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BRIGHTON

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ZONING BOARD OF APPEALS

4

MEETING

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October 6, 2021
At approximately 7 p.m.
Brighton Town Hall Zoom
2300 Elmwood Avenue
Rochester, New York 14618

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10 PRESENT:

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12

DENNIS MIETZ
Chairperson

13

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EDWARD PREMO)
JUDY SCHWARTZ) Board Members
HEATHER MCKAY DRURY)
MS. TOMPKINS WRIGHT)

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KEN GORDON, ESQ.
Town Attorney

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RICK DiSTEFANO
Secretary

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ABSENT: KATHLEEN SCHMITT

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

1 CHAIRMAN MIETZ: All right. Good evening,
2 everyone. Welcome to the October 2021 meeting of the
3 Brighton Zoning Board of Appeals. Just a couple of
4 little housekeeping things. If you would please keep
5 your camera off. If you are someone who's going to be
6 speaking later in the meeting when there's an item
7 that you're interested in, but until then if you
8 would. And then also if someone during that period of
9 time needs to speak and they could raise their hand
10 and we could view that and then Everett could help us
11 out to acknowledge you and allow you to speak.

12 These meetings go on pretty well. We did
13 quite a few of them in Zoom. So I think you should
14 see no trouble in, you know, getting your thoughts out
15 there. And the Board Members are able to ask
16 questions and us to move along in an efficient manner.

21 MR. DiSTEFANO: Yes, Mr. Chairman. It was
22 advertised in the September 30th, 2021, edition of the
23 Daily Record.

24 CHAIRMAN MIETZ: Okay. Very good. Could
25 you call the roll please?

1 (Whereupon the roll was called.)

2 MR. DiSTEFANO: Please let the record show
3 that Ms. Schmitt is not present.

4 CHAIRMAN MIETZ: Okay. Very good. Okay.
5 So would you like to talk about anything that's part
6 of the agenda this evening?

7 MR. DiSTEFANO: I have nothing for the
8 members unless someone has a question regarding any of
9 the applications.

10 CHAIRMAN MIETZ: Okay. That's good. I
11 guess we've got six applications and then one piece of
12 old business, yes?

13 MR. DiSTEFANO: Right. And we do have the
14 August meeting minutes.

15 CHAIRMAN MIETZ: Yes. Yes. We'll do those
16 forthwith. I know Judy's burning over there --

17 MS. SCHWARTZ: They're good.

18 CHAIRMAN MIETZ: You got your finger right
19 on the switch. All right.

20 MS. SCHWARTZ: On page 12, line 6, the name
21 is Mr. Shea, S-H-E-A. On page 43, line 18, please
22 delete the A and B at the end of the sentence. And
23 that's it. They were good. Good, good.

24 CHAIRMAN MIETZ: Wow.

25 MS. SCHWARTZ: I know.

1 MR. PREMO: I also have a change.

2 CHAIRMAN MIETZ: Yes. Go ahead, Ed.

3 MR. PREMO: Page 43, the third line, it
4 should be Meadowbrook Drive, not drove.

5 CHAIRMAN MIETZ: Okay.

6 MS. SCHWARTZ: Typo. Yes. Okay.

7 CHAIRMAN MIETZ: Okay. Does anyone have
8 anything else? Okay. Well, then we can have a motion
9 for the minutes.

10 MS. SCHWARTZ: So approved.

11 CHAIRMAN MIETZ: Second?

12 MS. MCKAY DRURY: I'll second.

13 CHAIRMAN MIETZ: Okay.

14 MR. DiSTEFANO: Motion is to approve with
15 corrections.

16 (Mr. Premo, aye; Ms. Schwartz, aye;
17 Ms. Tompkins Wright, abstain; Mr. Mietz,
18 yes; Ms. McKay Drury, aye.)

19 (Motion to approve carries.)

20 CHAIRMAN MIETZ: Okay. Now, again, just for
21 those on the conference call, the way we like to
22 generally handle this is that we'll call your
23 application. You'll present what you would like to.
24 The Board Members will ask any questions. And then
25 we'll see if anyone on the call would like to speak

1 regarding your application. If they do, we'll allow
2 them all to do so. And then we'll close the public
3 hearing and move on to the next application. Excuse
4 me.

5 And then at the end we'll move through them
6 one by one. And you're welcome to stay and listen.
7 There is no more discussion with applicants during
8 that part, but you're certainly free to listen. If
9 you choose to listen, then you'll see the result
10 because we vote on everything tonight unless something
11 gets tabled. And if you don't want to stay, then you
12 can call Mr. DiStefano in the building -- in the main
13 office tomorrow and he can let you know what the
14 result of your application is. Okay. So let's roll,
15 Rick.

16 **Application 10A-01-21**

17 Application of Cliff Wagner - Landtech
18 Surveying and Planning, agent and Trinity Reform
19 Church, owner of property located at 909 North Landing
20 Road, for an Area Variance from Sections
21 203-2.1C(1)(a) and 203-9B(1) to allow a church
22 building to have a 41.7 foot side setback, after
23 subdivision of one lot into two, in lieu of the
24 minimum 100 feet setback required by code. All as
25 described on applications and plans on file.

1 CHAIRMAN MIETZ: All right. Who do we have
2 speaking for 10A-01?

3 MR. SCIARABBA: Good evening, Mr. Chairman.
4 My name is John Sciarabba with LandTech. I'm
5 pinch-hitting for Cliff tonight.

6 CHAIRMAN MIETZ: Okay. Very good, sir.
7 Just give an address please.

8 MR. SCIARABBA: Sure. I'm with -- my office
9 is located at 1105 Ridgeway Avenue, Rochester 14615.

10 CHAIRMAN MIETZ: Okay, sir. Then go ahead
11 and proceed.

12 MR. SCIARABBA: We are representing the
13 Trinity Reform Church that is located on the west side
14 of Landing Road, right between Penhurst Road and
15 Stratton Road. This is a 2.6-acre parcel of land that
16 is zoned RLB Residential, low density.

17 And what we're really asking for tonight is
18 to subdivide the existing house that borders the
19 Stratton area and create a three-tenths of an acre
20 parcel around the home and then that -- and then the
21 rest of the church will remain as is.

22 So basically the church would like to sell
23 the house. In doing so, we made the lot meet all the
24 size, width and depth requirements, but the section of
25 code within the Town requires any church to be at

1 least 100 feet from a property line in this zoning
2 district, which is quite impossible in this situation.

3 If you look at the map, the corner of the
4 church and the corner of the garage of the house are
5 approximately 85 feet apart. So we are forced to ask
6 for a variance for the side setback of the 41.7 feet.
7 Also in the subdivision process we're creating a
8 ingress/egress. So the driveway will remain as is to
9 be used in common between both parcels.

10 So we feel that this application and this
11 request for the variance is in the character of the
12 neighborhood due to the fact that we're not altering
13 any physical features of the property. It's all going
14 to remain the same. We're not proposing any new
15 structures, any new driveway access or anything such
16 as that.

17 We also feel that, you know, it could be
18 considered significant because we're more than
19 50 percent deviation of code, but as I explained,
20 there's only 85 feet between the properties. And they
21 really can't be configured in any other way that
22 wouldn't require more variances.

23 So, again, it's going to stay in the
24 character of the neighborhood. We're not altering any
25 physical features of the neighborhood. It's all going

1 to remain the same. It is self-created, but I think
2 there is a need, possibly economic need for churches
3 these days to recoup some money. And I think the sale
4 of this house will be a benefit -- a great benefit to
5 the church itself.

6 So it's a very quick overview of what we're
7 asking for as it relates to the variance and goals of
8 the church itself. We are on the Planning Board
9 agenda, the next Planning Board agenda for subdivision
10 approval pending, hopefully, your approval of this
11 variance.

12 CHAIRMAN MIETZ: Okay. Very good. Okay.
13 Just a couple quick things and then we'll go around
14 for some other questions.

15 So the issue with the driveway, you feel
16 that, or the real estate folks of the world feel that,
17 this is a workable situation with the driveway to
18 remain the way it is and be shared by these
19 properties?

20 MR. SCIARABBA: If you're asking me,
21 Mr. Chairman --

22 CHAIRMAN MIETZ: Yes.

23 MR. SCIARABBA: -- the easements are a
24 common part of land development use. We'll -- I think
25 that they should be used in harmony. I don't see any

1 issue. The church will work with an agreement before
2 selling the property, make sure that that's clarified
3 as far as maintenance and snow removal. I will share
4 that with the Planning Board at that time when we get
5 that easement documentation put together.

6 CHAIRMAN MIETZ: Yeah. I agree. It's not
7 uncommon, just, you know, was there any discussion
8 about doing anything differently then that as far as
9 what you've considered with the church related to it
10 versus that scenario?

11 MR. SCIARABBA: We felt that we could -- we
12 have kind of lobbed off the church's access to that
13 road to Stratton and made a, you know, for lack of
14 better term, put a gate across the driveway and just
15 use it for the house. But we feel that the church is
16 going to need that for traffic flow during service.
17 And I think -- I don't think it would be a great idea
18 for the church and/or emergency vehicles. So I think
19 it's going to work well having that open access to
20 both parties.

21 CHAIRMAN MIETZ: Okay. Very good. Board
22 Members, questions for --

23 MS. SCHWARTZ: Yes. The house is going to
24 remain a house, a residential use, and the church
25 isn't going to be changing in any way for use or

1 physically with any additions or anything like that?

2 MR. SCIARABBA: Nope. Not that I'm aware
3 of. Not at this time.

4 MS. SCHWARTZ: Okay. Thank you.

5 CHAIRMAN MIETZ: Okay. Yeah. Judy, it is
6 a, you know, residentially zoned lot. So if there was
7 any future idea to do something differently, then
8 obviously it's --

9 MS. SCHWARTZ: They'd have to come to --
10 yeah.

11 CHAIRMAN MIETZ: Us or the Town Board or the
12 Planning Board or whatever they're trying --

13 MS. SCHWARTZ: Okay. Just wondered though,
14 if they had any thoughts. Okay.

15 CHAIRMAN MIETZ: That's fine.

16 MS. SCHWARTZ: Thank you.

17 CHAIRMAN MIETZ: Fair question. Does anyone
18 else have any other questions for the applicant?

19 MS. MCKAY DRURY: I'm curious --

20 CHAIRMAN MIETZ: Go ahead, Heather.

21 MS. MCKAY DRURY: I'm wondering if the
22 portion that will be the shared drive, do church
23 parishioners traditionally park along that portion or
24 just in the bigger asphalt area?

25 MR. SCIARABBA: That's a tough question for

1 me. I don't have a historic knowledge of the church
2 service. I think there's plenty of room. We have two
3 rather large parking lots, one on the west side and
4 one south of the church. So I don't see the issue
5 with parking alongside that route.

6 MS. MCKAY DRURY: Okay.

7 CHAIRMAN MIETZ: Okay. All right. All
8 right. Any other questions by any other Board
9 Members?

10 MR. GORDON: Dennis, I just wanted to -- can
11 you hear me, Dennis?

12 CHAIRMAN MIETZ: Oh, yes. Go right ahead.

13 MR. GORDON: Okay. Sorry.

14 CHAIRMAN MIETZ: I'm sorry. Just stick your
15 hand up. That's always the safest way, but go ahead.

16 MR. GORDON: So just to share with the Board
17 Members, and I don't think Mr. Sciarabba knows this
18 necessarily, but the church building itself has been
19 designated as a historic landmark in the Town. So
20 there could be no changes to that without approval of
21 the Historic Preservation Commission.

22 CHAIRMAN MIETZ: Okay.

23 MR. GORDON: And -- and this was a fairly
24 recent designation. When the Historic Preservation
25 Commission considered designation, there was an

1 expressed discussion about this very idea of
2 subdividing off the house because it did not have
3 historic value and doing that in such a way so that
4 the church could sell off that house that was no
5 longer being used by the church.

6 CHAIRMAN MIETZ: Right. Sure.

7 MR. GORDON: And I think it was originally a
8 rectory.

9 CHAIRMAN MIETZ: Okay. Very good. I think
10 as was noted here, I mean, the pressure on many
11 religious institutions to try to carve out some of
12 their real estate investments to try to keep the
13 congregations vibrant is certainly a common thought
14 and problem. So it seems pretty straight forward
15 that -- why they would want to do this. But thank you
16 for telling us that.

17 All right. Is there any other questions by
18 the Board Members -- or are there? Okay. Very good.

19 Is there anyone on the Zoom call that would
20 like to speak regarding this application? Okay.
21 There being none, then let's close the public hearing
22 and move on to the next application.

23 **Application 10A-02-21**

24 Application of James and Christina Kolberg,
25 owners of property located at 401 Brooklawn Drive, for

1 Area Variances from Section 205-2 to allow 1) a front
2 porch addition to extend 9 feet into the 40 foot front
3 setback required by code, and 2) allow a garage
4 addition to extend 4 feet into the 40 foot front
5 setback required by code. All as described on
6 application and plans on file.

7 CHAIRMAN MIETZ: Okay. And who do we have
8 speaking for application number 2?

9 MR. MINOR: I'm Paul Minor, the architect
10 for James and Christina Kolberg. I live at 111
11 Averill Avenue in Rochester 14620.

12 CHAIRMAN MIETZ: Okay, Paul. Welcome.
13 Thank you and go ahead and give us your thoughts here.

14 MR. MINOR: Thank you. This application
15 before you states this variance request is part of a
16 greater addition renovation project during which the
17 Kolbergs would like to add a front porch to the house.

18 As noted in the application front porches --
19 front porches are a vestige of much older homes.
20 They're once again becoming popular in newer homes.
21 Handled right they enhance the house and can increase
22 its value.

23 But they also convey literally and
24 figuratively a sense of community. We are not walled
25 up inside, but welcome interaction with you. They

1 also improve safety on the street, a message that,
2 yes, there are eyes on this street.

3 Unfortunately so many homes built in the
4 last 50 to 60 years -- and this house was built in
5 1957 -- were built to the max, right up to the zoning
6 setback lines in the front and the side, hence the
7 need for a variance for this porch in the front yard.
8 This was not a self-created hardship, but one created
9 when the house was originally built.

10 As for the request for a variance for a
11 small corner of a new garage, the proposed addition is
12 to provide the Kolberg's, without children, continuing
13 to live at home, more personal space and additional
14 space for entertaining including accommodation of a
15 large pool table from the turn of the last century.

16 The best opportunity is beyond -- behind and
17 within part of the existing garage. But because of a
18 large tree behind the present garage that the Kolbergs
19 want to retain, constructing a portion of this garage
20 further towards the front of the house seems
21 reasonable. Given the unique shape of the lot on a
22 cul-de-sac, almost all the garages can be built within
23 the front yard setback requirement, except one small
24 corner is shown approximately 17 square feet.
25 Building any closer to the side yard to avoid this

1 request is not possible, again, because the existing
2 house and the garage are already right up to the side
3 yard setback line.

4 Being the first house as you enter this
5 cul-de-sac and the side yard line extending so far to
6 the front next to an adjoining property, which
7 actually faces on Westfall Road, one will hardly know
8 what seems like a -- unusually close to the street.
9 Like the porch, breaking up the two-story wall of the
10 present garage with a bedroom above with this
11 garage -- one-story garage extension will add more
12 character and interest, not unlike the other houses
13 around it in this small, four-lot subdivision.

14 CHAIRMAN MIETZ: Okay. All right. So just
15 quickly, can you go through all, any, other
16 alternatives that maybe were reviewed in the design
17 process to maybe achieve this without the variance?

18 MR. MINOR: As for the porch there really is
19 no alternative. I mean, that 40 feet requirement goes
20 to the second-floor overhang facing the street.

21 As for the garage it would be possible to
22 pull it back and maybe rotate the addition in the
23 back. But what we're trying to do is create a flow
24 from the existing house naturally into the addition.
25 You'll note that there's a bathroom there and --

1 actually two -- as you look at the drawing to the
2 right of the bathroom is about a 5-foot square nook in
3 the kitchen where there is an office. And you'll see
4 a room in the addition that is -- is also the space
5 for their office to move, plus the entertainment space
6 in the back.

7 We could rotate and pull the garage back.
8 We lose that through-circulation into the addition.
9 And we then begin to obstruct the view from out the
10 kitchen. It's a lovely backyard with a patio back
11 there and we'd hate to lose that.

12 CHAIRMAN MIETZ: Okay. Very good. All
13 right. So Board Members, questions please. Any
14 questions for Mr. Minor?

15 MS. TOMPKINS WRIGHT: I apologize if you've
16 already said, but the porch is completely open?

17 MR. MINOR: Yes. It's got a roof. It's got
18 a roof. We're debating whether it will have a railing
19 or not.

20 MS. TOMPKINS WRIGHT: Okay. Thank you.

21 CHAIRMAN MIETZ: Okay.

22 MS. SCHWARTZ: Member Schwartz.

23 CHAIRMAN MIETZ: Yes.

24 MS. SCHWARTZ: Are you losing any trees in
25 the front yard because of the porch?

1 MR. MINOR: No.

2 MS. SCHWARTZ: Okay. And I assume then the
3 shed in the backyard is coming down for that addition
4 in the back; correct?

5 MR. MINOR: It's being moved.

6 MS. SCHWARTZ: Oh, it's being moved.

7 MR. MINOR: Yes. I checked with
8 Mr. DiStefano and he said that so long as we're more
9 than 5 feet from a side or rear property line,
10 basically it can go where we want it -- as we want it.

11 CHAIRMAN MIETZ: Okay. All right. Other
12 questions please?

13 MS. SCHWARTZ: A comment.

14 CHAIRMAN MIETZ: Yes.

15 MS. SCHWARTZ: Okay. You were describing,
16 you know, some of the interior spaces. We have a
17 drawing that doesn't really show much. And I was
18 wondering whether you had any elevations to give us a
19 better idea of what this might be looking like because
20 it's hard to really -- you know, from what we were
21 given really tell what it is that you wish to
22 accomplish.

23 I mean, I understand the porch. And I'm all
24 in favor. We put one in and it's the best thing we'll
25 ever do. So I think that's great. But do you have

1 any other drawings that -- that we could see that
2 gives us a better idea or what --

3 MR. MINOR: I do. I thought of including
4 them with this in preparing. With a favorable vote by
5 you, I'm preparing the application to go before the
6 Architectural Review Board at the end of this month.
7 And they obviously will have -- raise questions about
8 how we're handling this.

9 CHAIRMAN MIETZ: Would you be --

10 MR. MINOR: The garage addition is just a
11 one-story addition. The bedroom above it is two
12 stories and it's basically in line with the face of
13 the house.

14 MR. DiSTEFANO: This second-floor bedroom is
15 existing now; correct? So if you go to the picture of
16 the property.

17 MR. MINOR: There. There you go.

18 MR. DiSTEFANO: So basically you're saying
19 that the garage addition is just going to be a one
20 story coming out from the existing garage face?

21 MR. MINOR: Correct. And it will be a gable
22 roof facing you, which, again, breaks up the long
23 face.

24 CHAIRMAN MIETZ: And similar -- similar
25 pitch, Paul?

1 MR. MINOR: Similar.

2 CHAIRMAN MIETZ: Okay.

3 MR. MINOR: We got a couple bedroom windows
4 we're dealing with, but it'll be pretty close to the
5 same.

6 CHAIRMAN MIETZ: Okay. And similar
7 materials so it will look like it was --

8 MR. MINOR: Yes.

9 CHAIRMAN MIETZ: -- sided the same and the
10 same roofing materials.

11 MR. MINOR: Yes.

12 CHAIRMAN MIETZ: Okay. Great. Okay. Does
13 that address your concern, Judy?

14 MR. DiSTEFANO: Judy, you're muted. Judy --

15 CHAIRMAN MIETZ: You got to unmute yourself.
16 All right. Let's move along. Any other questions?

17 Oh, there you go, Judy. Do you understand
18 what the --

19 MS. SCHWARTZ: Sort of. But I remember -- I
20 remember in past applications we haven't seen, you
21 know, full plans. And it's hard to make a really good
22 decision. And so that's why I was asking. Thank you.

23 CHAIRMAN MIETZ: Okay.

24 MR. MINOR: I appreciate your concern and
25 knew this was a zoning, sort of a flat land issue. In

1 the future I would include more interior information.

2 CHAIRMAN MIETZ: I think, Paul, just you --
3 we don't need detailed plans, but if there's just an
4 elevation, or whatever, it just arrests any concerns
5 that people have how does it fit into the character of
6 the neighborhood. That's pretty much it. But it
7 doesn't need specific architectural detailing. Okay?

8 MR. MINOR: Okay. Thank you.

9 CHAIRMAN MIETZ: Okay. All right. Other
10 questions from any of the members? Okay. Great. All
11 right.

12 So at this point then is there anyone on the
13 call that would like to speak regarding the
14 application for 401 Brooklawn? Okay. There being
15 none, then the public hearing is closed.

16 MR. MINOR: Thank you very much.

17 CHAIRMAN MIETZ: Thank you.

18 **Application 10A-03-21**

19 Application of Tom Johnson, agent, and Mark
20 Benoit, owner of property located at 40 Ambassador
21 Drive, for Area Variances from Section 205-2 to 1)
22 allow an attached garage addition to extend 20.3 feet
23 into the existing 24.3 feet rear setback where a 60
24 foot rear setback is required by code, and 2) allow a
25 front addition to extend 3 feet into the existing

1 49.96 foot front setback where a 60 foot front setback
2 is required by code. All as described on application
3 and plans on file.

4 CHAIRMAN MIETZ: Very good. Who do we have
5 speaking please?

6 MR. JOHNSON: This is Tom Johnson. I'm the
7 designer on the project.

8 CHAIRMAN MIETZ: Welcome. And how about an
9 address?

10 MR. JOHNSON: My address is 73 Nunda
11 Boulevard, Rochester, New York 14610.

12 CHAIRMAN MIETZ: Okay. Great. Go ahead and
13 let us know what you got.

14 MR. JOHNSON: Okay. The client Mark Benoit
15 can't be here. He is in London on business. So I'm
16 representing him. But basically what's happening is,
17 as stated on the application, the current house is
18 about 2,700 square feet. And they're a family with
19 two children and two dogs and visiting parents. And
20 so they were hoping to expand a little bit, maybe have
21 a family room and maybe have a first floor primary new
22 bedroom.

23 And in order to get that we thought we would
24 push a garage off the back hidden from the street so
25 you wouldn't see it. And this is a very unique

1 situation because this house actually shares a
2 driveway with number 50 Ambassador Drive. And so my
3 idea is to keep the garage addition as far away from
4 number 50 as possible so that, you know, there's still
5 room for everybody to park and maneuver around the
6 driveway.

7 In order to get just a 20-foot wide garage,
8 we would have to be 3 feet from the back property
9 line. And the lot behind this house is a very long
10 lot that extends to East Avenue. The house behind
11 the -- behind this house is very far to the north. So
12 really behind this house is really just wilderness and
13 a bit of lawn from the house on East Avenue.

14 And the current dining room is 12 feet by 13
15 feet, which is very small by American standards. So I
16 thought let's try to push it out. Just even a 3-foot
17 addition off the front would be -- you know, give them
18 some elbow room.

19 So the variance order we're applying for is
20 for the garage going to the back and the dining room
21 addition off to the front. These are quick sketches
22 that kind of -- the sketch that you're showing right
23 now, the dining room -- this is not perfect design.
24 This is just to show you just generally where we're
25 going. As you can see at the left of that upper

1 elevation is the -- some kind of glass addition off
2 the front that would be the addition to the dining
3 room.

4 And to the right of that upper elevation
5 would be the addition -- or -- it's not in the
6 variance application, but that would be the new
7 primary bedroom. And we would actually be reusing the
8 antique windows -- or -- you know, the existing
9 windows of the house. So that would keep it looking
10 as part of the neighborhood.

11 The other elevation -- that middle
12 elevation on the left shows the top of the house,
13 which is not applicable to today's conversation. And
14 at the bottom you can see just a one -- a flat roof,
15 one all cedar clad, stained dark brown to match the
16 dark brown of the trim of the house, classically
17 detailed. That would be the addition coming off the
18 back of the house. And as I said, it's almost not
19 visible from the street.

20 So that is the general outline of what we're
21 doing or what we would like to do.

22 CHAIRMAN MIETZ: Okay. All right. So Board
23 Members, questions for Mr. Johnson?

24 MS. TOMPKINS WRIGHT: This is Member Wright.
25 I think it just makes sense to kind of talk about

1 these two separately just for question and discussion
2 purposes. So for the dining room addition that juts
3 into the front yard setback -- or further juts out
4 from the current property, does -- did you consider
5 pushing that dining room off to the south instead of
6 the east, which wouldn't increase the setback?

7 MR. JOHNSON: I suppose that's possible. I
8 think if you walk to the property -- and you would
9 probably agree -- that it would probably work better
10 on the front of the house. If you look in the bottom
11 left-hand corner of the page that you're showing right
12 now, you can see a photograph of the house. And that
13 front window, it's not quite visible. If you can
14 scroll up a hair.

15 CHAIRMAN MIETZ: You can move it up there,
16 guys.

17 MR. JOHNSON: The other direction.

18 CHAIRMAN MIETZ: Yup. There we go.

19 MR. JOHNSON: You see the dotted line around
20 that black hole? So that black hole is the existing
21 window. So I think in a way what we're trying to do
22 is take a little bit of the detail of the current --
23 the detailing of the current house and kind of give it
24 a covered roof and, you know, sort of make that area a
25 little bit more charming.

1 The other interesting thing about the
2 setbacks, if you look on the site plan on the upper
3 right-hand corner, I don't know if you can see, but
4 there are two dotted lines basically running right
5 through the center of the house. There's one to the
6 right. There you go.

7 You see those red lines? That shows the
8 60-foot setback from the front and the 60-foot setback
9 from the back. So if somebody were wanting to build a
10 new house here, their house would be about 4-feet
11 wide. So I think asking to stick out about, you know,
12 3 feet into the front lawn seemed appropriate
13 considering the situation.

14 CHAIRMAN MIETZ: Okay. Andrea?

15 MS. TOMPKINS WRIGHT: The other question I
16 have is regarding this front garage -- or -- I'm
17 sorry -- the front dining room. Are the setbacks in
18 this area consistent such that this would be, you
19 know, one of the larger variances granted in this
20 neighborhood?

21 MR. JOHNSON: Is that directed to me?

22 CHAIRMAN MIETZ: Yes.

23 MR. JOHNSON: I mean, if you walk around
24 this neighborhood, you'll see almost every single
25 house has put an addition off the back of the garage.

1 So I'm not sure --

2 MS. TOMPKINS WRIGHT: I'm -- I'm referencing
3 the front yard setback, the dining room and --

4 MR. JOHNSON: Can you repeat the question?
5 I'm sorry.

6 MS. TOMPKINS WRIGHT: Yeah. Just was
7 wondering if in the neighborhood -- and, again, I was
8 looking at Google Earth images -- it looks like all
9 the homes have a somewhat consistent setback, but that
10 may not be true. So that's what I'm wondering about
11 the front yard setback, is it relatively consistent or
12 is this going to be one of the larger variances
13 granted for front yards in this neighborhood?

14 MR. JOHNSON: I -- okay. So the back story
15 to this is I used to live in this house. And -- and I
16 used to walk my dog around this neighborhood all the
17 time. I don't know that there is a consistent setback
18 to this neighborhood. That is a good question.

19 If -- the properties are all fairly large.
20 This is probably the smallest house on Ambassador
21 Drive and probably has a fairly good sized front yard
22 relative to other houses. I'm not really sure that
23 that is relevant. I don't mean irrelevant. I'm
24 sorry. That's disrespectful. But I guess I'm not --
25 I'm misunderstanding that -- what you're getting at.

1 MS. TOMPKINS WRIGHT: Sure. So one of the
2 questions that we have to answer as the Board is
3 whether or not this variance changes the character of
4 the neighborhood. And so part of this when you ask
5 for a front yard setback, is us determining whether or
6 not if all the homes have similar setbacks. And if we
7 grant a variance to have one be significantly -- sit
8 significantly differently on a yard than the others,
9 could that change the character of the neighborhood.
10 And then we're not able to issue a variance for this.

11 MR. JOHNSON: Right. I understand your
12 point. Okay. Well, it's a very unique neighborhood.
13 This is a street full of extremely large houses with
14 -- with -- every house is quite different from the
15 other.

16 CHAIRMAN MIETZ: Okay.

17 MR. JOHNSON: I guess I don't have the
18 proper answer to that. I -- I think that this being
19 one of the smallest houses on the street is -- and by
20 adding this 3-foot bump-out on the front does not at
21 all affect the neighborhood, considering all the other
22 houses are considerably larger and have a lot more
23 going on with them than this house. Does that make
24 sense?

25 MS. TOMPKINS WRIGHT: Okay.

1 MR. JOHNSON: I mean, of course, it's
2 subjective; correct?

3 CHAIRMAN MIETZ: Yes.

4 MR. JOHNSON: I mean it's -- yeah.

5 MS. TOMPKINS WRIGHT: Yeah.

6 CHAIRMAN MIETZ: Yeah. Just one other point
7 you can address it a little different way is to
8 suggest that because of the mass of this house, if you
9 look at, as you point out, some of the larger homes on
10 there, that, you know, whether this one is 3 feet one
11 way or the other, would you suggest that this -- would
12 you suggest the impact of -- in your opinion of the
13 3-foot incursion would be?

14 MR. JOHNSON: In my personal opinion I don't
15 know if anyone would notice it. It's -- it's kind of
16 an irrelevant addition relative to what's going on in
17 all the other houses. I mean, if you look at Danny
18 Wegmans' house down the street, which has turrets and
19 gables and --

20 CHAIRMAN MIETZ: Right.

21 MR. JOHNSON: Maybe his setback is within
22 what the setbacks should be, but there's a lot more
23 going on in that house than adding a 3-foot bay window
24 on the front of this house.

25 CHAIRMAN MIETZ: Okay. Very good. All

1 right. Other questions for Mr. Johnson?

2 MS. SCHWARTZ: Yeah. Judy.

3 CHAIRMAN MIETZ: Go ahead, Judy.

4 MS. SCHWARTZ: Yes. The house is currently
5 a little over 2,600 square feet. What will your new
6 square footage be when you're done, do you know?

7 MR. JOHNSON: Yeah. It's -- it's about
8 3,275, I believe.

9 MS. SCHWARTZ: Okay. Thank you.

10 MR. JOHNSON: And that's falls within the
11 allowable -- the allowable --

12 MS. SCHWARTZ: Okay. That's what I
13 wondered. Okay. Thank you.

14 CHAIRMAN MIETZ: Very good. Okay. Other
15 questions?

16 MS. TOMPKINS WRIGHT: Well, one thing I want
17 to make sure is on the record, which is with respect
18 to the rear garage extension. So number one -- and
19 maybe this is -- Rick, you can tell me, if this were a
20 detached garage, it would be able to be in that
21 location?

22 MR. DiSTEFANO: Yeah. So that was going to
23 be my question to Tom is that you could construct a
24 detached garage in that -- kind of in that back corner
25 meeting your 5-foot setback without needing any type

1 of variances; correct?

2 MR. JOHNSON: It's probably true. Although,
3 if I lived in number 50 Ambassador Drive, I don't
4 think I would be too happy about that because this is
5 a shared driveway. And that would be completely, you
6 know, infringing on their sense of space, not to
7 mention their sense of parking. It would make snow
8 plowing more difficult. Like there are -- there are
9 reasons why it would be inconvenient to put it there.

10 And so the reason that I chose this location
11 is because I really thought by putting it behind the
12 house, when you're -- when you're going by the house,
13 you don't even really see it. And by giving it a lot
14 of space between number 50, the two -- currently the
15 garage from number 50 faces the garage for number 40.
16 So there's, you know, -- I don't want to say
17 congestion. You know, it's just two single-family
18 houses, but you want to make sure that there's elbow
19 room for everyone to drive around. So I'm trying to
20 be very aware of that situation.

21 CHAIRMAN MIETZ: Okay.

22 MR. JOHNSON: By putting the garage where I
23 put it, it's actually pulling the parking area for
24 number 40 Ambassador away from the parking area of
25 number 50 Ambassador, which I think gives everyone a

1 little bit more room.

2 CHAIRMAN MIETZ: Okay. Very good. How
3 about -- that begs another question, you know, what do
4 the folks next door have to say? Have we talked to
5 them?

6 MR. JOHNSON: Well, she happens to be in our
7 meeting if you want to ask her.

8 CHAIRMAN MIETZ: Well, she will have an
9 opportunity. How about that? Okay. Great.

10 MR. JOHNSON: I actually have discussed it
11 with them. They're -- they were lovely neighbors for
12 four years. So I walked them through the project and
13 showed them the plans.

14 CHAIRMAN MIETZ: All right. Well, we'll get
15 their --

16 MR. JOHNSON: So we can get their feedback.

17 CHAIRMAN MIETZ: Why don't we hear their
18 feedback shortly then. Okay. Is there any other
19 questions? Go ahead.

20 MS. TOMPKINS WRIGHT: I do have another one.
21 So the property that this sites up to or the garage
22 will back up to is 2695 East Avenue. Can you just
23 kind of describe what this addition will back up to?
24 Is it --

25 MR. JOHNSON: Yes.

1

2 MS. TOMPKINS WRIGHT: Just so that it's on
3 the record.

4 MR. JOHNSON: Sure. So the house of -- the
5 East Avenue house is actually much farther to the
6 north. And everything behind number 40 Ambassador is
7 basically an open field and forest. So really there's
8 no -- there's no other building or driveway or
9 playground or really anything behind there. It's just
10 wilderness.

11 And I believe my next -- the people at
12 50 Ambassador told me that at one point somebody was
13 trying to see if they could turn that into a flag lot.
14 And that was denied. So I think we pretty much know
15 we're not going to have a conflict of another building
16 hitting another building back there.

17 CHAIRMAN MIETZ: Okay. Very good. Other
18 questions please. Okay. Very good. All right. So
19 at this point is there anyone -- I think there is
20 someone -- who would like to speak related to this
21 application?

22 MS. CONSTINE: Yes. Hi. My name is Sally
23 Constine. My husband and I -- do you hear me?

24 CHAIRMAN MIETZ: Yes.

25 MR. JOHNSON: My husband and I live at 50

1 Ambassador Drive and have for 25 years.

2 CHAIRMAN MIETZ: Very good.

3 MS. CONSTINE: That is next door to 40. And
4 these two houses were built in 1927, number 40 for the
5 daughter of those at number 50. There is more than an
6 unusual relationship for homeowners at these two
7 properties as they share a driveway and only -- and
8 it's the only one in this neighborhood.

9 CHAIRMAN MIETZ: Okay.

10 MS. CONSTINE: We respect Mr. Johnson's work
11 and agree that the proposal to build the garage in the
12 location proposed is much better than the non-variance
13 option of building it closer to our line and in view
14 of the street.

15 In the -- originally when these homes were
16 built, garages were not to be seen from the street.
17 That was, you know, that was the way it was. So they
18 are small garages. Now number 40's garage is going to
19 be turned into a family room and they're going to add
20 this garage behind it.

21 Of course, I am not crazy about having green
22 space disappear and having a larger structure, but I
23 would much -- we would much prefer it to be in this
24 location that needs a variance. We -- let me just see
25 what else I have.

1 We hope that the driveway situation can be
2 improved with this project making the shared driveway
3 situation better for both parties.

4 And on the point of the -- the back of the
5 garage, new garage, being 3 feet from the line of the
6 Wilts' house on East Avenue, it was not their house
7 that requested a flag lot. It was the next one over.
8 They have very, very long yards. And, you know,
9 certainly it would be possible to have a flag lot.
10 But it definitely affects the people behind them.

11 There's nobody who uses that space that's
12 behind number 40. There is some scruff trees and
13 there is a -- some lawn. And I haven't seen anybody
14 on that part of the property in years.

15 So we do feel that this is a large project
16 for this property, but we do -- the things that we are
17 concerned about we hope that the Architectural Review
18 Board will look at. There's going to be some larger
19 windows on both sides of the dining room. And we just
20 want to make sure that it blends well.

21 I don't -- as far as the setback, I can go
22 out and measure while you're still in the meeting, but
23 I'm not sure how -- where the line is from the front
24 of our property compared with 3 foot further out on
25 number 40.

1 But I do understand what Andrea said that we
2 want to make sure it doesn't look out of place. I
3 don't think it would look out of place. I'm not sure
4 if they were planning on removing that tree that is in
5 front of that window.

6 MR. JOHNSON: No.

7 MS. CONSTINE: If they're not removing the
8 tree, you would hardly notice it at all.

9 And, I guess, on the other parts of the
10 project, yes, it's just wanting it to look as good as
11 it can. And the people on the other side, number 10,
12 they, you know -- they were wondering what it was
13 going to look like from their side. But it doesn't
14 need a variance for their side. So that's all I
15 really have.

16 CHAIRMAN MIETZ: Okay. Thank you for your
17 thoughts. Appreciate it. Okay. Is there anyone else
18 on the call that would like to speak regarding this
19 application? Okay. There being none, then the public
20 hearing is now closed. Thank you. Thank you,
21 Mr. Johnson.

22 MR. JOHNSON: Thank you.

23 CHAIRMAN MIETZ: Okay.

24 **Application 9A-06-21**

25 Application of Bell Atlantic Mobile Systems

1 LLC, lessee, and 1850 WRS LLC, owner of property
2 located at 1850 Winton Road South, for an Area
3 Variance from Section 207-42C(1)(b) to allow for the
4 installation of cellular support equipment on the
5 ground outside the building in lieu of inside the
6 building as required by code. All as described on
7 application and plans on file.

8 CHAIRMAN MIETZ: Okay. Great. Who do we
9 have speaking for this application?

10 MR. VANDER WAL: Can you hear me?

11 CHAIRMAN MIETZ: Yes.

12 MR. VANDER WAL: Great. Thank you,
13 Chairman, Board and Town staff. My name is Nate
14 Vander Wal. I'm with the law firm Nixon Peabody, 1300
15 Clinton Square, Rochester, New York 14604. Also here
16 this evening in connection with this application is
17 Gary Ferrara with Tectonic Engineering. Gary and his
18 team are the real estate consultants engaged by
19 Verizon Wireless in connection with this project. And
20 I'm hopeful between the two of us and the application
21 we've submitted we can address any questions that the
22 Board has this evening.

23 CHAIRMAN MIETZ: Okay.

24 MR. VANDER WAL: Just briefly to discuss why
25 we're here, Verizon Wireless -- I know this Board and

1 all the town boards are familiar with Verizon Wireless
2 and their facilities. They are a public utility
3 licensed by the Federal -- excuse me -- Communications
4 Commission. Part of that license is a charge to keep
5 a certain level of service within all of their
6 licensed regions, one of them being this location,
7 this cell, if you will, within the Town of Brighton.

8 Verizon currently has a facility located on
9 the Jewish Home at 2021 South Winton. They've been up
10 there for quite some time, but in the process of
11 renewing that lease, we were advised last year that
12 they were no longer -- be permitted on there. The
13 lease would not be renewed. And they are required to
14 find a new location to continue to meet the RF
15 obligations within this cell.

16 Once that had been identified, they
17 conducted their search. All of this is laid out in
18 Exhibit G of the application dated August 10th that's
19 been submitted to the Town and this Board. And
20 ultimately we're fortunate to have found this location
21 at 1850 South Winton Road, the Genesee Regional Bank
22 building right at the outside of the Cambridge office
23 complex as a willing lessor.

24 They did the RF analysis and determined that
25 this site -- a site located on the rooftop of this

1 building would, in fact, meet the RF need within the
2 Verizon network. And we're able to enter into a lease
3 with the bank for this building.

4 The site as it's proposed involves a
5 rooftop -- three sets of rooftop arrays or antennas.
6 Under the Town's code, these are permitted by right.
7 They do not require any approvals beyond the building
8 permit given that they don't extend a given height --
9 above the height of the existing rooftop -- the
10 rooftop height and it's location within the Town's B1
11 District.

12 However, despite their efforts to locate
13 these -- the equipment, these necessary and associated
14 equipment within the building, they were unable to do
15 so. That's set out in Exhibit H to the application.
16 Therefore, they were required to find an exterior
17 alternate location. And under the Town's code that
18 requires an Area Variance given that it's not located
19 in the interior of the building.

20 Again, referencing Exhibit H, they were not
21 able to find a location that was sufficient in size to
22 house equipment. There was also an additional factor
23 here that this is a bank building, which by -- for
24 obvious reasons restricts access to the premises. And
25 Verizon requires 24/7 access to it's equipment in the

1 case of, you know, a failure, a network going down.
2 So, again, in that sense the interior location was not
3 an option here.

4 The rooftop area was similarly not an
5 option. At the landlord's direction there was
6 structural concerns with locating the equipment on the
7 rooftop. And ultimately, and we felt fortunately,
8 they were able to find that existing concrete pad on
9 the southeast side of the building. This is the rear
10 of the building away from Winton Road, really out of
11 view from the access drive, the access drive into the
12 office complex to locate this equipment. And as
13 reflected in the site plan that's included with the
14 application, that is where they are proposing to
15 locate that exterior equipment.

16 So, again, the rooftop equipment portion of
17 this facility is permitted as a right. The exterior
18 equipment -- ground-level equipment requires an Area
19 Variance from this Board. And then upon obtaining --
20 or -- submitting the application, we were also advised
21 by the Town that given the project location at Allens
22 Creek, being within a Water Protection and Floodplain
23 Protection District, that project also required an
24 EPOD permit.

25 That additional material has been submitted

1 to the Town. We've been working with Ramsey, both
2 myself and Costich Engineering, who is the civil
3 engineer in connection with this project, to get him
4 the information he needs. And we're working through
5 that process as well.

6 I understand there was some communications
7 even as recent as today that did confirm that the
8 project and the improvements are located outside of
9 the floodplain, eliminating that concern on behalf of
10 the -- the understandable concern on behalf of the
11 Town. And they are working to have those updates made
12 to the site plan to confirm that.

13 So it would be our request today that this
14 Board issue the negative declaration for the project
15 and approve the Area Variance as set out in Exhibit D
16 to the application. We believe we meet even the
17 standard Area Variances both under the code and the
18 New York Town Law for an Area Variance, to say nothing
19 of the public utility standard in which Verizon
20 Wireless is subject given it's identification as a
21 public utility. In that sense, pursuant to Exhibit G
22 has shown the need for this project and that the
23 project as proposed will meet that need.

24 CHAIRMAN MIETZ: Okay. Very good. Thank
25 you very much. All right. So Board Members,

1 questions regarding this application? We can talk,
2 Rick, you know, during the deliberation part about the
3 floodplain situation and all that, but beyond that is
4 there any other questions related to why the location?
5 I think Mr. Vander Wall explained it pretty clearly.
6 It's about the most sheltered spot there you could put
7 some type of exterior application. So any other
8 questions anybody has at this point?

9 MR. DiSTEFANO: I'll ask a question,
10 Mr. Chairman. Was there any consideration regarding
11 screening of the equipment either through fencing or
12 landscaping or anything like that? You're not showing
13 any on this site plan so --

14 MR. VANDER WAL: Yeah. I understand that
15 was discussed with the land -- with the landlord, with
16 the building owner. Given the natural buffer both by
17 the building and existing foliage, if you will, or the
18 landscaping, already minimizing that location.
19 But more -- but even more so given the fact that -- as
20 you can see the site plan that abuts up to some
21 windows on the rear of the building and the landowner
22 not wanting to obstruct that natural light and the
23 view out of those windows, but also being able to
24 utilize that existing concrete pad and not having to
25 increase any additional ground disturbance. That was

1 the reason for not -- again, at the request of the
2 landlord, not proposing any -- any screening around
3 that equipment.

4 CHAIRMAN MIETZ: Okay. All right. Very
5 good. And, I guess, the last thing anyway would be --
6 if you could just hold that one, Rick, right there.
7 How about as far as just foot access? I mean, you
8 have that parking lot that wraps to the rear and then
9 there's whatever amount of feet from the corner of
10 that parking lot over. Was there any thought of
11 providing any way to do that versus walking through
12 the grass in the wintertime or whatever else?

13 MR. VANDER WAL: As far as accessing the
14 equipment?

15 CHAIRMAN MIETZ: Yes.

16 MR. VANDER WAL: That I'm -- I'm not aware
17 of. I'm not sure if there's any exterior, you know,
18 entrance ingress/egress on that side of the building
19 or any walkway. I'm -- I'm not sure. So I can't
20 speak to that.

21 CHAIRMAN MIETZ: Okay.

22 MR. VANDER WAL: I would assume -- again, I
23 would assume that if -- for Verizon's maintenance and
24 emergency access, they would be comfortable with where
25 wherever that location is proposed that they could

1 sufficiently access it and perform whatever service
2 they need.

3 CHAIRMAN MIETZ: Yup. Yup. Okay. That's
4 fine. I mean, you know, from our experience with
5 these, this is not a -- like a very frequent access,
6 you know, item. However, they might just need to
7 bring a shovel some time in January, February or
8 March. But other than that, they'd probably be okay.
9 All right. Any other questions?

10 MR. DiSTEFANO: Yes. I just have one
11 additional question regarding conduit along the
12 building coming from the antenna down to the
13 equipment. Are you going to bring it down and bury it
14 or are you just going to run the conduit along the
15 side of the building? How's that going to look and
16 how's that going to be, you know, match the color of
17 the brick or what?

18 MR. VANDER WAL: I know there is conduit
19 running down the building from the antennas down to
20 the equipment. It is -- it is typically standard to
21 paint that to match the wall on which it's mounted. I
22 don't know if, Gary, is on this call if he can speak
23 to any more specifics on that.

24 MR. FERRARA: Yes. Most of it is going to
25 be run underground and through the building. It

1 doesn't appear that anything is going to be exposed.

2 CHAIRMAN MIETZ: Okay. Very good. That's a
3 great answer. Okay.

4 MS. TOMPKINS WRIGHT: Dennis, for the
5 record, I believe Gary will need to say his name and
6 address.

7 CHAIRMAN MIETZ: Oh, sure, sure. I'm sorry.
8 Go ahead, Gary. Can you just give us your name and
9 address?

10 MR. FERRARA: Yeah. It's Gary Ferrara,
11 Tectonic Engineering. My office is 429 Lithia
12 Pinecrest Road in Brandon, Florida.

13 CHAIRMAN MIETZ: Okay. Very good. And how
14 about a zip code?

15 MR. FERRARA: That's a good question.

16 CHAIRMAN MIETZ: Okay. If you get it then
17 you can throw it in. All right. Any other.

18 MR. FERRARA: I don't have it exactly
19 memorized now, but it's 33511.

20 CHAIRMAN MIETZ: Thank you very much. So
21 we'll have a complete record. Okay. In case we're
22 looking for you. All right. So what else? Any other
23 questions? Okay. Very good.

24 So at this point is there anyone on the Zoom
25 call that would like to speak regarding 1850 South

1 Winton Road? Okay. And then at this point the public
2 hearing is now closed.

3 **Application 9A-08-21**

4 Application of Save Monroe Ave., Inc. (2900
5 Monroe Avenue LLC, Cliffords of Pittsford L.P., Elexco
6 Land Services, Inc., Julia Kopp, Mike Boylan, Anne
7 Boylan and Steven DePerrior) appealing the issuance of
8 a building permit (3rd building - Whole Foods) by the
9 Town of Brighton Building Inspector (pursuant to
10 Section 219-3) to the Daniele Family Companies,
11 developer of the Whole Foods project located at
12 2740/2750 Monroe Avenue. All as described on
13 application and plans on file.

14 CHAIRMAN MIETZ: Okay. Very good. All
15 right. So who do we have speaking for the applicant?

16 MR. ZOMERFELD: Good evening. Henry A.
17 Zomerfeld on behalf of the appellants, Hodgson Russ
18 LLP, 140 Pearl Street Buffalo, New York 14202.

19 CHAIRMAN MIETZ: Okay. Very good.

20 MR. ZOMERFELD: Thank you very much. As
21 just stated, the appeal concerns the issuance of the
22 third building permit to the Whole Foods project. The
23 permit was issued back in May of this year and it
24 contemplates the construction of a building that
25 amounts to 50,000 square feet in size plus an

1 additional roughly 3,300 for inclusion of canopies and
2 a ramp.

3 In short, the legal requirements in the Town
4 Code have not been satisfied. And a third building
5 permit should not have been issued. In our appeal we
6 raised three arguments. The first, that the
7 development exceeded the size that the Town approved
8 and there was no elimination of the excess square
9 footage, which violates the site plan approval.

10 Our second, the development has been and
11 continues to be constructed in phases when the
12 approvals expressly requires single-phase
13 construction. And the time of construction has exceed
14 18 months as originally contemplated and approved.

15 And finally, there's been lack of consent
16 concerning the cross actions -- the cross access --
17 excuse me -- easements which is required.

18 To begin I'll note that we're going to
19 preserve points 2 and 3 and just not reiterate them
20 for the purposes of the oral presentation this
21 evening. For the purposes of tonight, I'll address
22 the first point as far as access building square
23 footage.

24 The size of the building, building 3 as this
25 permit concerns, was not reduced by the developer.

1 And the Town did not require any reduction in size,
2 which is directly contrary to approvals, the Town code
3 and the law. And as the Board is aware, Save Monroe
4 Ave previously challenged the second building permit
5 after the second was constructed with excess square
6 footage than contemplated.

7 And the Board took the position that the
8 developer was actually allowed to do that and exceed
9 the permitted square footage. Recall that at that
10 time what was approved was 22,380. And the second
11 building came out to be 22,700 square feet. And the
12 Board's decision was the developer was permitted to do
13 that and allowed to do that so long as the overall
14 approved square footage did not exceed 83,700 square
15 feet.

16 So based on that position the developer had
17 to reduce the size of another building, which is the
18 building that we're dealing with in building permit
19 number 3. But the developer did not do so. And the
20 Town did not require such a reduction in the square
21 footage.

22 So we're here. The developer sought, the
23 Town approved the third building permit for the
24 construction, which as I mentioned is 50,000 square
25 feet with an additional 3,330 square for the canopies

1 and the ramp. This is problematic because under the
2 Town Code as we outlined in our papers
3 Section 73-12(b) expressly requires that with the
4 approval of the associate planner, upon satisfactory
5 proof that the applicant is in compliance with the
6 provision, the rules and the regulations as the
7 comprehensive development regs, only then may a permit
8 be issued.

9 But we know that there has not been
10 compliance with the provisions, rules and regulations
11 of the law. And we know that there's non-compliance
12 with the site plan approval, which expressly requires
13 that the developer meet all of the requirements under
14 the Town Code and the incentive zoning approval for
15 the project. The project simply is not in compliance
16 with the approvals and the law and the Town failed to
17 require the elimination of square footage for this
18 building and this permit, which is in excess of what
19 has been previously approved.

20 And for the same reason, you know, the
21 excess that was raised in the second permit, which I
22 know has been addressed, but it adds context to this
23 issue, was similarly unlawful, as is this third
24 permit. And we're going to ask that the Board annul
25 the determination approving the building permit and

1 issue a determination that the developer has not met
2 all of the required conditions under the law, under
3 the Town Code and under the Town approvals. And this
4 includes the first building permit, which required
5 that all incentive zoning conditions be satisfied.
6 That simply has not occurred. Thank you.

7 CHAIRMAN MIETZ: Okay. Board Members,
8 question for Mr. Z here?

9 MR. GORDON: Dennis, if I could just jump in
10 please.

11 CHAIRMAN MIETZ: Yes. Go right ahead, Ken.

12 MR. GORDON: Yeah. I was trying to get in
13 there. My mic was muted and I had to --

14 CHAIRMAN MIETZ: Okay. I didn't see you
15 waving. Okay. Go right ahead.

16 MR. GORDON: I was waving frantically.

17 CHAIRMAN MIETZ: Oh, I'm sorry. Go right
18 ahead.

19 MR. GORDON: That's okay. I did want to
20 note a couple things for the Board as we --

21 CHAIRMAN MIETZ: Ken, just excuse me one
22 second, just in case anyone's listening, can you just
23 kind of introduce yourself to the Zoom audience here?

24 MR. GORDON: Happy to do that. Ken Gordon,
25 Town Attorney.

1 CHAIRMAN MIETZ: Thank you.

2 MR. GORDON: So what -- what I wanted to say
3 first is we do have a new Board Member this evening,
4 Heather McKay, who is not participating in this public
5 hearing and will the not participating in
6 deliberations regarding this project because there is
7 a conflict of interest that exists for her. So she
8 has turned off her video and muted her mice and is not
9 part of the Board for the purposes of this public
10 hearing or this matter. So I want to note that for
11 the record.

12 Secondly, just -- and I think Mr. Zomerfeld
13 did a nice job of covering this, but I did just want
14 to give just a brief intro just to say that this
15 challenge to the Planner's issuance of the building
16 permit is in large part -- well, I should say in
17 two-thirds part exactly two of the same issues we've
18 soon before, the issue regarding the phasing, and the
19 issue regarding cross access easements, both of which
20 this Board overruled and determined were not
21 sufficient to set aside the building permits. And the
22 court, the State Supreme Court recently agreed with
23 this Board on those two matters.

24 CHAIRMAN MIETZ: Correct.

25 MR. GORDON: And then the third matter as he

1 mentioned has to do with building size. This one is
2 different. The argument here being that although the
3 Town Board and incentive zoning resolution authorized
4 building 3 to be 50,000 square feet, the argument is
5 that that building should have been less than 50,000
6 square feet.

7 So that's what's before -- I just wanted to
8 sort of set the table for the Board in terms of what
9 was -- and I guess the last thing I wanted to ask,
10 Dennis, was I think I heard Rick call this matter
11 9A-08-21. We also have 9A-09-21, which is an
12 identical appeal. Are we holding these public
13 hearings jointly or separately?

14 MR. DiSTEFANO: Ken, I was just going to ask
15 you that, whether or not we should -- at this point if
16 Mr. Zomerfeld is done with his presentation, call
17 9A-09, let them present anything in addition. And
18 then the Board can ask the applicants the questions.
19 And then we can bring up anybody up from the audience
20 who would like to address the Board. I think we could
21 do both applications together.

22 MR. GORDON: Yes. We can do that, but I
23 think we need to make Mr. Zomerfeld's comments part of
24 the record for both public hearings so that his
25 comments, and for that matter my comments, are made

1 part of the record for both the public hearing on
2 9A-08-21 and 9A-09-21. I don't know if there will be
3 a separate presentation on 9A-09-21, but if there is,
4 Dennis, I'd ask that you call for that now before.

5 CHAIRMAN MIETZ: Yeah. I agree.

6 MR. GORDON: Yeah.

7 CHAIRMAN MIETZ: And I think the record
8 should indicate. And this is very common for us to do
9 with applications such as these. So I don't think
10 there's really any --

11 MR. GORDON: That's all I have right now.

12 Thanks.

13 CHAIRMAN MIETZ: Okay. Great. So, I guess,
14 sir, do you have anything in addition that you would
15 like to talk about?

16 MR. GORDON: Dennis, why don't --

17 CHAIRMAN MIETZ: Why don't I call it first?

18 MR. DiSTEFANO: Yeah. Why don't I call
19 9A-09 now.

20 CHAIRMAN MIETZ: That's fine.

21 **Application 9A-09-21**

22 Application of Brighton Grassroots, LLC,
23 appealing the issuance of a building permit (3rd
24 building - Whole Foods) by the Town of Brighton
25 Building Inspector (pursuant to Section 219-3) to the

1 Daniele Family Companies, developer of the Whole Foods
2 Plaza project located at 2740/2750 Monroe Avenue. All
3 as described on application.

4 CHAIRMAN MIETZ: Okay. Back to you then,
5 sir.

6 MR. ZOMERFELD: Thank you. Just two brief
7 points and I'll conclude. One is just to make clear
8 for the record, and I know this will be the case
9 momentarily, the Brighton Grassroots application,
10 though similar, I will not be addressing counsel for
11 Brighton Grassroots who will be speaking on that.

20 CHAIRMAN MIETZ: Okay. Very good.

21 MR. ZOMERFELD: Thank you.

22 CHAIRMAN MIETZ: Okay. Go ahead, Andrea.

23 MS. TOMPKINS WRIGHT: So I have a question.
24 This is Member Wright. Just wondering if it's better
25 to wait until after Brighton Grassroots gets

1 through --

2 CHAIRMAN MIETZ: That's fine.

3 (Simultaneous conversation.)

4 CHAIRMAN MIETZ: Yes. Sure.

5 MR. GORDON: Yeah. Let's wait until after
6 and have the presentation on 9A-09-21 by the
7 petitioner.

8 CHAIRMAN MIETZ: Yeah. Sure. Sure. Then
9 we can have questions on both applications. Okay. So
10 who do we have speaking for Brighton Grassroots?

11 MS. ZOGHLIN: Good evening. Mindy Zoghlin
12 from the Zoghlin Group, 300 State Street, Suite 502,
13 Rochester, New York 14614. I represent Brighton
14 Grassroots.

15 CHAIRMAN MIETZ: Go ahead and proceed.

16 MS. ZOGHLIN: Thank you. So this an appeal
17 from the building inspector's decision to issue a
18 building permit to the Whole Foods store. The appeal
19 involves three issues as both Mr. Zomerfeld and
20 Mr. Gordon explained, with phase construction, the
21 cross access easements and that the Whole Foods
22 building should have been reduced in size to
23 compensate for the excess square footage that the
24 building inspector granted for building number 2.

25 As you know our issues are identical to

1 those raised by Save Monroe. So unless the Board has
2 any specific questions of me, Brighton Grassroots will
3 rest on it's submission and join in the arguments made
4 by Mr. Zomerfeld.

5 CHAIRMAN MIETZ: All right. That's fine.
6 Okay. So let's go back then and, Andrea, did you have
7 some -- a question for either of these folks?

8 MS. TOMPKINS WRIGHT: Either or both.

9 CHAIRMAN MIETZ: Okay. Well, go right
10 ahead. I'm sure they'll decide who can answer.

11 MS. TOMPKINS WRIGHT: Sure. So
12 Mr. Zomerfeld you made comments both in the
13 submissions and also in your presentation that the
14 50,000-square foot building should have been reduced.
15 My understanding is that there's two more buildings
16 that could be reduced in size. So could you just
17 explain, or Ms. Zoghlin explain, why this building
18 needs to be reduced and not the other two in order to
19 comply with the overall square footage of the project?

20 MR. ZOMERFELD: In deference to my
21 colleagues, I'm happy to address the question, but
22 I'll first ask Ms. Zoghlin if she wants to address
23 initially, only because I did a majority of the
24 speaking the first time around.

25 MS. ZOGHLIN: Sure. I'm happy -- I'm happy

1 to, Ms. Wright. You know, the issue here really is
2 that the other two structures have been granted
3 approvals and we fully expect that the applicant, the
4 developer here, will construct the buildings as
5 approved or come back to the Boards and seek
6 modification of the incentive zoning approval, the
7 site plan approval and SEQRA review that was already
8 done.

9 So, you know, unless -- so since it's more
10 likely that they're going proceed as approved
11 consistently with the requirements and, you know,
12 hopefully in consistency with the requirements that
13 they build this plaza all at once, that the reduction
14 in square footage ought to be taken from the next
15 building that has been approved and issued a building
16 permit.

17 MR. ZOMERFELD: And I'll just -- I'll just
18 chime in and say -- and I know we didn't address this
19 and we rested on our papers in this regard, but this
20 was also part of the problem as to the phased
21 construction. If there was done as a single phase as
22 was contemplated and approved, the developer would
23 have adhered to the approvals given by the Town. But
24 instead by phasing it, the developer's essentially
25 getting a second bite at the apple, be it unlawfully,

1 to continue to erode what has been approved and
2 basically cherry picks which building he wishes to
3 increase in size and then seek to reduce the size of
4 the next building. And consistent with the prior
5 determination, albeit that we have on appeal, that
6 they would have the size. Ultimately they have to
7 reduce the size. And this is what has been approved
8 and this is the building that should come off of in
9 light of those approvals. Otherwise by doing it in
10 this matter with the phased construction, it's just
11 going to be onto the next building, onto the next
12 building.

13 The Town needs to ensure that the approvals
14 are upheld and that the law is followed here. And we
15 should not be giving any additional chances or passes
16 to the developer in this regard.

17 CHAIRMAN MIETZ: All right. Andrea, any
18 follow-up?

19 MS. TOMPKINS WRIGHT: Yeah. But just to
20 confirm, if they applied for the other two buildings
21 and did reduce the square footage, you would not have
22 an issue with the square footage? You're not arguing
23 that this square footage is more than is permissible.
24 It's only in light of the fact that they need to
25 reduce the square footage on a building in this

1 station -- or -- in this.

2 MR. ZOMERFELD: Right. And it should have
3 come up with this building. That is the argument.

4 MS. TOMPKINS WRIGHT: And just -- the
5 argument is only because it was the next one approved?

6 MR. ZOMERFELD: Yes. And because the other
7 two buildings are expected to be built as approved.

8 CHAIRMAN MIETZ: Okay. All right. Other
9 questions for either of these folks? Other Board
10 Members, any other questions?

11 MR. ZOMERFELD: I just -- I just want to
12 point out one thing.

13 CHAIRMAN MIETZ: Sure.

14 MR. ZOMERFELD: You know, the building is
15 contemplated here as 50,000 square foot, but don't
16 forget -- square feet -- but don't forget there's also
17 this additional 3,330 square feet for these canopies
18 and ramps. So that already is beyond what was
19 contemplated. So let's not forget the size, you know,
20 as was approved, as was calculated is particularly
21 relevant here for this building.

22 MR. PREMO: If I could ask a question. This
23 is Edward Premo.

24 CHAIRMAN MIETZ: Go ahead.

25 MR. PREMO: You're not making an appeal

1 about that?

2 MR. ZOMERFELD: No. But I want to point out
3 why it's important that we adhere to what's been
4 approved just as Ms. Zoghlin has said.

5 MR. PREMO: Well, I mean, but you're not
6 challenging the canopy and the other areas?

7 MR. ZOMERFELD: No, not specifically.

8 MR. PREMO: Okay.

9 CHAIRMAN MIETZ: Okay.

10 MR. PREMO: Thank you.

11 CHAIRMAN MIETZ: All right. Other questions
12 of the Board Members?

13 MS. TOMPKINS WRIGHT: Yeah. This is Member
14 Wright, again. Just to make sure it's clear for
15 myself and hopefully for the rest of the Board as
16 well. One of the original arguments was that in order
17 to comply with Brighton Code, the building permit had
18 to match exactly with the -- or the building permit
19 issued had to match exactly what the site plan had
20 approved. This seems to be migrating a little bit
21 too, only this can't be more than.

22 Is that accurate that you're -- you're not
23 arguing that each building has to be exactly the
24 square footage that was approved on the site plan, but
25 it can't be more than what was on the site plan, each

1 individual building?

2 MR. ZOMERFELD: I want to make sure I
3 understand your question. So you're saying that in
4 your view, our argument is as long as it's equal to
5 and less than, it's acceptable. Is -- do I -- have I
6 gotten your question correct?

7 MS. TOMPKINS WRIGHT: Right. Well,
8 that's -- that's what I'm -- I guess for each
9 individual building because obviously there was an
10 appeal of one of the buildings being larger in square
11 footage than what was approved on the site plan. And
12 the argument was that it had to be exactly what was on
13 the site plan otherwise it didn't meet code.

14 I just want to confirm that that argument is
15 now that as long as it's less than what's approved by
16 Code it's all right, it just can't be more.

17 MR. ZOMERFELD: Ultimately your argument is
18 there needs to be -- if the square footage was
19 approved in the amount that was approved, that is what
20 needs to be adhered to.

21 MS. ZOGHLIN: Yeah. If I may jump in here,
22 I mean, that was not an issue that was raised in any
23 of Brighton Grassroots' appeals, only Save Monroe
24 claims that. But my understanding of what happened
25 during that appeal is that the ZBA rendered an

1 interpretation that since the overall approvals
2 permitted 83,700 square feet, that it was not time to
3 challenge the fact that building 2 was constructed in
4 excess of the permitted square footage.

5 MS. TOMPKINS WRIGHT: Not permitted, but
6 the -- the -- what the square footage that was listed
7 on the site plan.

8 MS. ZOGHLIN: No. It was permitted. It was
9 permitted by the incentive zoning resolution by the
10 site plan approval and was specifically evaluated in
11 the SEQRA review.

12 MR. GORDON: And that's -- that's not an
13 accurate statement, Ms. Zoghlin. And I think, you
14 know, that it was not specifically referenced building
15 2 square footage in the incentive zoning resolution.
16 But --

17 MS. ZOGHLIN: I think that's --

18 MR. GORDON: That square footage was, in
19 fact, specifically mentioned as 50,000 square feet.

20 CHAIRMAN MIETZ: All right. Very good. So
21 other questions for anyone related to this
22 application? Okay. Great. Thank you very much,
23 everyone. Thank you for your presentations.

24 MS. ZOGHLIN: Thank you.

25 CHAIRMAN MIETZ: At this point is there

1 anyone on the call that would like to speak regarding
2 either of these two applications?

3 MR. BOEHNER: I would.

4 CHAIRMAN MIETZ: Okay. Please go ahead.

5 MR. BOEHNER: Good evening. Once again, I'm
6 Ramsey Boehner. This matter -- I'm the associate
7 planner for the Town. And I first would like to start
8 off by thanking the Zoning Board of Appeals for giving
9 me the opportunity to speak tonight in opposition to
10 the third appeal regarding the issuance of a building
11 permit for the project. And it's important for you to
12 know, as always, your time, effort and consideration
13 regarding this matter is greatly appreciated.

14 The Town of Brighton issued the building
15 permit in accordance with the applicable laws,
16 regulations, including the requirements of the Town's
17 comprehensive development regulations and approvals
18 issued by the Town Board and town of Brighton. It's
19 alleged that the Town's failure to require the
20 elimination of square footage from the Whole Foods
21 building to compensate for the excess square foot inch
22 of building 2 violates the approval of the site plan
23 and the prior approvals.

24 This is unsupported by the record and
25 applicable Town approvals. As a condition of the Town

1 Board's incentive zoning approval, the maximum
2 building development on the property shall not exceed
3 83,700 square feet. And the Whole Foods building
4 should not exceed 50,000 square feet. There was never
5 a restriction put on building 2. That is clear. And
6 that's just not right. That's a wrong statement.

7 The Town's confirmed that the developer's
8 calculations for the total square footage of building
9 1 at 50,000 square feet complies with the site plan
10 and the Town's prior approvals. To date, the Town has
11 issued three building permits authorizing the
12 construction of Starbucks building at 1,997 square
13 feet, building 2 at 22,380 square feet and the Whole
14 Foods building at 50,000 square feet, totaling
15 74,377 square feet.

16 The current square footage is well within
17 the maximum project density of 83,700 square feet as
18 conditioned by the Town Board's incentive zoning
19 approval. It's also really important to note that the
20 Town has not yet issued the building permits for the
21 last two buildings shown on the site plan. It's
22 really important to make clear the Town will not
23 approve building permits for the last two buildings in
24 excess of 9,323 feet and that the overall square
25 footage of this project will not exceed 83,700 square

1 feet as required.

2 The applicant in this matter knows this very
3 clearly. I have spoken to them. And we do keep track
4 of this. We have a system and we keep track of it.

5 The last matter I'd like to address is the
6 3,300 square feet for the canopies and ramp authorized
7 by the building permit. Our architectural projections
8 as previously as discussed in previous appeals,
9 architectural projections and other elements are not
10 part of the building permit, but are in addition to
11 the building footprint for the purposes of generating
12 the permit fees. Therefore, as referenced in the
13 building permit, the 53,330 square feet area is
14 compromised of -- comprised of, excuse me -- of 50,000
15 square feet building footprint and 31,000 square feet
16 of canopies and a 230 square foot ramp.

17 Based on the review, analysis, calculations
18 undertaken by the Building and Planning Department,
19 the Town's issued a building permit in accordance with
20 applicable laws and regulations, including the
21 requirements, the Town development regulations,
22 incentive zoning resolution and site plan approvals.

23 Accordingly as you can probably tell I
24 strongly believe that the request for this appeal
25 should be denied and the building permit upheld.

1 There was never a restriction on building 2. I want
2 to say that. Once, again, and that is just wrong to
3 say that. I'm sorry. That just very much upset me.
4 It's misleading information.

5 Once again, I would like to thank the Board
6 for your time, the effort regarding this matter and
7 I'd like to ask Mr. Mancuso if he has any closing
8 remarks regarding our opposition to this third appeal.
9 And I would once again, thank you all very much for
10 your time and consideration as always.

11 CHAIRMAN MIETZ: Okay. Thank you very much.
12 Is there someone else that would like to speak
13 regarding this application please?

14 MR. MANCUSO: Yes, Chairman. This is John
15 Mancuso of the law firm of Weaver Mancuso and
16 Brightman PLLC, 150 Allens Creek Road, Rochester, New
17 York 14618. I will be brief. I know this Board is
18 intimately familiar with this matter having heard this
19 as the third appeal of an issuance of a building
20 permit.

21 To briefly just memorialize our points on
22 the issues presented on two and three, we would simply
23 ask that the Board adhere to its prior determination
24 with respect to the second building permit and find
25 that those two issues are procedurally barred by res

1 judicata and collateral estoppel. It's an identical
2 issue that is now -- the third time it's been before
3 this Board. And we simply ask that you adhere to that
4 determination.

5 With respect to the Whole Foods building
6 square footage, just to briefly echo the sentiments of
7 the Town Building Inspector, there really are four
8 simple points that I will make with respect to that.
9 Number one, the incentive zoning resolution as a
10 condition requires 50,000 square foot building.

11 Number two, the site plan similarly depicts
12 a 50,000 square foot building.

13 Number three, as presented and submitted in
14 building plans and as certified by the developer and
15 is in the record before this board is a 50,000 square
16 foot building. SMA's counsel has conceded during the
17 public here that they are not contesting the canopies
18 and ramps associated with that building. And so we
19 had a 50,000 square foot building footprint, which is
20 identical to all of the Town's approvals that require
21 a 50,000 square foot building for building number 1.

22 And finally the overall project density is
23 currently below 83,700 square feet as articulated by
24 the Town Building Inspector. The argument is not
25 appreciating that there are two additional building

1 permits that have not yet been issued for additional
2 square footage. And as the Building Inspector has
3 reiterated, the overall project density will not
4 exceed 83,700 square feet.

5 And so that we would otherwise rest on our
6 submission unless the Board has any questions. And I
7 would like to just close by saying that we would -- I
8 would like to confirm for the record that
9 Mr. Boehner's comments and my own be made a part of
10 the public hearing record for both SMA's and BGR's
11 appeal.

12 CHAIRMAN MIETZ: Okay, Mr. Mancuso. Thank
13 you. Okay. Now, Mr. Zomerfeld, here's the situation
14 here. If you have something else to add, I will allow
15 it. But, you know, we're not interested in a debate
16 between what's been said because in the public
17 hearing, again, it's the Board's responsibility to
18 listen to all the testimony as it's been given and
19 sort it out. So if you have something additional to
20 add, then please proceed.

21 MR. ZOMERFELD: Thank you very much. And I
22 respect that, Mr. Chair. I'm not looking to engage in
23 cross debate. I just want to clarify for the record
24 because I did misspeak, you know --

25 CHAIRMAN MIETZ: Sure.

1 MR. ZOMERFELD: When members asked about our
2 challenges as far as the canopies and the ramp and I
3 was referring to -- and I was also taking a look
4 through while everyone else was speaking, I want to
5 retract that statement because I see it's very clear
6 in our submission that was raised. So I want to
7 withdraw that and clarify that we will rest on our
8 submission. As to that it was raised in multiple
9 places in our papers. And I don't want to concede
10 that we're not challenging that. I think it is an
11 issue. And I'll defer to our papers in that regard.
12 So I just want the record to be clear.

13 CHAIRMAN MIETZ: Okay. Very good. That's
14 reasonable. All right.

15 MR. ZOMERFELD: Thank you.

16 CHAIRMAN MIETZ: You're welcome. All right.
17 Now, is there anyone else that would like to speak
18 regarding this application? Okay. Very good. At
19 this point then the public hearing on 9A-08 and 9A-09
20 are closed.

21 MR. BOEHNER: Thank you.

22 MR. MANCUSO: Thank you very much.

23 CHAIRMAN MIETZ: Okay. Very good. Go
24 ahead, Rick. We have some old business?

25 MR. DiSTEFANO: That's it for the public

1 hearings. We do have an old business item that we
2 closed the public hearing on last month. I don't
3 believe we need to reopen that hearing unless anybody
4 would care to.

5 MR. PREMO: The only thing I had, Rick, is
6 the communication received from the applicant's
7 architect, can we make sure that's included as part of
8 public record? Because that was after the hearing.

9 MR. DiSTEFANO: Yes. I think -- yes. That
10 will be in the file. And that's a good point. We can
11 make sure it's part of the record.

12 CHAIRMAN MIETZ: Okay.

13 MR. DiSTEFANO: So besides that, if you guys
14 don't feel you need any explanation regarding that, I
15 believe we should go on to discussions or take a quick
16 recess, Mr. Chairman.

17 MR. GORDON: If we could, before -- before
18 we move off of that request by Mr. Problem, this is on
19 application 9A-03-21. Could we just have a simple
20 quick motion to add the email correspondence from Jeff
21 Ashline at Mosseien, dated September 13th, 2021, and
22 the attached drawings to the record for the public
23 hearing on this item?

24 MR. PREMO: So moved.

25 CHAIRMAN MIETZ: Okay. And a second please.

1 MS. TOMPKINS WRIGHT: Second. Member
2 Wright.

3 CHAIRMAN MIETZ: Andrea. Okay. Very good.
4 All right.

5 MR. DiSTEFANO: All members in favor, just
6 say aye.

7 ALL BOARD MEMBERS: Aye.

8 MR. DiSTEFANO: Members opposed? Motion
9 carries.

10 CHAIRMAN MIETZ: Okay. Very good. Okay.
11 Does anyone need five minutes here? Or shall we
12 proceed?

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2 **BRIGHTON**

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4 **ZONING BOARD OF APPEALS**

5

6 **MEETING**

7

8 **DELIBERATIONS**

9

10 **October 6, 2021**
At approximately 7 p.m.
Brighton Town Hall Zoom
2300 Elmwood Avenue
Rochester, New York 14618

11

12 **PRESENT:**

13 DENNIS MIETZ
14 Chairperson

15 EDWARD PREMO)
16 JUDY SCHWARTZ) Board Members
17 HEATHER MCKAY DRURY)
18 MS. TOMPKINS WRIGHT)

19

20 KEN GORDON, ESQ.
21 Town Attorney

22 RICK DiSTEFANO
23 Secretary

24 ABSENT: KATHLEEN SCHMITT

25

26 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
27 FORBES COURT REPORTING SERVICES, LLC
28 21 Woodcrest Drive
29 Batavia, NY 14020

1 CHAIRMAN MIETZ: So does anyone have
2 concerns related to this application?

3 MS. TOMPKINS WRIGHT: I'm a hundred percent
4 good. The only question I have is sometimes when we
5 do these types of deals we ask to see a copy of the
6 easement agreement. I didn't see that in the file.
7 Is that something we'd normally request or is that
8 more a Planning Board requirement?

9 CHAIRMAN MIETZ: Yeah. I believe that's
10 really more of a Planning Board issue.

11 MS. TOMPKINS WRIGHT: Okay. Then I'm good.

12 MR. DiSTEFANO: Basically we're just dealing
13 with the setback issue.

14 CHAIRMAN MIETZ: Right. Reasonable --
15 reasonable point though. Okay. All right. Does
16 anyone else have any other concerns here? I have this
17 one. Okay.

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1 **application 10A-01-21**

2 Application of Cliff Wagner - Landtech
3 Surveying and Planning, agent and Trinity Reform
4 Church, owner of property located at 909 North Landing
5 Road, for an Area Variance from Sections
6 203-2.1C(1)(a) and 203-9B(1) to allow a church
7 building to have a 41.7 foot side setback, after
8 subdivision of one lot into two, in lieu of the
9 minimum 100 feet setback required by code. All as
10 described on applications and plans on file.

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

14 **Findings of Fact:**

- 15 1. While the variance is self-created, there is no
16 opportunity to separate the adjoining lots without a
17 variance.
- 18 2. The request of the 41.7 feet on the side setback
19 is the minimum relief necessary to create two legal
20 lots.
- 21 3. No changes to the property will occur with the
22 approval of this variance since the other setbacks
23 will remain and the structures will be unchanged.
- 24 4. No negative effect on the character of the
25 neighborhood will result from the approval since the

1 property will remain unchanged in appearance.

2 **Conditions:**

3 1. This is based on the testimony given and the
4 drawings submitted as relates to the subdivision of
5 the two lots.

6 2. All necessary Planning Board approvals shall be
7 obtained.

8 (Second by Ms. Schwartz.)

9 (Mr. Premo, aye; Ms. Tompkins Wright, yes;
10 Ms. McKay Drury, aye; Ms. Schwartz, yes;
11 Mr. Mietz, yes.)

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

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1 CHAIRMAN MIETZ: So next we move to
2 Brooklawn for the porch and garage additions.

3 MS. SCHWARTZ: This is Member Schwartz.
4 This is mine and I would feel more comfortable tabling
5 it for more information I think in the past we've
6 approved things without really good drawings and
7 knowing what we're approving and have not always been
8 happy with the result. So I'm -- I would move to
9 table this.

10 CHAIRMAN MIETZ: All right. Well, let's
11 kind of go around the room and see what everybody else
12 thinks.

13 MR. GORDON: Dennis, this Ken.

14 CHAIRMAN MIETZ: Yeah. Sure.

15 MR. GORDON: Just as a -- as a procedural
16 matter, and I'm sort of a procedural stickler, Judy's
17 made a motion to table. We need to know if there's a
18 second to that motion to table.

19 CHAIRMAN MIETZ: Sure.

20 MR. GORDON: If there is a second to that
21 motion to table, the motion to table is not a
22 debatable proposition. It's something you need to
23 immediate --

24 MS. SCHWARTZ: Well, okay. So then you know
25 what? I can withdraw my comments. Okay? And then

1 that would give others a chance to give their opinion
2 and then we --

3 MR. GORDON: So you're not actually a motion
4 to table. You're just thinking maybe the Board would
5 like --

6 MS. SCHWARTZ: There are questions in my
7 mind.

8 MR. GORDON: Wonderful. Thank you.

9 CHAIRMAN MIETZ: Okay. Well, then we've
10 procedurally corrected it. Okay. All right. So
11 let's kind of go around on this. And, Judy, we'll let
12 you speak last. How's that?

13 MS. SCHWARTZ: Okay.

14 CHAIRMAN MIETZ: Andrea, what are you
15 thinking?

16 MS. TOMPKINS WRIGHT: So it's interesting.
17 It's not where my mind was going, but I don't -- I
18 don't necessarily disagree with Judy in part because
19 certainly this project will still need to go to the
20 Architectural Review Board. But part of our approval
21 language will be that because -- I would assume --
22 language would be that because this porch is open and
23 appears, you know, less substantial than a full
24 structure, that's why it isn't changing the character
25 of the neighborhood, it's not detrimental to nearby

1 properties, that is hard to do without a visual
2 representation of what this porch will look like. And
3 that would be my greater concern, the porch, because
4 it is such a significant part of it in the front yard
5 setback. Is that what you were kind of thinking,
6 Judy?

7 MS. SCHWARTZ: I have a question too about
8 what the garage is going to look like. I mean, he
9 talked about a gable, but it's really coming forward.
10 I also have a problem with garages coming beyond the
11 front of the house, which this will. So I just want
12 to see both, you know, how --

13 CHAIRMAN MIETZ: Okay. Just clarification.
14 Okay.

15 MS. SCHWARTZ: Exactly.

16 CHAIRMAN MIETZ: Okay. Okay. Mr. Premo?

17 MR. PREMO: Yeah. I guess as far as the
18 variance application I felt comfortable with it. I
19 mean, there is ARB that could take up a lot of these
20 issues. As far as the criteria for the variance, I
21 think they've -- they've met it. And I'm sure ARB
22 would make sure it looks nice.

23 CHAIRMAN MIETZ: Okay.

24 MS. TOMPKINS WRIGHT: And just to -- just to
25 piggyback on Ed's comment about the Architectural

1 Review Board, we could make a condition to this that
2 says that it needs to be open construction and, you
3 know --

4 CHAIRMAN MIETZ: Right.

5 MS. TOMPKINS-WRIGHT: Some kind of language
6 and then let the ARB deal with it.

7 MS. SCHWARTZ: Right. But our charge is to
8 say will it change the character of the neighborhood?
9 I don't really have a problem with the porch. I just
10 want to know what this -- to me this garage is going
11 to hit you smack in the face. And I just really want
12 to know what it's going to look like before I
13 personally say yes.

14 CHAIRMAN MIETZ: Okay. All right. Okay.
15 So -- so let me just chime in here. And I understand
16 the concern that Judy has related to this. But again,
17 there's varying levels of understanding. The
18 architect freely admitted that he did not create
19 elevations for the front of this, you know, due to the
20 sequential approval that the client expected him to
21 do.

22 So for the purpose of clarification to
23 understand it, then, yes, we do not have that. So, I
24 guess, really what it relates to is, you know, do the
25 other Board Members feel the explanation he gave are

1 enough to, you know, feel comfortable with it.

2 MR. GORDON: Hey, Dennis, I don't think
3 we've heard from Ms. McKay Drury yet.

4 CHAIRMAN MIETZ: Yes. Yes. That's fine.
5 Let me finish first. And then we'll go --

6 MR. GORDON: Okay. Just didn't know --

7 CHAIRMAN MIETZ: I don't always go last. I
8 didn't forget Heather. All right. So anyway -- yeah.
9 So I think that's my feeling is just that, you know,
10 being a construction person myself, I'm okay with the
11 explanation that I was given, but I can understand
12 other people's acumen might be different. Okay.
13 Heather, go ahead please.

14 MS. MCKAY DRURY: I'm coming down on the
15 same as Member Premo. I believe that creating that
16 multi-dimensionality of the front of this house will
17 be more aesthetically pleasing. It's stark to begin
18 with in terms of the -- the two stories. I think that
19 given what we know and the explanation that was given,
20 I think that that's what they're going for is
21 having -- adding a porch and a single-story garage in
22 front will create that aesthetic interest. And in
23 addition, as Member Premo noted, I believe that the
24 ARB is going to sufficiently handle more of those
25 aesthetic questions.

1 So in terms of the encroachment, I think
2 that those are very minimal. The porch, it really has
3 to encroach, otherwise they cannot have the porch,
4 which I think will be aesthetically pleasing. And the
5 area of encroachment with respect to the garage is
6 very minimal. And the only alternative was one where
7 it would kind of be at an angle, which I think would
8 actually be more odd looking.

9 CHAIRMAN MIETZ: Okay. All right. So,
10 Judy, you have the last hurrah here.

11 MS. SCHWARTZ: I still personally would
12 table it.

13 CHAIRMAN MIETZ: Okay all right. So this
14 was your application, Judy.

15 MS. SCHWARTZ: I know.

16 CHAIRMAN MIETZ: Yeah. And as you know the
17 rest of the Board it sounds like, Ed we'll just have
18 to pull a little bit. Ed, would you be willing to
19 support this application at this point?

20 MR. PREMO: Yes.

21 CHAIRMAN MIETZ: Okay. And Andrea? You
22 were muted, Andrea.

23 MS. TOMPKINS WRIGHT: I'm sorry. Yeah. I
24 don't have any problems at all with the garage. And
25 as long as we put in the condition regarding the

1 porch, I'm good with that as well.

2 CHAIRMAN MIETZ: Okay. All right. And
3 Heather?

4 MS. MCKAY DRURY: I'm good with it.

5 CHAIRMAN MIETZ: Okay. I'm actually good
6 with it too. Okay. So would someone be willing then
7 to -- because Judy, don't want you to feel conflicted
8 here.

9 MS. SCHWARTZ: Thank you.

10 CHAIRMAN MIETZ: Would someone else be
11 willing to make this motion? Would you work on it,
12 Andrea, please?

13 MS. TOMPKINS WRIGHT: Sure.

14 CHAIRMAN MIETZ: We'll help you.

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1 **Application 10A-02-21**

2 Application of James and Christina Kolberg,
3 owners of property located at 401 Brooklawn Drive, for
4 Area Variances from Section 205-2 to allow 1) a front
5 porch addition to extend 9 feet into the 40 foot front
6 setback required by code, and 2) allow a garage
7 addition to extend 4 feet into the 40 foot front
8 setback required by code. All as described on
9 application and plans on file.

10 Motion made by Ms. Tompkins-Wright to
11 approve application 10A-02-21 based on the following
12 findings of fact.

13 **Findings of Fact:**

- 14 1. The granting of the requested variance will not
15 produce an undesirable change in the character of the
16 neighborhood or be a detriment to nearby properties.
17 The garage extension into the front yard setback is
18 minimal in nature as it only represents a small corner
19 of the garage. Further the proposed porch is open in
20 nature with only a roof and thus will not appear to
21 materially infiltrate the front yard setback.
- 22 2. The requested variance is not substantial given
23 the limited increase in setback with the garage and
24 the open nature of the porch.
- 25 3. The benefit sought by the applicant cannot

1 reasonably be achieved by any other method as any
2 addition of a porch will necessarily violate the front
3 yard setback.

4. There's no evidence that proposed variance will
5 have an adverse affect or impact on the physical or
6 environmental conditions in the neighborhood or
7 district.

8. The variance request was not self-created as the
9 home was sited on the property by the original builder
10 of the home and not by these owners.

11 **Conditions:**

12 1. The Area Variance applies only to the garage
13 addition and proposed porch as depicted in the plans
14 and materials submitted as described in the meeting.

15 2. The proposed porch shall be open in nature in
16 order to minimize the visual effect.

17 3. All necessary Architectural Review Board approvals
18 and building permits must be obtained.

19 (Second by Mr. Premo.)

20 (Ms. Schwartz, no; Mr. Mietz, yes;
21 Ms. McKay Drury, in favor; Mr. Premo, yes;
22 Mr. Tompkins-Wright, yes.)

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1 CHAIRMAN MIETZ: Now we move over to 40
2 Ambassador. This relates to the garage addition at
3 the rear and then the 3-foot front addition. So
4 concerns here by any of the Board Members?

5 MS. TOMPKINS WRIGHT: I mean, it's
6 certainly -- it's not that you can't say it's not
7 substantial given the fact of where it is and what it
8 encroaches on, but, you know, it -- it's certainly
9 very close for an attached garage to that rear
10 property line.

11 CHAIRMAN MIETZ: Okay. And you're --

12 MS. TOMPKINS WRIGHT: I'm okay with it.

13 CHAIRMAN MIETZ: Okay.

14 MS. TOMPKINS WRIGHT: I wrote it up as an
15 approval. This was my application. I wrote it up as
16 an approval. I had some fancy language for why it's
17 not substantial, but --

18 CHAIRMAN MIETZ: Very good. Can't wait to
19 hear it.

20 MS. TOMPKINS WRIGHT: But it is a larger
21 variance request than many of our variance requests.

22 CHAIRMAN MIETZ: Yes, it is. Yes, it is.
23 Okay. All right. Go ahead, Ed.

24 MR. PREMO: So I was just saying, I think
25 that's true, but once again this is the -- I think

1 there's unique circumstances with the properties
2 that -- that justify the variances. And, you know,
3 perhaps if it wasn't such a unique situation, maybe
4 I'd be more concerned, but I am not here.

5 CHAIRMAN MIETZ: Okay. Very good. All
6 right. Heather or Judy, any thoughts?

7 MS. SCHWARTZ: I think they're being very
8 sensitive by maintaining a single -- a shared driveway
9 for the Constines next door, you know, by putting it
10 behind the house. So I think they really gave it a
11 lot of serious thought and came up with a very good
12 solution.

13 CHAIRMAN MIETZ: Very good. And Heather?

14 MS. MCKAY DRURY-DRURY: I agree. I think
15 that the shared driveway makes it particularly
16 difficult and justifies the more unusual setback that
17 they're proposing here.

18 CHAIRMAN MIETZ: Okay. Yeah. And I agree.
19 I think that, you know, the situation here -- you
20 heard from the neighbor who's mostly affected by this,
21 the appreciation for the placement. So I think,
22 again, as was pointed out here, the respect for the
23 property, the property owner and all the rest seems to
24 be made.

25 And then, you know, when you look down the

1 street, I think the points about the front yard
2 setback, you know, are legitimate. There's quite a
3 difference in both the size and scale of the houses on
4 Ambassador. So I think this 3 foot is going to be
5 relatively unnoticed really. Okay.

6 MS. TOMPKINS WRIGHT: I appreciate you
7 pointed that out earlier that -- regarding the size
8 because I was struggling with the setback a little
9 bit. So that's helpful.

10 CHAIRMAN MIETZ: Okay. Great. All right.
11 So, Andrea, you're up.

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1 **Application 10A-03-21**

2 Application of Tom Johnson, agent, and Mark
3 Benoit, owner of property located at 40 Ambassador
4 Drive, for Area Variances from Section 205-2 to 1)
5 allow an attached garage addition to extend 20.3 feet
6 into the existing 24.3 feet rear setback where a 60
7 foot rear setback is required by code, and 2) allow a
8 front addition to extend 3 feet into the existing
9 49.96 foot front setback where a 60 foot front setback
10 is required by code. All as described on application
11 and plans on file.

12 Motion made by Ms. Tompkins-Wright to
13 approve application 10A-03-21 based on the following
14 findings of fact.

15 **Findings of Fact:**

16 1. The granting of the requested variance will not
17 produce an undesirable change in the character of the
18 neighborhood or be a detriment to nearby properties.
19 The garage addition will not be visible from the
20 street and encroaches on an area of the backyard
21 that's not back up to any structure, but instead backs
22 up to open fields and a tree lot. Further, the
23 placement is specifically designed to reduce any
24 maneuvering issues within the shared driveway. With
25 respect to the front yard setback the additional

1 variance of 3 feet will not be noticeable in
2 comparison to setbacks throughout the neighborhood and
3 in particular given the size of homes in the
4 neighborhood and this home being one of the smallest
5 in the area.

6 2. The requested variance is not substantial given
7 the fact that the garage would be permissible in this
8 location were it a detached garage and it appears to
9 be a location that reduces effects on neighboring
10 property owners. Further, the 3-foot extension in the
11 front yard setback is minimal in light of the overall
12 size of the building in comparison to neighboring
13 homes.

14 3. The benefit sought by the applicant cannot
15 reasonably be achieved by any method as the family is
16 in need of additional space on an otherwise
17 constrained lot. With respect to the attached garage
18 other configurations including a detached garage would
19 be detrimental to neighboring properties.

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

24 5. The need for the variance is not self-created as
25 the home necessarily links the rear and front yard

1 setbacks as there is only less than a 10-foot space of
2 allowable building between the set lines.

Conditions:

4 1. The variance granted herein applies only to the
5 additions as presented in the application and
6 materials submitted as well as the presentation.
7 2. All necessary Architectural Review Board approvals
8 and building permits must be obtained.

9 (Second by Ms. Schwartz.)

10 (Ms. McKay Drury-Drury, I'm in favor; Mr.
11 Mietz, yes; Mr. Premo, yes; Ms. Schwartz, yes;
12 Ms. Tompkins-Wright, yes)

13 (Motion to approve with conditions carries.)

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1 CHAIRMAN MIETZ: Okay. Our next situation
2 is over at 1850 Winton Road. Ken or Rick, your
3 feelings about the relationship to this EPOD and all
4 the rest?

5 MR. DiSTEFANO: Yeah. They do need an EPOD
6 permit. And SEQRA does need to be performed on this.
7 Unfortunately, when they made this application, they
8 did not give us enough information to do SEQRA or to
9 issue an administrative EPOD or possibly referring it
10 to the Planning Board.

11 So I think at this point in time it'd be a
12 little premature for us to approve it not knowing
13 whether or not there's an EPOD permit and what kind of
14 SEQRA determination would be made. However, I think
15 it would be beneficial if we at least were able to
16 give some idea of how we feel about this --

17 CHAIRMAN MIETZ: Sure.

18 MR. DiSTEFANO: -- variance. Certainly --
19 certainly if you are not in favor of it, there's
20 nothing preventing you from denying it.

21 CHAIRMAN MIETZ: Okay. All right. So let's
22 just go around. Ken, did you have anything to add to
23 that?

24 MR. GORDON: I agree with -- Rick and I
25 talked about this earlier today. And we're in

1 agreement.

2 CHAIRMAN MIETZ: Okay. Fine.

3 MR. PREMO: What is that you need to do the
4 SEQRA determination?

5 MR. DiSTEFANO: The EPOD permit, the
6 Environmental Protection Overlay District permit would
7 require SEQRA approval -- would require a
8 determination.

9 MR. PREMO: So the EPOD permit is issued
10 administratively?

11 MR. DiSTEFANO: Either administratively or
12 sent to the Planning Board depending on the impact of
13 the project on the specific EPOD.

14 MR. PREMO: What about the testimony that
15 they gave that the actual location is outside the
16 flood --

17 MR. DiSTEFANO: Well, we would certainly
18 like to verify that --

19 CHAIRMAN MIETZ: Right.

20 MR. PREMO: Okay.

21 MR. DiSTEFANO: -- before we were to --

22 MR. PREMO: I think that's, of course, a big
23 point.

24 CHAIRMAN MIETZ: Yes.

25 MR. GORDON: It's not -- it's that -- it's

1 not that this is necessarily -- using a triple
2 negative almost -- it's not that it's not going to get
3 a negative declaration. It's simply that we don't
4 have enough information right now to make that
5 determination or to issue the EPOD permit or to know
6 whether it was going to be done administratively or
7 not.

8 CHAIRMAN MIETZ: Right. Right.

9 MR. GORDON: So basically they're -- they
10 need to flesh out these issues a little bit more and,
11 you know, staff has to have an opportunity to review
12 that.

13 CHAIRMAN MIETZ: Right. Anyway you
14 characterize it, at this point incomplete. So --
15 okay. So any other Board Members have any other
16 thoughts about this or do, you know, you generally, I
17 mean, are people reasonably supportive of what's being
18 asserted here subject to obviously these matters being
19 cleared up related to the EPOD?

20 MS. SCHWARTZ: Judy. Aside from the EPOD, I
21 think they really worked it out. I believe, and
22 correct if I'm wrong, I think we've had other
23 applications like this, haven't we, over the past few
24 years?

25 CHAIRMAN MIETZ: Yes.

1 MS. SCHWARTZ: Yeah. So and I think that
2 they really took into account placing them really out
3 of the way.

4 CHAIRMAN MIETZ: Okay. Good. Thank you.
5 Does anyone else have any thoughts about this? Yes,
6 Ed. Go ahead. I'm sorry, Ed. Were you trying to
7 speak?

8 MR. PREMO: No.

9 CHAIRMAN MIETZ: Oh, okay.

10 MR. PREMO: I'm in support of tabling it.

11 CHAIRMAN MIETZ: So to give Verizon just the
12 general idea we really don't appear to have any
13 significant issues related to either placement or the
14 equipment outside and the particular location that was
15 asserted and the rest of that part of that discussion.

16 Okay. All right. So I think at this point
17 it's my motion. I think the right thing to do here is
18 table this motion, you know, for the additional
19 information and staff's ability to review the
20 submissions and also clear up the SEQRA issue.

21 MR. DiSTEFANO: My question to the Board is
22 would you want to hear back from them once you have
23 made a determination and whether or not the EPOD goes
24 administratively or to the Planning Board? What I'm
25 trying to say is, do you want to keep the public

1 hearing closed on our end?

2 MS. TOMPKINS WRIGHT: I do. I don't think I
3 need to hear any more testimony from them.

4 MS. SCHWARTZ: Right. I agree.

5 CHAIRMAN MIETZ: I think that's reasonable.
6 Yeah.

7 MR. DiSTEFANO: So we will table it, keep
8 the public hearing closed.

9 CHAIRMAN MIETZ: Yeah. We need a second for
10 my motion though please.

11 MR. DiSTEFANO: Well, I'm going to get -

12 CHAIRMAN MIETZ: Go ahead. Hold on.

13 MR. PREMO: Second.

14 CHAIRMAN MIETZ: Okay.

15 MR. DiSTEFANO: We're tableing it for SEQRA
16 determination and also EPOD permit approval.

17 CHAIRMAN MIETZ: Okay. Yes. That's what I
18 said. Okay. So now we have a second from Mr. Premo.

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1 Application 9A-06-21

2 Application of Bell Atlantic Mobile Systems
3 LLC, lessee, and 1850 WRS LLC, owner of property
4 located at 1850 Winton Road South, for an Area
5 Variance from Section 207-42C(1)(b) to allow for the
6 installation of cellular support equipment on the
7 ground outside the building in lieu of inside the
8 building as required by code. All as described on
9 application and plans on file.

10 Motion made by Mr. Mietz to table
11 application pending SEQRA determination and EPOD
12 approvals, keeping the public hearing closed.

13 (Second Mr. Premo.)

14 (Ms. Schwartz, yes; Ms. Tompkins-Wright,
15 yes; Ms. McKay Drury-Drury, yes; Mr. Mietz,
16 yes; Mr. Premo, yes.)

17 (Motion to table carries.)

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1 CHAIRMAN MIETZ: On the next two
2 applications I think we can talk as we did earlier
3 with them together. But obviously we'll vote on them
4 individually as we need to. All right. So, Ken or --
5 excuse me -- Rick, do you have any thoughts before we
6 talk about these?

7 MR. GORDON: My -- just preliminarily I will
8 say that with each of these Whole Food appeals, you've
9 given me the opportunity to draft some specific
10 findings after hearing what direction generally the
11 Board wants.

12 So I would benefit greatly from hearing your
13 thoughts, but then I would ask that you allow me a
14 month to get the findings written up so that we can
15 have adequate and specific findings made for this
16 matter.

17 CHAIRMAN MIETZ: Okay. Well, there's
18 certainly precedent for that.

19 MR. PREMO: I -- I guess, Dennis, this is
20 one I was going to take the lead on.

21 CHAIRMAN MIETZ: Sure.

22 MR. PREMO: And I agree with that. I mean,
23 once again, I would -- based upon our other
24 determinations, be in favor of denying both of these
25 appeals. I will say one thing is when I have been

1 sitting here scanning through the appeals again and I
2 don't really see the basis for there being some sort
3 of appeal over the canopies. I -- I -- the fact that
4 that was retracted I think is just wrong. But
5 that's -- that's --

6 CHAIRMAN MIETZ: What do you feel is wrong?
7 I'm sorry, Ed. What do you mean it's wrong?

8 MR. PREMO: Well, I don't think they raised
9 the canopies in this appeal.

10 CHAIRMAN MIETZ: Okay. Correct. Okay. So
11 I just want to make sure, clarifying so everyone
12 understands what you meant. Okay.

13 MR. GORDON: Just to -- just to point out
14 what I saw. I did see that in the SMA submission -- I
15 will say that I did see reference to the square
16 footage of canopies. It is called out -- give me a
17 moment here -- on page -- it's here because I saw it
18 when he mentioned it.

19 MR. PREMO: Yeah. But I don't know if
20 mentioning it was --

21 MR. GORDON: Right. I just want to make
22 sure our record is clear that -- here we are. On
23 page 29 of paragraph 110, the statement is "The
24 developer did not remove any square footage from the
25 Whole Foods building for which the Town issued a third

1 building permit allowing for a 50,000 square foot
2 structure, the same size approved by Town Board and
3 Town Planning Board. Plus an additional 33 -- 130
4 square foot for canopies and a ramp."

5 Now, they don't make the argument that that
6 in any way violated the approvals.

7 MR. PREMO: Right.

8 MR. GORDON: And I think that's your point,
9 Ed. And I would concur that they don't make that
10 point.

11 CHAIRMAN MIETZ: Okay.

12 MR. GORDON: But I just want to make sure
13 that there isn't a notion that they don't mention the
14 3,330. They do.

15 MR. PREMO: I mean you can read through both
16 of those appeals. And the conclusion you would reach
17 is their -- the basis for their appeals has nothing to
18 do with the canopy and the ramp.

19 CHAIRMAN MIETZ: Yeah. I think that's
20 reasonable.

21 MR. GORDON: I think that's a fair
22 statement.

23 MS. SCHWARTZ: I have a question. For
24 information purposes, is there ever a limit on the
25 allowable square footage of these canopies and extra

1 additions and so on? Can they keep going over the top
2 or is there some guideline or whatever?

3 MR. GORDON: So it's not within the
4 definition of the square footage of the building.
5 It's to the exterior walls. And we define that in the
6 Code that the measurement is to the exterior of the
7 walls. And that is what we got a computer assisted
8 design certification for building number 3 is that it
9 was exactly, as a matter of fact, 50,000 square feet
10 as measured under the computer assisted design.

11 CHAIRMAN MIETZ: Ken, I think her question
12 really relates to like could they have made them three
13 times as big as this --

14 MS. SCHWARTZ: Right. Right.

15 CHAIRMAN MIETZ: -- arbitrary size of these
16 canopies is -- so Rick, maybe you could address that
17 quickly.

18 MR. DiSTEFANO: I don't think the incentive
19 zoning ever compensated architectural features. And
20 if they were going to do something so outrageous as to
21 do a canopy that goes into the parking lot, I think
22 that could violate site plan approval, but that's not
23 what's going on here. There's definitely canopy areas
24 that are protecting people from the weather, adding
25 architectural features to the building. The handicap

1 ramp certainly is not necessary.

2 CHAIRMAN MIETZ: Yeah. It would really have
3 to be compromising the fire lane or --

4 MS. SCHWARTZ: Okay.

5 CHAIRMAN MIETZ: -- impeding on losing
6 parking or something. So that would catch all of
7 that, Judy.

8 MR. GORDON: Well stated.

9 MR. PREMO: So -- go ahead. I'm sorry.

10 CHAIRMAN MIETZ: All right. So from that,
11 any other questions or clarifications that the Board
12 Members would like at this point or -- Heather, I
13 don't think we heard from you.

14 MR. DiSTEFANO: We can't hear from Heather.

15 CHAIRMAN MIETZ: Oh, I apologize.

16 MR. GORDON: Heather's not even listening
17 I'm sure.

18 CHAIRMAN MIETZ: I apologize. Okay. All
19 right. Is there anything else then?

20 MS. TOMPKINS WRIGHT: Well, I'll just -- I
21 mean, what I heard from them is just that the major
22 issue is they don't trust Brighton to force a
23 reduction on future property, not that they have
24 really a problem with this property being 50,000
25 square feet. I think that in of itself means we -- I

1 don't know how to not deny their appeal based on that,
2 based on some potential wrong that they think is going
3 to happen.

4 CHAIRMAN MIETZ: Right.

5 MS. TOMPKINS WRIGHT: And I tried to point
6 this out because this was -- again this was their
7 first appeal on the Starbucks building. I believe it
8 was on the Starbucks building on the exact square feet
9 when we -- we even went into details because they
10 believed the square footage had to be exactly what was
11 on the site plan to be approved. And this 50,000
12 square feet is exactly what was on the site plan.

13 CHAIRMAN MIETZ: Yeah.

14 MS. TOMPKINS WRIGHT: It's hard to have it
15 both ways.

16 CHAIRMAN MIETZ: Right.

17 MR. DiSTEFANO: Just for clarification, the
18 Starbucks they did not challenge.

19 CHAIRMAN MIETZ: It was the second building.

20 MS. TOMPKINS WRIGHT: Building number 2.
21 Sorry about that.

22 CHAIRMAN MIETZ: It was a pretty exhaustive
23 discussion about that from both sides of it that the
24 Board Members were party to listening to. So -- okay.

25 MR. GORDON: Judy, you had an issue on

1 building number 2. I mean, do you have a similar
2 issue here with building 3? I'm curious.

3 MS. SCHWARTZ: I feel a little bit better
4 with this one. You know as long -- I mean, I asked my
5 question about the extras and so on and so forth and
6 is there going to be a limit. I can certainly
7 understand things that would be more ground level, you
8 know, that would interfere with parking and so on and
9 so forth. But can they, you know, put something way
10 up around the top and so on that goes way out and --
11 you know.

12 CHAIRMAN MIETZ: I think --

13 MS. SCHWARTZ: Would it interfere with the
14 parking lot?

15 CHAIRMAN MIETZ: I think we've addressed
16 that adequately. There's really no concern with that
17 really.

18 MS. SCHWARTZ: So there's no limit. Thank
19 you, Ken. I do feel a little bit better because this
20 one is more on hypothetical than actual -- which
21 Andrea just mentioned. So that, you know, clarifies
22 it a bit more. Thank you.

23 MR. PREMO: Dennis, I want to move that we
24 table this --

25 CHAIRMAN MIETZ: Yes. Go right ahead, Ed.

1 MR. PREMO: -- to work on the resolution and
2 take up a vote at the next ZBA meeting.

3 MR. DiSTEFANO: Ed, can I have you do formal
4 tablings of each application?

5 CHAIRMAN MIETZ: Yes. You got to do them --
6 I'm sorry, Ed -- just individually. Just say 9A-08 --

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1 Application 9A-06-21.

2 Application of Bell Atlantic Mobile Systems
3 LLC, lessee, and 1850 WRS LLC, owner of property
4 located at 1850 Winton Road South, for an Area
5 Variance from Section 207-42C(1)(b) to allow for the
6 installation of cellular support equipment on the
7 ground outside the building in lieu of inside the
8 building as required by code. All as described on
9 application and plans on file.

10 Motion made by Mr. Premo to table
11 Application 9A-08-21 and keep the public hearing
12 closed.

13 (Second Ms. Tompkins-Wright.)

14 (Ms. Schwartz, yes; Mr. Mietz, yes; Mr.
15 Premo, yes; Ms. Tompkins-Wright, yes.)

16 (Motion to table carries.)

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1 Application 9A-09-21

2 Application of Brighton Grassroots, LLC,
3 appealing the issuance of a building permit (3rd
4 building - Whole Foods) by the Town of Brighton
5 Building Inspector (pursuant to Section 219-3) to the
6 Daniele Family Companies, developer of the Whole Foods
7 Plaza project located at 2740/2750 Monroe Avenue. All
8 as described on application.

9 Motion made by Mr. Premo to table
10 application 9A-09-21 and keep the public hearing
11 closed.

12 (Second by Ms. Tompkins Wright.)

13 (Mr. Mietz, yes; Ms. Schwartz, yes; Ms.
14 Tompkins-Wright, yes; Mr. Premo, yes.)

15 (Motion to table carries.)

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1 CHAIRMAN MIETZ: Old business is 36
2 Eastland. Again, you were provided some additional
3 materials. So what are the thoughts here? So how
4 about, Judy, what do you think?

5 MS. SCHWARTZ: I drove by again and I didn't
6 realize this the first time around, but the neighbors
7 drive -- garage, I'm sorry -- is right next to this
8 proposed -- next to the existing garage. And I don't
9 think it's going to be in keeping with the
10 neighborhood. I mean, it's going to be really much
11 larger, taller and so on. So I don't think I am going
12 to approve it. I think it's going to really change
13 things.

14 CHAIRMAN MIETZ: All right. How about
15 Andrea?

16 MS. TOMPKINS WRIGHT: So I am planning on
17 abstaining from this. I was not part of last month's
18 Board meeting. So I did not hear the testimony and
19 unfortunately did not have room in my carry-on luggage
20 to bring minutes with me, which is why I abstained
21 from approving the minutes as well. I was hoping
22 you'd have the votes with me on this application.

23 CHAIRMAN MIETZ: Okay.

24 MR. DiSTEFANO: Doesn't look like it.

25 CHAIRMAN MIETZ: Ed?

1 MR. PREMO: I went out there a couple times
2 myself. I guess I have a different view than Judy
3 does about whether it would be in keeping with the
4 character of the area. I don't think it's going to be
5 particularly any larger or taller as I recall than the
6 next door garage. They're going to move it over
7 slightly to take better advantage and add some
8 accents.

9 I think the architect's discussion of why
10 the additional 3.5 feet made sense was persuasive to
11 me. And I note that when I talked to the property
12 owner, you know, before the first hearing he had
13 mentioned the desire to put on the solar panels some
14 time in the future. You know, the garage that's there
15 needs to be replaced. And I really just don't have a
16 problem with it.

17 CHAIRMAN MIETZ: Okay. All right. Now,
18 Heather, you didn't hear this one either; correct?

19 MS. MCKAY DRURY-DRURY: Correct. To the
20 extent that I'm permitted to, I do feel like --
21 especially with the additional information that was
22 provided, I think that it sounds like that echoed some
23 of the testimony that was provided at the meeting that
24 I did not attend.

25 CHAIRMAN MIETZ: Right.

1 MS. MCKAY DRURY: With respect to the -- the
2 intention to potentially install solar panels, that
3 explains the angle that's required for this. And
4 given the fact the adjoining properties have two-car
5 garages similar to this and that it would be minimally
6 visible from the road, I feel I do have enough to
7 indicate that I am inclined to approve this.

8 CHAIRMAN MIETZ: Okay. Very good. Yes.
9 And that's certainly reasonable, you know, if you
10 reviewed the property, you reviewed the -- yes. You
11 can certainly -- are well within your purview to do
12 that. And I'm kind of sitting in the same thing
13 because I was not here last month either, but I did
14 review the property. I did review the extra things
15 and I really don't have a concern either. Okay.

16 MR. PREMO: So there's four of us who can
17 vote right now; right?

18 CHAIRMAN MIETZ: Correct.

19 MR. PREMO: And Judy thinking to vote no?

20 MR. DiSTEFANO: Well, there's five of us
21 that can vote.

22 CHAIRMAN MIETZ: Right. Right. Andrea's
23 just saying she's --

24 MR. PREMO: Oh, I thought you agreed -- said
25 she was going to abstain?

1 MR. DiSTEFANO: Well, she's eligible to
2 vote. So the question is do we have a 3-1. We had a
3 3-1 last month. At some point we have to make a
4 decision for this applicant. I don't like to keep
5 stringing them along one way or another.

6 MR. PREMO: So if we take a 3-1 vote, it's a
7 no action.

8 MS. TOMPKINS-WRIGHT: Yeah.

9 CHAIRMAN MIETZ: I think --

10 (Simultaneous conversation.)

11 MR. DiSTEFANO: My point is I'd like to one
12 way or another --

13 CHAIRMAN MIETZ: Okay. Hang on, Rick. So
14 Andrea --

15 MS. TOMPKINS WRIGHT: I guess is there --
16 because I don't even have the minutes with me to even
17 review them right now. Is there an opportunity --
18 what's the Board's temperature on, you know -- we
19 don't normally take comments from applicants at this
20 stage -- but tabling it for another week so I can read
21 the minutes and then be prepared to vote next week on
22 it -- or -- I'm sorry next month on it because I don't
23 feel -- I do not have the knowledge of this
24 application. I do not have the minutes. I apologize.
25 That was my fault in my travel packing, but I don't

1 feel like I can vote on this one without reading
2 through the minutes and looking at the application.

3 But I'm perfectly willing to table it for
4 another month in the sense, I will likely align with
5 those -- I assume given the 3-1 vote, that I will be
6 comfortable as well. I don't know if the
7 applicant's -- what the board's temperature is
8 extending this another month.

9 MR. DiSTEFANO: Well, I think we're going to
10 have to.

11 CHAIRMAN MIETZ: Yeah. Sounds like it. I
12 don't think we really have too much --

13 MR. DiSTEFANO: Yeah. We really don't have
14 a choice.

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1 Application 9A-03-21

2 Application of Jeffrey Ashline, architect
3 and Joel Thompson, owner of property located at 36
4 Eastland Avenue, for 1) an Area Variance from Sections
5 203-2.1B(3) and 203-9A(4) to allow for the
6 construction of a detached garage 672 square feet in
7 size in lieu of the maximum 600 square feet allowed by
8 code; and 2) an Area Variance from Section 207-6A(1)
9 to allow said garage to be 19 feet 5 inches in height
10 in lieu of the maximum 16 feet allowed by code. All
11 as described on application and plans on file. TABLED
12 AT THE SEPTEMBER 1, 2021 MEETING, PUBLIC HEARING
13 CLOSED.

14 Motion made by Mr. Premo to table
15 Application 9A-03-21.

16 (Second by Ms. Tompkins-Wright.)

17 (Ms. Schwartz, no; Mr. Mietz, yes; Ms. McKay
18 Drury-Drury, yes; Ms. Tompkins-Wright, yes; Mr.
19 Premo, yes.)

20 (Motion to table carries.)

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1 CHAIRMAN MIETZ: All right.

2 MR. GORDON: I didn't want to jump in there
3 in the middle of that, but I will say this, one of the
4 great advantages to doing these meetings virtually is
5 that the entire record and hearing is now recorded and
6 available on video. So I know that's not going to
7 help for last month, but going forward, I mean, it's a
8 huge help to have this available.

9 CHAIRMAN MIETZ: Sure.

10 MR. GORDON: Kathleen was not here tonight.
11 She could, you know, watch the entire meeting and
12 be --

13 CHAIRMAN MIETZ: Sure. And I'll speak with
14 her about it too. And, Ken, do you have any thoughts
15 about how you're going to proceed on the other issues?
16 Will you be getting some materials to the Board
17 Members prior to next month's meeting or what's your
18 thought here?

19 MR. GORDON: Yes.

20 CHAIRMAN MIETZ: Very good.

21 MR. PREMO: Was that to Ken or was that to
22 me?

23 CHAIRMAN MIETZ: That was to Ken.

24 MR. PREMO: Oh, I'll answer for Ken anyway.

25 CHAIRMAN MIETZ: Okay. All right. I think

1 we're good. Thank you, everybody.

2 (Proceedings concluded at 9:12 p.m.)

3 * * *

4 REPORTER CERTIFICATE

5

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

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

14

15 Dated this 6th day of October, 2021
16 at Rochester, New York.

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Holly E. Castleman,

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Notary Public

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