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BRIGHTON

3

ZONING BOARD OF APPEALS

4

MEETING

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6

7

June 6, 2021

8

At approximately 7 p.m.

9

Brighton Town Hall Zoom Meeting

2300 Elmwood Avenue

Rochester, New York 14618

10

11

PRESENT:

12

DENNIS MIETZ, CHAIRPERSON

13

EDWARD PREMO

)

JEANNE DALE

)

14

KATHLEEN SCHMITT

)

15

ANDREA TOMPKINS WRIGHT

)

Board Members

JENNIFER WATSON

)

JUDY SCHWARTZ

)

16

JEFF FRISCH

17

KEN GORDON, ESQ.

18

Town Attorney

19

RICK DiSTEFANO

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Secretary

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22

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24

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

25

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 question 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2 withdrawn.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 (AUpon 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. McCUALEY: 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. McCUALEY: Yes.

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

4 MS. McCUALEY: 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. McCUALEY: 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. McCUALEY: 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. McCUALEY: 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. McCUALEY: I have a lot of old trees.

7 MR. PREMO: Yeah.

8 MS. McCUALEY: 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. McCUALEY: 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. McCUALEY: 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 know 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 than 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 closest 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.

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 then 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 sigh where ESL is. And
10 we're very excited about this operator.

11 MS. DALE: So as spar 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.

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1 | **REPORTER CERTIFICATE**

2

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

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

11

12 Dated this 23rd day of June, 2021
13 at Rochester, New York.

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Holly 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

10 | PRESENT:

DENNIS MIETZ, CHAIRPERSON

JEFF FRISCH

17 KEN GORDON, ESQ.
Town Attorney

18 RICK DiSTEFANO
Secretary

23 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
24 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.

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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. Applicants shall obtain ARB approval.

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.)

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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.

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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.)

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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 is 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.

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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 (AUpon roll, Motion to table carries.)

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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.

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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.)

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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.

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 be 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.)

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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.

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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 URMC
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

1 adversely impact public facilities.

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

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

11 7. The food truck will provide a welcomed amenity to
12 the URMC health care staff.

13 **CONDITIONS:**

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

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

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

21 4. The food truck on the site must be currently
22 licensed and successfully completed the 2021 fire
23 safety inspection by the City of Rochester Fire
24 Department which establishes full compliance with the
25 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.)

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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.

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

9. 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. 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. 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.)

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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.

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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. 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.)

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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.

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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.

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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.)

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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.

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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.)

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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