

---

**BRIGHTON**  
**ZONING BOARD OF APPEALS**  
**MEETING**

---

June 6, 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. Good  
2 evening everyone and welcome to the June meeting of  
3 the Brighton Zoning Board of Appeals. Just let me  
4 give you a couple little pieces of information of how  
5 we will handle this meeting tonight. We have 11  
6 applications, one from May and ten from this month.

7           And what we'll do is we will listen to those  
8 applications individually. We'll ask you to identify  
9 yourself if you're presenting the application. And  
10 please let us know why you feel we should approve it.  
11 The Board Members may very well questions of you. And  
12 then we will close the public hearing and move on to  
13 the next application.

14           When we finish all of those, we will then  
15 begin a -- look at each individual application and  
16 discuss and render a decision. And if you'd like to  
17 stay on for that, you're welcome to. If you decide  
18 not to, you can call Rick DiStefano in the building  
19 office tomorrow and find out what happened with your  
20 application. Okay.

21           Rick, was there any other pieces of  
22 information? I know there's some correspondence that  
23 was given that you sent out today and --

24           MR. DiSTEFANO: Yeah. I just want -- just  
25 for anybody in the audience, Application 6A-03-21 has

1       been postponed and Application 12-5-20 has been  
2       withdrawn. So if there is anybody in the audience who  
3       would like to hear those, they will not be heard  
4       tonight.

5               CHAIRMAN MIETZ: Okay. Very good. Okay so  
6       at this time, I'm going to call this meeting to order.  
7       Can you please call the roll, sir?

8               MR. DiSTEFANO: Let me just state the  
9       meeting was advertised in the Brighton-Pittsford Post  
10      of May 27th, 2021.

11              (Whereupon the roll was called.)

12              MR. DiSTEFANO: Let the record show all the  
13      Members are present.

14              CHAIRMAN MIETZ: Okay. So we have minutes.  
15      Excuse me. So any additions or corrections to the  
16      minutes please.

17              MS. SCHWARTZ: Yes, Member Judy.

18              CHAIRMAN MIETZ: Yes Judy.

19              MS. SCHWARTZ: Okay. On page 10, line 14,  
20      add an "E" at the end of the first word. On page 17,  
21      the first word in line 6 should be "retired." Page  
22      28, the first word in line 7 should be "garage." Page  
23      29, line 4 delete the word "for," first word. Page  
24      41, line 1, after the word home add "and," A-N-D.  
25      Page 43, Dennis this was yours. There was no findings

1 of fact or anything on that. Rick, I don't know if  
2 you noticed that or not. But I believe CCR --

3 CHAIRMAN MIETZ: Yeah. There were  
4 definitely. I don't know what --

5 MS. SCHWARTZ: Okay. So just a heads up on  
6 that one. And then on page 45, there was no number,  
7 but I think it's 4A -- oh, I'm sorry. Line 3, I think  
8 it's 4A-01-21. On page -- hold on -- 54, line 13  
9 please add the word architectural as the first word on  
10 13. On page 56 at the end of line 22, please add the  
11 word "were," W-E-R-E. On page 63, line 14, add the  
12 word "unit" after conditioning. On page 71, line 20,  
13 change "doesn't he" to "don't leave." Page 32, line  
14 3, delete the word "for." And one more, page 75, line  
15 5, delete the word "that" and change it to the word  
16 "to," T-O. That's all I have.

17 CHAIRMAN MIETZ: Okay.

18 MR. PREMO: I have one, Dennis.

19 CHAIRMAN MIETZ: Please.

20 MR. PREMO: On page 51, line 12, delete the  
21 word "net" after the word "minimum."

22 CHAIRMAN MIETZ: Okay. Very good. Does  
23 anybody else have any other additions or corrections?  
24 Okay. All right. How about a motion?

25 MS. SCHWARTZ: I --

1 MS. TOMPKINS WRIGHT: I move to approve the  
2 minutes as amended.

3 CHAIRMAN MIETZ: Okay. Judy, second?

4 MS. SCHWARTZ: I'll second, sure.

5 MR. DiSTEFANO: Motion is 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. So, Rick, when  
12 you're ready, let's read the first application.

13 **Application 5A-01-21**

14 Application of Best Construction of Wayne  
15 County, agent, and Ellen McCauley, owner of property  
16 located at 1129 Highland Avenue, for an Area Variance  
17 from Section 205-2 to allow an enclosed entryway  
18 addition to extend 8 feet. Into the existing 39.5  
19 feet front setback where a 60 feet front setback is  
20 required by code. All as described on application and  
21 plans on file.

22 CHAIRMAN MIETZ: Okay. Ms. McCauley, please  
23 proceed when you're ready.

24 MS. McCAULEY: I don't know what else to  
25 say. I think we have a great plan. I don't think

1       there have been any complaints. It's really not  
2       changing -- it's really not increasing the area out  
3       front other than enclosing it. My steps have  
4       significantly deteriorated since we started this whole  
5       application process. So I have to do something soon.

6               I think that Best Construction is a very  
7       reputable organization. They come highly recommended.  
8       I would just hope that you could approve it so we can  
9       start construction.

10              CHAIRMAN MIETZ: Okay. Any questions by the  
11      Board Members?

12              MR. PREMO: Yes. Ms. McCauley?

13              MS. McCAULEY: Yes.

14              MR. PREMO: This is Ed Premo. I just had a  
15      couple quick questions. You purchased the house about  
16      2001; is that right?

17              MS. McCAULEY: Oh, my gosh. 20 -- yeah.  
18      About 20 years ago, yes.

19              MR. PREMO: Right. And the house -- the  
20      configuration of the house has always stayed the same.

21              MS. McCAULEY: Yes.

22              MR. PREMO: And you did mention -- I saw  
23      your steps. They look like they have been -- they  
24      have deteriorated. And I think you also indicated  
25      that you get ice -- a lot of icing there?

1 MS. McCAULEY: Yes.

2 MR. PREMO: So the enclosure should help  
3 with that.

4 MS. McCAULEY: Absolutely. Yeah.

5 MR. PREMO: And it looks like the design of  
6 the enclosure is done in such a way that it will match  
7 other similar entranceway enclosures along Cobb  
8 Terrace?

9 MS. McCAULEY: Yeah. In fact, I think it's  
10 going to be very nice. I had sent the Board -- I went  
11 down the street and I saw about eight houses have --  
12 their front entrances are porches with nothing but  
13 screen doors.

14 MR. PREMO: Yeah.

15 MS. McCAULEY: So this is going to be a  
16 solid structure. We changed -- we upgraded the entry  
17 to a door with a -- I don't know all the  
18 technological, you know -- but it's got a -- it's an  
19 upgraded door. It's going to look very nice.

20 MR. PREMO: So very nice, very consistent.

21 MS. McCAULEY: But I don't know if -- I know  
22 that one of the Board Members came personally to look  
23 at the house. But I have very beautiful gardens that  
24 people come in on. So aesthetically I -- it's going  
25 to look pretty. It's going to look very pretty.

1 MR. PREMO: Well, I just -- I did come out.  
2 I didn't see you there. But one thing I noticed  
3 there's -- you have a beautiful tree out there. It  
4 looks like a big old tree. I assume that's going to  
5 stay?

6 MS. McCAULEY: I have a lot of old trees.

7 MR. PREMO: Yeah.

8 MS. McCAULEY: A boxwood is going to come  
9 out. Some of the -- some of the horticulture around  
10 the door is going to have to be pulled. But I got  
11 azaleas -- it's beautiful.

12 MR. PREMO: Yes, it is beautiful. And your  
13 trees in particular. All right. That's all I had.

14 MS. McCAULEY: Thank you.

15 CHAIRMAN MIETZ: Okay. Thanks, Ed. Any  
16 other questions by the Board Members? Okay. There  
17 being none then, is there anyone on the Zoom call that  
18 would like to speak related to this application?  
19 Okay. There being none, then the public hearing is  
20 closed.

21 MS. McCAULEY: Thank you.

22 CHAIRMAN MIETZ: Thank you.

23 MR. DiSTEFANO: Just a -- Just a quick  
24 reminder for people in the audience that -- please use  
25 your "raise your hand function" of the Zoom in order



1 to be recognized. Thank you. Ready for the next one?

2 CHAIRMAN MIETZ: Yes. Go right ahead.

3 **Application 6A-01-21**

4 Application of Shelly Strachen, property  
5 manager, and The Park at Allens Creek LLC, owner of  
6 property located at 100-160 Allens Creek Road, for  
7 renewal of a Temporary and Revocable Use Permit  
8 pursuant to Section 219-4 to allow a food truck to be  
9 on site up to three times per summer for the years  
10 2021 and 2022 where not allowed by code. All as  
11 described on application and plans on file.

12 CHAIRMAN MIETZ: Okay. Who do we have  
13 speaking for this application?

14 MR. FRISCH: I don't see Shelly. Is this  
15 the phone one?

16 MR. DiSTEFANO: This is the phone one. Do  
17 you have a phone one?

18 MR. FRISCH: Yeah.

19 MR. DiSTEFANO: Let's see if that's who that  
20 is.

21 MR. TEARS: Hello?

22 CHAIRMAN MIETZ: Yes.

23 MR. DiSTEFANO: Are you representing the  
24 Allens Creek Park?

25 MR. TEARS: Yes. I'm John Tears. I'm the

1 superintendent for the park.

2 CHAIRMAN MIETZ: Okay. John, can you just  
3 give us an address, please, for you?

4 MR. TEARS: Well, I've been the  
5 superintendent at the Park at Allens Street for 20  
6 years now.

7 CHAIRMAN MIETZ: Yeah. Just need you --  
8 just need an address sir.

9 MR. TEARS: Oh, the address.

10 CHAIRMAN MIETZ: For yourself.

11 MR. TEARS: Myself, I live -- my living  
12 address?

13 CHAIRMAN MIETZ: Or the business address.  
14 That's fine.

15 MR. TEARS: Okay. 120 Allens Creek Road is  
16 the business address.

17 CHAIRMAN MIETZ: Okay. Thank you, sir. Go  
18 ahead and proceed when you're ready.

19 MR. TEARS: All right. It's just the food  
20 truck again for another session. It really pretty  
21 much explains itself on the paperwork. Location is  
22 exactly the same place we've done following, following  
23 all the same existing rules that we applied to before.

24 CHAIRMAN MIETZ: Okay. Was there any issues  
25 the last time you had it? And I don't believe, Rick,

1 we heard of any issues, did we?

2 MR. DiSTEFANO: No. We didn't hear any  
3 issues in regards to it.

4 CHAIRMAN MIETZ: Okay. Sir, was there any  
5 issues that you encountered that you made any changes?  
6 Or did you think things ran fine the way they were?

7 MR. TEARS: I think it ran very smooth. It  
8 did exactly what we hoped it would do for our tenants.

9 CHAIRMAN MIETZ: Okay. Great. Well, that's  
10 good to hear. Okay. Any other questions by the Board  
11 Members? Okay. Very good, sir. Thank you very much.

12 Is there anyone on the Zoom call that would  
13 like to speak regarding Application 6A-01? There  
14 being none, then the public hearing is closed.

15 **Application 6A-02-21**

16 Application of Save Monroe Ave., Inc.  
17 appealing the issuance of a building permit by the  
18 Town of Brighton Building Inspector to the Daniele  
19 Family Companies, developer of the Whole Foods project  
20 located at 2740/2750 Monroe Avenue. All as described  
21 on application and plans on file.

22 CHAIRMAN MIETZ: Okay. Just before we start  
23 this application, Counsel to the board, Mr. Gordon,  
24 would like to give us a little information.

25 MR. GORDON: Thank you, Mr. Mietz. So what

1 I wanted to explain is what the Board has before it is  
2 essentially three issues challenging the issuance by  
3 the Town Planner of a building permit for what is  
4 known as building number 2 in the Whole Foods Plaza.

5 Two of those issues that are raised  
6 challenging it, phasing and issues regarding the cross  
7 access easement, have already been heard and decided  
8 by the Zoning Board of Appeals, the context of the  
9 prior challenge to the Town Planner's issuance of the  
10 building permit for the Starbucks building. And the  
11 Zoning Board of Appeals, as you known determined that  
12 there was no merit to those issues and upheld the Town  
13 Planner's issuance of the building permit for the  
14 Starbucks building.

15 The Zoning Board Appeals decision was then  
16 challenged by the same petitions in court. And it was  
17 taken to the court and the court determined that the  
18 ZBA was correct and, again, found that the issues  
19 relating to phasing and cross access easements lacked  
20 any merit. Those two issues have been determined by a  
21 court of competent jurisdiction and reconsideration of  
22 those two issues by the Zoning Board of Appeals would  
23 be concluded because it's been determined by a court.  
24 There really is no need for testimony on either of  
25 those issues.

1           The third issue, however, includes or  
2 involves the computation of the square footage for  
3 building number 2. I expect that the Zoning Board of  
4 Appeals will hear testimony during the public hearing  
5 regarding the computation of the square footage on  
6 this issue.

7           That's the background that I wanted to  
8 provide to the Board as we begin this public hearing.

9           CHAIRMAN MIETZ: Okay. Ken, thank you very  
10 much. So we'll proceed along those guidelines. So  
11 who do we have speaking for Save Monroe, Inc.

12           MR. SAYKIN: Mr. Chairman, Aaron Saykin with  
13 the law firm for Hodgson Russ, attorney for Save  
14 Monroe Ave.

15           CHAIRMAN MIETZ: Okay. And just an address  
16 for you Aaron?

17           MR. SAYKIN: Business address is 140 Pearl  
18 Street, Buffalo, New York 14202.

19           CHAIRMAN MIETZ: Okay. So then please  
20 proceed.

21           MR. SAYKIN: Okay. Thank you, Members of  
22 the Board, for hearing us on this appeal tonight. We  
23 just want to add to something that Mr. Gordon had  
24 mentioned a moment ago. And I obviously acknowledge  
25 that the court had decided in large measure issues 2

1 and 3 that we raised in our appeal with respect to the  
 2 cross access easements in the phase construction and  
 3 we would rely on our papers for those arguments. But  
 4 I did want to point out to the Board we are -- as much  
 5 as we respect Judge Odorisi, we disagree with his  
 6 decision and we are obviously appealing that. And so  
 7 the purpose of including these in our appeal to the  
 8 Board is to reserve our rights and not to have it be  
 9 interpreted as we're waiving those arguments because  
 10 we do hope that we will be successful on appeal.

11 I do want to point out one very minor issue  
 12 though with respect to the phased construction. And  
 13 that has to do with the timing of construction, as  
 14 you're probably aware from the last -- the last time  
 15 and the last public hearing. The SEQRA findings,  
 16 which were actually adopted as part of the Incentive  
 17 Zoning approval, required construction to be completed  
 18 within an 18-month period. At the time we had  
 19 challenged the first building permit, that permit had  
 20 been issued less than 18 months from the commencement  
 21 of construction.

22 In the case of this building permit that  
 23 we're challenging, the building permit was issued some  
 24 23 and a half months after the commencement of  
 25 construction. So that would be outside the 18-month

1 window, plainly outside the 18-month window that was  
2 permitted under the incentive Zoning approval and the  
3 SEQRA findings. So that would be one addition that I  
4 would add.

5 CHAIRMAN MIETZ: Okay.

6 MR. SAYKIN: But with respect to the main  
7 claim and the square footage of the building, this  
8 issue is significant. And I'm actually glad that the  
9 town attorney and Mr. Boehner had submitted a letter  
10 to the Planning Board because it essentially admitted  
11 what we pointed out in our appeal, that the Building  
12 Inspector and the Planning Department have approved a  
13 square footage for building number 2 on the property  
14 and they've approved a permit for it for square  
15 footage that is larger then what was approved by the  
16 Planning Board in the site plan. It's a difference of  
17 about 130 square foot.

18 You can't do that under the Town Zoning  
19 Code. The key provision here is section 225-3b. It  
20 says the building permit shall Be issued -- no  
21 building permit shall be issued for any building  
22 subject to site plan approval by the Planning Board or  
23 subject to review by the Architectural Review Board  
24 except in conformity with the plans approved by either  
25 or both of said Boards as appropriate. Nothing in

1 there allows the Building inspector and the Planning  
2 Department from deviating from the site plan.

3           You have in front of you there sharing on  
4 the screen a shot of the approved site plan in  
5 building number 2. That's the building that I would  
6 say is in the -- it's shaded in brown. It's in the  
7 top right of the diagram. And I should point out  
8 before I get into some of the specifics here, this  
9 building is of particular importance because, as you  
10 can see, it is closest to the Auburn Trail. In fact,  
11 it almost butts -- abuts right up against it to the  
12 rear of this facility.

13           And also notably, and this context I think  
14 is important especially when we're talking about  
15 square footage being added to buildings, Supervisor  
16 Moehle and eventually the Town Board right in the  
17 run-up to the approval of the incentive zoning,  
18 required a reduction of about 6,300 square feet to the  
19 project because of the size and intensity and the  
20 traffic problems. What we have here is an instance  
21 where the developer is now adding back square footage  
22 and the Planning Department and the Building Inspector  
23 has essentially given them permission to do that in  
24 the form of a building permit that is larger than that  
25 amount.



1           What do I mean by that? If you look at the  
 2 site plan, it says proposed building 2, 22,250 square  
 3 feet, specialty retail. Key is the square footage.  
 4 If you look at the copy of the building permit, which  
 5 part of the record and we also submitted on our  
 6 appeal, the square footage for the building is listed  
 7 at 22,380 square feet. That is larger, 130 square  
 8 feet larger than what was approved by the Planning  
 9 Board for the site plan. The code in the provision  
 10 that I just read to you does not give the Planning  
 11 Department and Building Inspector the authority to  
 12 deviate from what the Planning Board previously  
 13 approved.

14           It is a ministerial approval process by the  
 15 Building Inspector and by the Planning Department.  
 16 It's not a discretionary process. There's nothing in  
 17 the code -- which by the way, other municipalities  
 18 sometimes include -- that says minor deviations are  
 19 permitted of a certain amount. They're not permitted  
 20 under the code. The code is clear. And the letter  
 21 that Mr. Boehner and the Town Attorney submitted to  
 22 you, to the Members of the ZBA essentially admits that  
 23 they approved the building that was 130 square feet  
 24 larger, but then said, well, you know, we looked at  
 25 the code and we think we have the ability to issue

1 deviations. There's no such power or authority under  
2 the code. It's not in there.

3 What they're doing is I think they're trying  
4 to go back and justify allowing this. The proper  
5 procedure here under the Town Code is for the  
6 developer to go back to the Planning Board and ask for  
7 an amendment or for -- to the site plan or a deviation  
8 from the site plan that was actually approved. The  
9 bottom line is we have a site plan that was approved  
10 with a building for a particular square footage and  
11 then you have a building permit that was issued and  
12 approved for the developer that exceeds that square  
13 footage.

14 There's some other issues in the letter that  
15 I think require further exploration other than simply  
16 a conclusory sentence from the Town Attorney trying to  
17 dismiss it. And what I mean by that is we were  
18 provided notes from the Planning Department -- they  
19 may have been from the architect. We don't know who's  
20 identified, but it talks about that number of 22,380  
21 square feet being from the inside of the walls of the  
22 facility as opposed to the outside of the walls. All  
23 the letter says is that's incorrect.

24 Well, I think more is required and I think  
25 the plan -- or the ZBA should require a little bit

1 more. Well, number one, whose notes were they?  
2 Number two, why did they right it was 22,380 square  
3 feet from the inside because, as you know, the number  
4 would be larger if they measured from the outside of  
5 the walls; right? So who wrote it? Why did they  
6 write that original number? Why is it incorrect?  
7 What process did they go through to determine that was  
8 incorrect? A statement that simply says it's  
9 incorrect is insufficient.

10 The bottom line here is that the Building  
11 Inspector and the Planning Department do not have the  
12 authority under the Town Code to deviate from what was  
13 actually approved and they did so. And we're asking  
14 the ZBA to annul the permit. And frankly, that's  
15 what's required under the code and they can fix the  
16 problem, if they seek to fix the problem, by going  
17 before the Planning Board which is the only Body that  
18 has the authority of -- the authority to provide site  
19 plan approval.

20 And the site plan approval here, and it's  
21 right there clear as day on your screen, is for 22,250  
22 square feet, not a larger building. I can understand  
23 why the developer may want to try to bring back some  
24 of the square feet that the Town Board and Supervisor  
25 Moehle wanted eliminated from the project, but if they

1 want to do that, the process is very simple. They  
2 have to go and they have to have the site plan  
3 approved for what they actually built and they didn't  
4 do that.

5 With that, I'm happy to answer any questions  
6 that the Members of the Board may have.

7 CHAIRMAN MIETZ: Okay. Thank you Mr.  
8 Saykin. Questions? Jeanne, you have a question?

9 MS. DALE: I don't believe so.

10 CHAIRMAN MIETZ: Oh, I'm sorry. I thought  
11 you had your hand up.

12 MS. DALE: Nope.

13 CHAIRMAN MIETZ: Okay. All right.  
14 Questions by any of the other Board Members at this  
15 point? Okay. I don't see any other questions at this  
16 time.

17 MR. GORDON: Dennis, if I could, this is  
18 Ken. I just want to clarify --

19 CHAIRMAN MIETZ: Go right ahead.

20 MR. GORDON: Sure. There is a letter that  
21 was submitted to the ZBA by Mr. Boehner. There is no  
22 letter from me to the ZBA. So to the extent that  
23 Mr. Saykin was referring to a letter from the Town  
24 Attorney, there is no such letter from the Town  
25 Attorney.

1 MR. SAYKIN: I was -- let me be a little  
2 more specific. I was referring to John Mancuso who is  
3 special counsel to the Town with respect to the  
4 project. So I stand corrected. It was not Mr.  
5 Gordon. It was Mr. Mancuso and Mr. Boehner.

6 CHAIRMAN MIETZ: Okay. I think that  
7 represents the record. Yes. Okay. Board Members,  
8 any other questions for the attorney? Okay. At this  
9 point is there anyone else on the call that would like  
10 to speak regarding this application? I'm sorry -- was  
11 the --

12 MR. MANCUSO: Yeah. Sorry. I was waiting  
13 to be unmuted.

14 CHAIRMAN MIETZ: Sure. Go ahead. I  
15 couldn't see you.

16 MR. MANCUSO: This is -- good evening. This  
17 is John Mancuso. As you know, I am special counsel to  
18 The town Planner and with this appeal Mr. Boehner. I  
19 just wanted to briefly touch on a couple of points and  
20 then I'll turn it over to Mr. Boehner to conclude the  
21 presentation.

22 As our submissions reflect and as the Town  
23 Attorney has referenced here tonight, there are three  
24 issues being raised in the appeal, two of which the  
25 second and third grounds in SMA's current appeal

1 regarding the finding that the cross access easements  
2 were valid, sufficient to implement the access  
3 management plan as well as the project being  
4 constructed is not being constructed in multiple  
5 phases.

6 As this Board is aware these issues have all  
7 been ruled upon by the Zoning Board of Appeals, which  
8 denied SMA's prior appeal on that basis and those  
9 issues have also been reviewed by Supreme Court and a  
10 court of competent jurisdiction that has affirmed this  
11 Board's determination in that regard.

12 Their appeal is essentially verbatim of the  
13 prior appeal that was filed with this Board. And the  
14 ZBA's and the court's determination are preclusive as  
15 to those issues. And we would also submit substantive  
16 in the extensive record that has been before this  
17 Board and its prior findings speak for themselves and  
18 should stand.

19 As to that additional issue that was  
20 essentially supplemented regarding the phasing of  
21 construction because a second building permit was  
22 issued beyond an 18-month period, this argument was,  
23 in fact, argued as part of the prior matter. There  
24 was argument that the building permits were being  
25 spread out over beyond an 18-month period. And that

1 was not accepted as a basis to annul prior permit.  
2 The court in its decision, which is attached to  
3 Mr. Boehner's and my joint submission with respect to  
4 this appeal, did reference the 18-month period. But  
5 nevertheless, found that there was documentary support  
6 that building construction did not need to be done all  
7 at once, but instead could be spread over a period of  
8 time, governed by separate building permits subject to  
9 extension.

10 And regardless of the verbiage employed, the  
11 building permit allows site work for the whole site  
12 and is essentially a component of single-case  
13 construction. The fact that the buildings were being  
14 spaced out is not enough to undermined the building  
15 permit. And so we even submit that rational would  
16 have equal force and effect to what is being argued  
17 here to the extent that SMA is attempting to enforce a  
18 new additional argument into the that phasing issue  
19 that has already been addressed.

20 So otherwise we would rest on our submission  
21 for those two points. And as for the remaining third  
22 round of the appeal, I would like to now turn it over  
23 to Mr. Boehner to address that point.

24 MR. BOEHNER: Thank you, John. Good  
25 evening. Once again, I'm Ramsey Boehner. And I would

1 like to thank the Zoning Board of Appeals for giving  
2 me the opportunity to speak tonight in opposition to  
3 the second appeal regarding the issuance of a building  
4 permit for the project. As always your time, effort  
5 and consideration regarding this matter is greatly  
6 appreciated.

7 The Town issued the building permit in  
8 accordance with applicable law and regulations  
9 including the requirements of the Town of Brighton's  
10 comprehensive development regulations and all  
11 approvals issued by the Town Board of the Town of  
12 Brighton and the Town of Brighton.

13 In my submission I've provided applicable  
14 provisions of the Town Code and comprehensive  
15 development regulations, which the Town interprets as  
16 authorizing the issuance of a building permit when the  
17 associate planner has given satisfactory proof that  
18 proposed construction is in conformity with the  
19 approved site plan. Based on the Town's review and  
20 the evaluation of the applicable documents and plans,  
21 the building permit was issued in conformity with the  
22 site plan.

23 The site plan as approved by the Planning  
24 Board shows building 2 as having a footprint of 22,250  
25 square feet. When the Planning Board approved the



1 site plan, building square footage is based on the  
2 building's footprint measured from the exterior faces  
3 of the exterior walls of the building. The square  
4 footage of the building on the approved site plan does  
5 not include architectural projections. The gross  
6 floor area of 22,380 square feet as reflected on the  
7 site plot plan is the footprint. Utilizing  
8 Computer-aided design, some of you might know it as  
9 CAD, the floor area is measured from the exterior  
10 faces of the walls of the building.

11 In addition to relying on the submitted  
12 plans calculated using CAD software, the Town also  
13 independently confirmed the accuracy of the square  
14 footage calculations accounting for reasonable limits  
15 of variation. The Town architect separately  
16 calculated the floor area of building number 2 as  
17 22,387 square feet, which is in conformity with the  
18 2,380 square feet contained on the site plan plot plan  
19 filed as part of the building permit application.

20 In reference to the building permit, the  
21 22,700 square footprint, is the overall square footage  
22 of the building including architectural and other  
23 elements that, while part of the overall building  
24 design, are in addition to the building footprint  
25 reflected on the plan. The building footprint

1 calculation shows the Town of Brighton's building  
2 permit form indicates that the square footage of  
3 construction is only used to generate permit fees.  
4 The items calculated in this number can include, but  
5 are not limited to the following things, like building  
6 a footprint, additional -- which includes the ground  
7 floor from the outside of the exterior walls,  
8 additional building stores, rooftop structures,  
9 covered walkways, covered sidewalks, covered patios  
10 and porches, raised patios and walkways more than 18  
11 inches above grade, decks, building canopies, ramps,  
12 dumpster enclosures.

13           These architectural features as it relates  
14 to building 2 are approximately 420 square feet based  
15 on the calculation performed by the Town Architect.  
16 This amount is not included in the floor area of the  
17 building. Based on the review, analysis, calculations  
18 undertaken by the Building and Planning Department,  
19 the Town was given satisfactory proof that the  
20 proposed construction of building 2 had a floor area  
21 22,300 square foot and is in full compliance with the  
22 comprehensive development regulations.

23           The provisions contemplating discretion in  
24 determining conformity rather than mathematical  
25 precision, which allows for engineering provinces and

1 reasonable limits of variation in the square footage  
2 measurement without significantly affecting the  
3 overall building. The 130 foot difference in building  
4 footprint amounts to less than 0.6 percent deviation,  
5 which is inconsequential in the overall development of  
6 building 2 and the project as a whole.

7 The other consideration is the overall  
8 project's square footage of 83,700 square feet, which  
9 the development cannot exceed. Whether you consider  
10 22,380 square feet or 22,700 square feet, what has  
11 been approved to date is well within the maximum  
12 project density of 83,700 square feet as conditioned  
13 by the incentive zoning approval.

14 Building 2 is also located in compliance  
15 with the site plan setback requirements as approved by  
16 the Planning Board. The building permit is in full  
17 conformity with the approved site plan as required by  
18 the comprehensive development regulations. And based  
19 on this review, analysis, and calculation undertaken  
20 by the Building and Planning Department, the Town  
21 issued the building permit in accordance with the  
22 applicable laws, regulations, including the  
23 requirements of the comprehensive development  
24 regulations, incentive zoning resolution and the site  
25 plan approval. Accordingly I strongly believe and

1 request that the second appeal be denied and the  
2 building permit be upheld.

3 CHAIRMAN MIETZ: Very good.

4 MR. BOEHNER: Once again, I'd like to thank  
5 the Board for your time and your effort in this  
6 matter. I guess I'd like to ask Mr. Mancuso if he has  
7 any closing remarks regarding our opposition to the  
8 second appeal. And as always, I thank you.

9 CHAIRMAN MIETZ: Thanks, Ramsey. John, did  
10 you have anything else?

11 MR. MANCUSO: Thank you. I'll pause for one  
12 second to the extent that the Board has any questions  
13 of myself or Mr. Boehner before -- before concluding.

14 CHAIRMAN MIETZ: Okay. Board Members, are  
15 there any questions on the -- Andrea, did you have  
16 something?

17 MS. TOMPKINS WRIGHT: I think Kathleen had  
18 one first.

19 CHAIRMAN MIETZ: That's fine. Kathleen, go  
20 ahead.

21 MS. SCHMITT: Okay. Mr. Boehner, thank you  
22 for coming in. Only because you went over it very  
23 quickly, can you again explain to me the two different  
24 types of measurements, how you measure from the floor  
25 space versus the -- kind of the extra space of like

1 the awnings, et cetera.

2 MR. BOEHNER: Yeah. The building footprint  
3 would consist of the exterior wall measurements and  
4 such things -- like I gave you the examples of things  
5 like canopies, rooftop structures, covered sidewalks.  
6 In this case, that all added up to an additional 420  
7 square feet. The -- the square footage, gross square  
8 footage is an exterior measurement of the exterior  
9 walls only.

10 MS. SCHMITT: And is there -- and I don't  
11 want to put you on the spot, but where in the  
12 documents that were submitted to us does it say  
13 that -- how you will measure? Is that something -- or  
14 is that something in the Brighton Code that talks  
15 about how it's measured?

16 MR. BOEHNER: What's measured? There's a  
17 definition?

18 MS. SCHMITT: Yes.

19 MR. BOEHNER: That I think is in the letter?

20 MS. SCHMITT: Yes.

21 MR. MANCUSO: It's -- section 201-5 is the  
22 definition of floor area as defined as the sum of the  
23 gross horizontal area of the several floors of the  
24 building or buildings on a lot, measured from the  
25 exterior faces of exterior walls.

1 MS. SCHMITT: Thank you.

2 CHAIRMAN MIETZ: Okay. Are you all set,  
3 Kathleen?

4 MS. SCHMITT: I am. Thank you.

5 CHAIRMAN MIETZ: Okay. And then let's have  
6 Ms. Dale.

7 MS. DALE: Dennis, I'm good. I don't have a  
8 question.

9 CHAIRMAN MIETZ: Okay. Great. How about  
10 Mr. Premo? I think he had his hand up.

11 MR. PREMO: Yes. Just to put a point on it,  
12 and this would be to either Ramsey or John, but the  
13 point you're making is regardless of the building  
14 permit for building 2, the overall project density of  
15 83,700 square feet has not changed; is that correct?

16 MR. BOEHNER: That's correct.

17 MR. PREMO: So to the extent that one  
18 building may be 130 square feet, another building  
19 contingently would be reduced some how, as long as  
20 they get the whole total, which is that --

21 MR. BOEHNER: Yes.

22 MR. PREMO: -- 83,700 square feet?

23 MR. BOEHNER: That's the number.

24 CHAIRMAN MIETZ: Okay. Very good. All  
25 right. Other -- go ahead Ms. Wright.

1 MS. TOMPKINS WRIGHT: Ramsey, given the  
2 various ways to get measurements, just to get an idea,  
3 how likely is that what's submitted for a building  
4 permit will match exactly what the square footage is  
5 on the approved site plan?

6 MR. BOEHNER: It's usually not. There's  
7 always a little play. It's only drawn by the engineer  
8 and then the architect will come in with their plans.  
9 And they're done on CAD and you get a little bit more  
10 precise of a square footage. One little tick can add  
11 up to some square foot.

12 You have to look at is it in conformance  
13 with the setbacks? Is it placed as the Planning Board  
14 approved it? Is it in conformity with what the  
15 Planning Board approved? In this case, yes. We've  
16 gotten surveys. The building is exactly where it's  
17 supposed to be. It meets all the setbacks. It's what  
18 was represented to the Planning Board. It's in full  
19 conformance.

20 CHAIRMAN MIETZ: Okay. Andrea, did you have  
21 anything else? Are you all set?

22 MS. TOMPKINS WRIGHT: I just -- one other  
23 thought too. When the Planning Board approves a site  
24 plan like this, are they -- can you just provide some  
25 sort of guidance -- I'm not sure if that's you,

1 Ramsey, or Mr. Mancuso -- but is it more that they are  
2 approving the exact square footage of each building or  
3 that they're approving square footage of all the  
4 buildings together? Or is it kind of a mix of both?

5 CHAIRMAN MIETZ: Ramsey, can you --

6 MR. BOEHNER: Well, I guess -- I guess I was  
7 trying to think of what you're asking me. I guess my  
8 response would be a mix of both.

9 CHAIRMAN MIETZ: Okay. All right. Judy,  
10 you have a question?

11 MS. SCHWARTZ: Yes. So, Ramsey, am I  
12 hearing you correctly saying that the 22,700 is within  
13 the overall square footage and isn't going over it in  
14 any way?

15 MR. BOEHNER: No. The footprint, Judy,  
16 includes other things than the gross square footage.  
17 It includes canopies, overhangs, walkways --

18 MS. SCHWARTZ: It's the actual footprint  
19 that gets you --

20 MR. BOEHNER: It's the actual -- yeah. You  
21 know, we're playing with terms here and it can get  
22 confusing.

23 MS. SCHWARTZ: Okay. Thank you.

24 MR. BOEHNER: You have architectural  
25 features that get added onto the building when it's



1 getting designed architecturally. And when we do our  
2 building permit review, the fee is based on the areas  
3 that we reviewed. They may not be part of the  
4 building. They could be a dumpster enclosure.

5 MS. SCHWARTZ: Okay.

6 MR. BOEHNER: The way we're looking at it,  
7 it's going in as a fee.

8 CHAIRMAN MIETZ: Okay. Very good. Okay.  
9 Other questions by the Board Members or anyone else?

10 MR. GORDON: Dennis --

11 CHAIRMAN MIETZ: Yes.

12 MR. GORDON: -- it's Ken Gordon.

13 CHAIRMAN MIETZ: Yes, Ken.

14 MR. GORDON: Thank you. I just wanted to  
15 ask a couple follow up questions from what Member  
16 Wright was asking you, Mr. Boehner. And bear with me  
17 here. Just -- I want to set the record here clearly.  
18 How long have you been working for the Town of  
19 Brighton?

20 MR. BOEHNER: 31 years, going on 32.

21 MR. GORDON: And during those 31 or 32 years  
22 have you worked always in the Department of Public  
23 Works?

24 MR. BOEHNER: Yes. In the Building and  
25 Planning Department.

1 MR. Gordon: What's your present title?

2 MR. BOEHNER: I have a couple of them, but  
3 Associate Planner, Building Inspector, Environmental  
4 Liaison Officer --

5 MR. GORDON: How long have you been  
6 Associate Planner approximately?

7 MR. BOEHNER: 20 years? Not exactly sure.  
8 It's been a while.

9 MR. GORDON: During those years about how  
10 many --

11 MR. BOEHNER: It's been about 25 years. I'm  
12 sorry. What's that, Ken?

13 MR. GORDON: During those years  
14 approximately how many site plans have you reviewed in  
15 the process of issuing building permits? And I  
16 don't -- I'm not looking for any kind of exact number.  
17 I'm looking for --

18 MR. BOEHNER: Hundreds.

19 MR. GORDON: Hundreds?

20 MR. BOEHNER: Hundreds, absolutely.  
21 Hundreds a year, yeah. I look at them all day long.

22 MR. GORDON: Hundreds a year. So maybe --

23 MR. BOEHNER: There's Zoning Board  
24 applications; there's Planning Board applications.  
25 There's all types of applications that we're looking

1 at site plans all day long.

2 MR. GORDON: Is it fair to say that over the  
3 course of those years, perhaps thousands of building  
4 permits based upon site plan applications?

5 MR. BOEHNER: Absolutely.

6 MR. GORDON: And Member Wright's question  
7 was how common is it. I just want to give that some  
8 context. How common is it for the actual footprint as  
9 approved on a building permit to differ in some  
10 nominal way from what might appear on a site plan?  
11 How common is that?

12 MR. BOEHNER: It is common because what  
13 happens, again, it's the engineer putting down the  
14 square box on the paper. You get your site plan  
15 approval, then you get into the engineering details.

16 So there can be little adjustments in the  
17 building to meet Building Code, to bring out the  
18 design as -- as requested by the Architectural Review  
19 Board or any other board that has been reviewing the  
20 project.

21 MR. GORDON: So in these thousands of  
22 building permits that you have issued after reviewing  
23 site plans were there have been these minor  
24 deviations, you have found all of those over the years  
25 to be in conformity with the site plan and have issued

1 building permits; yes?

2 MR. BOEHNER: Yes or I would not issue them,  
3 no way I would issue them.

4 MR. GORDON: So if I understand you  
5 correctly, you're asking the Board to agree with your  
6 interpretation here of the Code that word "conformity"  
7 in section 225-3b does allow for some minor  
8 mathematical deviations between what's shown on the  
9 site plan and what's shown on the building permit; is  
10 that fair?

11 MR. BOEHNER: That's -- that's fair and it's  
12 common practice.

13 MR. GORDON: So you would disagree with the  
14 petitioner's statement, and I think I'm quoting here,  
15 "That minor deviations are not permitted under the  
16 Code." You disagree with that.

17 MR. BOEHNER: I totally disagree with that.  
18 Then what's the point of having me? I mean, part of  
19 this is, is not everything lines up a hundred percent  
20 in life and to make someone go back and spend tens of  
21 thousands of dollars over a tick on a page -- one  
22 little tick can add up a hundred square feet on a  
23 project this size very, very fast.

24 MR. GORDON: I live out in the country,  
25 Mr. Boehner, and ticks are something we don't want on

1 us. But can you tell me -- you're saying -- you're  
2 using the term tick in some different way.

3 MR. BOEHNER: Just, you know, when you're  
4 doing a measurement, you're off just a 16th of an  
5 inch, can add on -- you know, can add on a substantial  
6 amount of square footage.

7 MR. GORDON: Thank you. Those are all my  
8 questions.

9 CHAIRMAN MIETZ: Thank you, Mr. Gordon.  
10 Okay. Is there anyone else on the call or elsewhere  
11 that has a question or something?

12 MS. TOMPKINS WRIGHT: Can I ask one more?  
13 This is member Wright again.

14 CHAIRMAN MIETZ: Yes.

15 MS. TOMPKINS WRIGHT: One of the comments in  
16 Mr. Boehner's and Mr. Mancuso's letter is that the  
17 project square footage is still well within the  
18 maximum project density of 83,700 square feet. Given  
19 that there's always some deviations among what is on  
20 the site plan and what a permit will show in square  
21 footage, could you have these minor deviations above  
22 the overall maximum project density? Or is that the  
23 cutoff line? If the last building that gets a  
24 building permit, adding all those square footages up,  
25 couldn't go past --

1 MR. BOEHNER: That's right. That's right.

2 MS. TOMPKINS WRIGHT: -- the 83,700. Okay.

3 MR. MANCUSO: That's right. This says they  
4 cannot exceed the 83,700.

5 MR. BOEHNER: And we keep track.

6 MR. GORDON: I'm -- I'm sorry. I'm just  
7 going to jump in. This is Ken Gordon. I don't think  
8 the record is clear what the answer was to that  
9 question. So Member Wright asked, can the project  
10 exceed 83,700 square feet. And the answer is --

11 MR. BOEHNER: No.

12 MR. MANCUSO: No.

13 CHAIRMAN MIETZ: Okay. I think we got that  
14 pretty clear. Okay. Is there anyone else? Do you  
15 have something new, Mr. Saykin, because, again, we're  
16 not going to debate it here. That's the Board's job;  
17 right?

18 MR. SAYKIN: I would just simply ask and  
19 wonder then, if this Code and -- if this Code allows  
20 minor deviations, notwithstanding that fact that it  
21 says nothing regarding minor deviations, what's the  
22 limit on those deviations? How are they defined? Can  
23 the Building Inspector wake up one day and say a 20  
24 percent deviation or a 30 percent deviation is  
25 permissible in his judgment? I mean, what it's

1 effectively doing is, is transforming what a is a  
2 ministerial approval into a discretionary approval.  
3 There are no parameters whatsoever. If we were to  
4 expound this logic, then a minor deviation would be  
5 whatever the Planning Department deems it to be. And  
6 that's not -- that's simply not what's permitted  
7 within the Code.

8 CHAIRMAN MIETZ: Okay. We'll gladly take  
9 that into consideration, your comment. Okay. Is  
10 there anyone else that would like to speak?

11 MR. MANCUSO: May I briefly address that,  
12 Chairperson?

13 CHAIRMAN MIETZ: Okay. But, again,  
14 Mr. Mancuso, we're not going to debate it between  
15 Attorneys. That's -- obviously the Board has to  
16 take -- so if you have something to add, I would  
17 appreciate it.

18 MR. MANCUSO: Yeah. I would just be very  
19 brief. I think that the important thing is to make  
20 sure that the right Code provision and the language  
21 that is being interpreted is the focal point, which is  
22 whether or not the determination is in conformity, not  
23 whether there is a discretion for allowing for  
24 deviation. So the proper question is whether or not  
25 the building permit was issued in conformity.

1           And again, the discretion is not -- is not  
2           as broad as it's being suggested because, again, there  
3           is much that goes into this as is set forth in  
4           Mr. Boehner's submission. The overall project square  
5           footage 83,700 square feet is being considered and  
6           complied with, as well as, I think, very importantly  
7           the overall square footage as it relates to the  
8           setbacks and the other project approvals that are in  
9           place to ensure that this building as sited is in the  
10          precise location that was intended when it was  
11          approved.

12                 So obviously you could not add a 10,000  
13          square foot addition and call it -- it a reasonable  
14          deviation because that would change all of the  
15          configuration of the project. This amounts to a  
16          negligible 0.6 percent as Mr. Boehner has submitted.  
17          And so because everything is as it should be on the  
18          plan, that's why he had determined that it is in  
19          conformity with what the Planning Board approved.

20                 CHAIRMAN MIETZ: Okay. Appreciate that. Is  
21          there anyone else that would like to speak? Okay. At  
22          this time is there anyone else on the Zoom conference  
23          that had anything to speak about regarding this  
24          application? Okay. There being none, then this part  
25          of the public hearing is now closed.



1 MR. BOEHNER: Everyone, thank you.

2 CHAIRMAN MIETZ: Thank you very much for  
3 everyone's participation and maintaining decorum also.  
4 Thank you.

5 **Application 6A-03-21**

6 MR. DiSTEFANO: Okay. Once again,  
7 Application 6A-03-21 has been postponed. So we'll go  
8 on to 6A-04-21.

9 **Application 6A-04-21**

10 Application of Jason Mahar, owner of  
11 property located at 289 Penhurst Road, for an Area  
12 Variance from Section 205-2 to allow a side setback to  
13 be 11.2 feet in lieu of the minimum 18 feet required  
14 by code. All for the purpose of resubdivision  
15 approval. All as described on application and plans  
16 on file.

17 MR. LaRUE: Good evening. Al LaRue of  
18 McMahon LaRue Associates. What we're trying to do is  
19 our client is combining two parcels that are separate  
20 parcels now into one. And as a part of that, just  
21 want to clean up the side setback on the existing  
22 structure to the southeast property line. So it's  
23 essentially a pre-existing non-conforming. But it's a  
24 matter of just cleaning up.

25 They do want to add a pool and do some other

1 work along the north side of the building. And it's  
2 important they have a carport that extends  
3 over essentially -- essentially what are two parcels.  
4 And so they are -- this will clean that up and they  
5 can move along with their development.

6 CHAIRMAN MIETZ: Okay. Questions by the  
7 Board Members?

8 MR. DiSTEFANO: Mr. Chairman, I'd just like  
9 to clarify a couple statements.

10 CHAIRMAN MIETZ: Go right ahead.

11 MR. DiSTEFANO: The house currently does  
12 meet setbacks. However, by adding this second parcel  
13 into the mix to make it one, that's what knocks it out  
14 of conformance. So just want to make sure we realize  
15 that. As it sits today, it's in conformance.  
16 However, the subdivision requires the variance.

17 CHAIRMAN MIETZ: Okay. All right.

18 MR. PREMO: Would this be an Administrative  
19 resub?

20 MR. DiSTEFANO: Yes. The administrative  
21 resub does not need Planning Board review or approval.

22 CHAIRMAN MIETZ: Okay. That's a good  
23 clarification. Is there anyone else on the Board that  
24 has any other questions regarding this? Okay. Is  
25 there anyone on the Zoom call that would like to speak

1 regarding this application? Okay.

2 MR. FRISCH: There is, yes.

3 CHAIRMAN MIETZ: There is? Okay. Sorry.  
4 Go -- who is.

5 MS. WOLF-SCHNEIDER: Hello. My name is  
6 Cassandra Wolf-Schneider and I'm just next door  
7 neighbors of the Mahars. So I was just here for --  
8 just in favor of the application is all.

9 CHAIRMAN MIETZ: Ma'am, could you just tell  
10 me what your address is?

11 MS. WOLF-SCHNEIDER: Sure. It's 273  
12 Penhurst Road.

13 CHAIRMAN MIETZ: Okay. Great. Thank you  
14 for chiming in.

15 MS. WOLF-SCHNEIDER: Thanks.

16 CHAIRMAN MIETZ: Okay. Is there anyone else  
17 who would like to speak Regarding this application?  
18 Okay. There being none, then the public hearing is  
19 now closed.

20 MR. DiSTEFANO: Next two applications kind  
21 of go together so I will read them both and move on  
22 from there.

23 **Application 6A-05-21**

24 Application of Robert G. Harding and Jason  
25 Harding, owners of property located on Northern Drive,

1 known as Tax ID# 148.20-2-1, for Area Variances from  
2 Sections 205-7 and 205-8 to allow a resubdivided lot  
3 to have 68 percent impervious lot coverage in lieu of  
4 the maximum 65 percent allowed by code, and 2) allow  
5 said resubdivided lot to have pavement up to the  
6 western lot line where a 10 feet setback is required  
7 by code. All as described on application and plans on  
8 file.

9 **Application 6A-06-21**

10 Application of Amaehrken LLC, owner of  
11 property located at 120 Northern Drive, for Area  
12 Variances from Section 205-7 to allow a resubdivided  
13 lot to 1) have impervious lot coverage of 100 percent  
14 in lieu of the maximum 65 percent allowed by code, 2)  
15 allow lot width to be 42 feet in lieu of the minimum  
16 150 feet required by code, and 3) allow building  
17 density to be 13,460 square feet per acre in lieu of  
18 the maximum 10,000 square feet per acre allowed by  
19 code. All as described on application and plans on  
20 file.

21 CHAIRMAN MIETZ: Okay. So who do we have  
22 speaking for the Hardings?

23 MR. LaRUE: Al LaRue of McMahon LaRue  
24 Associates.

25 CHAIRMAN MIETZ: Okay, Al. Just give us

1 your business address please.

2 MR. LaRUE: It's 822 Holt Road, Webster,  
3 14580.

4 CHAIRMAN MIETZ: Thank you, sir. All right.  
5 Go right ahead. You can kind of walk through the  
6 group of them there.

7 MR. LaRUE: So the Amaehrken LLC, now owns  
8 the green area and the eastern part of the blue area  
9 that's outlined. There's a red line where they own up  
10 to. So they own that whole thing. And Bob Harding  
11 who owns below the building and the structure there,  
12 his business, he wants to purchase that parcel because  
13 he utilizes it for turning and access to his parcel by  
14 turning trailers around and that sort of thing.

15 And he thought, well, you know, let's create  
16 a compliant-sized lot. And in doing so that left a  
17 42-foot wide access to the Amaehrken LLC, parcel  
18 because that's where the main driveway into the rear  
19 part of that structure. They don't have access out  
20 to -- out of the Northern Drive. So that's -- and so  
21 essentially what we've created is a flag lot. We  
22 provided an easement over that flag lot for access.  
23 And so -- and in doing so Mr. Harding doesn't want  
24 to -- because he does not own lot 2 and the parcels to  
25 the west of that -- he doesn't plan to do anything to

1 upgrade or improve that lot. He just wants to keep it  
2 like it is and -- and -- and structure and such that  
3 he can own it. And -- and the Amaehrken LLC, can have  
4 their access over the blacktop road. And it does  
5 require some variances. And that's why we're here  
6 tonight.

7 CHAIRMAN MIETZ: Okay. Very good. Board  
8 Members, questions for Mr. LaRue?

9 MS. TOMPKINS WRIGHT: Member Wright. I'm  
10 assuming that there's no water drainage issues on any  
11 of these lots considering how -- you know, the  
12 impervious coverage on them?

13 MR. LaRUE: No, there's not. There hasn't  
14 been any record of that. And we've talked with  
15 Mr. Harding for quite a while and there hasn't been  
16 any issues with that. A lot of it's pretty  
17 undeveloped, some blacktop on the Amaehrken LLC,  
18 parcel. But nothing -- nobody's brought to our  
19 attention any drainage issues.

20 And again, we don't plan to -- it's gravel  
21 right now, but I realize how that interpretation is --  
22 is, you know, it could be blacktop or paved, but we  
23 have no intention of doing that and certainly would  
24 stipulate that it -- that if that were ever to be  
25 paved, then the storm water issues should come before

1 the Planning Board.

2 CHAIRMAN MIETZ: Okay. Can you -- just for  
3 the record, do you know approximately how long those  
4 services have existed in this condition?

5 MR. LaRUE: Oh, wow.

6 CHAIRMAN MIETZ: Approximately.

7 MR. LaRUE: Well over 20 years.

8 CHAIRMAN MIETZ: Okay.

9 MR. LaRUE: Because Harding has been there a  
10 long time and so has Amaehrken. They're all older  
11 buildings and that -- part of that Northern Drive has  
12 been there like that for quite a long time.

13 CHAIRMAN MIETZ: Okay. Okay. Board  
14 Members, any other Board Members with a question?

15 MR. DiSTEFANO: Dennis, I just want to bring  
16 up the subdivision plat.

17 CHAIRMAN MIETZ: Sure.

18 MR. DiSTEFANO: So if we could bring up the  
19 subdivision plat. Just so we can go over it real  
20 quick. I know this is kind of confusing, who owns  
21 what and what's being subdivided off. I think that  
22 the subdivision plat kind of shows it a little  
23 clearer.

24 MR. LaRUE: There you go.

25 MR. DiSTEFANO: So the new lots being

1 created are obviously lot one and lot 2. What  
2 currently exists for Amaehrken is, to the left of lot  
3 2, you'll see the property line. So that's what  
4 currently exists as all part of 120 Northern. And  
5 then Harding owns just that smaller lot to the left,  
6 which Jeff is showing you.

7 CHAIRMAN MIETZ: Okay.

8 MR. DiSTEFANO: So basically we're just  
9 doing a lot line adjustment where that middle line --  
10 that goes away and the new line is created where his  
11 hand is now. I think that might be a little clearer  
12 than looking at that aerial.

13 CHAIRMAN MIETZ: Okay. That's helpful.  
14 Very good. But, again, as Mr. LaRue stated, there's  
15 no intention, at least currently, to change the use of  
16 these lots or the function of their current use.

17 MR. LaRUE: That's correct.

18 CHAIRMAN MIETZ: Okay. Okay. Other  
19 questions by Board Members?

20 MS. TOMPKINS WRIGHT: One of the lots --  
21 sorry. This is Member Wright again. One of the lots  
22 will have a 42-foot width. Can you show on this  
23 subdivision map what that width -- is that the whole  
24 new lot?

25 MR. DiSTEFANO: Yeah. The lot has got to be



1 taken from the setback line. And since the setback  
2 line is off Northern Drive, that's where the access  
3 point is. So where Jeff is putting the hand right  
4 there, that's where the lot was taken. But if you go  
5 back up into the lot itself where the building is, the  
6 lot width is much --

7 MS. TOMPKINS WRIGHT: Okay. Yes. That  
8 makes sense. Okay.

9 CHAIRMAN MIETZ: Yeah. Okay. Other  
10 clarifications or questions? Okay. Great. Thank  
11 you, Mr. LaRue. Is there anyone who would like to  
12 speak regarding this application? Or applications, I  
13 should say. Okay. There being none, then the public  
14 hearing on both of these applications is closed.

15 MR. LaRUE: Thank you very much.

16 CHAIRMAN MIETZ: Thank you.

17 **Application 6A-07-21**

18 Application of Brielle Messina, agent, and  
19 Ralph Ditucci, Castle Office Group LLC, owner of  
20 property located at 180 Sawgrass Drive, for a  
21 Temporary and revocable Use Permit pursuant to Section  
22 219-4 to allow a food truck on the site once per week  
23 through the summer of 2021 where not allowed by code.  
24 All as described on application and plans on file.

25 CHAIRMAN MIETZ: Okay. Who do we have

1 speaking for 6A-07?

2 MS. PREM: Hi. This is Kellsie Prem. I'm  
3 the nurse manager at Sawgrass Surgery Center and  
4 Brielle is on the call as well. She's our  
5 administrative assistant --

6 CHAIRMAN MIETZ: Just an address for you  
7 please.

8 MS. PREM: 180 Sawgrass Drive.

9 CHAIRMAN MIETZ: Okay. Thank you. Please  
10 proceed.

11 MS. PREM: So we're hoping to provide an  
12 amenity for our health care workers at 180 Sawgrass  
13 Drive which includes the surgery center downstairs and  
14 then three suites upstairs, three clinic suites, all  
15 U of R employees. We're hoping to provide a food  
16 truck as a show of our appreciation to employees  
17 during the summer months June, July, and August, one  
18 day a week. We're thinking Wednesdays 11 o'clock to 2  
19 o'clock. So that's our goal here.

20 CHAIRMAN MIETZ: Now, will this event -- or  
21 these events, I guess, be open to anyone or just  
22 employees or what is your plan there?

23 MS. PREM: So our plan is definitely not to  
24 advertise to the public, just for employees. So  
25 letting the employees of the building know there will

1 be a truck, if it's approved, you know, time and date  
2 of each truck, but certainly not for the public.

3 CHAIRMAN MIETZ: Okay. All right.

4 Questions by the Board Members?

5 MS. SCHWARTZ: Member Schwartz.

6 CHAIRMAN MIETZ: Yes.

7 MS. SCHWARTZ: So a total of how many times  
8 do you anticipate the truck coming there over the  
9 summer?

10 MS. PREM: So we're thinking June, July, and  
11 August, three summer months, one day per week. So  
12 approximately 12 occurrences.

13 CHAIRMAN MIETZ: Okay. Ed?

14 MR. PREMO: This is Member Premo. Can you  
15 hear me all right?

16 CHAIRMAN MIETZ: Yes. Go ahead, Ed.

17 MR. PREMO: Are you going to be -- I think I  
18 looked in the application, are you going to be able to  
19 trash bins and stuff near where the food trucks will  
20 be to handle trash and recycling.

21 MS. PREM: Correct. I think, Brielle, you  
22 might -- maybe you can speak to this. But I think the  
23 plan was to provide the truck right near our actual  
24 dumpsters for the surgery center. So we can dispose  
25 of the trash as well.

1 MR. PREMO: So there will be -- you'll have  
2 trash facilities there? So if someone eats something,  
3 wants to throw it away, there's a place for them to do  
4 it?

5 MS. PREM: Correct. I think -- I envision  
6 most employees going to the truck, getting their food  
7 and going back into the building to our canteen lunch  
8 area.

9 MR. PREMO: Right. Okay.

10 MS. MESSINA: We also do have -- the janitor  
11 staff also has like trash cans -- large trash cans on  
12 wheels that they'll wheel around for us at different  
13 events that we have in the building. So I'm sure that  
14 they'd be able to bring them outside for us too.

15 CHAIRMAN MIETZ: Excuse me. Just for the  
16 record, can you just identify yourself and your  
17 address? We just need it for the court reporter's  
18 record.

19 MS. MESSINA: I'm Brielle. I'm at 180  
20 Sawgrass Drive.

21 CHAIRMAN MIETZ: Okay.

22 MR. PREMO: So I take it if we were to say  
23 that you would provide trash containers related to the  
24 food truck, that just wouldn't be a problem?

25 MS. MESSINA: Correct.

1 MR. PREMO: Okay. And I take it -- you had  
2 mentioned in your application that you don't have any  
3 issue with the food trucks -- only food trucks that  
4 are licensed by the City of Rochester and in  
5 compliance with their requirements?

6 MS. PREM: Correct. It was my understanding  
7 that certain food trucks have a safety permit through  
8 the City of Rochester. So we would seek out trucks  
9 that have that permit.

10 MR. PREMO: Yeah. And you don't have any  
11 problems with that being a condition to the approval?

12 MS. PREM: No.

13 MR. PREMO: Okay. And we talked about the  
14 months. Would it be all right if we just said it  
15 would be June, July and August?

16 MS. PREM: Correct. One day a week for  
17 those three months.

18 MR. PREMO: Okay. That's all I have.

19 CHAIRMAN MIETZ: Okay. Ed, thank you.  
20 Board Members, anybody else have a question?

21 MS. SCHWARTZ: It's just one truck per week?

22 MS. PREM: Correct. One truck.

23 MS. SCHWARTZ: Okay.

24 CHAIRMAN MIETZ: Okay. Very good.

25 MR. GORDON: Dennis, Ken Gordon. Just a

1 couple follow-up questions. So just looking at the  
2 location on the plan as to where these trucks are  
3 being placed, is that in proximity to where your  
4 patients park generally?

5 MS. MESSINA: No. So this -- I'm looking at  
6 the map you have up here. This is the employee  
7 parking on this side of the building. The front of  
8 the building, you'll see where patients park. So we  
9 purposely wanted to keep it away from patients walking  
10 into the building and walking out.

11 MR. GORDON: So there -- so there is no  
12 patient entry on the backside where the food trucks  
13 will be closest to; correct?

14 MS. MESSINA: No, no.

15 MR. GORDON: Do you have any picnic tables  
16 or other seating or tables in the parking lot this  
17 time of year or over the summer months?

18 MS. PREM: We do. We have -- is it two or  
19 three picnic tables, Brielle? They're over by the --

20 MS. MESSINA: I think it's three.

21 MR. GORDON: And where are those located?

22 MS. MESSINA: In that like square of blank  
23 white space. Yes, right there.

24 MR. GORDON: Not in any parking spaces?

25 MS. MESSINA: No, no, no.

1 MR. GORDON: And, Rick, maybe this is a  
2 question for you. I think I know the answer, but it  
3 looks like they're going to be taking up approximately  
4 six parking spaces for these food trucks. That  
5 doesn't put them in any compliance issue relative to  
6 their parking ratios?

7 MR. DiSTEFANO: I think on a temporary basis  
8 like this, it wouldn't have any impact. If it was a  
9 permanent structure there for three months, then it  
10 might, Ken. But I think that it is going to be  
11 basically on site for a couple hours once a week, I  
12 don't think it will have any impact on the parking.

13 MR. GORDON: Thank you.

14 CHAIRMAN MIETZ: Okay. Any other  
15 clarifications or questions? Okay. Very good. Is  
16 there anyone else on the Zoom call that would like to  
17 speak regarding the application? There being none,  
18 then the public hearing is closed.

19 MS. MESSINA: Thank you.

20 CHAIRMAN MIETZ: Thank you, ladies.

21 **Application 6A-08-21**

22 Application of Katherine Turner Jacus, owner  
23 of property located at 255 Fairhaven Road, for an Area  
24 Variance from Section 207-2A to allow a portion of a 6  
25 foot high fence to extend into a front yard where the

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

3 MS. JACUS: Good evening.

4 CHAIRMAN MIETZ: Yes, good evening.

5 MS. JACUS: Great. You guys can hear me  
6 okay? So we are looking to complete our --

7 CHAIRMAN MIETZ: Excuse me. Would just  
8 identify your name and address please.

9 MS. JACUS: Sorry. Kate Jacus or Katherine  
10 Jacus. 255 Fairhaven.

11 CHAIRMAN MIETZ: Okay. Please proceed.

12 MS. JACUS: So we're just looking to finish  
13 our backyard fence project, except that we realized  
14 that part of our backyard, since it faces Blossom,  
15 counts as a front yard. So with asking for the  
16 variance to get a variance on the 3 and a half foot  
17 fence height rule so that we can complete a 6 foot  
18 fence around the backyard, which is what the other two  
19 sides of the fence are going to be.

20 We have two dogs, two very active dogs, and  
21 an eight year old who often has friends over playing  
22 in the backyard. And Blossom, as you know, is a  
23 pretty busy road. So we are looking to have a pretty  
24 secure high fence for the privacy, but also to really  
25 just contain kids and dogs and make it a safe -- a



1 safe backyard for everybody.

2 And we are only asking to go 16 feet into  
3 the front yard, if you will, of our side yard there  
4 because we have a garden already in place. And so the  
5 red line of that fence is like exactly to the very  
6 edge of our garden. So we're kind of just going into  
7 this -- as little as possible into the variance. And  
8 there's still a significant amount of yard before you  
9 hit the sidewalk. And, as you probably saw in the  
10 images I submitted, there's also a pretty significant  
11 hedge between the sidewalk. So I think that there's  
12 not too much visual impact to the neighborhood.

13 CHAIRMAN MIETZ: Okay. Very good. Board  
14 Members, questions for --

15 MR. DiSTEFANO: Yes. Just for the record,  
16 can you tell me how high this fence is going to be  
17 from the highest point?

18 MS. JACUS: 6 feet.

19 MR. DiSTEFANO: Will you have any posts or  
20 finials that will be higher than that 6 foot height?

21 MS. JACUS: That I --

22 MR. DiSTEFANO: Or is it going to be  
23 straight across?

24 MS. JACUS: The idea is that they're all  
25 straight across, but there may be variations in the --

1 you know, we're not doing any kind of leveling work of  
2 the yard. So there might be --

3 MR. DiSTEFANO: Yeah. But there's no  
4 like -- there's no like finial post or you know --

5 MS. JACUS: No. No. Very plain, very  
6 simple. It's a dog ear fence. Yes. Very simple.

7 MR. DiSTEFANO: Thank you.

8 MS. JACUS: Yup.

9 CHAIRMAN MIETZ: Okay. All right. Anyone  
10 else with a question regarding this?

11 MS. DALE: This is Jeanne Dale. I just  
12 wanted to make sure I understood in the application,  
13 it looked like you considered a lower fence. But if  
14 you did not -- that -- that would be deemed to be  
15 insufficient to you to properly contain the dogs.

16 MS. JACUS: Yeah. It's just that they are  
17 kind of active. And -- yeah. 3 and a half feet just  
18 doesn't seem like it was going to be -- I would just  
19 feel worried that -- one of them in particular is a  
20 very active dog and I don't know that 3 and a half  
21 would, if he was after something on the other side, a  
22 squirrel or something, would contain him. So --

23 MS. DALE: Thanks.

24 MS. JACUS: Thank you.

25 MS. DALE: You're welcome.

1 MS. SCHWARTZ: Just curious, how long have  
2 you lived there?

3 MS. JACUS: I have been here -- I bought  
4 this house in 2009.

5 MS. SCHWARTZ: Thank you.

6 MS. JACUS: May of 2009.

7 CHAIRMAN MIETZ: Okay. Thank you. Okay.  
8 Any other questions by Board Members? Okay. Very  
9 good. Is there anyone on the Zoom call that would  
10 like to comment on this application? Okay. There  
11 being none, then the public hearing is closed.

12 MS. JACUS: Thank you.

13 CHAIRMAN MIETZ: Thank you very much.

14 **Application 6A-09-21**

15 Application of Jack and Kaitlin Keenan,  
16 owners of property located at 55 Elmore Road, for an  
17 Area Variance from Section 205-2 to allow a covered  
18 front porch to extend 5 feet into the 40 feet front  
19 setback required by code. All as described on  
20 application and plans on file.

21 CHAIRMAN MIETZ: Okay. Who do we have  
22 speaking for application 9.

23 MR. KEENAN: Jack and Kaitlin Keenan.

24 CHAIRMAN MIETZ: Okay. Very good.  
25 Go ahead.

1 MR. KEENAN: So our proposal is we would  
2 like to build a front porch. We have a flat-front  
3 colonial house, which would lend itself perfectly to  
4 the style of front porch that we're trying to do. We  
5 have been to the Review Board. We passed them  
6 contingent upon, you know, getting the variance that  
7 we're asking for.

8 Due to the significant curvature of the  
9 street that we live on, the northeast corner of the  
10 porch, the setback there would be 45 feet. So we're  
11 not in any -- we don't have any issue there. It's  
12 that southeast corner closet to the driveway. Due to  
13 the curvature of the street that setback would only be  
14 35 feet. So we have a 10-foot difference from one  
15 corner of the porch to the other just due to the --  
16 the placement of the house on the property and the  
17 curvature of the street, which is why we're here for  
18 the variance.

19 CHAIRMAN MIETZ: Okay.

20 MS. KEENAN: I just wanted to speak too.  
21 We're excited at the prospect of building a porch.  
22 We've lived here about three and a half years. Love  
23 this neighborhood. We plan to stay here for quite a  
24 long, long time, raise our family here. The kids play  
25 with the neighbors and we think it's a nice spot for

1 gathering neighbors while we watch our kids, all that  
2 good stuff.

3 CHAIRMAN MIETZ: Okay. All right. Board  
4 Members, questions? Anything?

5 MS. TOMPKINS WRIGHT: This is Member Wright.  
6 Can you give some background on the width of the porch  
7 and why that's the right width for what you're  
8 building.

9 MR. KEENAN: So the width -- the depth of  
10 the porch is going to be 10 feet.

11 MS. TOMPKINS WRIGHT: Yes. Thank you.  
12 That's the right word, depth. Sorry about that.

13 MR. KEENAN: Yeah. Yeah. So we're going  
14 with 10 feet. We've debated 8 and 10. Either way  
15 we're going to need a variance for that corner. But  
16 we've just gone to friend and family members' houses  
17 that have kind of both depths and when you see it with  
18 furniture and, you know, the possibility of eating a  
19 meal out there in the evening and needing to slide a  
20 chair back to stand up to walk away from the table,  
21 and kids and toys and those types of things, we  
22 just --

23 MS. KEENAN: Potted plants.

24 MR. KEENAN: Yup. Plants. Yeah. 10 just  
25 seemed to be the comfortable depth that we desire.

1 CHAIRMAN MIETZ: Okay. All right. Other  
2 questions by any Board Members?

3 MR. DiSTEFANO: I just have one, Dennis.  
4 And for the record, this is going to be an open porch,  
5 not screened or enclosed in any way?

6 MS. KEENAN: Correct.

7 MR. KEENAN: Yes.

8 MR. DiSTEFANO: Thank you.

9 CHAIRMAN MIETZ: Okay. All right. Anything  
10 else? Okay. Thank you very much. Is there anyone on  
11 the call that would like to speak regarding this  
12 application? Okay. There being none, the public  
13 hearing is closed.

14 MR. KEENAN: Thank you. Have a good night.

15 CHAIRMAN MIETZ: Thank you very much.

16 **Application 6A-10-21**

17 Application of Not a Wrap LLC, lessee, and  
18 570 Delaware II, LLC, owner of property located at  
19 2830 West Henrietta Road, for modification of approved  
20 Sign Variances allowing for new tenant signage on an  
21 approved second building face and relocation of two  
22 approved menu boards. All as described on application  
23 and plans on file.

24 CHAIRMAN MIETZ: Okay. Who is speaking for  
25 Application 10?

1 MR. DOLLINGER: Good evening. This is Pete  
2 Dollinger, Dollinger Associate 2170 Monroe Avenue, on  
3 behalf of Not a Wrap LLC. We also have Jennifer  
4 Blaine who is a member of the LLC and also Craig  
5 Kessler on the call who is with Premier Sign Systems  
6 who designed the sign that you see in front of you  
7 now.

8 CHAIRMAN MIETZ: Okay. Go right ahead.

9 MR. DOLLINGER: Thank you. The first think  
10 I'd like to mention is that the Board had previously  
11 approved a variance for the second business  
12 identification sign that faces south down Brighton  
13 Henrietta -- or down West Henrietta towards Brighton  
14 Henrietta Town line Road. That was for a Tim Hortons  
15 restaurant. They also had a driveway -- or a  
16 drive-through with the menu boards.

17 The character and ultimately and -- well,  
18 you know, the design I guess I would say of the signs  
19 is essentially the same as the Tim Hortons before they  
20 changed the logo. You know, I mention that to  
21 highlight the fact that the addition of one sign and  
22 also the drive-through with the menu boards is well  
23 within the overall, you know, context of the  
24 neighborhood. There's a KFC across the street that  
25 has a second facing sign towards Brighton Henrietta.

1 There's also a Starbucks that has a second facing sign  
2 towards Brighton Henrietta.

3 So there's really not going to be much of a  
4 change to the overall character of the neighborhood.  
5 It's not going to be detrimental to that section of  
6 Brighton of West Henrietta. All the other stores that  
7 are along that stretch are fast food restaurants,  
8 smaller retail stores. You know, the addition of this  
9 other sign and also the drive-through is not going to  
10 have any effect on the overall character.

11 Also I think it's important to highlight the  
12 fact that if you're coming -- the sign that's going to  
13 face out towards Brighton Henrietta is where the  
14 majority of the traffic is going to be coming from.  
15 And this is a newer restaurant. They're not local  
16 yet. So, you know, they need the advertisement for  
17 business, but also cars that are traveling north up  
18 West Henrietta need a little bit of a -- you know, a  
19 recognition of where the store is. Otherwise, you  
20 know, you could have some safety issues with cars  
21 traveling north.

22 CHAIRMAN MIETZ: Okay.

23 MR. DOLLINGER: And I guess that's really  
24 essentially our proposition to the Board is that this  
25 has been previously approved. It's going to have some



1 safety benefits. And ultimately, you know, it's going  
2 to benefit the business because people are going to  
3 know where it is.

4 CHAIRMAN MIETZ: Okay.

5 MR. DiSTEFANO: Could you just touch on the  
6 menu boards and the need for modification of those.

7 MR. DOLLINGER: I guess I would defer that  
8 question to Craig if he's on still.

9 MR. KESSLER: Yes, I'm here. How can I --

10 CHAIRMAN MIETZ: Go right ahead.

11 MR. KESSLER: And what was the question  
12 again please?

13 MR. DiSTEFANO: Craig, can you just kind of  
14 explain the need for modification of the approved menu  
15 boards that were given to Tim Hortons that Firehouse  
16 needs now.

17 MR. KESSLER: And again, speaking to that,  
18 Rick, obviously a completely different concept per se.  
19 And I know Jennifer obviously being the franchisee  
20 probably would know more intimately the need. But  
21 obviously with the drive-through capability as Tim  
22 Hortons had and the redesign for Firehouse Subs, that  
23 basically is the intent. And, again, the same drive  
24 that Tim Hortons was approved on, the same direction  
25 of traffic flow, et cetera. So we are basically just

1 taking advantage of what was there prior to what  
2 incorporated into the Firehouse Subs presentation.

3 CHAIRMAN MIETZ: Does that address what your  
4 question was Rick? Or would you like --

5 MR. DiSTEFANO: I think that's fine. I just  
6 wanted to get something on record in regard to the  
7 menu board.

8 CHAIRMAN MIETZ: I guess the thing to  
9 consider too is there's really been no alteration to  
10 the traffic patterns, stacking or anything else as it  
11 relates to the changes in these boards. Is that fair  
12 to say, Mr. Dollinger?

13 MR. DOLLINGER: Yes, it is.

14 CHAIRMAN MIETZ: Okay. All right.  
15 Questions by the Board Members?

16 MS. SCHWARTZ: Yes. Member Schwartz. Could  
17 you please tell us how the placement of these menu  
18 boards differs from where they were for Tim Hortons?  
19 Because it says new relocation. So I --

20 MR. DOLLINGER: Craig, do you want to speak  
21 to that?

22 MR. KESSLER: To be honest with you, I don't  
23 have the prior locations for the -- I guess the  
24 variance would dictate where they were prior, Rick,  
25 the prior variances obtained? So in relation to where

1 we're proposing, again, I can't speak to that  
2 definitively, but I would -- I would --

3 MR. DiSTEFANO: Yeah. I just think the menu  
4 boards were kind of spaced closer together. The first  
5 menu board you have kind of out right by the -- the  
6 preview board you have kind of right on that turn.  
7 Just curious if people are stopping there to read it  
8 if that would back up traffic into the drive lane  
9 or -- I think Tim Hortons was further down. So the  
10 person would drive through that preview board before  
11 stopping. Here it might kind of back stuff up.

12 So just wondering why the preview board is  
13 located -- opposed to where it was located further in.

14 MS. BLAINE: This is Jenny Blaine. I think  
15 we just put the preview board there because that was  
16 where the mechanics were for the Tim Hortons, but we  
17 can place it wherever Tim Hortons had it. It doesn't  
18 need to go in that specific spot.

19 MR. DiSTEFANO: It's really up to you guys.  
20 I'm just, you know, curious on where -- where it works  
21 for you guys.

22 MS. BLAINE: Well, the drive-through warps  
23 all the way around. It doesn't even go in that  
24 parking lot area. So it's all the way around the  
25 outside. So I figured that was probably the best spot

1 because, I mean, you got to an order sub. It's not  
2 like a McDonalds menu. So that's probably the best  
3 spot so you can see what you're going to order before  
4 you get to the speaker. That's really -- it looks  
5 much bigger on the screen then it actual is from  
6 where -- when you're in the drive-through lane. I  
7 mean, we can move it to where that clearance pole area  
8 is if need be. It's not really set in stone, whatever  
9 you decide we need to do. That's where we have it  
10 right now.

11 CHAIRMAN MIETZ: Well, again, you know, it's  
12 really not kind of our per view to decide how --

13 MS. BLAINE: Right.

14 CHAIRMAN MIETZ: -- you think it's going to  
15 work. I think the point that Rick was making is, you  
16 know, you're entering the queue at that point and if  
17 someone is stopping, is it going back cars up into the  
18 parking lot? I think, Rick, that was what your  
19 concern was?

20 MR. DiSTEFANO: Yeah. Basically -- I mean,  
21 there are two ways into the drive-through lane. One  
22 is straight down the parking lot. And one is around  
23 the parking lot.

24 MS. BLAINE: Yeah. You're really not  
25 allowed to go that way. There's a sign that says "Do

1 not enter," right -- I know people will, but --

2 MR. DiSTEFANO: Yeah. You're not allowed,  
3 but people -- you know people will.

4 MS. BLAINE: Right.

5 MR. DiSTEFANO: So that was just my only  
6 concern would have been that someone does that, stops  
7 there, and maybe starts backing up into that center  
8 drive.

9 MR. BLAINE: Yeah. I see your concern. I  
10 mean, that's just a preview board. So that's just a  
11 sign with just like a cardboard cutout with pictures.  
12 So, I mean, yeah. I can see what you're saying. So I  
13 would probably maybe move that up a little bit if  
14 that's okay. Or will we need to redo this whole  
15 thing?

16 MR. DiSTEFANO: No. If you wanted to move  
17 it up I think we can deal with something --

18 MS. BLAINE: Okay.

19 CHAIRMAN MIETZ: It would be reasonable  
20 tolerance to it. Because, again, we want you -- it to  
21 work, but --

22 MR. BLAINE: Right.

23 CHAIRMAN MIETZ: -- it's just an observation  
24 that, you know, if there's a -- once, you know, the  
25 other cars are ahead of the car at that point, they're

1 waiting for their food.

2 MS. BLAINE: True.

3 CHAIRMAN MIETZ: So it's -- you're not  
4 really holding anybody ahead up. It's just how many  
5 cars or backing up behind you that's all while you're  
6 reading the preview board.

7 MS. BLAINE: Right.

8 CHAIRMAN MIETZ: All right. Very good. All  
9 right. Is there any other questions by the Board  
10 Members? Okay. Very good. Thank you very much.

11 MR. BLAINE: Thank you.

12 CHAIRMAN MIETZ: Is there anyone on the Zoom  
13 call that would like to speak regarding this  
14 application? There being none, the public hearing is  
15 now closed.

16 MR. DOLLINGER: Thank you.

17 CHAIRMAN MIETZ: Okay. Thanks.

18 **Application 6A-11-21**

19 Application of Brighton Twelve Corners  
20 Associates LLC, owner of property located at 1881  
21 Monroe Avenue for 1) modification of an approved  
22 Sign variance allowing for a business identification  
23 sign on a second building face; and 2) a Sign Variance  
24 from Section 207-26D to allow two logo only signs to  
25 be located at the southwestern portion of the

1 building, one on each side, where not allowed by code.  
2 All as described on application and plans on file.

3 MR. PREMO: This is member Premo. I'm going  
4 to recuse myself from this application because of my  
5 prior legal representation of this applicant.

6 CHAIRMAN MIETZ: Okay. Very good. So you  
7 can just exit the call. And then we'll probably take  
8 a few minute break after that. So just keep attention  
9 and then we'll begin the deliberations.

10 Okay. Go right ahead then -- who is  
11 handling Application 11.

12 MR. CRETEKOS: Good evening, everyone. My  
13 name is James Cretekos. I'm with BME Associates.  
14 We're located at 10 Liftbridge Lane East in Fairport,  
15 New York 14450. I'm here on behalf of Brighton Twelve  
16 Corners Associates LLC. Also on the line with me this  
17 evening is Fred Rinaldi, who is the applicant.

18 Were here tonight to request two variances  
19 for the Brighton Twelve Corners plaza building. We're  
20 looking to -- just to get a variance to allow a sign  
21 on the second western-facing side of the building.  
22 That side is kind of internal to the parking lot. It  
23 faces the new Core Life building that was just built  
24 there.

25 And then the other variance we're looking to

1 obtain is for the little business logos that are  
2 located on the southwestern corner of the building.  
3 There's two as shown in the rendering. They're  
4 basically just a small brushed metal business logo  
5 with the back illuminated. The actual channel letters  
6 that are for the main business sign, those are brushed  
7 chrome silver edging with a white acrylic face. And  
8 those are internally illuminated as well.

9 They do comply with the sign sizes. So it's  
10 just the second business sign would replace the  
11 existing Anju Noodle sign that's still on the building  
12 in that location as well allowing the logos.

13 If you guys have any questions about signs  
14 or the business that's going to be occupying the  
15 space, we'd be happy to answer.

16 CHAIRMAN MIETZ: Okay. Very good. All  
17 right. Just a question, Rick. How are these, you  
18 know, dis-attached logo signs addressed in code?

19 MR. DiSTEFANO: Basically a logo has to be  
20 part of the principal sign. Then it can be 25 percent  
21 of that principal sign. We had something similar to  
22 when -- if you remember QDOBA came in and they had the  
23 large graphic that was separated from the sign. This  
24 is kind of similar to that where they're just kind of  
25 putting their logo at the corner of the building, not



1 associated with the actual business identification  
2 sign.

3 CHAIRMAN MIETZ: Okay.

4 MR. DiSTEFANO: So basically just a logo on  
5 the building is not permitted by code.

6 CHAIRMAN MIETZ: Okay. So there's really no  
7 governance on its size or its location or anything  
8 other than it's dis-attached from the either one or  
9 two approved building face signs.

10 MR. DiSTEFANO: Correct.

11 CHAIRMAN MIETZ: Okay. All right.

12 Questions by the Board Members?

13 MS. SCHWARTZ: Yes. Member Judy.

14 CHAIRMAN MIETZ: Yes.

15 MS. SCHWARTZ: Yes. What are the dimensions  
16 of this logo thing?

17 MR. CRETEKOS: The logo sign totals 9 square  
18 feet. It's a little less than 2 and a half feet wide  
19 at the widest point. And it's just about 3 feet 9  
20 inches tall at the tip. But most of the logo is  
21 vacant space. It's going to expose the brick behind  
22 it. It's just that kind of brushed metal, clear open  
23 space. And that is, like I mentioned, the exact  
24 business logo that they use on all their marketing  
25 materials.

1 MS. SCHWARTZ: Are there other restaurants  
2 like this in other places?

3 MR. CRETEKOS: Yes. There's one other  
4 currently open and operating in Webster, New York.  
5 And they have the same logo as well as the  
6 channel-style lettering with Seasoning Thai Bistro  
7 spread across three lines. It's on their menus as  
8 well the exterior of the building up there.

9 MS. DALE: This is Jeanne. I'm sorry. I  
10 have a question and this might be sort of a repeat,  
11 but if these logos were right with the lettering of  
12 the -- of the name above the door, from a size  
13 perspective would a variance be -- I know that you can  
14 only have one. But if there were just one and it was  
15 within the letters of the sign above the door from a  
16 perspective would --

17 MR. DiSTEFANO: Perhaps. Basically that  
18 logo attached to the sign couldn't be more than 25  
19 percent of the sign face. So taking that over the  
20 Elmwood Avenue sign, which is a much larger sign, it  
21 would probably be fine.

22 MS. DALE: Okay.

23 MR. DiSTEFANO: Taking it, putting it to the  
24 sign that's over the entryway on the west side of the  
25 building, that might get close to that 25 percent. I

1 don't know.

2 MS. DALE: Okay.

3 MR. CRETEKOS: Yeah. Actually we -- Jeanne,  
4 we did provide in our letter of intent some  
5 calculations assuming that's how the QDOBA sign was  
6 done previously on this building. So, no. The  
7 answers to both of your questions are, no, neither  
8 size is under that 25 percent threshold. The side  
9 facing Elmwood would have to be 8.5 square feet and as  
10 I mentioned, it's 9. And the one facing internal to  
11 the parking lot on the western face would be allowed 6  
12 square feet based on the signage dimensions.

13 MS. DALE: And I -- I'm not trying to put  
14 words in your mouth, but I'm kind of assuming that  
15 with the logos on the corner like that both being the  
16 same size, I'm assuming you were doing that for  
17 aesthetics --

18 MR. CRETEKOS: Yes.

19 MS. DALE: -- Thinking that it might look a  
20 little strange, you know, if one was smaller than the  
21 other.

22 MR. CRETEKOS: Correct.

23 MR. RINALDI: And, Jeanne, this is -- this  
24 is Fred Rinaldi, the landlord. Good evening. I just  
25 wanted to comment on that quickly. One of the things

1 that we were hoping to accomplish with this is -- is  
2 also to bring a little illumination to that corner.  
3 So they are -- you are correct. They are balanced.  
4 And in these -- these elements are less -- less  
5 traditional trade dress -- less traditional logo from  
6 the standpoint of written identification. And it's  
7 more of an authentic and inspired almost art piece  
8 that's indicative of what inspires the food that is  
9 the focus of Seasoning's menu.

10 The -- one of the things that we're really  
11 excited about is the way that they're using the  
12 interior of the space and what -- what this is going  
13 to help us do, among other things, is draw attention  
14 to the primary entry, which will be the -- which will  
15 be the doors facing the Core Life eatery. It also  
16 allows for us to add a little energy to the -- to the  
17 restaurant that we feel is necessary having been with  
18 this property for quite a long time. And I'm very  
19 excited in investing in this new -- this new operator.

20 They are incredible restaurant operators.  
21 They're incredible people. And we've learned a lot  
22 about the attention they've paid to the way that they  
23 have built their trade dress marketing, et cetera.  
24 And we believe that these are very important and  
25 delicate applications of more -- of more light and

1 authenticity then really logo or marketing, if that  
2 helps at all.

3 But we did want them to be balanced because,  
4 among other things, we will be making some  
5 improvements, bringing the wood down -- down that  
6 elevation. We got some beautiful themed landscaping  
7 that will wrap both elevations of the space. Actually  
8 three -- all three sides -- will wrap all three sides  
9 including the drive-through sign where ESL is. And  
10 we're very excited about this operator.

11 MS. DALE: So as far as the lighting of the --  
12 of the brass finished logos, is the reason for it to  
13 be backlit -- there's -- I assume you feel that  
14 there's not enough light, you know, otherwise from the  
15 open windows that are there and the interior of the  
16 building.

17 MR. RINALDI: Yeah. It's a treatment --  
18 it's a treatment that is -- that is designed to bring  
19 a little energy to that corner. That corner sits --  
20 even with -- even with the windows and the glazing  
21 there and it's position on Elmwood, it is a -- it is a  
22 silent corner. We want people to feel comfortable.  
23 We really want people to feel comfortable navigating  
24 this new space.

25 And you'll see just from this rendering that

1 the inside is going to be very beautiful, very simple  
 2 light. It is going to have incredible interior  
 3 agriculture. So a very beautiful backdrop and then  
 4 beautiful plants. They are -- they're going out of  
 5 their way to make this beautiful even when it's not  
 6 open, almost like when people window shop.

7 So this is -- this is a treatment that  
 8 allows them -- you know, we're -- we live in an  
 9 environment where starting in October we'll have 75  
 10 consecutive days where the sun sets before 4:20. And  
 11 it's just an opportunity to kind of maintain an energy  
 12 throughout the year.

13 And it's a beautiful -- in our opinion, a  
 14 beautiful treatment against the brick. And it's a  
 15 very nice -- what we did for the purposes of this  
 16 rendering was really contrasted and exposed the light  
 17 impact. It will be a little more delicate than what  
 18 you see there in the rendering that we've used for  
 19 today's presentation. And -- and it would -- it would  
 20 absolutely compliment the -- really the authenticity  
 21 of what they're trying to accomplish there. And these  
 22 guys do -- these guys do really really awesome  
 23 programming with Thai cuisine.

24 MS. DALE: And otherwise there's no --  
 25 there's no other exterior -- exterior lighting of the

1 plaza; correct? So there would only be lights on  
2 Elmwood Avenue, I guess, would be the closest outer  
3 lights.

4 MR. RINALDI: Correct. There aren't --  
5 there aren't any formal lights except for the street  
6 lights and then the parking lot lights and then there  
7 are wall packs for safety for people who are --  
8 employees that are bringing garbage to the refuse and  
9 walking to their vehicles through the back door.  
10 They'll use employees enter and exit through the door  
11 that's on the ESL drive-through side. So there's a  
12 wall pack there. This is really the only kind of  
13 programmed and architectural light that compliments  
14 their space.

15 MS. DALE: And it would -- I would assume it  
16 would go on at the same time as the lighting for the  
17 lettering?

18 MR. RINALDI: We would put everything -- we  
19 would put everything on photometrics. So this would  
20 be run in the most efficient way possible. And then  
21 the -- even the LED systems are consistent with the  
22 technology used in our internally lit letters, the  
23 channel letters, all of which are dark sky compliant.

24 And we're going to be using Premier Signs  
25 for this. So we have -- we have an entrusted

1 technology with them that we're using on a hundred  
2 percent of our portfolio right now as we upgrade all  
3 our light systems to LED.

4 MS. DALE: Thank you.

5 CHAIRMAN MIETZ: Okay. Very good. Any  
6 other questions from the Board Members?

7 MS. SCHWARTZ: Yeah. Fred, I heard you say  
8 the word environmental I believe and so on and so  
9 forth. I'd like to pursue it. It's not quite  
10 pertinent to the variance, but will it be full  
11 service? Are you using china?

12 MR. RINALDI: They're -- they're using the  
13 space because it's such a unique space. Do you  
14 remember being in there with the vaulted ceilings?

15 MS. SCHWARTZ: No.

16 MR. RINALDI: It just has such an awesome --  
17 it has such an awesome feel when you're -- when you're  
18 in the space. It has 20-plus foot vaulted ceilings.  
19 So this is going to be -- this will be an evolution of  
20 what -- what they had prepared in Webster. So, yes.  
21 They will be -- except for -- except for some things  
22 that will be temporary in light of -- in light of  
23 COVID, the operation of their business will have will  
24 have many reusable features from not just the plates  
25 and silverware, but we removed a hundred percent of



1 the old kitchen and we are putting all new technology  
2 in the kitchen from the ovens, the hoods, even the  
3 cooler system. So this -- everything in here will be  
4 state of the art.

5 MS. SCHWARTZ: So you are using china?

6 MR. RINALDI: For the serving plates, yes.

7 MS. SCHWARTZ: Yes. Okay. You didn't  
8 answer, is it full service or do you go through a  
9 cafeteria line?

10 MR. RINALDI: Oh, no. This is full service.  
11 Yup. There's servers.

12 MS. SCHWARTZ: Okay.

13 MR. RINALDI: There's -- you can get  
14 takeout. The takeout won't be -- they won't deliver  
15 takeout in china.

16 MS. SCHWARTZ: Okay. Oh, I know. That's  
17 fine.

18 MR. RINALDI: But the -- but the --  
19 everything -- but the formal interior, it's quite --  
20 it's quite beautiful. So every -- every element  
21 that -- that exists in their Webster location, which  
22 has many of those features all ready, there will be a  
23 little bit of an evolution here just because the space  
24 has some unique futures to help them accomplish that.

25 MS. SCHWARTZ: Okay.

1 CHAIRMAN MIETZ: All right. Very good. Is  
2 there any other questions related to this by the Board  
3 Members? Very good. Thank you very much. Is there  
4 anyone on the Zoom call that would like to speak  
5 regarding this application? Okay. There being none  
6 then the public hearing is closed.

7 Okay how about we take a little break here  
8 before we start the deliberations. No more than 10  
9 minutes. Okay. All right. Thank you.

10

11

\* \* \*

12

13

14

15

16

17

18

19

20

21

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 23rd day of June, 2021 at Rochester, New York.

*Holly E. Castleman*

Holly E. Castleman,  
Notary Public

**BRIGHTON  
ZONING BOARD OF APPEALS  
MEETING**

**DELIBERATIONS**

June 6, 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: All right. Who are we  
2 waiting for here? All right. Let's see. Are we  
3 missing anybody? I don't know, Rick. Can you see the  
4 whole screen?

5 MS. SCHWARTZ: Here.

6 MR. DiSTEFANO: I think we got everybody.

7 CHAIRMAN MIETZ: Okay. Swell. Okay. Well,  
8 let's give it a roll here. All right. So the first  
9 application we need to talk about is 5A-01 which is  
10 Highland Avenue, the one held from last month. So is  
11 there anyone with any concerns about that one? We'll  
12 just try for a little bit of speed here.

13 MS. SCHWARTZ: No.

14 CHAIRMAN MIETZ: No concerns?

15 MS. DALE: No.

16 CHAIRMAN MIETZ: Okay. Mr. Premo.

17

18

19

20

21

22

23

24

25

1     **Application 5A-01-21**

2             Application of Best Construction of Wayne  
3     County, agent, and Ellen McCauley, owner of property  
4     located at 1129 Highland Avenue, for an Area Variance  
5     from Section 205-2 to allow an enclosed entryway  
6     addition to extend 8 feet into the existing 39.5 feet  
7     front setback where a 60 feet front setback is  
8     required by code. All as described on application and  
9     plans on file.

10            Motion made by Mr. Premo to approve  
11     application 5A-01-21 based on the following findings  
12     of fact.

13     **FINDINGS OF FACT:**

14     1. The requested setback and Area Variance for single  
15     family use is a Type II action pursuant to 6 NYCRR  
16     section sign 617.5 V 16 and 17 and no review is  
17     required pursuant to the State Environmental Quality  
18     Review Act.

19     2. The requested variance is the minimum variance  
20     necessary to address the benefits sought by the  
21     applicant. The existing house was constructed with a  
22     39.5 foot front setback facing Cobb Terrace and that  
23     is a pre-existing condition. The current front steps  
24     are in a deteriorated condition in part due to icing  
25     during winter months. The requested variance allows

1 for an enclosed entranceway that would protect the  
2 steps and provide better entry. The additional 8 foot  
3 extension into 39.5 foot setback is to allow for this  
4 entranceway.

5 3. No other alternative can alleviate the difficulty  
6 and produce the desired result. The current front  
7 setback is a pre-existing condition. To meet the  
8 current front setback requirement at 60 foot would  
9 require demolition of a substantial part of the house  
10 and is a practical solution.

11 4. There will be no unacceptable change in the  
12 character of the neighborhood and no substantial  
13 detriment to nearby properties is expected from  
14 approval of the variance. The proposed entranceway is  
15 consistent with other porches and entranceways on  
16 various houses along Cobb Terrace and will be an  
17 improvement to the existing house.

18 5. The hardship was not self-created by the  
19 applicant.

20 6. The health, safety and welfare of the community  
21 will not be adversely affected by approval of the  
22 variance.

23 **CONDITIONS:**

24 1. The variance is based on the application submitted  
25 including various drawings and plans and only

1 authorizes the project described therein.

2 2. Applicants shall obtain ARB approval.

3 3. All necessary building permits shall be obtained.

4 (Second by Ms. Schwartz.)

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

8 (Upon roll, Motion to approve carries with  
9 conditions.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1 CHAIRMAN MIETZ: Okay. The next one is  
2 Allens Creek. So that's the food trucks again. This  
3 is something that -- this was the second time they've  
4 handled this. And we heard that there were no  
5 objections last time or any complaints that the  
6 Building Department received. It's a pretty isolated  
7 parcel as well. So, you know, not anyone really going  
8 to wander in there from anywhere to grab a hot dog I  
9 don't think. So any issues with this?

10 MS. DALE: No.

11 MS. SCHMITT: No.

12 CHAIRMAN MIETZ: Okay. So I have this.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1     **Application 6A-01-21**

2             Application of Shelly Strachen, property  
3     manager, and The Park at Allens Creek LLC, owner of  
4     property located at 100-160 Allens Creek Road, for  
5     renewal of a Temporary and Revocable Use Permit  
6     pursuant to Section 219-4 to allow a food truck to be  
7     on site up to three times per summer for the years  
8     2021 and 2022 where not allowed by code. All as  
9     described on application and plans on file.

10            Motion made by Mr. Mietz to approve  
11     application 5A-02-21 based on the following findings  
12     of fact.

13     **FINDINGS OF FACT:**

- 14     1. The food trucks will provide an amenity solely to  
15     the tenants of the office park.
- 16     2. The food trucks will be placed near the rear of  
17     the subject property and not visible from the street.
- 18     3. No other alternative can meet the needs of the  
19     applicant to provide a neighborhood atmosphere within  
20     the office park for tenants to congregate.

21     **CONDITIONS:**

- 22     1. This variance is subject to the drawings as  
23     submitted as to the location of the trucks and  
24     testimony given.
- 25     2. The trucks can visit for no more than three hours

1 on three separate occasions in the years 2021 and  
2 2022.

3 3. The owner shall be responsible for all trash  
4 removal on site.

5 4. All trucks shall be currently licensed and  
6 completed the 2021 safety inspection and be in full  
7 compliance with the Fire Code of New York State  
8 section 319.

9 (Second by Mr. Premo.)

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

13 (Upon roll, Motion to approve carries with  
14 conditions.)

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRMAN MIETZ: Okay. So the next  
2 application relates to the Monroe Avenue property. I  
3 think we can probably go around on this one. But I'm  
4 just going to ask Ken, do you have any opening  
5 comments or any counsel for the Board?

6 MR. GORDON: Well, with this application I  
7 think it is important to hear what the Board Members'  
8 vantage point is and views are relative to  
9 interpretation of the code whether consistent with  
10 Mr. Boehner or not. But once -- once we go around, I  
11 would like an opportunity to have time to draft a  
12 specific set of findings based on the testimony that  
13 was presented this evening and what I hear from you in  
14 the next new minutes so that we have a good set of  
15 findings to back up whatever decision it is that the  
16 Board ultimately makes.

17 So although I am in no position to make any  
18 motions, of course, I would encourage someone after  
19 your discussions -- and have your discussions first --  
20 to consider making a motion.

21 CHAIRMAN MIETZ: Okay. All right. That  
22 certainly makes sense. I think, you know, there's two  
23 major things here to think about. One is, you know,  
24 this is really asking us to do a pretty fine  
25 interpretation of the code as it relate to the

1 semantics as well as the intent of it. And how each  
2 side here in this appeal is addressing it in some  
3 different manner as well as it relates to the latitude  
4 and, you know the -- you know, the actions by the  
5 Building Department.

6 If there's any questions possibly Rick or  
7 Ken could, you know, try to address those for Board  
8 Members if they wish. But why don't we kind of go  
9 around and see what people are generally thinking.  
10 Judy, what are you thinking?

11 MS. SCHWARTZ: I -- first of all I have to  
12 say Ramsey and John, I thank you very much for what  
13 you do. Ramsey I think we go back almost as long. I  
14 started in '88. So we've been around together for a  
15 long time. And I appreciate all that you do and this  
16 has to be hard.

17 However, that being said it's the wording in  
18 our code that bothers me about -- and I'm looking at  
19 your report on the last -- I don't what page, but  
20 whatever it says, the Town Code and comprehensive  
21 development regulations require satisfactory proof.  
22 To me that's rather subjective and I think it can be  
23 problematic. And those provisions contemplate  
24 discretion in determining conformity rather than  
25 mathematical precision, which allows for engineering

1 tolerances and so on and so forth. This has been, I  
 2 don't think anyone can deny, a very controversial  
 3 proposal. And because of that I think that things  
 4 have to be, if possible, tighter. I think that, you  
 5 know, where it says -- hold on -- satisfactory proof  
 6 and determining conformity rather than mathematical  
 7 precision can be a problem. To me it is a problem  
 8 already. What's to say what's going to happen with  
 9 future buildings and so on?

10 And you know, just a little bit more -- just  
 11 a little bit more -- I think it's taking us down a  
 12 slippery slope. So I really do see where SMA is  
 13 coming from with their concern. And -- and so I'm  
 14 troubled by the decision.

15 And as I said, Ramsey, I thank you. It's  
 16 really -- it's not you. It's the wording in our code  
 17 that allows this to be done, which I find problematic,  
 18 especially in this proposal.

19 CHAIRMAN MIETZ: Could you just clarify what  
 20 you mean by you're troubled by -- troubled --

21 MS. SCHWARTZ: The wording. The wording  
 22 that I read where it says the Town Code and  
 23 comprehensive development regulations require  
 24 satisfactory proof that the building permit is in  
 25 conformity with the site plan, thus the provisions

1 contemplate discretion in determining conformity  
2 rather than mathematical precision, which allows for  
3 engineering tolerances and reasonable limits of  
4 variations in the square footage measurements and so  
5 on.

6 MS. DALE: But so -- doesn't that say that  
7 it's not requiring mathematical precision?

8 MS. SCHWARTZ: Right. Right. Which bothers  
9 me because in this particular application, I think I's  
10 have to be dotted from here to Timbuktu and T's really  
11 need to be crossed because of the way it's progressed  
12 and the fact that it has been controversial mainly  
13 because of these two groups --

14 MS. DALE: Again, I guess my -- my feeling  
15 is a little different that if -- if the issue at  
16 hand -- or the SMA's position seems to be that the  
17 fact that there was this, you know 0.6 percent  
18 deviation. And that seems to be the crux of their  
19 argument that it should be -- that we should basically  
20 deny the permit.

21 I think the language that you read shows  
22 that there does not have to be mathematical precision.  
23 And I was satisfied by the explanation of this work  
24 overall and how it's calculated. I -- I -- it's just  
25 funny because you're reading language that I was

1 thinking helped me be comfortable with the fact that  
2 it's -- that it's not necessarily meant to be exact,  
3 exact, exact.

4 MS. SCHWARTZ: But it can be it seems too;  
5 right?

6 MS. TOMPKINS WRIGHT: Can I interject  
7 something really quickly?

8 MS. SCHWARTZ: Yup.

9 CHAIRMAN MIETZ: Let's try not to bounce  
10 around too much, but why don't you give all of your  
11 comments, Andrea.

12 MS. TOMPKINS WRIGHT: Well, there are about  
13 7,000 different ways to measure the square footage of  
14 a building.

15 CHAIRMAN MIETZ: Right.

16 MS. TOMPKINS WRIGHT: I don't know if I have  
17 ever seen a site plan match an actual survey, you  
18 know, of what square footage was approved by the site  
19 plan and what actually got built. And that's not  
20 because what got built didn't match -- the building  
21 permit didn't match, wasn't in conformity with the  
22 site plan, but because those measurements just don't  
23 always a hundred percent line up.

24 If we expected applicants to submit for a  
25 building permit square footages that matched exactly,



1 we wouldn't be able to issue any building permits. It  
2 just would never come down to those exact square  
3 footages.

4 I am persuaded by the fact that, look, we're  
5 adding up our square footage and relying on the total  
6 maximum square footage for the full project, not  
7 necessarily the individual square footages of each  
8 building. I question whether or not the applicant  
9 would have objected if that building came in a hundred  
10 square foot below what was in the site plan. Would  
11 they have -- would they be able to make the same  
12 argument that it's not mathematically exact?

13 I would suggest that, you know -- I've seen,  
14 you know, a parking spot get "zujed" in one direction,  
15 a wall comes out, those things are normal changes that  
16 don't affect whether it's conforming to the site plan.  
17 So I -- I think we rely on the fact that this is a  
18 total square footage for the full project and that,  
19 you know, a mathematical change of 130 square feet in  
20 light of the total project, so long as the whole  
21 project doesn't exceed the maximum square footage, it  
22 seems in conformity with the site plan as approved to  
23 me.

24 CHAIRMAN MIETZ: Okay. Kathleen, what do  
25 you think?

1 MS. SCHMITT: Yeah. I have to say I had  
2 concerns because I couldn't follow the numbers  
3 anywhere. But after Ramsey's testimony that he  
4 provided, I did come away with a comfort level that it  
5 was in conformity with the site plan as approved. And  
6 I read it the way Andrea read it and it sounds like  
7 the attorney for the Board read it, which is that it  
8 has to be within that 83,750 square feet. And they  
9 assured me today that it is well within that. I think  
10 that's the language I wrote down, "well within."

11 CHAIRMAN MIETZ: Okay.

12 MS. SCHMITT: So I'm okay.

13 CHAIRMAN MIETZ: How about Ed?

14 MR. PREMO: I agree fully with Andrea's  
15 comments in both -- you know, from my experiences  
16 the -- the fact that you would have a 22,000-plus  
17 square foot building and when you do the final  
18 engineering drawings, you have a little change of 130  
19 square feet, that's nothing. I mean, that's -- that's  
20 not something we would normally -- anyone would even  
21 be talking about.

22 The overall density of the project is  
23 staying the same. The building is being placed where  
24 it shows on the site plan. It's meeting all the  
25 setback and other requirements. And, you know, 130

1 square feet is really nothing. It's trivial. The  
2 legal term word would be de minimis. And I think it  
3 is clearly in conformity with the site plan.

4 I mean, I think the other thing that is  
5 giving me reason is you can't possibly identify an  
6 impact or problem or something that wasn't already  
7 considered in the SEQRA -- or in the review process  
8 just by this minor little change. It doesn't change  
9 anything. And I think Ramsey's testimony particularly  
10 about like well, no this building is exactly where it  
11 showed it would be on the site plan, shows that it's  
12 in conformity.

13 CHAIRMAN MIETZ: Okay. Thank you. Okay. I  
14 kind of agree. I think, you know, from being in this  
15 business everyday I think this is a reasonable  
16 tolerance on a building this size. And, you know, the  
17 burden in on the Building Department as pointed out  
18 here that, you know, if this one is 130 square feet  
19 difference based on the features and whatnot that are  
20 reasonable, the burden's on the Building Department to  
21 keep the project on the remaining buildings where they  
22 need to be at the 83 and change or whatever.

23 You know, we have to rely on them to, as  
24 Ramsey said, you know, keep the calculator and add it  
25 up because the last building, you know, if it has to

1 be altered, then it does, you know, based on these  
2 decisions. And that has happened many times on plazas  
3 where there's multiple buildings like this.

4 So, you know, I'm pretty confident that, you  
5 know, the analysis is -- is reasonable. And you  
6 know -- I think, you know, we need to articulate it as  
7 it relates to this code and this language so that, you  
8 know, we have a fair presentation here on this issue.  
9 Andrea, what's your feeling here? It's your  
10 application.

11 MS. TOMPKINS WRIGHT: Yeah. I want some  
12 time to reflect on the language used and would  
13 certainly appreciate Ken's help in making sure that  
14 we're drafting something that accurately reflects --

15 CHAIRMAN MIETZ: Okay.

16 MS. TOMPKINS WRIGHT: Terms. But I would  
17 move to deny the appeal of the building permit. I  
18 think that the project as planned is in conformity  
19 with the development codes and the development  
20 regulations.

21 CHAIRMAN MIETZ: Okay. Would you want time  
22 by tabling this application to do that? Or how would  
23 you propose to do that?

24 MS. TOMPKINS WRIGHT: Yeah, I would. I  
25 would keep the public hearing closed. I don't think

1 there's any more information that we need. I think  
2 it's just a matter of taking the time to insure that  
3 we covered our bases and drafting --

4 CHAIRMAN MIETZ: Yes.

5 MS. TOMPKINS WRIGHT -- and having the rest  
6 of the Board review and sign onto the approval.

7 CHAIRMAN MIETZ: Okay.

8 MR. PREMO: The only other thing I would  
9 say -- and this is something for Andrea, maybe  
10 something you should consider is to the extent the  
11 second and third grounds -- you know, they weren't  
12 really properly before us. I mean, in essence they  
13 admitted they were requesting a rehearing even though  
14 one, they're not entitled to it and two, there was no  
15 motion any of us made and no vote by all of us to  
16 rehear the matter. So, I mean, that's -- that's  
17 another basis. I do think res judicata has been  
18 adjudicated, but it is also -- those two matters  
19 weren't properly before us.

20 MR. GORDON: It would be my intention, Ed,  
21 to make sure that that was addressed in the findings.  
22 So the determination would be comprehensive as to all  
23 of the grounds raised. And I will work with Andrea on  
24 coming up with something that she's comfortable  
25 with --

1 CHAIRMAN MIETZ: Okay.

2 MR. GORDON: -- and we can present to the  
3 Board and have you all review it at the next meeting.  
4 If that's -- if that's the pleasure of the Board.

5 The only other thing I wanted to add to this  
6 discussion, there's been some talk about, you know,  
7 keeping the entire project within the total limits of  
8 the incentive zoning approval was 83,700 square feet.  
9 Just by way of background, the way that we got to that  
10 number, you heard some reference today to reduction in  
11 the project size that the Supervisor asked for that  
12 was ultimately agreed to by the developer of 6,300.  
13 This project was originally 90,000 square feet.

14 CHAIRMAN MIETZ: Right.

15 MR. GORDON: You know, that's how we got to  
16 this somewhat odd number of 83,700. But right now you  
17 have a 22,380 square foot building number 2, the  
18 Starbucks building just under 2,000 square feet. So  
19 that gets us to 24,380. The Whole Foods shopping --  
20 you know, the Whole Foods Market itself must be 50,000  
21 square feet or less. So maximum of 50,000 square  
22 feet, that is a specific size limit unlike what was  
23 placed on the plaza.

24 So between those three buildings we are  
25 looking at 74,780 square feet about. So there's

1 plenty of room up to that 83,700 scale for whatever  
2 remaining buildings. But they are going to make sure  
3 that they stay under that number. But I just wanted  
4 to give the Board some comfort that there's plenty of  
5 room to do that.

6 CHAIRMAN MIETZ: Yup. Seems so. Okay. So  
7 are you all set, Andrea to table this application  
8 then?

9 MS. TOMPKINS WRIGHT: Sure. I move to  
10 table -- sorry -- application 6A-02-21 in order to  
11 draft and review an appropriate motion for the  
12 application.

13 CHAIRMAN MIETZ: Yeah. I think that's fine.

14 MR. DiSTEFANO: And keep the public hearing  
15 closed.

16 MS. ANDREA WRIGHT: And keep the public  
17 hearing closed.

18 MR. DiSTEFANO: Do we have a second?

19 MR. PREMO: Second.

20 CHAIRMAN MIETZ: Okay, Ed.

21 MR. DiSTEFANO: The motion is to table.

22 Ms. Schwartz?

23 MS. SCHWARTZ: I'm torn because you know my  
24 feeling on this. So I don't know how I should really  
25 vote.

1 MS. ANDREA WRIGHT: Well, Judy, I didn't  
2 specifically say what kind of motion I was thinking.

3 MS. SCHWARTZ: Okay. That's -- all right.

4 MS. TOMPKINS WRIGHT: All you're doing is  
5 voting to table it.

6 MS. SCHWARTZ: Okay. Yes. All right.  
7 You're right.

8 MR. DiSTEFANO: So, yes you vote to table?

9 MS. SCHWARTZ: Correct.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1     **Application 6A-02-21**

2                     Application of Save Monroe Ave., Inc.  
3     appealing the issuance of a building permit by the  
4     Town of Brighton Building Inspector to the Daniele  
5     Family Companies, developer of the Whole Foods project  
6     located at 2740/2750 Monroe Avenue. All as described  
7     on application and plans on file.

8                     Motion made by Ms. Tompkins Wright to table  
9     application.

10                    (Second by Mr. Premo)

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

14                    (Upon roll, Motion to table carries.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: All right. So the next  
2 application is Penhurst Road. Okay. So thoughts on  
3 Penhurst Road? Does anyone have any concerns about  
4 it?

5 MS. SCHWARTZ: No.

6 MS. SCHMITT: No.

7 MS. SCHWARTZ: No, it's fine.

8 CHAIRMAN MIETZ: Okay. Go ahead, Judy.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1     **Application 6A-04-21**

2             Application of Jason Mahar, owner of  
3     property located at 289 Penhurst Road, for an Area  
4     Variance from Section 205-2 to allow a side setback to  
5     be 11.2 feet in lieu of the minimum 18 feet required  
6     by code. All for the purpose of resubdivision  
7     approval. All as described on application and plans  
8     on file.

9             Motion made by Ms. Schwartz to approve  
10    application 6A-04-21 based on the following findings  
11    of fact.

12    **FINDINGS OF FACT:**

- 13    1. This variance is for a side setback to be 11.2  
14    feet resulting in a resubdivision combining two  
15    parcels. The code requires a minimum 15 percent of  
16    lot width. In this case it's 18 feet.  
17    2. There will be no change in the character of the  
18    area due to this variance.  
19    3. The resubdivision is causing the need for this  
20    variance which will have no impact on the character of  
21    the neighborhood.

22    **CONDITIONS:**

23    None

24             (Second by Ms. Dale.)

25             (Ms. Schmitt, yes; Mr. Mietz, yes;

1 Ms. Tompkins Wright, yes; Mr. Premo, yes; Ms. Dale,  
2 yes; Ms. Schwartz, yes.)

3 (Upon roll, Motion to approve carries.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: Okay. The next one is over  
2 on Northern Drive. So we have two pieces to that.  
3 And the first one is talking about the coverage there.  
4 And then the second one is talking about the lot and  
5 the 42 foot flag lot, driveway there. So any problems  
6 anybody has with either of these?

7 MS. DALE: No.

8 CHAIRMAN MIETZ: It's a continuous use.  
9 It's been there a long time.

10 MS. SCHWARTZ: I can't tell you how many  
11 years.

12 CHAIRMAN MIETZ: Yeah. Right.

13 MR. DiSTEFANO: I think the one point about,  
14 you know, possibly conditioning the Harding lot, the  
15 new lot created, lot 2, not to be paved is a good  
16 condition to consider, keep it in stone. If they are  
17 to pave it, then they have to come back to us or  
18 something.

19 CHAIRMAN MIETZ: And they fairly admitted  
20 that. Yeah.

21 MR. DiSTEFANO: Right. So I think maybe  
22 consider that as a condition.

23 CHAIRMAN MIETZ: Where -- where do you feel  
24 that -- Rick, where do you feel that fits? In 5 or 6?

25 MR. DiSTEFANO: Well, I think you could do

1 it -- I think you could make the same conditions on  
2 both applications and just refer to lot 1 and lot 2 in  
3 both applications. Because any conditions you have  
4 for lot 1 -- both of the applications you can kind of  
5 make the same findings and the same conditions for  
6 each, for 6A-5 and 6A-06. Just specify what lot  
7 number you're talking about.

8 MR. GORDON: Well, if I could, Rick, lot  
9 2 -- if I'm understanding this right, lot 2 that you  
10 want to keep in stone is owned by Harding. Lot --

11 MR. DiSTEFANO: Will be.

12 MR. GORDON: Will be, right. Lot 1 is owned  
13 by Amaehrken LLC. They don't -- they won't have any  
14 legal authority or control over what happens with  
15 respect to paving on this lot 2.

16 MR. DiSTEFANO: Correct. But because it's a  
17 subdivision that incorporates both properties, I don't  
18 know -- Ken, correct me if I'm wrong, I think just  
19 conditioning them both with the same conditions --

20 MR. GORDON: I don't see the harm in doing  
21 that. I just -- I just -- if I'm owner of lot 1 and  
22 I --

23 MR. DiSTEFANO: I know what you're saying.  
24 I -- just -- yeah. The Harding one which is 6A-05.

25 MR. GORDON: Yeah. And if Harding decides

1 to violate that condition and paves the lot, you know,  
2 we go back to Amaehrken and say, hey, this is a  
3 problem for you. I don't think so.

4 CHAIRMAN MIETZ: Well, actually -- actually  
5 the reverse can happen too. There's a lot of gravel  
6 on lot 1. And if they were to pave all of that area,  
7 you would create a lot more drainage issues back there  
8 too as Mr. LaRue stated.

9 MR. GORDON: So do you want -- what you're  
10 saying, Dennis, is you want to have the condition be  
11 that all of the gravel areas on lots 1 and 2 remain as  
12 gravel areas.

13 CHAIRMAN MIETZ: Yeah. I don't know how,  
14 Rick, but we could really --

15 MR. DiSTEFANO: That sounds good. I --

16 MR. GORDON: I think that's better.

17 CHAIRMAN MIETZ: Hold on. Hold on. One at  
18 a time here please. Can't really hear either of you.  
19 Okay. Go ahead, Rick. What do you got?

20 MR. DiSTEFANO: You can put that same  
21 condition on both applications.

22 CHAIRMAN MIETZ: Yes. I mean, it puts a  
23 little policing on you, but I think, you know,  
24 somebody does a 10-foot section and paves it, we're  
25 not going to be worried because that's not really

1 going to do anything anyway. But if they materially  
2 paved all that gravel area or they installed it on lot  
3 2, we all know the conditions in West Brighton. So I  
4 think it's, you know, reasonable to be concerned about  
5 a little bit.

6 MR. GORDON: Yup. And --

7 MS. TOMPKINS WRIGHT: Just a quick --

8 CHAIRMAN MIETZ: Hold on. Go ahead. Is  
9 that Kathleen? I can't see who's talking.

10 MS. SCHMITT: No, it's Andrea.

11 MS. TOMPKINS WRIGHT: Just a quick question.  
12 If they weren't applying for the subdivision, they  
13 would have full rights to pave all of the gravel area;  
14 right?

15 MR. DiSTEFANO: No. No. We'd have to see  
16 how much coverage, what that's going to do to storm  
17 water --

18 CHAIRMAN MIETZ: Right. It'd be a site plan  
19 modification.

20 MS. TOMPKINS WRIGHT: I thought gravel was  
21 already considered impervious coverage. So changing  
22 something from one impervious coverage to another --

23 MR. DiSTEFANO: Yeah. It is considered  
24 impervious coverage, but there's never been a site  
25 plan for -- I mean lot 1 has had probably a site plan



1 review on it, but the new created lot does not have a  
2 site plan. So if they were going in to and modifying  
3 that gravel and saying hey, we're going to go pave it  
4 now, we would probably bring them in under some type  
5 of site plan modification or site plan approval in  
6 order to do that, at which time you would want to look  
7 at drainage. It makes --

8 MS. TOMPKINS WRIGHT: Okay.

9 MR. DiSTEFANO: -- some type of argument  
10 that the water is going to percolate through the  
11 gravel, certainly not going to percolate through  
12 the --

13 CHAIRMAN MIETZ: Correct.

14 MS. TOMPKINS WRIGHT: Okay.

15 CHAIRMAN MIETZ: All right. So we can  
16 probably just insert that, you know -- then any  
17 alterations, you know, to the current coverage, you  
18 know, would be an issue, you know, and --

19 MR. DiSTEFANO: Yeah. Some words to that  
20 effect.

21 CHAIRMAN MIETZ: Yeah. We can figure out  
22 the exact words. Okay. Jeanne, are you okay to do  
23 number 5?

24 MS. DALE: Yes.

25

1     **Application 6A-05-21**

2             Application of Robert G. Harding and Jason  
3     Harding, owners of property located on Northern Drive,  
4     known as Tax ID# 148.20-2-1, for Area Variances from  
5     Sections 205-7 and 205-8 to allow a resubdivided lot  
6     to have 68 percent impervious lot coverage in lieu of  
7     the maximum 65 percent allowed by code, and 2) allow  
8     said resubdivided lot to have pavement up to the  
9     western lot line where a 10 feet setback is required  
10    by code. All as described on application and plans on  
11    file.

12            The Board having consider the information  
13    presented by the applicant and having completed  
14    required review pursuant to SEQRA, The Boards  
15    determines that the proposed project will not likely  
16    have a significant environmental impact and has made  
17    the following decision.

18            Motion made by Ms. Dale to approve  
19    application 6A-05-21 based on the following findings  
20    of fact.

21     **FINDINGS OF FACT:**

22     1. The recent purchase of 120 Northern Drive prompted  
23     applicant to realize the requirement for an area to  
24     turn around large vehicles. In the event the parcel  
25     was sold to another owner who restricted use, the

1 applicant would not be able to maneuver as needed to  
2 run his business. To avoid this potential difficulty  
3 the applicant's intent is to purchase a parcel  
4 adjoining his existing property, which would  
5 resubdivided a portion of 120 Northern Drive.

6 2. The Variance request is to 1) allow the maximum  
7 impervious coverage to be 68 percent versus the 65  
8 percent as required and 2) allow gravel to be up to  
9 the lot line rather than within 10 feet of the lot  
10 line.

11 3. Granting of the variance request will not result  
12 in a substantial change in the character of the  
13 neighborhood or be a detriment to surrounding  
14 properties as the gravel on site is currently in  
15 place. So there is no change to the character of the  
16 neighborhood. Also the majority of the surrounding  
17 area is industrial, zoned for industrial and  
18 commercial use. The parcel is located at the end of a  
19 paved portion of Northern Drive and will not draw  
20 attention or create an eye sore to the neighborhood.  
21 There are no additional businesses adjoining the  
22 gravel area beyond the property that the applicant  
23 already owns.

24 4. The difficulty necessitating the variance request  
25 can not can solved in the another manner not requiring

1 a variance as the gravel is needed as a foundation to  
2 maneuver large tractor trailers and the removal of the  
3 existing gravel will create difficulties turning  
4 around on site. If the gravel along the property line  
5 were removed, the western half of the lot would become  
6 inaccessible.

7 5. The variance request is not substantial as it is a  
8 3 percent variance to the code requirements and a  
9 variance request is the minimum necessary to have room  
10 to maneuver.

11 **CONDITIONS:**

12 1. The existing gravel areas on lots 1 and 2 shall be  
13 maintained and further Town review would be required  
14 before any paving.

15 (Second by Ms. Schwartz)

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

19 (Upon roll, Motion to approve carries with  
20 conditions.)  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: Okay. Go ahead.

2 MR. DiSTEFANO: Do you want to talk about it  
3 first? Or --

4 CHAIRMAN MIETZ: I think we agreed before we  
5 were okay with both of these.

6 MR. DiSTEFANO: Okay. Who's got this  
7 application?

8 CHAIRMAN MIETZ: I do.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1     **Application 6A-06-21**

2             Application of Amaehrken LLC, owner of  
3     property located at 120 Northern Drive, for Area  
4     Variances from Section 205-7 to allow a resubdivided  
5     lot to 1) have impervious lot coverage of 100 percent  
6     in lieu of the maximum 65 percent allowed by code, 2)  
7     allow lot width to be 42 feet in lieu of the minimum  
8     150 feet required by code, and 3) allow building  
9     density to be 13,460 square feet per acre in lieu of  
10    the maximum 10,000 square feet per acre allowed by  
11    code. All as described on application and plans on  
12    file.

13            The Board having considered the information  
14    presented by the applicant and having completed the  
15    required review pursuant to SEQRA, the Board  
16    determines that project will not likely have a  
17    significant environmental impact and have made the  
18    following decision in regard to application 6A-06-21.

19            Motion made by Mr. Mietz to approve application  
20    6A-06-21 based on the following findings of fact.

21     **FINDINGS OF FACT:**

- 22     1. The current use and configuration of the lot  
23     contains buildings, gravel and black top surfaces for  
24     parking.  
25     2. No other alternative can achieve the desired

1 results since removal of any of these surfaces would  
2 limit access to parts of the existing buildings.

3 3. The property is adjacent to similar uses and no  
4 negative effect on the neighborhood or adjacent  
5 properties would likely result from the continuation  
6 of the 100 percent impervious coverage.

7 4. The 42 foot lot width creates a compliant adjacent  
8 lot and continues access to the subject property.

9 5. The subdivision of the lot will create a compliant  
10 adjacent lot without any negative effect on the  
11 character of the neighborhood

12 6. The separation of the two parcels will allow for  
13 potential future development of the newly subdivided lot 2.

14 **CONDITIONS:**

15 1. This variance is based on testimony given and  
16 drawings submitted specifically in relation to the  
17 intended subdivision into the two proposed lots.

18 2. Any alterations to the current surface conditions  
19 on lots 1 or 2 must be reviewed.

20 (Second by Ms. Schwartz.)

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

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

1 CHAIRMAN MIETZ: Okay. The next one is the  
2 other food trucks over on Sawgrass at the large  
3 surgical center there. Any concerns? Okay, Ed.

4 MR. PREMO: Just one quick question. If we  
5 issue this, it's a two year permit automatically or --

6 MR. DiSTEFANO: They are asking for one  
7 year. And usually when they're new like this, we only  
8 give them a year. And then they come back for it next  
9 year in case there were issues. It's an easier way to  
10 control it. So my suggestion would be give them the  
11 one year, 2021. If they want to do it again in 2022,  
12 they can then ask for a two-year permit if they'd  
13 like.

14 MR. PREMO: Okay. So I'd make that one of  
15 the conditions.

16 CHAIRMAN MIETZ: Sure.

17 MR. DiSTEFANO: Yeah. For the 2021 season.

18 MS. SCHWARTZ: This is quite often too. I  
19 mean, usually they're once a month. This is every  
20 week.

21 CHAIRMAN MIETZ: That's fine. Yeah. We'll  
22 give it a shot. This is what they applied for. So --

23 MS. SCHWARTZ: Right. Right. Right.  
24 But -- yeah. But a year is good. You're right.

25



1     **Application 6A-07-21**

2             Application of Brielle Messina, agent, and  
3     Ralph Ditucci, Castle Office Group LLC, owner of  
4     property located at 180 Sawgrass Drive, for a  
5     Temporary and revocable Use Permit pursuant to Section  
6     219-4 to allow a food truck on the site once per week  
7     through the summer of 2021 where not allowed by code.  
8     All as described on application and plans on file.

9             Motion made by Mr. Premo to approve  
10    application 6A-07-21 based on the following findings  
11    of fact:

12    **FINDINGS OF FACT:**

- 13    1.   The requested temporary and revocable Use Permit  
14    is a Type II action pursuant to number 6 in NYCRR,  
15    section sign 6717.5 V 21 and no review is required  
16    pursuant to the State Environmental Quality Review  
17    Act.
- 18    2.   The temporary use permit is consistent with the  
19    medical offices and ambulatory surgical center uses in  
20    the area and provides a temporary amenity for the UPMC  
21    medical staff.
- 22    3.   The requested time duration is consistent with the  
23    reasonable use of the parcel and is the minimum relief  
24    necessary.
- 25    4.   A single self-contained food truck will not

adversely impact public facilities.

5. The food truck once a week for three to four hours during the months of June, July and August will not produce a change in the character of the neighborhood or a detriment to the public.

6. The location of the food truck is a large parking field, provision of trash and recycling containers and the fact that only one properly licensed food truck will be allowed to ensure adequate protection of the health safety and community character.

7. The food truck will provide a welcomed amenity to the UPMC health care staff.

**CONDITIONS:**

1. This temporary and revocable permit is based on the drawings, documents and testimony provided.

2. The applicant will provide adequate trash and recycling containers for use by customers of the food truck and be responsible for trash removal.

3. The food truck will only operate three to four at a time.

4. The food truck on the site must be currently licensed and successfully completed the 2021 fire safety inspection by the City of Rochester Fire Department which establishes full compliance with the 2020 Fire Code of the State of New York, section 319

1 in the National Fire Protection Association, Chapter  
2 96 (2017 edition), Appendix C- Mobile Food Preparation  
3 Vehicle Safety

4 5. This temporary use and revocable Use Permit is  
5 only good for 2021.

6 (Second by Ms. Schwartz.)

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

10 (Upon roll, Motion to approve carries with  
11 conditions.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: Okay. The next one is  
2 Fairhaven for the fence extension on the Blossom Road  
3 side. Any issues with this?

4 MS. TOMPKINS WRIGHT: No.

5 CHAIRMAN MIETZ: Okay. Kathleen.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1     **Application 6A-08-21**

2             Application of Katherine Turner Jacus, owner  
3     of property located at 255 Fairhaven Road, for an Area  
4     Variance from Section 207-2A to allow a portion of a 6  
5     foot high fence to extend into a front yard where the  
6     maximum fence height is 3.5 feet as allowed by code.  
7     All as described on application and plans on file.

8             Motion made by Ms. Schmitt to approve  
9     application 6A-08-21 based on the following findings  
10    of fact:

11    **FINDINGS OF FACT:**

- 12    1.   The homeowners wish to install a 6 foot privacy  
13    fence in what they consider to be their backyard.  
14    They have a young daughter and believe that a fenced  
15    yard will provide extra safety and also serve as a  
16    sound barrier to road traffic.
- 17    2.   The property in question is a corner lot with the  
18    front door of the home facing Fairhaven Road. As it  
19    is a corner lot the property line that runs along  
20    Blossom Road also is designated as the front yard.  
21    The homeowners and most observers, however, would  
22    consider the property line of Blossom Road to be a  
23    side yard as it faces the side of the main entrance of  
24    the home.
- 25    3.   The homeowners explored placing fence directly

1 behind the garage but decided against it because there  
2 is an existing garden that will be destroyed if the  
3 fence went through it.

4 4. The proposed fence would leave a minimum of 22 and  
5 a half feet of a buffer between the fence and the  
6 property line.

7 5. Blossom Road is a busier street with significant  
8 automobile and foot traffic.

9 6. The proposed placement of the fence will be hidden  
10 in large part behind a substantial existing hedge and  
11 a line of mature trees

12 7. The granting of this variance would not appear to  
13 result in any substantial detriment to nearby  
14 properties or otherwise adversely affect the character  
15 of the neighborhood as at least one nearby by home has  
16 a similar size and style of fence also facing Blossom  
17 Road.

18 8. Moreover there is no evidence that there would be  
19 a negative impact on the health, safety and welfare of  
20 the neighborhood.

21 **CONDITIONS:**

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

25 2. All necessary building permits shall be obtained.

1 (Second by Ms. Tompkins Wright).

2 (Mr. Premo, yes; Ms. Schwartz, yes;  
3 Ms. Dale, yes; Mr. Mietz, yes; Ms. Tompkins Wright,  
4 yes; Ms. Schmitt, yes.)

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

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   CHAIRMAN MIETZ: The next one is the porch  
2 on Elmore. That's the one where, you know, it's  
3 grazing the road on one side so the whole thing isn't  
4 really in the setback, but part of it is. Any issues  
5 there?

6                   MS. SCHWARTZ: No.

7                   CHAIRMAN MIETZ: Okay. Judy.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1     **Application 6A-09-21**

2             Application of Jack and Kaitlin Keenan,  
3     owners of property located at 55 Elmore Road, for an  
4     Area Variance from Section 205-2 to allow a covered  
5     front porch to extend 5 feet into the 40 feet front  
6     setback required by code. All as described on  
7     application and plans on file.

8             Motion made by Ms. Schwartz to approve  
9     application 6A-09-21 on the following findings of  
10    fact.

11    **FINDINGS OF FACT:**

12    1. This variance for a 45 foot front setback in lieu  
13    of the 40 foot required by code is minimal and would  
14    not be necessary if the street did not curve.

15    2. The addition of the front porch will enhance the  
16    style of the house and offer some shaded area for the  
17    applicant

18    3. The rear yard is smaller than the front yard and  
19    would not be conducive for the porch addition.

20    4. The porch will be open and not obstruct line of  
21    sight any neighboring properties.

22    **CONDITIONS:**

23    1. This variance only applies to the addition of the  
24    front porch as presented in testimony and written  
25    application

1 2. All necessary Planning, Architectural Review Board  
2 and building permits must be obtained.

3 3. This must be an open porch now and in the future.

4 (Second by Ms. Schmitt)

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

8 (Upon roll, Motion to approve carries with  
9 conditions.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. DiSTEFANO: And all necessary  
2 architectural review board and building permits.

3 MS. SCHWARTZ: Yes. Yes.

4 MR. DiSTEFANO: Judy, do you want to --  
5 since you mentioned it in your findings, do you want  
6 to make a condition that it should remain an open  
7 porch?

8 MS. SCHWARTZ: Open porch. Okay. And  
9 condition 3, this must be an open porch.

10 MR. DiSTEFANO: Not enclosed.

11 MS. SCHWARTZ: Not enclosed. Yes. Good  
12 point. Thank you.

13 MR. GORDON: Just to make sure the record is  
14 clear, Rick, I think you suggested and, Judy, I think  
15 you agreed that the condition is and not to be  
16 enclosed in the future.

17 MR. DiSTEFANO: Correct. Thank you.

18 MS. SCHWARTZ: They would have to come back.  
19 Right.

20 MR. DiSTEFANO: Right.

21 CHAIRMAN MIETZ: Yeah.

22 MR. DiSTEFANO: Yeah. If they wanted to  
23 enclose, they'd have to come back.

24

25

1 CHAIRMAN MIETZ: All right. Moving along.  
2 The next one is the short-term Tim Hortons which is  
3 now being converted. Long interesting story for  
4 another night on this thing, but anyway. So what --  
5 anyone have any concerns about -- other than the point  
6 that Rick raised, I guess.

7 MS. SCHWARTZ: I was just having a hard time  
8 because they didn't put on the street, but none of  
9 this menu board stuff is going to be on West  
10 Henrietta?

11 CHAIRMAN MIETZ: Right.

12 MS. SCHWARTZ: Okay. All right.

13 CHAIRMAN MIETZ: And all of it's on the rear  
14 it's on -- we'll say the east.

15 MS. SCHWARTZ: Okay. Just wanted to be  
16 sure. Okay.

17 CHAIRMAN MIETZ: Anyone else have anything?

18 MS. TOMPKINS WRIGHT: The only thing I  
19 thought that was in my conditions, I wasn't sure if we  
20 were going to require the preview board be placed  
21 closer to the menu board or just in their discretion,  
22 maybe place closer as needed for traffic flow.

23 MR. DiSTEFANO: Yeah. I was just trying to  
24 get them to think about it a little bit. You know,  
25 ultimately it's going to be their issue on site if it

1 backs things up and if that happens, they're going to  
2 go out there and move it. As long as they're thinking  
3 about it, you know --

4 MS. TOMPKINS WRIGHT: Okay.

5 CHAIRMAN MIETZ: We typically try not to  
6 indicate like where something should be because it's  
7 really not our per view to do that, just to suggest  
8 there's a concern about it. So I guess it's really up  
9 to you, Andrea, to say that they could have latitude  
10 if they wanted to move it closer. You could do  
11 something like that.

12 MS. TOMPKINS WRIGHT: Okay.

13 MR. DiSTEFANO: I don't think we have to  
14 hold to that it has to be right there.

15 CHAIRMAN MIETZ: No.

16 MS. TOMPKINS WRIGHT: Yeah. Okay.

17 MR. GORDON: In this regard -- I'm sorry. I  
18 was just going to suggest unless you're going to make  
19 it an actual enforceable condition, I wouldn't make it  
20 a condition at all. So putting a suggested condition,  
21 not what I would recommend.

22 CHAIRMAN MIETZ: Okay. That makes sense.  
23 Yeah. Again, there's really nothing to suggest -- if  
24 it's just a bunch of pictures there, you're probably  
25 not going to stand there and stare at it that long

1        anyway.    So -- okay.

2                MS. TOMPKINS WRIGHT:    Normally when we  
3        approve sign applications we specifically say that  
4        they're in the location as depicted on the plans.

5                CHAIRMAN MIETZ:    Right.    Right.

6                MS. TOMPKINS WRIGHT:    So in this case we  
7        would specifically do that only for the building face  
8        sign and not for the menu board?

9                CHAIRMAN MIETZ:    Well, I think what Ken is  
10       suggesting is that either we think it should be  
11       relocated or not, not leave it, you know, like up to  
12       their discretion or maybe move it somewhere.    So,  
13       again, as Rick is saying, it's a condition they're  
14       creating there.    I suppose if the thing starts causing  
15       problems, then they're probably going to either come  
16       back or discuss it or try to move it.    But, you know,  
17       to be halfway in the middle on it, we probably could  
18       say it's based on the drawings as submitted as to the  
19       locations that are submitted.

20               MS. TOMPKINS WRIGHT:    I would personally not  
21       want to see them come back if they're going to move it  
22       10 feet.    That seems to be just a waste of our time.  
23       So I would suggest that we write it that it's based on  
24       the location depicted, although that one sign can be  
25       moved closer.    You know, that the location of that

1 sign isn't set in stone. And that gives them the  
2 latitude to move it along that line without coming  
3 back to us.

4 MR. DiSTEFANO: I think you're right.  
5 And -- Andrea if you kind of craft something like  
6 that.

7 CHAIRMAN MIETZ: Yeah. Well, there's some  
8 tolerance and stuff. Again, I just don't want to be  
9 placing the location. That's all. That's really not  
10 our per view to do that. We're not traffic engineers  
11 here.

12 MR. GORDON: And if I might suggest the  
13 language that seems to me to be appropriate would be  
14 to say that the preview board shall be located  
15 approximately in the position that is shown on the  
16 plans; right? I mean, we don't want there to be a  
17 substantial change, but a small change, like you said,  
18 5, 10 feet one way or another.

19 CHAIRMAN MIETZ: Yeah. Half a car length.  
20 You okay with that Andrea?

21 MS. TOMPKINS WRIGHT: Yes. And does this  
22 need a SEQRA statement? I think it does; right?

23 MR. DiSTEFANO: Yup.

24 MS. TOMPKINS WRIGHT: Okay.

25 MR. DiSTEFANO: Yup. Both this one and the

1 next one.

2 CHAIRMAN MIETZ: Go ahead, Rick. Why don't  
3 you read it in.

4 MS. TOMPKINS WRIGHT: I have it actually.

5 CHAIRMAN MIETZ: Oh, you have it? Then go  
6 ahead.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1     **Application 6A-10-21**

2             Application of Not a Wrap LLC, lessee, and  
3     570 Delaware II, LLC, owner of property located at  
4     2830 West Henrietta Road, for modification of approved  
5     Sign Variances allowing for new tenant signage on an  
6     approved second building face and relocation of two  
7     approved menu boards. All as described on application  
8     and plans on file.

9             The Board having considered the information  
10    presented by the applicant and having completed the  
11    required review pursuant too SEQRA, the Board  
12    determines that the proposed project would not likely  
13    have a significant environmental impact and have made  
14    the following decision.

15            Motion made by Ms. Tompkins Wright to  
16    approve application 6A-10-21 based on the following  
17    findings of fact.

18     **FINDINGS OF FACT:**

19     1. The granting of the requested variance will not  
20     produce an undesirable change in the character of the  
21     neighborhood or be a detriment to nearby properties.  
22     This property is located in a commercial area with  
23     several other businesses with similar building faces  
24     signs and menu board signs for drive-through uses.  
25     Further, the signs were previously approved by the

1 Board albeit with a different design and have not  
2 caused any material change in the neighborhood.

3 2. The requested variance is not substantial. With  
4 respect to the second building face the combined size  
5 of the two building face signs is significantly less  
6 than the allowable square footage for any one building  
7 face sign. And the menu board, while not expressly  
8 permitted, are necessary for the successful operation  
9 of any drive-through, which is a permitted use.

10 Further, the proposed signs are modest in size.

11 3. The benefit sought by the applicant cannot  
12 reasonably be achieved by any other method as there  
13 are no reasonable alternatives to appropriate signage  
14 for a restaurant for the purpose of identifying its  
15 location to the public along a major road and  
16 providing a menu for drive-through use.

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

21 **CONDITIONS:**

22 1. The variance granted herein applies only to the  
23 additional building face sign and menu boards as  
24 depicted in the application submitted and testimony  
25 given. Notwithstanding, the preview and menu board

1 shall be located at approximately the location as  
2 shown on the plans submitted.

3 2. All necessary Architectural Review Board approvals  
4 and Planning Board approvals must be obtained.

5 (Second by Ms. Schwartz).

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

9 (Upon roll, Motion to approve carries with  
10 conditions.)

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: Okay. So the last one is  
2 the new Thai restaurant in the old Brighton Anja  
3 Noodle. Okay. So what are -- does anyone have  
4 concerns about the logos? I presume the two signs are  
5 reasonable, but does anyone have concerns about these  
6 logos, dis-attached and at the corner of the building.

7 MS. SCHWARTZ: No. But I just have to say,  
8 it's very interesting that the two restaurants he's  
9 brought up there, both were very special and needed  
10 these very different and very important, you know,  
11 logos to make the business successful. I just find it  
12 kind of comical. I don't -- I mean, I don't know.

13 MR. DiSTEFANO: They don't even look like  
14 logos. They look like building accents.

15 MS. SCHWARTZ: They do. They do.

16 MR. DiSTEFANO: Like a nice little building  
17 feature. So I don't know.

18 MS. SCHWARTZ: Yeah. But it's funny.

19 CHAIRMAN MIETZ: Yeah. I thought the  
20 argue -- the way the argument was made was a little  
21 bizarre because really they're just a feature.

22 MS. SCHWARTZ: Right.

23 CHAIRMAN MIETZ: I don't know how anybody  
24 would know that it would be their logo anyway.

25 MS. SCHWARTZ: Right. Right.

1 CHAIRMAN MIETZ: In any event -- okay.

2 MS. DALE: Yeah. I think it's pretty  
3 different then the QDOBA and like the big masks  
4 that --

5 MS. SCHWARTZ: Right. But it's the idea  
6 that his restaurants need these --

7 MS. DALE: Yeah. No. I'm with you. I'm  
8 more comfortable with this then --

9 MS. SCHWARTZ: Oh, yes. For sure.

10 MR. GORDON: Brighton Hots didn't have any  
11 of that fancy stuff --

12 MS. DALE: If you guys are ok, I will go  
13 ahead.

14 CHAIRMAN MIETZ: Go ahead. I think we're  
15 good.

16 MS. DALE: Rick, I don't have the SEQRA  
17 thing handy. I apologize.

18 MR. DiSTEFANO: I'll read that.

19 MS. DALE: Thank you.  
20  
21  
22  
23  
24  
25

1     **Application 6A-11-21**

2             Application of Brighton Twelve Corners  
3 Associates LLC, owner of property located at 1881  
4 Monroe Avenue for 1) modification of an approved.  
5 Sign variance allowing for a business identification  
6 sign on a second building face; and 2) a Sign Variance  
7 from Section 207-26D to allow two logo only signs to  
8 be located at the southwestern portion of the  
9 building, one on each side, where not allowed by code.  
10 All as described on application and plans on file.

11             The board having considered the information  
12 presented by the applicant and having completed the  
13 required review pursuant to SEQRA, the Board  
14 determines that the proposed project will not likely  
15 have a significant environmental impact and have made  
16 the following decision.

17             Motion made by Ms. Dale to approve  
18 application 6A-11-21 based on the following findings  
19 of fact.

20     FINDINGS OF FACT:

21     1. The applicant is seeking a primary business  
22 identification sign along the Elmwood Avenue building  
23 facade with a second business identification sign on  
24 the western building elevation. The applicant also  
25 requests two 9 square foot logo signs at the

1 southwestern corner of the building, one on each of  
2 the southern and western building elevations.

3 2. The existence of a second business identification  
4 sign on the second facade of the building would be  
5 double what is allowed by code, but would not be  
6 substantial as the proposed sign would replace  
7 existing signs at the same locations. The former Anja  
8 Noodle restaurant at this site was granted sign  
9 variances to allow identification at the same  
10 locations as requested by this applicant. It is not  
11 uncommon for businesses in Brighton at corner lots  
12 with entrances to different streets to have two  
13 business identification signs assist in way finding.

14 3. The applicant's request includes allowing the  
15 pictorial image to be larger than code. The image on  
16 the southern elevation would be approximately half of  
17 a square foot over the 8 and a half square foot  
18 allowed by code and 3 square feet over the 6 foot  
19 square feet allowed on the western elevation. The  
20 location of the images on the adjacent corners  
21 requires the images to be a uniform size in order to  
22 be aesthetically pleasing.

23 4. The applicant believes the variance to be the  
24 minimum relief necessary for reasonable use of the  
25 property as they are required to allow vehicular

1 traffic to identify the entrances from both Elmwood  
2 Avenue and from within the parking areas and drive  
3 lanes shared between adjacent properties.

4 5. The increase to the allowable size of the  
5 pictorial images as part of the signage package is to  
6 meet the applicant's desire to increase the awareness  
7 of the franchise location while reducing uncertainty  
8 in locating site and has been deemed a necessary  
9 element to be included with the new tenant for the  
10 proposed use. The image proposed is the smallest  
11 deemed necessary by the operator to achieve the  
12 desired result to make identification of the  
13 restaurant easier for motorists traveling through the  
14 area and increase awareness for potential customers.

15 6. Approval of the variance request will not result  
16 in a substantial change in character of the  
17 neighborhood or detrimentally affect surrounding  
18 properties. The former businesses at this locations  
19 also had two primary business identification signs in  
20 the same location as being requested. The proposal is  
21 not inconsistent with other business signage in the  
22 immediate area.

23 7. The difficulty leading to apply for the variance  
24 request cannot be solved in another manner due to the  
25 nature of the positioning of the building in



1 relationship to Elmwood Avenue and the existence of  
2 two primary entrances into the restaurant. The  
3 existence of shared parking and drive lanes between  
4 the adjacent parcels may cause difficulty with  
5 motorists locating the restaurant's entrances, which  
6 will be alleviated by the additional signage.

7 8. The requested logos as designed are primarily  
8 vacant space which will show the underlying brick of  
9 the building.

10 **CONDITIONS:**

11 1. The signs are to be the size, location and  
12 materials as described in the application.

13 2. All necessary Architectural Review Board and  
14 Planning Board permits shall be obtained.

15 (Second by Ms. Schmitt)

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

18 (Upon roll, Motion to approve carries with  
19 conditions.)  
20  
21  
22  
23  
24  
25

1 CHAIRMAN MIETZ: Okay. Very good. So we  
2 will work on number 3 and then come back and review it  
3 next month. Thank you very much.

4 (Proceedings concluded at 9:55 p.m.)

5 \* \* \*

6 REPORTER CERTIFICATE

7  
8 I, Holly E. Castleman, do hereby certify  
9 that I did report the foregoing proceeding, which was  
10 taken down by me in a verbatim manner by means of  
11 machine shorthand.

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

16  
17 Dated this 23rd day of June, 2021  
18 at Rochester, New York.

19  
20  
21 *Holly E. Castleman*  
22 -----

23 Holly E. Castleman,

24 Notary Public  
25