. GORDON: No one is in the waiting room.

9 MR. FRISCH: No one is in the waiting room.

10 MS. WATSON: Might I propose taking a five
11 minute stretch break and --

12 CHAIRMAN MIETZ: Okay.

13 MS. WATSON: -- leave the hearing open for
14 five minutes to give her five more minutes.

15 CHAIRMAN MIETZ: Okay. That's fine, but
16 let's keep it to the five minutes because the hour's
17 getting late.

18 MS. WATSON: I know. But three hours
19 without using a restroom is a lot.

20 CHAIRMAN MIETZ: No. That's fine. Let's
21 keep it to five minutes.

22

23

* * *

24

25

REPORTER CERTIFICATE

I, Holly E. Castleman, do hereby certify that I did report the foregoing proceeding, which was taken down by me in a verbatim manner by means of machine shorthand.

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 1st day of June, 2021
at Rochester, New York.

Holly E. Castleman

Holly E. Castleman,
Notary Public

**BRIGHTON
ZONING BOARD OF APPEALS
MEETING**

May 5, 2021
At approximately 7 p.m.
Brighton Town Hall Zoom Meeting
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON

EDWARD PREMO)	
JEANNE DALE)	
KATHLEEN SCHMITT)	
ANDREA TOMPKINS WRIGHT)	Board Members
JENNIFER WATSON)	
JUDY SCHWARTZ)	

JEFF FRISCH

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, NY 14020

1 CHAIRMAN MIETZ: Okay. All right. So I
2 guess the beginning is back to 12A-05-20 which is 1075
3 Clover Street. Just a couple comments here.
4 Obviously there's a lot of material that Rick gave us
5 and then that last few days and was noted and the
6 conversation by the various entities.

7 MS. TOMPKINS WRIGHT: Dennis.

8 CHAIRMAN MIETZ: Yes.

9 MS. TOMPKINS WRIGHT: Did we check to see if
10 McCauley came in those five minutes.

11 CHAIRMAN MIETZ: I think Rick checked.
12 Rick, did you check again?

13 MR. DiSTEFANO: She -- she's not back on.

14 MS. TOMPKINS WRIGHT: Okay.

15 CHAIRMAN MIETZ: Okay. So let me continue
16 please. So anyway there's a lot of material here. I
17 don't know how the rest of the Board Members feel
18 related to this. Again, to digest it all is
19 significant, as the volume of it was. So why don't we
20 just go around. Do we feel that this is a matter that
21 we have enough information and time to be able to deal
22 with tonight? Or what is the pleasure of the Board
23 Members? Andrea, why don't you start.

24 MR. DiSTEFANO: Andrea can't.

25 CHAIRMAN MIETZ: Oh, that's right. I'm

1 sorry. It's getting later. Excuse me friends.

2 MS. WATSON: If I may. I would move to
3 table it. It's a lot to consider.

4 CHAIRMAN MIETZ: Okay. Can we just kind of
5 get a little consensus on that? How about Kathy?

6 MS. SCHWARTZ: I agree.

7 MS. DALE: That's fine.

8 MS. SCHMITT: I would appreciate additional
9 time. I want to go back and read the materials again.

10 CHAIRMAN MIETZ: Okay. Okay. Jeane?

11 MS. DALE: Yeah. I think that that's fair.

12 CHAIRMAN MIETZ: Okay. Judy?

13 MS. SCHWARTZ: Yes. I agree tabling. Much
14 came in yesterday too.

15 CHAIRMAN MIETZ: Okay. Let's do that then.

16 MR. DiSTEFANO: Before we do that, now we
17 have to talk about whether you guys want to keep the
18 public hearing open --

19 CHAIRMAN MIETZ: Yeah.

20 MR. DiSTEFANO: -- or do you just need to
21 read the materials you have? Or do you want to give
22 the applicant and the opposition chances to rebut and
23 talk to us again?

24 MS. DALE: I don't have a problem keeping it
25 open.

1 MR. GORDON: Well, let me just interject
2 here.

3 CHAIRMAN MIETZ: Go ahead, Ken.

4 MR. GORDON: I think, Dennis, I heard you
5 state after everyone made their comments that the
6 public hearing is closed.

7 CHAIRMAN MIETZ: I did.

8 MR. GORDON: We would have to have a motion
9 to reopen the public hearing.

10 CHAIRMAN MIETZ: That's fine.

11 MR. GORDON: Yup. Okay.

12 CHAIRMAN MIETZ: And we've done that in the
13 past.

14 MR. GORDON: I'm just saying procedurally.
15 If you want --

16 CHAIRMAN MIETZ: Absolutely. Okay what
17 about -- how about Andrea, what do you think?

18 MR. DiSTEFANO: Andrea can't talk.

19 CHAIRMAN MIETZ: Oh boy. Oh boy. Boy oh
20 boy. I'm shooting blanks here. How about Kathleen?

21 MS. SCHMITT: I don't need more material. I
22 want to go back and double-check and make sure that I
23 read it and recall what I remembered.

24 CHAIRMAN MIETZ: Okay. Judy?

25 MS. SCHWARTZ: Yeah. I don't think we'd get

1 anything new. We have enough to go over right now.
2 We don't need to keep it open.

3 CHAIRMAN MIETZ: Okay. Okay.

4 MR. DiSTEFANO: Ken, do you have an opinion
5 on that?

6 CHAIRMAN MIETZ: Yes, Ken.

7 MR. GORDON: Yeah. I think that each --
8 both the applicant and the opponents had a full
9 opportunity to make the record. They've made the
10 record that they wished us to have in front of us.
11 Unless the Board Members have a specific question.
12 And if you did have a motion to reopen the public
13 hearing, I would suggest that you make a limited
14 record that we would like to reopen the public hearing
15 to hear more information about a specific topic. That
16 would be the only way that I would suggest that you
17 reopen this public hearing. Otherwise the parties
18 have all had an opportunity, the public's had an
19 opportunity to make their arguments.

20 CHAIRMAN MIETZ: I agree. And generally
21 that's what we've done. It's been something where the
22 Board required specific additional information from an
23 applicant then it certainly makes sense to keep it
24 open, but, you know, I think we have debates among
25 professionals here which is obviously something that

1 happens all the time. And it's up to us to kind of
2 sift through all of that and take a look at it. How
3 about you Jen?

4 MS. WATSON: May I make a procedural
5 question? If we were to table it, keeping the public
6 hearing closed, in the course of our review over the
7 next month, if we had additional questions that we
8 wanted to ask the applicant, could the public hearing
9 be reopened at a future meeting or has that ship
10 sailed?

11 MR. DiSTEFANO: The only problem you run
12 into with that, it will be advertised as tabled,
13 public hearing closed. So it doesn't meet the
14 advertising requirements of a public hearing. So it's
15 hard to reopen it with at least advertising that
16 public hearing is still open for the general public to
17 know that they have a right to speak.

18 MR. GORDON: Right. And I thought the
19 question she was asking is if at the next meeting in
20 June, after bringing up the project to discuss off the
21 table if an issue came up and the Board decided they
22 wanted more information could we at that point make a
23 motion to reopen the public hearing, give notice and
24 then make -- hold the decision again for another
25 month. I think we'd run out of time under the code.

1 MS. WATSON: Understood.

2 CHAIRMAN MIETZ: All right. Okay. So do we
3 feel comfortable then -- it sounds like the consensus
4 is to keep the hearing closed and to move to table.

5 MR. DiSTEFANO: So let me just state one
6 more thing, either side does have the right to submit
7 additional information which I will pass on to you.

8 CHAIRMAN MIETZ: Right.

9 MR. DiSTEFANO: So just be aware that you
10 could be getting additional stuff that they won't have
11 an opportunity to talk about, which I don't know if
12 they need an opportunity to talk about it.

13 MS. SCHWARTZ: Can they as well send in more
14 information or not.

15 MR. DiSTEFANO: Anybody can send in
16 communications to the Board.

17 MS. SCHWARTZ: Okay.

18 MS. WATSON: Is there a deadline for
19 submissions to the Board?

20 MR. DiSTEFANO: I think we can put a
21 deadline on that.

22 MS. WATSON: Because 24 hours is roughly 400
23 pages.

24 MR. DiSTEFANO: I apologize for slamming you
25 guys with all that, but -- yeah. That's -- I don't

1 think that's fair to the Board in any way, shape or
2 form.

3 MR. GORDON: And just to make -- I'm sorry.

4 MR. DiSTEFANO: I'm sorry, Ken.

5 MR. GORDON: Just to make it clear as I can
6 procedurally, while, you know, Rick is absolutely
7 anyone can send any communication they wish to the
8 Board at any time. You are closing the public
9 hearing, you're closing the public hearing and later
10 submissions would not be part of the public hearing
11 record.

12 CHAIRMAN MIETZ: Okay. Well, let's -- we
13 got to keep ourselves rolling here guys. What is --
14 the general consensus is to keep the -- what I'm
15 hearing is the general consensus is to keep the public
16 hearing closed. Are we comfortable with that?

17 MS. DALE: Sure.

18 MS. SCHWARTZ: Yes.

19 CHAIRMAN MIETZ: Okay. Jen, let's proceed.

20 MS. WATSON: I move that we table
21 application 12A-05-20 for consideration of materials
22 submitted and testimony given.

23 Do I have to say anything about the public
24 hearings because it's already closed?

25 MR. DiSTEFANO: Already closed.

1 CHAIRMAN MIETZ: Okay. Second?

2 MS. SCHWARTZ: Judy.

3 CHAIRMAN MIETZ: Okay. Judy.

4 MR. DiSTEFANO: The motion is to table,
5 public hearing closed.

6 (Second by Ms. Schwartz.)

7 (Mr. Mietz, yes; Ms. Schmitt, yes;
8 Ms. Schwartz, yes; Ms. Dale, yes; Ms. Watson, yes.)

9 (Upon roll call, motion to table with public
10 hearing closed carries.)

11 CHAIRMAN MIETZ: Okay. All right. Now we
12 got everybody back here. How about Kathleen, what do
13 we think about the 5A-02, which is the CCR tents,
14 tents events.

15 MS. SCHMITT: I do not have a problem with
16 it.

17 CHAIRMAN MIETZ: Okay. Does anybody have a
18 problem with it?

19 MS. SCHWARTZ: No.

20 CHAIRMAN MIETZ: Okay. Go ahead.

21 MS. SCHMITT: Okay. Sorry I need to pull it
22 up on my computer. Normally I print. So just one
23 second.

24

25

1 **Application 5A-02-21**

2 Application of the Country Club of
3 Rochester, owner of property located at 2935 East
4 Avenue, for a Temporary and Revocable Use Permit
5 pursuant to Section 219-4 to erect a tent and hold up
6 to six (6) outdoor weddings and club special events
7 for the year 2021. All as described on application
8 and plans on file.

9 Motion made by Ms. Schmitt to approve
10 application 5A-02-21 based on the following findings
11 of fact.

12 **FINDINGS OF FACT:**

13 1. The applicant is requesting a variance to allow an
14 erection of a tent and hold up to six outdoor door
15 weddings and club special events for the year 2021.

16 2. Granting of the permit will not negatively impact
17 the health, safety or general welfare of the
18 community. The tent will be installed by a
19 professional tent company and will only be for special
20 events and weddings.

21 3. There will be no effect on available facilities
22 for the attendants of these events as the request is
23 for no more than six events per year and it is
24 anticipated that the special events will last not more
25 than one day and tents will be up no longer than three

1 days. There is also ample parking to accommodate
2 event goers.

3 4. Granting of the request will not result in a
4 change of character of the neighborhood or be
5 detrimental to surrounding properties as the location
6 of the proposed tent is within the confines of the
7 Country Club grounds behind the club, not clearly
8 visible from the road.

9 **CONDITIONS:**

10 1. The application is granted as per the application
11 submitted and testimony given for the remainder of
12 2021 for up to six events per year.

13 2. All necessary fire marshal permits shall be
14 obtained.

15 (Second by Ms. Schwartz.)

16 (Mr. Premo, yes; Ms. Tompkins Wright, yes;
17 Ms. Dale, yes; Ms. Watson, yes; Mr. Mietz, yes; Ms.
18 Schwartz, yes; Ms. Schmitt, yes.)

19 (Upon roll, Motion to approve carries with
20 conditions.)

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1 MR. GORDON: Rick, did you want to add any
2 SEQRA language to that?

3 MR. DiSTEFANO: Actually, Ken -- I'm
4 sorry -- special events do not require SEQRA. It's a
5 type two action. So we don't need to do SEQRA.

6 MR. GORDON: I just want to make sure we
7 have some record -- something on the record.

8 MR. DiSTEFANO: Yeah. It is a type two
9 action.

10 MS. SCHMITT: Thank you, Ken. I appreciate
11 you looking out for me.

12 MR. DiSTEFANO: Motion to approve with
13 conditions. I'm sorry, Judy, you seconded on that?

14 MS. SCHWARTZ: Yes.

15 MR. DiSTEFANO: Before we go on to three, do
16 we need to make some type of formal decision regarding
17 5A-01?

18 MR. GORDON: Yeah. We should do that, Rick.

19 CHAIRMAN MIETZ: Yeah. I received a text or
20 like a message from her too over her frustrations.
21 So -- yeah. I think we could just continue this until
22 next month.

23 MR. DiSTEFANO: So you want to table and
24 keep the public hearing open --

25 CHAIRMAN MIETZ: Right. Ed, would you be

1 willing to make that motion?

2 MR. PREMO: I move that we adjourn the
3 hearing with respect to application 5A-01-21 that the
4 public hearing is held open and that it be advertised
5 as such through the next meeting.

6 CHAIRMAN MIETZ: Second please.

7 MS. SCHMITT: Second.

8 MR. DiSTEFANO: The motion is to adjourn
9 application 5A-01-21 to the June meeting.

10 (Ms. Schwartz, yes; Ms. Dale, yes; Ms.
11 Tompkins Wright, yes; Mr. Mietz, yes; Ms. Watson, yes;
12 Ms Schmitt, yes; Mr. Premo, yes).

13 (Upon roll, motion to adjourn carries.)

14 CHAIRMAN MIETZ: Okay. So now we're on to
15 5A-03 which is Brookside Drive for the sunroom on the
16 rear. Does anybody have any concerns about this?

17 MS. SCHWARTZ: No.

18 CHAIRMAN MIETZ: Okay. Judy.

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1 **Application 5A-03-21**

2 Application of Robert Orlando and Sandra
3 Kyle-Orlando, owners of property located at 151
4 Brookside Drive, for an Area Variance from Section
5 205-2 to allow a sunroom addition to extend 14 ft.
6 Into the existing 56 ft. rear setback where a 60 ft.
7 rear setback is required by code. All as described on
8 application and plans on file.

9 Motion made by Ms. Schwartz to approve
10 Application 5A-03-21 based on the following findings
11 of fact.

12 **FINDINGS OF FACT:**

13 1. The location for the proposed sunroom at the rear
14 of the home is the only feasible one that will provide
15 adequate space for the 13 by 14 square foot addition.

16 2. The existing rear setback is 56 feet in lieu of
17 the 60 feet required by code. However, the requested
18 14 foot variance will not alter the character of the
19 neighborhood. The immediate neighbor has a rear
20 setback of 37.9 foot and a neighbor across the street
21 has one less then the required 60 feet as well. This
22 decision will hardly be visible to either of abutting
23 properties. It will not be visible from the road and
24 there are no homes at the rear of the property.

25 3. All materials will match the existing home

1 creating a uniformed appearance.

2 **CONDITIONS:**

3 1. This variance applies only to the 13 by 14 square
4 foot room addition to the rear of the house as
5 presented in testimony and written application.

6 2. All necessary building permits must be obtained.

7 (Second by Ms. Schmitt.)

8 (Ms. Tompkins Wright, yes; Ms. Dale, yes;
9 Ms. Schmitt, yes; Mr. Mietz, yes; Mr. Premo, yes; Ms.
10 Watson, yes; Ms. Schwartz, yes.)

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

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1 CHAIRMAN MIETZ: Okay. The next is Council
2 Rock Drive for the porch. Any concerns here? Okay.
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1 **Application 5A-04-21**

2 Application of Christopher Brandt,
3 architect, and Courtney and Kevin Cotrupe, owners of
4 property located at 85 Council Rock Avenue, for an
5 Area Variance from Section 205-2 to allow a front
6 porch to extend 13.35 ft(12 ft. with 1.25 ft.
7 Overhang) into the existing 51.8 ft front setback
8 where a 60 ft. front setback is required by code. All
9 as described on application and plans on file.

10 Motion made by Ms. Tompkins Wright to
11 approve based on the following findings of fact.

12 **FINDINGS OF FACT:**

13 1. The granting of the requested front yard variance
14 will not produce an undesirable change in the
15 character of the neighborhood or be a detriment to
16 nearby properties. The proposed project largely
17 recreates the front porch on the original home as
18 constructed in the early 1900s. It is also consistent
19 with multiple properties in the neighborhood that also
20 have substantial front porches that extend into the
21 required front yard setback.

22 2. The requested variance is not substantial in light
23 of the fact that the property as currently constructed
24 already extends considerably into the front yard
25 setback and the porch as proposed will only extend an

1 additional six or so feet in the setback representing
2 only 10 percent of the code specified minimum.

3 3. The benefits sought by the applicant cannot
4 reasonably be achieved by any other method or without
5 variance. The porch as currently constructed requires
6 replacement for safety purposes which in all cases
7 will require a variance and the applicant desires to
8 return the home closer to its original construction
9 with a more substantial porch.

10 4. There's no evidence that the proposed variance
11 will have an adverse effect or impact on the physical
12 or environmental conditions in the neighborhood or
13 district.

14 **CONDITIONS:**

15 1. The variance granted herein applies only to the
16 addition described in and in the location depicted on
17 the application and in the testimony given

18 2. All necessary permits and Architectural Review
19 Board Approvals must be obtained.

20 (Second by Ms. Schwartz.)

21 (Ms. Schmitt, yes; Ms. Watson, yes; Mr.
22 Mietz, yes; Ms Dale, yes; Mr. Premo, yes; Ms.
23 Schwartz, yes; Ms. Tompkins Wright, yes.)

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

1 CHAIRMAN MIETZ: Okay. Then we've got the
2 Country Club of Rochester first for the tennis courts
3 and second for the accessory building.

4 MR. DiSTEFANO: Just before we start, Ken, I
5 have a question for you. SEQRA regulations state that
6 tennis courts in residential districts do not -- are
7 type two actions? I'm not sure how to interrupt that
8 if they can count Country Clubs that are in
9 residential districts. But tennis courts are a type
10 two action.

11 MR. GORDON: Right. What it says is -- just
12 had it up here. Hold on a second here -- type two
13 action would include construction, expansion of
14 placement of minor accessory of residential structures
15 including garages, car ports, patios, and tennis
16 courts. This is not a residential structure. This is
17 obviously for the Country Club. I do not think this
18 is a type two. I was also just -- single lot line for
19 an Area Variance. So I think this is both for the
20 height of the fence and the -- allowing it in the
21 yard.

22 I do think we need -- I think this is an
23 unlisted. So we should make --

24 MR. DiSTEFANO: Did we give them AF?

25 CHAIRMAN MIETZ: Yeah. There would be one

1 with the application.

2 MR. DiSTEFANO: Let me double-check. Hold
3 on.

4 MS. WATSON: I didn't have one in my stuff.

5 CHAIRMAN MIETZ: You didn't have one in your
6 packet?

7 MS. WATSON: No.

8 MR. DiSTEFANO: You know what? You probably
9 didn't have one in your packet. You're correct. I'm
10 sorry. There is --

11 MR. PREMO: Yeah. I don't -- I didn't --

12 MR. DiSTEFANO: You probably don't.

13 MR. GORDON: What is the -- I don't have a
14 copy of it either.

15 MR. PREMO: There it is. Wait a second.

16 MR. DiSTEFANO: I take it it doesn't have
17 any impact -- environmental impacts? Can we go down a
18 little?

19 CHAIRMAN MIETZ: Okay.

20 MR. GORDON: Can you just go back up to the
21 top?

22 MR. PREMO: Yeah. If you can just go back
23 up too. I just want to see everything on the last
24 page.

25 MS. WATSON: Second page. It's replacing an

1 existing ice rink. So --

2 MR. DiSTEFANO: No grading or anything
3 involved.

4 MS. WATSON: Exactly. Not a lot of site
5 work.

6 MR. DiSTEFANO: Right.

7 MR. PREMO: Yeah.

8 CHAIRMAN MIETZ: Are we good?

9 MR. DiSTEFANO: Yeah. I think so.

10 MR. PREMO: Yeah. I'm good. Thank you.

11 CHAIRMAN MIETZ: So is there any concerns
12 other than that, that anyone has a concern about this?
13 Okay. Let's proceed then.

14 MS. WATSON: Is there anything special I
15 need to say?

16 MR. DiSTEFANO: Yeah. I'll say it for you.

17 MS. WATSON: Okay. I'll just read what I
18 wrote and you can add to it.

19 MR. DiSTEFANO: I'll do that first and then
20 just follow me. The Board having considered the
21 information presented by the applicant and having the
22 completed the required pursuant to SEQRA, the Board
23 determines that the proposed project will not have a
24 significant environmental impact and has made the
25 following decision:

1 **Application 5A-05-21**

2
3 Application of the Country Club of Rochester, owner of
4 property located at 2935 East Avenue, for 1) an Area
5 Variance from Section 207-10D(3) to allow for the
6 construction of three (3) clay tennis courts in a
7 front yard in lieu of the rear yard as required by
8 code; and 2) an Area Variance from Section 207-2A to
9 allow fencing, surrounding said tennis courts, to
10 range in height from 4 ft. to 16 ft. in lieu of the
11 maximum front yard fence height of 3.5 ft. allowed by
12 code. All as described on application and plans on
13 file.

14 Ms. Watson moves to approve application
15 5A-05-21 based on the following findings of fact.

16 **FINDINGS OF FACT:**

- 17 1. The proposed Variances will not produce an
18 undesirable change in the character of the
19 neighborhood nor is it a substantial request. The
20 proposed tennis courts are situated next to existing
21 tennis courts in the same location as an existing ice
22 rink. The proposed location is 83 feet from the
23 nearest property line and is visually shielded from
24 nearby properties by mature trees and shrubs.
25 2. The benefits sought by the applicant cannot be

1 achieved by any other method. The proposed tennis
2 court placement was chosen due to the location of the
3 existing tennis courts, parking and pedestrian access.

4 3. The 16 foot height of the fencing is the minimum
5 needed for general safety to protect users from stray
6 golf balls from the nearby golf course. The section
7 of the 16 foot high fencing will only be on the
8 farthest side of the courts from the nearest property
9 line with the northern section 10 feet in height and
10 the eastern and western sections just 4 feet in
11 height.

12 4. The health, safety and welfare of the community
13 will not be adversely affected by the approval of this
14 variance request. The project requires minimum
15 grading and site work that will not impact the
16 environmental conditions of the site. The proposed
17 fencing will provide the necessary safety and
18 protection from errant golf at tennis balls.

19 **CONDITIONS:**

20 1. This variance will apply only to the project as
21 described in the application and testimony. In
22 particular it will not apply to projects considered in
23 the future that are not in the present application.

24 2. All necessary Board approvals and permits shall be
25 obtained.

1 (Second by Ms. Tompkins Wright.)

2 (Mr. Premo, yes; Ms. Schwartz, yes;

3 Ms. Dale, yes; Mr. Mietz, yes; Ms. Schmitt, yes;

4 Ms. Tompkins Wright, yes; Ms. Watson, yes.)

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

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1 CHAIRMAN MIETZ: Okay. Then the final is
2 the accessory building. Any concerns here? Okay.

3 MS. WATSON: The same declaration again.

4 MR. DiSTEFANO: Yeah. I'll read that again
5 just so --

6 CHAIRMAN MIETZ: Okay. Go right ahead.

7 MR. DiSTEFANO: The Board having considered
8 the information presented by the applicant and
9 completing the required SEQRA review, the Board
10 determines that the proposed project will not likely
11 have a significant environmental impact and has made
12 the following decision:

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1 **Application 5A-06-21**

2 Application of the Country Club of
3 Rochester, owner of property located at 2935 East
4 Avenue, for an Area Variance from Section 203-2.1B(2)
5 to allow a shed to be located in a front yard in lieu
6 of the rear yard as required by code. All as
7 described on application and plans on file.

8 Motion made by Ms. Dale to approve
9 Application 5A-06-21 based on the following findings
10 of fact.

11 **FINDINGS OF FACT:**

12 1. Granting of the requested variance will not
13 produce an undesirable change in the character of the
14 neighborhood or be a detriment to nearby properties as
15 the proposed shed will be located approximately 185
16 feet from the nearest property line and will be
17 visually shielded by existing mature trees and shrubs
18 as well as additional plantings being proposed along
19 the existing access drive. An existing shed structure
20 located closer to the neighboring properties will be
21 removed as part of this project.

22 2. The applicant is seeking the location of the shed
23 due to the proximity to the clay tennis courts as the
24 shed will house specialized equipment to maintain the
25 courts and such equipment will be used frequently.

1 Because the property is not a residential use and the
2 primary structure is placed on the western end of the
3 property, the location of the proposed shed is
4 considered within the front yard and the shed is
5 considered an accessory use, therefore a variance is
6 required to provide relief.

7 3. The benefit sought by the applicant cannot be
8 achieved by feasible alternative methods other than an
9 Area Variance because the location of the shed is
10 determined by the location of the clay tennis courts
11 which the applicant would like to locate adjacent to
12 other existing tennis courts and platform tennis
13 amenities and at the site of the existing paved ice
14 rink which is being replaced.

15 4. The proposed variance will not have an adverse
16 impact or negative impact on the physical or
17 environmental conditions of the neighborhood. Rather
18 the applicant will remove an existing shed that is
19 located closer to adjoining neighboring property. So
20 the placement of the replacement shed will be an
21 improvement.

22 **CONDITIONS:**

23 1. The existing shed shall be removed and the Area
24 Variance approval is granted only for placement of the
25 accessory structure at the location specified in the

1 application.

2 2. All necessary Planning Board approvals and all
3 applicable building permits shall be obtained.

4 (Second by Ms. Tompkins Wright.)

5 (Ms. Schmitt, yes; Ms. Watson, yes; Mr.
6 Mietz, yes; Ms. Schwartz, yes; Mr. Premo, yes; Ms.
7 Tompkins Wright, yes; Ms. Dale, yes.) (

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

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1 CHAIRMAN MIETZ: Okay. Anything else, Mr.
2 DiStefano?

3 MR. DiSTEFANO: Yeah. We have -- Ken, I'm
4 going -- stop me if you don't think I should say
5 anything -- but we have had an application submitted
6 from attorneys representing opposition to the Whole
7 Foods project.

8 MR. GORDON: Yeah. We're going to talk
9 about that, Rick, as to -- I mean, you can certainly
10 receive and file it as communications, but we need to
11 talk about when and how that's going to be handled.

12 MR. DiSTEFANO: Right. So --

13 CHAIRMAN MIETZ: Stay tuned. Yes?

14 MR. GORDON: Yeah. I think at this point in
15 time.

16 CHAIRMAN MIETZ: Okay.

17 MR. GORDON: I mean, did you think we needed
18 to decide something, Rick, on the --

19 MR. DiSTEFANO: No, no, no. I just kind of
20 wanted to forewarn.

21 MR. GORDON: Yeah.

22 MR. DiSTEFANO: So forewarning, we may have
23 an application in front of us regarding the issuance
24 of a second building permit for the Whole Foods store
25 similar to the one we had back in November.

1 CHAIRMAN MIETZ: Okay.

2 MS. SCHWARTZ: June you mean?

3 MR. DiSTEFANO: For June.

4 MS. SCHWARTZ: For June. Okay.

5 MR. DiSTEFANO: Possibly will have one for
6 June.

7 CHAIRMAN MIETZ: Yeah. Okay. All right.
8 Is there anything else?

9 MR. DiSTEFANO: No. I do expect a heavy
10 June meeting though.

11 CHAIRMAN MIETZ: Okay. All right.

12 MS. TOMPKINS WRIGHT: You're just making all
13 of our nights right now, Rick. Thanks.

14 MR. DiSTEFANO: You know I just want to make
15 sure I see all your smiling faces next week.

16 CHAIRMAN MIETZ: Make sure you enjoy all
17 that reading on the first thing for the Baptist Temple
18 too, okay? All right. Thank you very much,
19 everybody.

20 (Proceedings concluded 10:38 p.m.)

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1 REPORTER CERTIFICATE

2
3 I, Holly E. Castleman, do hereby certify
4 that I did report the foregoing proceeding, which was
5 taken down by me in a verbatim manner by means of
6 machine shorthand.

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

11
12 Dated this 1st day of June, 2021
13 at Rochester, New York.

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21 *Holly E. Castleman*
22 -----

23 Holly E. Castleman,
24 Notary Public
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