
BRIGHTON
ZONING BOARD OF APPEALS
MEETING

January 5, 2022
At approximately 7 p.m.
Brighton Town Hall Zoom
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ
Chairperson

EDWARD PREMO)	Board Members
HEATHER MCKAY-DRURY)	
MS. TOMPKINS-WRIGHT)	
KATHLEEN SCHMITT)	

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

ABSENT: JUDY SCHWARTZ

BRENDAN RYAN

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

1 CHAIRPERSON MIETZ: All right. Good evening
2 everyone, and Happy New Year to all. And you're here
3 to tune in with us on the Zoning Board of Appeals
4 Brighton meeting for January 2022. So just want to
5 give you a couple little thoughts about how we will
6 run this meeting tonight. We have three applications
7 from last month and we have six new ones for a total
8 of nine.

9 So the way that we handle the meeting is
10 that when you -- we have some minutes to review first.
11 And then after that we'll begin the public hearings.
12 So when your application is called, if you can just
13 identify yourself and we'll admit you in so that you
14 can tell us about your application and why you think
15 we should approve. There may be questions from the
16 Board members at that point. And once we finish that
17 discussion we'll ask if there's anyone on the Zoom
18 call that wants to speak regarding any specific
19 application. If they do, then they will. And once we
20 finish that we'll close the public hearing and move on
21 to the next application.

22 You're welcome to stay for the
23 deliberations, which we go right into. If you don't
24 want to do that, you can call Rick DiStefano at the
25 Town -- excuse me -- office tomorrow and he can let

1 you know what the results of your application was.
2 Okay.

3 So at this point I'd like to call the
4 meeting to order. Rick, was the meeting properly
5 advertised?

6 MR. DiSTEFANO: Yes, Mr. Chairman. It was
7 advertised in the Daily Record of December 28th, 2021.

8 CHAIRPERSON MIETZ: Okay. And then can you
9 call the roll please.

10 (Whereupon the roll was called.)

11 MR. DiSTEFANO: Please let the record show
12 that Ms. Schwartz is not present.

13 CHAIRPERSON MIETZ: Okay. Very good. So
14 before we go to the minutes, Rick, is there anything
15 you would like to let the Board members know about the
16 applications?

17 MR. DiSTEFANO: Yes. And just for the
18 audience also, Applications 12A-03-21, 12A-04-21 and
19 Applications 1A-03-22 and 1A-04-22 have been postponed
20 to the February meeting. I don't know if any of the
21 members have any questions in regards to any of the
22 applications.

23 CHAIRPERSON MIETZ: Okay. All right. So
24 with have -- thank you. So we do have some minutes to
25 look at from the November meeting. Does anyone have

1 additions or corrections to the minutes?

2 MR. GORDON: Dennis, I do.

3 CHAIRPERSON MIETZ: Okay. Please do. All
4 right, Ken.

5 MR. GORDON: Hi --

6 MR. DiSTEFANO: Ken, you froze.

7 MR. GORDON -- agenda items actually -- I'm
8 frozen?

9 MR. DiSTEFANO: Yes.

10 CHAIRPERSON MIETZ: Now you're okay.

11 MR. GORDON: Okay. Just on the agenda just
12 want to note that some of the matters are labeled
13 incorrectly on the agenda as 21 applications. All the
14 1A applications should be labeled I believe '22. So
15 1A-03 is 22, 1A-04-22, 1A-05-22, 1A-06-22, et cetera.

16 MR. DiSTEFANO: Ken, you're looking at the
17 tentative agenda. That was corrected on the final.

18 MR. GORDON: Oh, it was? Okay.

19 CHAIRPERSON MIETZ: Yeah. He fired out one
20 today. Okay. No problem. Okay. Anything on the
21 minutes, Ken, why'll you're up?

22 MR. GORDON: Yes, I do.

23 CHAIRPERSON MIETZ: Okay. Please.

24 MR. DiSTEFANO: You muted yourself, Ken.
25 Now everybody's muted.

1 CHAIRPERSON MIETZ: Oh.

2 MR. DiSTEFANO: Ken, can you unmute?

3 MR. GORDON: There we go. Sorry about that.

4 CHAIRPERSON MIETZ: Okay. Go ahead.

5 MR. GORDON: Let me try again. I believe
6 that the minutes for November should be amended.
7 There's just -- I wanted -- I wanted to make sure we
8 had clarification on the attachments to the
9 resolutions for the two appeals on the Whole Foods
10 matter.

11 So for the November 3rd meeting the minutes
12 should reflect that the November 3rd resolution and
13 findings for Application 9A-08-21 contain as Exhibit 1
14 the December 2nd, 2020, resolution and findings for
15 Application 9A-04-20, and as Exhibit 2 the July 7th,
16 2020, resolution and findings for application
17 6A-02-21.

18 And then secondarily the November 3rd, 2021,
19 resolution and findings for Application 9A-09-21
20 should contain as Exhibit 1 the December 2nd, 2020,
21 resolution and findings for Application 10A-02-20, and
22 as Exhibit 2 the July 7th, 2020, resolution and
23 findings for Application 6A-02-21.

24 And what we were doing there as you may
25 recall is incorporating the Board's prior findings

1 into the findings that we were making during that
2 November meeting on each of those applications.

3 CHAIRPERSON MIETZ: Okay. All right. Well,
4 Rick, we can couch that through if we need to get --
5 make sure it's clear. Okay. Any other comments on
6 the minutes please? Okay. Can I get a motion for the
7 minutes as amended by Ken?

8 MR. PREMO: I move we approve the minutes
9 with amendments.

10 MS. TOMPKINS-WRIGHT: Second.

11 CHAIRPERSON MIETZ: Okay. Great. All those
12 in favor?

13 MR. DiSTEFANO: Who was the second on that?

14 CHAIRPERSON MIETZ: It was Andrea.

15 MR. DiSTEFANO: Andrea, thank you. The
16 motion is to approve the minutes as amended.

17 (Mr. Premo, yes; Ms. Tompkins-Wright,
18 Mr. Mietz, yes; Ms. McKay-Drury, yes;
19 Ms. Schmitt, yes.)

20 (Upon roll motion passes to approve minutes
21 as amended.)

22 CHAIRPERSON MIETZ: Okay. So Rick, whenever
23 you're ready you can read the first application.

24 MR. DiSTEFANO: Once again Application
25 12A-03-21 and Application 12A-04-21 which is for 30

1 Jefferson Road have been postponed to the February
2 meeting. We'll go on to Application 12A-06-21.

3 **Application 12A-06-21**

4 Application of Carini Engineering Design,
5 agent and John and Karen Gallagher, owners of property
6 located at 25 Northumberland Road, for an Area
7 Variance from Section 205-2 to allow a covered porch
8 to extend 10 +/- feet into the existing 35 foot front
9 setback where a 40 foot front setback is required by
10 code. All as described on application and plans on
11 file. Tabled at the December 1, 2021, meeting -
12 public hearing remains open.

13 CHAIRPERSON MIETZ: Okay. And who do we
14 have speaking for this application?

15 MS. SCHMITT: I think you're muted,
16 Mr. Carini.

17 MR. MAROTTA: Can you hear me now?

18 CHAIRPERSON MIETZ: Yes, we can.

19 MR. MAROTTA: Okay. My name is Todd Marotta
20 and I am representing Carini Designs here and we're
21 speaking on behalf of the setback variance we're
22 asking for John and Karen Gallagher at 25
23 Northumberland. Our request here is -- there's really
24 three parts to my arguments why we're asking for
25 setback relief. One is sort of the president.

1 There's approximately 12 houses on Northumberland that
2 all are -- have wide format, large front porches.
3 Most of the homes are nonconforming to the front
4 setbacks on that street. And predominantly the homes
5 with large front porches are sort of the structures
6 that are the closest to the street.

7 So, you know, we're not really looking to do
8 anything radically different than what is existing on
9 the street. The current front stoop on the residence
10 is approximately 28 feet from the setback. So we are
11 asking for a little bit more to allow for a very
12 usable sort of living space that the Gallaghers can
13 use at the front of their house.

14 The other thing that I would try to compel
15 the Board to understand is that this particular
16 space -- the design itself, it's mostly an open
17 structure. So it's not, you know, a heavy dominating
18 sort of a structure that's going to have a heavy
19 presence on the street. It's mostly openly. It has a
20 very low pitch roof. And, you know, I -- we submitted
21 some photographs of some homes on the street and I
22 would direct the Board if you can to look at the photo
23 of 117 Northumberland.

24 This particular house on the street is sort
25 of conveying my argument about how it's not such a

1 heavy looking facade. You can see through that porch.
2 You can see all of the finishes. It's very open and
3 it's got a very low pitch roof. That and also 76
4 Northumberland, similarly low pitch roof, very open
5 structure, not dominating.

6 And so it's not -- you know, it's not a
7 two-story addition. It's not a wall of siding and
8 additional windows. It's predominantly open. So
9 we're hoping that that will sort of contribute to the
10 fact that it's not going to appear as close and as
11 dominating to the street.

12 And the last thing I would want to say is --
13 so the purpose of the space, really it's a positive
14 kind of a space. It's -- first of all it gives the
15 owners a sense of cover and their guests when they
16 come to the front door. It's an inviting open space.
17 And more importantly it's really meant to connect this
18 house sort of to the neighborhood and to the
19 community. Front porches are very endearing spaces.
20 And this particular house just really has a very, very
21 minimal existing covered entry element. And as you
22 drive up and down the street, I mean, most of the
23 homes have a substantial front entry porch.

24 So we're hoping to get some setback relief
25 here so that the Gallaghers can create a nice front

1 porch, create a connection with the community and sort
2 of maintain the style and the architecture that is
3 present on that street.

4 MS. TOMPKINS-WRIGHT: This is Member Wright.
5 One of the concerns we had last month and didn't get a
6 chance to explore was the depth of that front porch.
7 That 10 feet seemed a little deeper than what it
8 appears that other porches were in the neighborhood
9 and a little deeper than what we're used to seeing for
10 front porches. Can you speak to that and is that
11 necessary?

12 MR. MAROTTA: Sure. So we sort of alluded
13 to that on the floor plan. If you could scroll back.
14 We sort of did a little furniture layout to show you
15 sort of how we're creating three distinct areas. It's
16 a little light and a little difficult to see, but
17 there's a sitting area to the left. So, you know,
18 room two or three or four people to sit comfortably.
19 There's an entry element at the center obviously for a
20 passage of guests. And then there's table space for
21 outdoor dining.

22 And, you know, we -- with the space that is
23 there it's about 9 and a half feet. So a table
24 generally is 3 feet. That leaves about 2 feet 9 of
25 clearance for people to be able to walk around the

1 table, pull out a chair. So, you know, the 10 feet I
2 think it kind of needed here to have the space have
3 multiple functions.

4 MS. TOMPKINS-WRIGHT: And when you -- you
5 spent some time going out to other properties in this
6 neighborhood to show, you know, the consistency with
7 the neighborhood. Were you seeing other porches that
8 were this deep as well?

9 MR. MAROTTA: 117 Northumberland. I wasn't
10 able to measure it, but visually it is -- it is
11 certainly deeper than 8 feet. I just didn't want to
12 intrude on someone's property to measure their porch.
13 There are porches. The property immediately adjacent
14 is on the order of 8 or 9 feet deep. Again, it's a
15 visual. I can't knock on the door and measure, but
16 there's many houses that have, you know, substantively
17 deep porches directly on that street and on connecting
18 streets.

19 CHAIRPERSON MIETZ: Okay. Other questions?
20 Board members, questions?

21 MS. SCHMITT: This is Board Member Schmitt.
22 Frequently when I see dining on the front porch, what
23 I see is instead of two chairs in the back, I see a
24 bench that allows you to not need the depth. Is there
25 a reason why there are -- you know, there are the

1 large chairs as opposed to the bench that slides up
2 against the house?

3 MR. MAROTTA: Well, I would say I don't know
4 that I would want to really predicate the design on a
5 type of table. That table that I showed here is a 3
6 by 5 table. It is a very standard size table. The
7 chairs are normal sized chairs. And so, you know, I
8 can't speak to -- to the functionality of one versus
9 the other. You would still need some room to get
10 around. I don't think we're leaving excessive space
11 around the table.

12 MR. GALLAGHER: This is John Gallagher.
13 Would you mind if sort of piped in here as far as the
14 depth of the porch? One of the items that I'm
15 concerned with is that my -- well, my father-in-law is
16 in a walker. My mother uses a walker. And I know
17 what you're making reference to just the front bench,
18 but this is not just for us to sit on the porch. This
19 is an entertainment area for us as well.

20 As I indicated in our last meeting, our
21 whole family comes to our house for every single major
22 holiday, for every single birthday. We're here with
23 20, 25, 30 people often throughout the year. We have
24 four children. We have grandchildren. We have
25 birthdays, holidays, graduations, all that kind of

1 good stuff.

2 And it's -- if we're going to use this as an
3 entertainment space as well as a sitting space and
4 watching the world go by, I can't sit down at the
5 table and then have my mother or my father-in-law try
6 and walk around to get around them and get around us
7 or -- yeah. And next thing would be a possibility of
8 a wheelchair coming into play. And a normal depth
9 porch would lack the ability to function probably for
10 situations such as that.

11 So that's -- that would be -- that's one of
12 my concerns. And I know that it may be wider than
13 what you're used to, but I think if we harken to the
14 last meeting we had, someone said they didn't want to
15 go to the Board because they were afraid of the
16 repercussions of the Board. Well, it's not -- as
17 Mr. Carini -- I'm sorry -- Todd indicated, it's not
18 much deeper than anything else that is on the street.
19 As a matter of fact, and I know someone shot me down
20 earlier in the first meeting, it's not even farther
21 out than our steps go out right now. And in order for
22 us to move around and entertain like we do regularly,
23 the depth of the porch is necessary.

24 So that's one of the things that I -- and
25 the -- really the big thing is our parents and their

1 ability to come and join us. I don't know if you've
2 ever -- the walker is what? 22 inches maybe,
3 23 inches wide.

4 MR. MAROTTA: You need 3 feet of space.

5 MR. GALLAGHER: Yeah. Just to get around.
6 Just throwing my two cents in there.

7 CHAIRPERSON MIETZ: Okay. All right. So
8 Board members, other questions for either of these two
9 gentlemen? Okay. At this point then is there anyone
10 on the Zoom call that would like to speak regarding
11 this application? Please identify yourself. Okay.
12 Then there being none, then the public hearing is
13 closed.

14 MR. MAROTTA: Thank you, Board members.

15 CHAIRPERSON MIETZ: Okay. Thank you.

16 **Application 1A-01-22**

17 Application of Gary Lofaso, owner of
18 property located at 166 Evandale Road, for an Area
19 Variance from Section 205-2A to allow a 6 foot high
20 fence to extend 5.5 feet into a front yard where a
21 maximum 3.5 foot high fence is allowed by code. All
22 as described on application and plans on file.

23 CHAIRPERSON MIETZ: Okay. And who do we
24 have speaking?

25 MR. LOFASO: This is Gary Lofaso the owner

1 at 166 Evandale Road.

2 CHAIRPERSON MIETZ: Okay, Gary. Then please
3 proceed.

4 MR. LOFASO: The fence was extended to its
5 account location for a few reasons. One, the way
6 these houses are located on Evandale Road, they are
7 very close to each other and the living room window of
8 my neighbor looks straight across to the dining room
9 window of my home. And, you know, I can see what they
10 do regularly in my house and they can see what I do
11 regularly in my dining room. So initially privacy.

12 The -- it's also important to note his house
13 protrudes out -- the face of the front of his house
14 protrudes to the face of -- of my house. So that --
15 on that side of the house he could actually build a
16 fence that extends out to where my current fence, just
17 that the fence is on my side of the property.

18 So one is for privacy from dining room to
19 living room of the adjacent house. Two, I have a
20 vehicle that is now parked on the side of the house.
21 It's a van. It's very nicely kind of shields it from
22 neighbors and views. And it's a nice, new fence
23 that's very attractive. So it's for, you know -- to
24 hide a vehicle and to also create privacy between two
25 neighbors.

1 My neighbor has submitted a letter, him and
2 his wife, saying that they are very comfortable with
3 the fence. They love the look of the fence. It's
4 acceptable to them. So --

5 MR. DiSTEFANO: Can I just interrupt you for
6 one second and ask Brendan to scroll up a little bit.
7 I think you can see the -- okay. There you go.
8 There's the fence and the requested variance.

9 I'm sorry. Go ahead, Gary.

10 MR. LOFASO: Yeah. I think that's it. I
11 sent in a couple documents, one that shows the houses
12 I believe. But, you know, hopefully I've explained it
13 clearly that the face of my neighbor's house protrudes
14 to the face of my house on that side. So he actually
15 would have the right to build a fence to the current
16 length that my fence is at.

17 And so, you know, I sent some pictures. I
18 think you should all have copies of the elevations and
19 the view from my dining room window across and you can
20 actually see where the fence is and then you can see
21 above it the window that's obstructing the -- or
22 creating privacy or the fence creating privacy from
23 that window. So that's -- that's pretty much it.

24 MS. TOMPKINS-WRIGHT: And Mr. Lofaso, just
25 to confirm, the neighbor that you sent in, Julie and

1 Matt Tipple, they are the property most affected by
2 the location of the fence on that side of the
3 property?

4 MR. LOFASO: That's correct. They're Lot
5 168.

6 MS. TOMPKINS-WRIGHT: Thank you.

7 MS. MCKAY-DRURY: Mr. Lofaso, this is Member
8 McKay Drury. Did you consider and would it have
9 addressed adequately the privacy concerns if the fence
10 as it extended out that extra length there, could that
11 have addressed those concerns with a fence at the code
12 approval height of 3.5 feet or would that not have
13 accomplished those privacy concerns for you?

14 MR. LOFASO: It would not have created the
15 privacy. The sill of that window is probably about
16 36 inches or so. Also I have a box van. That's a
17 Ford Transit 250. It's not too boxy, but it still has
18 elevation to it. So it kind of shields the front cab
19 of it.

20 So, yes. Tapering it down, which is what
21 the code and I what I see people do -- have it, it
22 would not accomplish the privacy issue, which is the
23 point of the fence.

24 MS. MCKAY-DRURY: Okay. Thank you.

25 CHAIRPERSON MIETZ: Okay. Any other

1 questions by Board members for this?

2 MR. GORDON: Dennis this is Town Attorney,
3 Ken Gordon. I have a couple questions for Mr. Lofaso.

4 Mr. Lofaso, the area that your box van is
5 parked in presently next to the garage, is that paved?

6 MR. LOFASO: It's gravel at this point. I
7 would like to pave it at some point, probably in the
8 spring or summer coming.

9 MR. GORDON: And is the van -- you said it's
10 a box van. Is that commercial? Is it an RV? What is
11 it?

12 MR. LOFASO: It's a 2017 Ford Transit 250.
13 I think there's a picture in the package that I
14 submitted that actually shows it I believe.

15 MR. GORDON: It's only a partial picture.
16 It's hard -- so is it there for the winter now or
17 what -- why is it parked there?

18 MR. LOFASO: It's what I do for a
19 livelihood. I'm a remodeler. It's my work vehicle.

20 MR. GORDON: Understood. So it's not there
21 on a permanent or semi-permanent basis. It goes in
22 and out?

23 MR. LOFASO: It leaves in the morning and it
24 comes back in the afternoon.

25 MR. GORDON: I see. Thank you.

1 MR. LOFASO: You're welcome.

2 CHAIRPERSON MIETZ: Good? All right. Other
3 questions by the Board members? Okay. Is there
4 anyone on the Zoom conference that would like to speak
5 regarding this application? Okay. There being none,
6 then the public hearing is closed.

7 **Application 1A-02-22**

8 Application of John Texter, owner of
9 property located at 265 Clover Street, for an Area
10 Variance from Section 205-2 to allow a deck to extend
11 11.5 feet into the existing 33 foot rear setback where
12 a 60 foot rear setback is required by code. All as
13 described on application and plans on file.

14 CHAIRPERSON MIETZ: Okay. And who do we
15 have speaking?

16 MR. TEXTER: Can you hear me?

17 CHAIRPERSON MIETZ: Yes.

18 MR. TEXTER: Okay. Can the map be
19 displayed, Mr. DiStefano?

20 CHAIRPERSON MIETZ: They'll work on that.
21 Mr. Texter, can you just identify yourself and your
22 address please for the record.

23 MR. TEXTER: Okay. My name is John Texter,
24 owner of 26 Clover Street.

25 CHAIRPERSON MIETZ: Okay. Hang on a minute.

1 Let's see if the guys can get the drawing up.

2 MR. TEXTER: So my lot is RLA. I am
3 surrounded by three RLB lots and one RL lot to the
4 north of me is a diamond-shaped lot with a more --
5 much more restricted, let's say, rear and side access
6 owned by Al Hawn.

7 CHAIRPERSON MIETZ: Okay.

8 MR. TEXTER: Okay. So --

9 CHAIRPERSON MIETZ: There we go.

10 MR. TEXTER: So I moved into this
11 neighborhood in '93. And I don't know when present
12 setback code was adopted, but on my -- on a segment of
13 my original survey map, the front setback was about 50
14 feet and the sides were 5 feet. I don't know what the
15 rear was.

16 But in any case, now it's 60 feet in the
17 front, 60 feet in back and 15 percent of lot width on
18 either side which is about 20 -- I think 21 -- or --
19 21 feet approximately, between 21 and 22 feet.

20 So I've -- so I've lived in the neighborhood
21 for 27 years. The last 19 years I've been commuting
22 weekends to Michigan for my third career. And I took
23 a buyout at the end of August. So now I'm spending
24 more time at home trying to rehabilitate things due to
25 my neglect of the last 19 years. I haven't -- I just

1 got a new roof. And I've often mused about having
2 this increased living space as a rear deck along the
3 back of my house and the north side of the house.
4 Does my pointer show up on your --

5 MR. DiSTEFANO: No. It won't.

6 MR. TEXTER: Okay. So we applied for a
7 building permit and staff made the -- a finding that
8 this perpendicular from the -- this line in the back
9 established a distance from that line that would be
10 okay. So we went ahead and got a permit and built
11 this first section.

12 So we're seeking an Area Variance so we can
13 complete this wrap-around section, which is 8 foot
14 wide. But doing so we shorten this distance to this
15 line. And -- and the sides and the back -- my house
16 is a ranch. But because of the sloping grade it's --
17 it has a full basement, a walkout basement in the
18 rear. So from the rear it is a two-story and on the
19 side it varies from two-story to, say, a 1 -- two or
20 three-story in the front.

21 So this is about a 600 square foot proposed
22 structure that would have the access only from our
23 dining room, which is centered on the part that juts
24 out 12-feet. And it would -- we want this just for
25 increased exterior living space.

1 When our siding -- after the deck is
2 finished, we're going to reside it in matching, vinyl
3 clapboard siding. And I believe aesthetically it's a
4 plus rather than a minus.

5 Most -- the neighbors to the south won't be
6 able to see the deck. During the summer the neighbors
7 to the west have to -- have limited sight of the deck.
8 And the neighbors to the north if they looked out
9 their one window, which is always kept blinded, they
10 could see it no problem. But I believe it's
11 aesthetically attractive of a structure. And our
12 desire for it is solely to have some -- to increase
13 our aesthetic enjoyment of our back yard, our side
14 yard.

15 And the distance of the neighborhood it
16 borders to the south, to the north and to the east,
17 enhanced by the fact that Grass Creek runs through our
18 backyard as illustrated. It's not a very big yard.
19 But basically for some increased exterior living
20 enjoyment.

21 CHAIRPERSON MIETZ: Okay. Very good.
22 Couple questions for you. Are you planning to do any
23 landscaping around this deck?

24 MR. TEXTER: Yes. I guess -- where my
25 existing sliding glass door is in the basement, which

1 is -- is mostly under the 12-foot protrusion part, I'm
2 going to run -- build a creek stone patio coming out
3 underneath it. And I'm also working on putting some
4 dirt in the yard to make -- to decrease the access to
5 the -- my basement to that door from the occasional
6 flooding that occurs when Grass Creek overflows once
7 or twice a year when we have a lot of rain.

8 CHAIRPERSON MIETZ: Okay.

9 MR. TEXTER: Okay. So I'm -- I think
10 landscaping generally -- or -- I think the code
11 generally wants one to, let's say, if one can't
12 landscape to mitigate possible flooding into the
13 structure.

14 CHAIRPERSON MIETZ: Correct. I guess where
15 I was asking you was, you know, where the deck is
16 wrapping around the house heading towards the street,
17 was there any plan to do anything maybe to block it
18 off a little bit, say, from the street, that end of it
19 where it ends where the 24.3 is on the drawing?

20 MR. TEXTER: I had no plans to do so. Right
21 now, there is a big -- a very large ewe on the --

22 CHAIRPERSON MIETZ: Yup. Corner.

23 MR. TEXTER: -- on the corner between the
24 proposed structure and Clover Street. So you really
25 won't be able to see it unless you're looking from a

1 certain range of angles.

2 CHAIRPERSON MIETZ: Okay.

3 MR. TEXTER: Let's say between Hawn's and
4 that ewe. But right in front across the street from
5 me and the Hawns is a public triangular lot that --
6 between Edgedale, Brookwood and Clover Street. So the
7 only houses that would see that are at a distance of,
8 say, 3- to 400 feet across a couple streets.

9 CHAIRPERSON MIETZ: Okay. All right. Very
10 good. Okay. Questions by the Board? Any other Board
11 members with any questions for Mr. Texter?

12 MR. TEXTER: May I make a brief closing
13 statement?

14 CHAIRPERSON MIETZ: Sure. Absolutely.

15 MR. TEXTER: So -- and I want to -- I just
16 want to take -- make a record on the advice of
17 counsel, of Peter Rogers of Lacey Capson, that we wish
18 to make a record that we respectfully disagree with
19 staff's interpretation of our proposed -- that our
20 proposed deck violates setback requirements.

21 Staff used the 33 foot perpendicular
22 illustrated in our instrument survey map connecting
23 the northwest corner of my house to one of my lot
24 lines to establish that the same lot lines --
25 establishes that lot line as my rear lot line and to

1 further need for an Area Variance.

2 At the time of this feedback from staff I
3 accepted it on the face, ordered the instrument survey
4 and then drafted the variance request you have in
5 front of you based on information and belief that
6 staff's interpretation was correct.

7 On New Year's Eve while preparing my oral
8 presentation for this evening I discovered how to
9 access Town Code online and consequently we now
10 respectfully disagree with staff's interpretation.
11 Chapter 201 of Town Code, the rear lot line in the
12 case of an interior lot with a curved front line, as
13 applies in my case. So in the event that front lot
14 line is a curved line, then the rear lot line shall be
15 assumed to be a line not less than 10 feet long line
16 within the lot and parallel to a line tangent to the
17 front line at its midpoint. When one -- end quote.

18 When one complies with this unequivocal
19 definition of rear lot line, our proposed deck
20 structure does not get closer than 10 feet to any rear
21 or side setback boundary, over 80 feet to the rear lot
22 line as defined in the definition in the Code, and
23 over 30 feet to right side lot lines. For sake of
24 expediency, if the Board believes there is no
25 detrimental effect on our proposed deck in my

1 neighborhood, we respectfully request the Board grant
2 our Area Variance request limited to the area of
3 proposed deck structure illustrated in our survey map.
4 Thank you.

5 CHAIRPERSON MIETZ: Okay.

6 MR. GORDON: Dennis, if I may.

7 CHAIRPERSON MIETZ: Sure.

8 MR. GORDON: This is Town Attorney, Ken
9 Gordon. Mr. Texter, I'm going to address these
10 remarks to you. I want you to know there is a
11 procedure that we have to bring a matter before the
12 Zoning Board of Appeals to challenge an administrative
13 interpretation of the code. You have not brought that
14 type of matter.

15 If you wish to withdraw your request for a
16 variance and submit an application to challenge the
17 interpretation of staff of the Code, you are certainly
18 able to do so. I want to make sure that you know
19 that.

20 MR. TEXTER: Thank you very much,
21 Mr. Gordon. So I -- my objective is to try to get my
22 proposed deck completed at the earliest time
23 acceptable to the Town. So I just -- but I submitted
24 that statement on advice of counsel. I don't want to
25 withdraw my request. And I -- I hope to get a

1 favorable decision. But -- and I was doing what
2 counsel advised me to do in making that statement.
3 And I think -- I believe Mr. DiStefano also -- I think
4 gave me similar information that you just did. So I
5 appreciate that, but --

6 MR. GORDON: I just wanted to let you know
7 that there was that separate procedure. But I
8 understand the Zoning Board of Appeals to --

9 MR. TEXTER: You know, I think if at -- if
10 you --

11 MR. GORDON: -- to consider --

12 MR. TEXTER: -- heard my statement and found
13 that -- and were in favor of granting me the variance,
14 you know, I think that would be great. So thank you
15 very much.

16 CHAIRPERSON MIETZ: Okay. Is there any
17 other Board members that have questions for him
18 related to the variance application that we're talking
19 about tonight?

20 MS. TOMPKINS-WRIGHT: I have a question more
21 for Rick or maybe Ken. Any issue with the
22 construction so close to Allens Creek? Any
23 restrictions on that?

24 MR. DiSTEFANO: It's Grass Creek. And it's
25 not a rated screen. So, no. It's more or less --

1 MS. TOMPKINS-WRIGHT: Oh, okay. Sorry.

2 CHAIRPERSON MIETZ: Grass River.

3 MR. DiSTEFANO: It's more or less just a
4 draining area.

5 MS. TOMPKINS-WRIGHT: Okay.

6 MR. DiSTEFANO: It's just got a nice name to
7 it.

8 MS. TOMPKINS-WRIGHT: Thank you very much.

9 CHAIRPERSON MIETZ: Okay. Fair question.
10 We're not looking for EPOD over here. Okay. Any
11 others on the Board? Okay. Very good. All right.

12 Is there anyone that's on the Zoom call that
13 would like to speak regarding Clover Street? Okay.
14 There being none, then the public hearing is closed.

15 MR. TEXTER: Thank you.

16 CHAIRPERSON MIETZ: You're welcome. Thank
17 you.

18 MR. DiSTEFANO: And Applications 1A-03-22
19 and 1A-04-22 for 3300 Brighton Henrietta Town Line
20 Road has been postponed per the applicant's request to
21 the February meeting.

22 **Application 1A-05-22**

23 Application of Lindsay Agor, owner of
24 property located at 387 Bonnie Brae Avenue, for an
25 Area Variance from Section 209-10 to allow livable

1 floor area, after construction of an addition, to be
2 3,415 square feet in lieu of the maximum 3024.8 square
3 feet allowed by code. All as described on application
4 and plans on file.

5 MS. AGOR: Hello.

6 CHAIRPERSON MIETZ: Okay. So who do we have
7 speaking?

8 MS. AGOR: Lindsay. Hi.

9 CHAIRPERSON MIETZ: Lindsay. And your
10 address for the -- for the record.

11 MS. AGOR: 387 Bonnie Brae Avenue, Rochester
12 14618.

13 CHAIRPERSON MIETZ: Okay. Please proceed.
14 Thank you.

15 MS. AGOR: Hello. I guess this is my first
16 time doing this. So apologies if I make any missteps.

17 CHAIRPERSON MIETZ: No problem.

18 MS. AGOR: So I'm wanting to put an addition
19 onto the house that would provide some living area for
20 my mother to come and be with us here. And in kind of
21 working with the architect and figuring out the best
22 way to put the garage it was suggested to do this kind
23 at an angle, which then created an interesting
24 situation with the roof line and made it so that we
25 had kind of like extra square footage of I think it's

1 390 above what the lot size would typically allow.

2 And so then I was told the next step in the
3 process of going -- before going forward with anything
4 would be to bring this up and ask for a variance. We
5 had -- before we went to this solution we had looked
6 at some other properties that were listed kind of in
7 the Twelve Corners area staying nearby as we have a
8 community in this area. And with the way that the
9 markets have been and now buyers asking for what --
10 final and best. It's kind of an interesting crapshoot
11 out there. I haven't been able to secure any of those
12 houses. So that's kind of when we said well, what if
13 we did it here.

14 CHAIRPERSON MIETZ: All right. So did you
15 or your architect, you know, look at any of the other
16 homes, you know, adjacent as it relates to their
17 square footage, their size as relates to their lots?

18 MS. AGOR: Yes. I did submit a listing of
19 20 of the largest in the traditional Meadowbrook area.
20 And I'm saying traditional as in kind of the storybook
21 houses that are here, storybook looking houses.

22 This square footage would put me at -- my
23 house at a size tied for tenth place. I think six of
24 the top ten -- I'm sorry. I didn't pull it up in
25 front of me. Six of the top ten were on Bonnie Brae

1 itself. The street tends to have larger houses than
2 some of the others. And then out of the top 20 --
3 hang on. I wish I had -- I should have pulled it up.
4 One second.

5 MR. DiSTEFANO: Brendan, can you scroll down
6 to that sheet?

7 CHAIRPERSON MIETZ: See if we can put it up
8 there. Yeah. I just wanted you to speak to it
9 because we knew you submitted it, Lindsay. But it's
10 good for the record to have some discussion about it.

11 MR. DiSTEFANO: Keep going.

12 MS. AGOR: That's it.

13 CHAIRPERSON MIETZ: Okay. Great.

14 MR. DiSTEFANO: Beautiful.

15 MS. AGOR: Do you mind just scrolling up a
16 little bit so I can read those points that I had put
17 above. I'm just a data geek.

18 So in the top ten, which is the area in
19 green, that ranges in size from 5,841 square feet to
20 3,415, which would be the total of my area as well.
21 That one -- that exact area already exists at 314
22 Bonnie Brae. In that top ten, one, two -- I'm sorry.
23 One, two, three are on Bonnie Brae.

24 Then in the top 20 the range is 5,841 to
25 3,156. And the seven of those are located on Bonnie

1 Brae and that averages in that group of 3,588.

2 Again, the yellow highlighted in the bottom
3 ten are just to bring up the hoses that are also on
4 Bonnie Brae.

5 CHAIRPERSON MIETZ: Okay. That was very
6 helpful. I appreciate you doing the work to put that
7 together.

8 MR. DiSTEFANO: Can I just ask a question
9 regarding that?

10 CHAIRPERSON MIETZ: Sure.

11 MR. DiSTEFANO: You have the square footage
12 of the houses. Do you know how that compares to the
13 lot sizes of those properties? Because basically your
14 request is based on your lot size. So these houses,
15 although large, if they're sitting on a larger lot
16 might not -- might meet code.

17 So the question becomes, you know, are you
18 out of character with these houses in terms of your
19 lot size.

20 MS. AGOR: So that I do not know. Jeff is
21 the one who told me to go about getting these numbers.
22 And unfortunately I -- he didn't suggest that I write
23 down the lot size and I didn't think to write it down
24 to see how it compares. He just asked about square
25 footage.

1 MR. DiSTEFANO: Okay.

2 CHAIRPERSON MIETZ: All right. Okay. So
3 did you have anything else?

4 MS. AGOR: No. Happy to answer any
5 questions.

6 MR. PREMO: Yeah. Ms. Agor, this is Ed --
7 Member Premo. The two houses that are next to you,
8 393 and 381 Bonnie Brae, are about the same size as
9 your existing house; is that correct?

10 MS. AGOR: That is correct, yes.

11 MR. PREMO: And the addition you're planning
12 would increase the size of your house a little more
13 than double; correct?

14 MS. AGOR: Yes, that is correct. It is
15 substantial.

16 MR. PREMO: And the -- it would be a
17 two-story extension into your rear yard; correct?

18 MS. AGOR: Yes.

19 MR. PREMO: And you're planning also on
20 having a balcony on one part of it?

21 MS. AGOR: Yes. Within the setbacks.

22 MR. PREMO: But on the -- a second-floor
23 balcony?

24 MS. AGOR: Yes. Facing the backyard, it's
25 not so visible from the two neighbors beside me, but

1 would be visible from behind me.

2 MR. PREMO: Right. And you said that you
3 had looked in -- to look at other homes in the area.
4 Was that basically in the Twelve Corners area?

5 MS. AGOR: Yes.

6 MR. PREMO: And is that an area -- I think
7 you mentioned there's a community there you want to
8 stay in?

9 MS. AGOR: That's correct, yes.

10 MR. PREMO: Okay. Have you been continuing
11 to look at what's going on in the market or if larger
12 homes are coming up?

13 MS. AGOR: I have been continuing to keep an
14 eye on it, not as actively as I was prior to then now
15 having to keep on track of like this process and you
16 know my regular work.

17 MR. PREMO: And I think you had mentioned,
18 and I hadn't seen this in the application before, but
19 that is -- the idea is that you want to move your
20 mother --

21 MS. AGOR: Yes.

22 MR. PREMO: -- to the area?

23 MS. AGOR: Yes.

24 MR. PREMO: And this would be space for here
25 to use?

1 MS. AGOR: It would be general space to --
2 the whole -- I guess -- I would -- it's not like I'd
3 be precluded from it, but out of -- the same way I
4 wouldn't walk into someone else's bedroom, you try to
5 give them privacy space, that's kind of the same
6 situation in her area, which is designated as the area
7 above the garage. The rest of it would be common
8 space.

9 MR. PREMO: But you'd be living as one
10 family unit?

11 MS. AGOR: Yes.

12 MR. PREMO: Okay.

13 MS. AGOR: And there's no -- just in case
14 anyone's curious about it, there's no separate
15 entrance for her at all. The -- everything's
16 completely common. There's only one way to get in
17 either from the garage through the traditional mudroom
18 that we or the front door.

19 MR. PREMO: Have you talked to either of
20 your neighbors at 393 or 381 about the addition?

21 MS. AGOR: Yeah. They are actually both
22 kind of excited about it. The Johnson's who are on --
23 I don't know which way is up or down, but they are to
24 the north of me, they actually have a
25 multi-generational family and are looking to do an

1 addition.

2 And then Sheila -- and I don't know what her
3 last name is, I apologize -- to the south of me she's
4 even -- just when I put the sign she's like, oh,
5 what's going on with that? How's that going? And
6 she's hoping to build an addition on to her property,
7 which is actually -- her property as I'm thinking
8 about it is larger than mine and the Johnsons because
9 the two-car garage that was built with her property
10 originally has already been converted into living
11 space and she has a separate garage. But she was
12 talking to me the other day. She and her husband are
13 talking about putting a master over the -- what was
14 the two-car garage originally to the house.

15 MR. PREMO: And so the Johnsons would be the
16 family at 381 Bonnie Brae?

17 MS. AGOR: Yes.

18 MR. PREMO: And Sheila would be at 393?

19 MS. AGOR: Yes.

20 MR. PREMO: Okay. But they haven't given
21 you any letters or anything?

22 MS. AGOR: Oh, I didn't ask for it because I
23 didn't know necessarily that I could. I was kind of
24 going on the like don't influence anyone parameter.

25 MR. PREMO: Have you had any discussions

1 with the architect about reducing the size of this so
2 you don't have to get a variance?

3 MS. AGOR: So where his concern on that was
4 is essentially he wanted to do the garage to drive in.
5 And if he pulled it -- pulled the garage closer, then
6 he was afraid of hitting the side of the house. And
7 if he pushed it farther back, it would need more room
8 to keep -- and I'm not an architect, so I'm sorry if
9 I'm not explaining this well -- but there's something
10 with like the gables. So the way that it has to kind
11 of like -- the roof hips have to go.

12 MR. PREMO: Now, in the new portion you'd be
13 creating a new master bedroom, master bath, a fourth
14 bedroom and a third bath; is that right?

15 MS. AGOR: Well, I guess, yes. I called the
16 one an office. So, yes, that is correct.

17 MS. TOMPKINS-WRIGHT: This is Member Wright.
18 I may have missed this, but what's the current square
19 footage of the home as it stands without the addition?

20 MS. AGOR: I think around 1,500. Let me
21 look it up on my --

22 MR. PREMO: Yeah. It's -- this is Member
23 Premo. It's 1,598.

24 MS. TOMPKINS-WRIGHT: Okay.

25 MR. PREMO: And then it would go to 3,415.

1 CHAIRPERSON MIETZ: Sounds about right.

2 MS. TOMPKINS-WRIGHT: And the additional --
3 I'll just call it a person load. I don't know if
4 that's the right term. But the additional occupants
5 of the home is going to be increased by one?

6 MS. AGOR: Correct.

7 CHAIRPERSON MIETZ: Okay. Other questions
8 by the Board members please?

9 MR. GORDON: Dennis, if I could just ask a
10 couple questions. This is Ken.

11 CHAIRPERSON MIETZ: Yes. Go ahead.

12 MR. GORDON: So for the new living space
13 above the garage, what is -- I can see it I think on
14 the plans what appears to be a kitchenette as well as
15 a bedroom and a full bath; is that correct?

16 MS. AGOR: Kind of. It's a sink, a
17 refrigerator and a washer and dryer, but with some
18 like built-in cabinetry to store items of hers that --
19 there's nothing to cook with up there necessarily.
20 Oh, except for a microwave, I guess.

21 MR. GORDON: If I'm reading the plans
22 correctly, the only way into this living room area is
23 through the garage and up the steps.

24 MS. AGOR: No. Also through the family room
25 downstairs. So the space underneath where like the

1 larger master is right now, that's all kitchen and
2 common eating area downstairs. So you could come in
3 through the front door and up the backstairs through
4 the traditional mudroom and transit up the backstairs
5 or through the garage and up the back stars.

6 MR. GORDON: But it's all up those stairs
7 to -- is there going be a door on that --

8 MS. AGOR: No. Yeah. It's open space, no
9 door.

10 MR. GORDON: What's your intention of making
11 that sort of just a separate standalone dwelling unit?

12 MS. AGOR: Absolutely none.

13 MR. GORDON: So you wouldn't object to a
14 condition if the Board was to grant a variance that
15 that could not ever be a separate dwelling area?

16 MS. AGOR: I would have no objection to that
17 at all.

18 MR. GORDON: Thank you.

19 MS. AGOR: You're welcome. Thank you.

20 CHAIRPERSON MIETZ: Okay. Other questions?

21 MR. PREMO: I don't have any other
22 questions.

23 CHAIRPERSON MIETZ: Okay. Great. All
24 right. Is there anyone on the Zoom call that would
25 like to speak regarding this application? Okay.

1 There being none, then the public hearing is closed.

2 MS. AGOR: Thank you.

3 CHAIRPERSON MIETZ: Thank you.

4 **Application 1A-06-22**

5 1A-06-22 Application of Clinton Signs, Inc.,
6 agent and Dorell, Inc., owner of properties located at
7 2654 West Henrietta Road (Tax ID #148.16-1-15) and
8 2674 West Henrietta Road (Tax ID #(148.16-1-16), for
9 Sign Variances form Section 207-32B to allow for the
10 Installation of nonbusiness identification signs on
11 two (2) building's frontage where not allowed by code.
12 All as described on application and plans on file.

13 MR. PREMO: Rick, real quick on this one.
14 When I had went, I couldn't see the sign for the
15 meeting. And I guess I'd ask the applicant to address
16 where they put the meeting sign because when I went
17 out there, I couldn't find it.

18 MR. DiSTEFANO: That would be a good
19 question for them.

20 CHAIRPERSON MIETZ: Okay. Let's find out
21 who's speaking first. Who's speaking for the sign
22 variance? Do we have somebody for 1A-06?

23 MR. DiSTEFANO: I don't see anybody.

24 CHAIRPERSON MIETZ: All right. All right.

25 We can hold and come back to it at the end if somebody

1 comes on, I guess.

2 MR. DiSTEFANO: Okay. We'll move on.

3 **Application 1A-07-22**

4 Application of Save Monroe Ave., Inc. (2900 Monroe
5 Avenue LLC, Cliffords of Pittsford L.P., Elexco Land
6 Services, Inc., Julia Kopp, Mike Boylan, Anne Boylan
7 And Steven DePerrior) appealing the issuance of two
8 building permits (4th building and 5th building) by
9 the 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 CHAIRPERSON MIETZ: Okay. And who do we
15 have speaking for 1A-07?

16 MR. DiSTEFANO: Dennis --

17 MS. McKAY-DRURY: If I can just jump, I
18 believe I'm recused from these matters. So I will
19 just stop my video and mute.

20 CHAIRPERSON MIETZ: Okay. Very good.

21 MS. McKAY-DRURY: Thank you.

22 CHAIRPERSON MIETZ: All right. So who do we
23 have speaking for 1A-07?

24 MR. ZOMERFELD: Good evening. Henry
25 Zomerfeld, Hodgson Russ, business address 140 Pearl

1 Street, Buffalo, New York 14202 on behalf of
2 applicants.

3 CHAIRPERSON MIETZ: Okay. Please proceed,
4 sir.

5 MR. ZOMERFELD: Thank you very much Mr.
6 Chairman and members of the Board. Good evening and
7 Happy New Year to all. This appeal concerns the
8 fourth and fifth building permits issued for the Whole
9 Foods project, specifically buildings 4 and 5, permit
10 4 with regard to 6,117 square feet and permit five
11 3,300 square feet.

12 We raised three grounds for our appeal; the
13 sizes of the buildings not being in conformity with
14 the site approval; second, the cross access easements
15 have not been satisfied; and third, that the
16 construction has proceeded unlawfully in phases, which
17 was not permissible as contemplated.

18 As before when I was here at the last ZBA
19 hearing on the prior application, I'll do the same
20 tonight. We're going to strictly focus on the first
21 point, reserving points two and three just to have
22 them in the record and preserve our rights. As the
23 Board is aware this has been -- the project has been
24 subject to litigation. We're also protecting appeals
25 to the Appellate Division. So we just wanted to

1 preserve our rights in that regard.

2 So turning to the building sizes, as a
3 threshold point there is no discretion to allow a
4 deviation from the site plan approval. We have
5 addressed in this application and prior applications
6 other issues with the permits previously issued as far
7 as building size, that's it not in conformity with the
8 site plan. And once again, that issue presents itself
9 here particularly with permit number 4, which is now
10 six -- excuse me -- 6,117 square feet.

11 This is not at all in conformity with the
12 site plan approvals. And yet the permit was issued.
13 This is problematic because when you look at
14 everything taken as a whole -- I realize that this
15 building was reduced. It was originally supposed to
16 be 6,250 according to the approval. And this was
17 reduced in size, which is problematic as noted because
18 it deviates from the approval.

19 But when you take all five permits and add
20 them all up, they still exceed what was permissible
21 for the project, which is another basis for the
22 argument. At the end of the day the site plan
23 approval was explicit as far as what was to be allowed
24 as far as size.

25 And we highlighted in our papers there are

1 other municipalities that allow discretion for the
2 Town Planner or the Building Inspector or another town
3 official to allow for some changes. But this
4 discretion is not what is permissible. The Town of
5 Brighton Town Code does not afford any discretion.
6 The site plan approval is what governs and that had
7 not been adhered to. And that is the basis for our
8 appeal. If you look at the building permit, if you
9 look at all of the permits in totality, they exceed
10 what is permissible.

11 So on that basis we do object and the
12 decision should be annulled. And with that we'll rest
13 on our papers as far as the other arguments. And I'm
14 happy to address any questions that the Board members
15 may have.

16 CHAIRPERSON MIETZ: Okay. So are there
17 questions by the Board?

18 MS. TOMPKINS-WRIGHT: This is Member Wright.
19 I had a question. The condition of the Town Board's
20 incentive zoning approval including three maximum
21 square footages, one for the full project, one for
22 Starbucks and one for the grocery -- or Whole Foods
23 building. But it didn't provide minimums or
24 maximums -- minimums for any property or maximums for
25 the other. How do you see that incentive zoning

1 approval specifically calling out some maximum -- a
2 total maximum and specific building maximums, but no
3 minimums and no maximums on some property? And how do
4 you see that in light of the fact that -- I'm hearing
5 your argument is that building permits have to be
6 issued in the exact square footage on the site plan.

7 MR. ZOMERFELD: Well, the site plan approval
8 is very clear about what the building should be. So
9 if -- to the extent the incentive zoning approvals
10 were silent in that regard, the site plan approval was
11 specific. And that's what you're juggling in that
12 regard where there's the absence of specificity.

13 MS. TOMPKINS-WRIGHT: So -- so you're saying
14 that the maximums given in the incentive zoning
15 approval didn't really have an effect because -- and
16 didn't matter because what only mattered was the
17 square footages listed on the site plan?

18 MR. ZOMERFELD: No. Obviously the maximums
19 in the incentive zoning did matter. I can't speak for
20 why they -- there were maximums. You're saying -- I
21 don't have it in front of me, but taking you at your
22 word, I don't know why there'd be some buildings
23 listed as a maximum and others not. I can't speak to
24 that, nor will I speculate as to why the Town acted in
25 that way.

1 What I'm saying is the site plan approval is
2 specific as far as what the square footages should
3 be -- should have been and the building permits don't
4 match that. And taken as a whole --

5 MS. TOMPKINS-WRIGHT: Okay.

6 MR. ZOMERFELD: -- all five permits exceed
7 what was to be permitted.

8 MS. TOMPKINS-WRIGHT: Okay. And the other
9 point just -- I know we've talked to your -- or we've
10 had your applications in the past for previous
11 appeals. In other instances they were for building
12 permits where the building permit was issued in excess
13 of the exact square footages that were on the site
14 plan. But just to make sure that it's clear for the
15 record, this argument is that even if it's below the
16 square footage of what's permitted -- or what the
17 exact square footage in the site plan, it cannot even
18 be a foot below. It'd have to be exact to what's on
19 the site plan.

20 MR. ZOMERFELD: It must conform. That's
21 right.

22 MS. TOMPKINS-WRIGHT: Okay. Thank you.

23 CHAIRPERSON MIETZ: Okay. Other questions
24 for the applicant? Okay. Okay. At this point do we
25 have anyone on the call that would like to speak

1 regarding this application?

2 MR. ZOMERFELD: I just --

3 MR. DiSTEFANO: Go ahead.

4 MR. ZOMERFELD: You know, I apologize.

5 Mr. Chairman, I just had a procedural question. Last
6 time when I appeared before the Board, because I do
7 see following this is the Brighton Grassroots
8 application, is it the intention of the Board to have
9 these be considered jointly? I think that's what
10 occurred at the last appeal that I presented at. And
11 I just wanted to ask you before this was formally
12 closed.

13 CHAIRPERSON MIETZ: Excuse me, Rick, I think
14 we have a separate applicant that's going to speak
15 regarding 1A-08.

16 MR. DiSTEFANO: Right. I think we should
17 call 1A-08 and leave open the ability for response to
18 both of them together. Also if Mr. Zomerfeld has
19 additional information, we should kind of handle it
20 that way.

21 Ken, correct me if you think we should be
22 doing it differently.

23 MR. GORDON: I think we can call the second
24 application and we can combine the public hearings on
25 the two matters.

1 CHAIRPERSON MIETZ: Yeah. I think that
2 would probably be expedient. And then, again, we can
3 listen to any other information. Okay. Rick, why
4 don't we do that?

5 **Application 1A-08-22**

6 Application of Brighton Grassroots, LLC,
7 appealing the issuance of two building permits (4th
8 Building and 5th building) by the Town of Brighton
9 Building Inspector (pursuant to Section 219-3) to the
10 Daniele Family Companies, developer of the Whole Foods
11 Plaza project located at 2740/2750 Monroe Avenue. All
12 as described on application and plans on file.

13 CHAIRPERSON MIETZ: Okay. So on 1A-08 is
14 there an applicant that would like to speak regarding
15 this application?

16 MR. ZOGHLIN: Yes. I'm Mindy Zoghlin. I
17 represent Brighton Grassroots. My office address is
18 300 State Street, Suite 502, Rochester, New York
19 14614.

20 CHAIRPERSON MIETZ: Okay, Mindy. Please
21 proceed.

22 MR. ZOGHLIN: Thank you. As this Board is
23 aware, our issues are identical to those that were
24 raised by Save Monroe Avenue. We raise the same three
25 issues. We recognize that this Board has already

1 ruled on the issues in prior appeals brought by BGR
2 and SMA with respect to the building permits for the
3 Starbucks coffee shop, building number 2 and the Whole
4 Foods grocery store. We also recognize that Justice
5 Odorisi upheld your determinations for the Starbucks
6 coffee shop in a stripped out plaza.

7 We're going to have oral argument on the
8 Whole Foods' determination next month. We've appealed
9 Judge Odorisi's decision to the Fourth Department.
10 And we will appeal the decision on the Whole Foods
11 store if it's adverse to us. And like SMA, BGR is
12 bringing this appeal to preserve our rights while our
13 other appeals are pending.

14 With respect to the buildings 4 and 5, we
15 disagree with your prior determination that the
16 building permit for the Whole Foods stores was in
17 conformity with the approved site plan and we also
18 disagree with the Building Inspector's position that
19 building square footage should not include the
20 so-called architectural projections like canopies and
21 ramps. And those are also on appeal to the Judge.
22 And, you know, we'll go up to the Fourth Department.

23 So unless you have any other questions for
24 me, we're happy to rest on our papers.

25 CHAIRPERSON MIETZ: Okay. So are there

1 questions for Ms. Zoghlin?

2 MS. TOMPKINS-WRIGHT: This is Member Wright
3 again. It's mainly the same question. I just want to
4 make sure I understand your client's position as well
5 to confirm whether it's the same or different from the
6 application 07 of Save Monroe Avenue.

7 Previous objections or appeals were
8 regarding buildings that were in excess of the square
9 footage that was listed in the site plan. So this
10 objection to building 4 is an objection based on the
11 fact that the square footage is less than the square
12 foot. So I just want to confirm whether that's an
13 argument for Grassroots that the square footage of
14 each building must be exactly as what's listed in the
15 site plan?

16 MR. ZOGHLIN: No. That's not -- that's not
17 BGR's position. And we don't necessarily disagree
18 with SMA's position on that case, but our position is
19 that the total square footage that was approved by
20 both the site plan and the incentive zoning resolution
21 was 83,700 square feet. And if you include the
22 architectural projections, like the canopies and
23 ramps, the square footage of the -- all five of the
24 buildings permits, including buildings 4 and 5, exceed
25 that number. The square footage would be 87,727

1 square footage.

2 So our position is that the -- it was
3 improper and illegal for the Building Inspector not to
4 reduce the size of buildings 4 and 5 by the excesses
5 that were permitted with respect to buildings 1, 2 and
6 3.

7 CHAIRPERSON MIETZ: Okay.

8 MS. TOMPKINS-WRIGHT: Thank you.

9 CHAIRPERSON MIETZ: Okay. Other questions
10 by the Board? Okay. Very good. So at this point
11 then do we have anyone on the call who would like to
12 speak regarding either of these two applications?

13 MR. BOEHNER: Yes. If I could,
14 Mr. Chairperson. I'm Ramsey Boehner.

15 CHAIRPERSON MIETZ: Okay.

16 MR. BOEHNER: Good evening, I would like to
17 thank the Zoning Board Of appeals for giving me this
18 opportunity to speak tonight in opposition to the
19 appeals by Save Monroe Avenue and Brighton Grassroots
20 regarding the issuance of building permits for this
21 project. As always your time, effort and
22 consideration regarding this matter is greatly
23 appreciated.

24 It is also alleged that the fourth build
25 permit and the fifth building permit allowed

1 construction of buildings not in conformity with the
2 size approved on the site plan. This is unsupported
3 by the record and the applicable Town approvals.

4 The site plan shows a footprint of 6,250
5 square feet for building 4 and 3,200 square feet for
6 building 5. The plans filed as part of the building
7 permit application provided for a footprint of 6,117
8 square feet for building 4 and 3,200 square feet for
9 building 5. The square footage for building 4 as
10 approved in the fourth building permit is 133 square
11 feet less than shown on the site. And building 5 as
12 approved in the fifth building permit is identical to
13 what was shown on the site plan.

14 The developer has certified that building 4
15 is 6,117 square feet and building 5 is 3,200 square
16 feet. I have also confirmed the calculations comply
17 with the site plan and the Town approvals. Based on
18 the Town's review and evaluation of the applicable
19 documents and plans the Town issued the fourth
20 building permit and the fifth building permit in
21 conformity with the site plan and the Town's approval.

22 It's also incorrectly claimed that the
23 project exceeds the 83,700 square foot condition. The
24 Town has confirmed that the overall square footage
25 authorized by the five building permits is 83,694

1 square feet, which is in conformity with site plan,
2 complies with the condition of the incentive zoning.

3 As I've stated several times previously, the
4 square footage of the buildings on the approved site
5 plan do not include architectural projections, which
6 are not part of the building footprint and include the
7 purposes of generating permit fees. Based on the
8 review, analysis and calculations undertaken by the
9 Building and Planning Department, the Town issued the
10 building permits in accordance with the applicable
11 laws and regulations including the requirements of the
12 comprehensive development regulations, incentive
13 zoning regulations -- incentive zoning resolution and
14 the site plan approval. Accordingly, I strongly
15 believe and request that these appeals should be
16 denied and the issuance of the building permits
17 upheld.

18 Once again, I would like to thank you for
19 your time and effort in this matter. And I'd like to
20 ask Mr. Mancuso if he has any closing remarks
21 regarding these appeals. And I'd like to once again
22 thank you very much for everything you guys do.

23 CHAIRPERSON MIETZ: Appreciate it. Thank
24 you. Okay. Who else do we have speaking then?

25 MR. MANCUSO: Good evening, members of the

1 Board. This is John Mancuso. As the Board is aware I
2 am special counsel to the Town Planner, Mr. Boehner.
3 To just briefly follow up on the Town Planner's
4 submission and comments tonight, the petitioner's
5 arguments regarding the square footage of the building
6 has been denied multiple times over by this Board and
7 by Supreme Court, which most recently found that
8 conformity does not mean identical and the Town has
9 the discretion to determine the conformity in
10 accordance with the code and the site plans that are
11 part of this application.

12 To quote a portion of the decision of
13 Supreme Court, "In this zoning context of transforming
14 site plans into precise architectural CAD design, it
15 is not unreasonable to construe conformity less
16 stringently to accommodate a square footage shift."

17 Which is precisely what the petitioners are
18 now arguing with respect to one of the two buildings.
19 The square footage of number 4 as approved with the
20 fourth building permit is 133 square feet less than is
21 shown on the site plan. And the square footage for
22 building 5 as the Town Planner has indicated is
23 identical to that -- what is shown on the site plan.
24 And overall square footage does not exceed 83,700 as
25 conditioned by the incentive zoning resolution.

1 The two building permits clearly were issued
2 in conformity with the site plan and in accordance
3 with the Town zoning comprehensive development
4 regulations. And there is simply no credible basis at
5 this point for petitioners to suggest otherwise.
6 There remaining arguments, just for purposes of
7 memorializing it in the record regarding the cross
8 access easement and phasing arguments, these have been
9 ruled on and denied multiple time by this Board and
10 twice by Supreme Court, which has already found that
11 res judicata and collateral estoppel, two legal
12 principles are preclusive and binding to the denial of
13 those claims in this current appeal and should be
14 therefore denied by this Board.

15 And with that we'll rest on our submission,
16 unless the Board has any questions. I would
17 respectfully that the building permits for building
18 number 4 and number 5 be upheld and the appeals
19 denied. Thank you very much.

20 CHAIRPERSON MIETZ: Okay, John. Thank you
21 very much. Okay. Are there any questions for either
22 Ramsey, Mr. Mancuso or --

23 MS. TOMPKINS-WRIGHT: I have two questions
24 for --

25 CHAIRPERSON MIETZ: Go ahead, Andrea.

1 MS. TOMPKINS-WRIGHT: Sure. These are in
2 attachments to the documents because we asked these
3 questions at previous meetings, but I just wanted to
4 make sure they were on the record for this one as
5 well. Ramsey -- or -- Mr. Boehner, sorry. The
6 calculations for square footage on site plans, those
7 are based on exterior wall measurements; is that
8 correct?

9 MR. BOEHNER: That's correct.

10 MS. TOMPKINS-WRIGHT: And then the other
11 question is how often do you see a building permit
12 come in that is an exact replica of the square footage
13 from the site plan?

14 MR. BOEHNER: Not that often.

15 MS. TOMPKINS-WRIGHT: Okay. Thank you,
16 Mr. Boehner.

17 MR. BOEHNER: Thank you.

18 CHAIRPERSON MIETZ: Okay. Board members,
19 any other questions? Okay. So at this point is there
20 anyone else that would like to speak regarding these
21 two applications? There being none, then the public
22 hearing is closed.

23 MR. BOEHNER: Thank you.

24 CHAIRPERSON MIETZ: Thank you very much.
25 All right do we -- let's go back and see if anyone is

1 here for the other application before we move along.
2 That would be 1A-06. That would be the Beam building,
3 2674 West Henrietta. Is there anyone on the call to
4 speak regarding their application?

5 MR. DiSTEFANO: I don't see anything,
6 Mr. Chairman.

7 CHAIRPERSON MIETZ: Okay. Then we'll deal
8 with it in our decisions I guess. Okay. Do we need a
9 break or are we okay to proceed? Everyone okay?

10 MS. SCHMITT: I'm okay.

11 CHAIRPERSON MIETZ: All right. Very good.
12 So I guess we will begin at the beginning.

13 (Public hearings concluded.)
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1 REPORTER CERTIFICATE

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

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

11
12 Dated this 5th day of January, 2022
13 at Rochester, New York.

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17 ----- *Holly E. Castleman* -----

18 Holly E. Castleman,

19 Notary Public
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BRIGHTON
ZONING BOARD OF APPEALS
MEETING
DELIBERATIONS

January 5, 2022
At approximately 7 p.m.
Brighton Town Hall Zoom
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ
Chairperson

EDWARD PREMO)	Board Members
HEATHER MCKAY-DRURY)	
MS. TOMPKINS-WRIGHT)	
KATHLEEN SCHMITT)	

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

ABSENT: JUDY SCHWARTZ

BRENDAN RYAN

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

1 CHAIRPERSON MIETZ: 25 Northumberland. So
2 why don't we -- since this one was tabled and we got
3 more information, why don't we just go around to each
4 member. Andrea, what do you think about this?

5 MS. TOMPKINS-WRIGHT: You know, I had a
6 little bit of concerns about it being 10 feet instead
7 of 8 feet. I'm persuaded by the fact that it does
8 appear that there are some neighboring properties with
9 a similar depth. I'm okay with it.

10 CHAIRPERSON MIETZ: Okay. All right,
11 Kathleen?

12 MS. SCHMITT: You know, I had hoped that
13 they were going to come in and reduce the square
14 footage to be similar to the properties that were sent
15 to us that showed that most of them were under 8 feet.
16 I also had hoped that they would come in and explain
17 why this was the minimum that was needed in order to
18 meet their needs. And unfortunately they did not do
19 either of those things for me. So my vote is no.

20 CHAIRPERSON MIETZ: Okay. All right.
21 Heather? She's back on I presume? Can't see her
22 there.

23 MS. MCKAY-DRURY: I had some concerns about
24 the depth as well, but I do feel that Judge
25 Gallagher's explanation sufficiently addressed those

1 concerns with respect to accessibility. So -- and
2 also the testimony regarding at least the visual
3 inspection of other depths of porches nearby. I also
4 think that overall the interests that they're trying
5 to accomplish here to have some more, you know,
6 entertaining but also kind of including the community.
7 Obviously we're all thinking about COVID all the time.
8 So, you know, it makes good sense and I would say that
9 my concerns have been adequately addressed.

10 CHAIRPERSON MIETZ: Okay. All right. Ed?

11 MR. PREMO: I don't have any problem with
12 the -- granting the variance.

13 CHAIRPERSON MIETZ: Okay. One of the things
14 that, you know, we were also concerned about is the
15 length of all of that and how it would look related to
16 the street. I think, you know, there was certainly
17 testimony given related to the need for whether it's
18 an extra foot or foot and a half, whatever it may be
19 against averages. And I don't think you'll really
20 pick up that foot and a half really as far as
21 optically. So I would be in support of it also.
22 Okay.

23 So that application, Kathleen, you were
24 going to handle it. It looks like the votes are more
25 positive. Would someone else be willing to make this

1 application? Because I really don't want you to have
2 re-doctor yourself here on this one.

3 MS. SCHMITT: I had been in communication
4 with Judy. And she was also a no. But I had a
5 feeling that we would be in the minority so I also
6 wrote it up as a yes.

7 CHAIRPERSON MIETZ: If you're willing to do
8 it, I appreciate that. That's fine. You can still
9 vote as you -- just generally we don't have that
10 occur.

11 MS. TOMPKINS-WRIGHT: Well, does it make
12 sense for me to make the motion than her?

13 CHAIRPERSON MIETZ: It would probably be
14 better.

15 MR. DiSTEFANO: Yes. It would be better,
16 Andrea.

17 MS. TOMPKINS-WRIGHT: So I move to approve
18 application 12A-06-21, et cetera, based on the
19 following findings of fact that I'm about to say.

20 MR. DiSTEFANO: Kathleen, do you want to
21 start?

22 MS. SCHMITT: Oh, okay. I --

23 CHAIRPERSON MIETZ: Yeah. You can read them
24 in please.

25 MR. DiSTEFANO: You can read them in.

1 CHAIRPERSON MIETZ: It's kind of a tag-team
2 thing here.

3 MS. SCHMITT: I thought Andrea was so
4 talented she was just going to do it right off the top
5 of the head.

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1 **Application 12A-06-21**

2 Application of Carini Engineering Design,
3 agent and John and Karen Gallagher, owners of property
4 located at 25 Northumberland Road, for an Area
5 Variance from Section 205-2 to allow a covered porch
6 to extend 10 +/- feet into the existing 35 foot front
7 setback where a 40 foot front setback is required by
8 code. All as described on application and plans on
9 file.

10 Motion made by Ms. Tompkins-Wright to grant
11 application 12A-06-21 based on the following findings
12 of fact.

13 **Findings of Fact:**

- 14 1. The request to allow a covered porch to extend
15 approximately 10 feet into the existing 35 feet
16 setback where a 40 foot setback required by code.
- 17 2. While the variance is self-created there would not
18 be an undesirable change in the character of the
19 neighborhood or be a detriment to nearby properties.
20 The proposed project is consistent with multiple
21 properties in the neighborhood that also have
22 substantial porches that extend into the front yard
23 setback.
- 24 3. The requested variance is not substantial in light
25 of the fact that the property's steps currently

1 constructed already extends 5 feet into the front yard
2 setback and the front porch proposed will extend only
3 an additional 10 feet.

4 4. The benefits sought by the applicant cannot
5 reasonably be achieved with any other method or
6 without a variance.

7 5. There's no evidence that there would be a negative
8 impact on the health, safety and welfare of the
9 neighborhood.

10 6. The applicant demonstrated that the size of the
11 variance requested is the minimum necessary in order
12 to accomplish their purposes in entertaining and
13 having adequate flow around proposed furniture on the
14 front porch.

15 **Conditions:**

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

19 2. All necessary permits and Architectural Review
20 Board approvals must be obtained.

21 3. This variance is approved only so long as the
22 porch remains open in nature and shall not be closed.

23 (Second by Mr. Premo.)

24 (Ms. McKay-Drury, yes; Mr. Mietz, yes;

25 Ms. Schmitt, no; Mr. Premo, yes;

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Ms. Tompkins-Wright, yes.)
(Upon roll motion to approve passes with
conditions.)

1 MR. DiSTEFANO: Andrea, since it's your
2 motion, do you want to put a condition in regards to
3 maintaining an open porch not ever being enclosed.

4 MS. TOMPKINS-WRIGHT: Yes, I do.

5 MR. DiSTEFANO: Can you state that for me?

6 MS. TOMPKINS-WRIGHT: Sure. Condition
7 number -- is this 3?

8 MS. SCHMITT: 3.

9 MS. TOMPKINS-WRIGHT: Condition number 3,
10 this variance is approved only so long as the porch
11 remains open in nature and shall not be closed.

12 MR. GORDON: This is Ken Gordon. Kathy, I'm
13 not sure I heard it, but did you have in there a
14 finding about minimum necessary?

15 MS. SCHMITT: I did not because I could not
16 do that. I just couldn't.

17 MR. GORDON: Andrea, could you articulate
18 that.

19 MS. TOMPKINS-WRIGHT: Yeah. What -- how
20 many findings of fact were there?

21 MS. SCHMITT: I had number 1, 2, 3, 4, 5.
22 So it would be number 6.

23 MS. TOMPKINS-WRIGHT: So number 6 on
24 findings of fact, the applicant demonstrated that the
25 size of the variance requested is the minimum

1 necessary in order to accomplish their purposes in
2 entertaining and having adequate flow around proposed
3 furniture on the front porch.

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1 CHAIRPERSON MIETZ: Okay. Thank you,
2 ladies. So the next one is Evandale Road. This is
3 the fence situation at the side of the property.
4 Let's go around quickly on this. Heather, it's yours.
5 What are your thoughts?

6 MS. McKAY-DRURY: Yeah I am not concerned
7 about this. I think that the applicant has
8 sufficiently explained the need to have the variance
9 for the 6 foot fence to continue as opposed to a
10 shorter fence, which the Code would allow. So I don't
11 have concerns here.

12 CHAIRPERSON MIETZ: Okay how about Ed?

13 MR. PREMO: I don't have any concerns
14 particularly given the fact that the neighbor
15 submitted a letter in support.

16 CHAIRPERSON MIETZ: Okay. Kathleen?

17 MS. SCHMITT: My only question, and this
18 wasn't about the fence, are you allowed to park a van
19 on your front yard side?

20 MR. DiSTEFANO: You can park in the side
21 yard. I think it must be a minimum of 4 feet from the
22 setback. You must park on a paved area in the side
23 yard. You must maintain a 4 foot setback for that
24 pavement.

25 MS. SCHMITT: I'm okay with it. It just

1 struck me that I have never seen -- never seen a van
2 what it appeared to be -- like it looked like a little
3 parking space in the front yard. So I was
4 wondering --

5 MR. DiSTEFANO: You'll see that often
6 especially with the one-car garages, they'll pull off
7 to the side of the garbage. And provided that they
8 meet the requirement for pavement setbacks, there's no
9 provisions that does not permit you to park there.

10 CHAIRPERSON MIETZ: Okay. Andrea?

11 MS. TOMPKINS-WRIGHT: Yeah. I'm fine with
12 it. My only comment was about the paving, making sure
13 they know -- you know, he mentioned -- nothing to do
14 with this one. I'm fully approving it. He just
15 mentioned paving in this coming year and make sure
16 that the code was followed for that.

17 CHAIRPERSON MIETZ: Okay. All right. And I
18 would agree. And I think, you know, again, he would
19 have to come in for that alteration, you know, both as
20 it relates as to how much paving is on the property as
21 well as the distances, you know, to the setbacks.
22 That's a discussion for another day. Okay. So
23 Heather, I guess you can proceed.

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1 **Application 1A-01-22**

2 Application of Gary Lofaso, owner of
3 property located at 166 Evandale Road, for an Area
4 Variance from Section 205-2A to allow a 6 foot high
5 fence to extend 5.5 feet into a front yard where a
6 maximum 3.5 foot high fence is allowed by code. All
7 as described on application and plans on file.

8 Motion made by Ms. McKay-Drury to approve
9 Application 1A-01-22 based on the following findings
10 of fact.

11 **Findings of Fact:**

- 12 1. The requested variance will not produce an
13 undesirable change in the character of the
14 neighborhood or a detriment to nearby properties in
15 that it affords both homes privacy, including we
16 received positive input from the adjoining home. And
17 it matches the rest of the wooden fence, which was
18 professionally installed and enhances the
19 surroundings.
- 20 2. The benefit sought cannot be achieved by other
21 means other than the Area Variance as the fence must
22 extend past the garage in order to obscure the windows
23 and afford privacy, which a 3.5 foot fence will not
24 afford.
- 25 3. The requested variance is not substantial. It

1 will only extend 5 feet, 6 inches past the face of the
2 garbage. 6 feet is a standard height fence and it is
3 only 2.5 feet taller than the fence that would be
4 permitted by code. And per the survey map, the front
5 face of the house extends further still than the
6 proposed fence.

7 4. The variance is the minimum necessary to grant the
8 relief that's requested in that it would not be
9 sufficient to include a 3.5 foot fence to afford the
10 privacy between the windows.

11 5. The proposed variance will not have an adverse
12 impact on the physical or environmental conditions in
13 the neighborhood or the district as it is just a short
14 extension of a pre-existing 6 foot tall fence open on
15 all sides.

16 **Conditions:**

17 1. The variance will apply only to the structure that
18 was described in the application and testimony. It
19 will not apply to additional structures considered in
20 the future and not included in the present
21 application.

22 2. All necessary building permits shall be obtained.

23 (Second my Ms. Schmitt.)

24 (Mr. Premo, yes; Ms. Tompkins-Wright, yes;

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

1 Ms. McKay-Drury, yes.)
2 (Upon roll motion to approve passes with
3 conditions.)
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1 MR. DiSTEFANO: And I believe they already
2 do have a permit. So can we just add all necessary
3 building permits shall be obtained?

4 CHAIRPERSON MIETZ: Okay.

5 MR. DiSTEFANO: Are you okay with that
6 Heather?

7 MS. MCKAY-DRURY: Yes.

8 MR. GORDON: Dennis, this is Ken Gordon.
9 Heather I would ask, if you're okay with it, to strike
10 the reference to the van in findings two and four just
11 so we don't prejudice in any way anything that our
12 code enforcement officer may need to do.

13 MS. MCKAY-DRURY: I have no problem with
14 that. I think it stands on its own --

15 CHAIRPERSON MIETZ: Correct.

16 MS. MCKAY-DRURY: -- without the references
17 to the van.

18 CHAIRPERSON MIETZ: That's a good point,
19 Ken. Reread those two please. Let's just reread two
20 and four then.

21 MS. MCKAY-DRURY: Okay. Then as amended the
22 second finding of fact is that the benefit sought
23 cannot be achieved by other means other than the Area
24 Variance as the fence must extend past the garage in
25 order to obscure the windows and afford privacy, which

1 a 3.5 foot fence will not afford.

2 And with respect to the fourth finding of
3 fact that is amended as follows. The variance is the
4 minimum necessary to grant the relief that's requested
5 in that it would not be sufficient to include a 3.5
6 fence to afford the privacy between the windows.

7 MR. DiSTEFANO: Thank you.

8 CHAIRPERSON MIETZ: Heather, just quickly
9 when you referenced in number 2 about the window, are
10 you speaking about the window on the adjacent
11 property?

12 MS. McKAY-DRURY: I believe that the
13 testimony was with respect to the affected property,
14 the window -- the height of that window. But it
15 sounds like they -- I'm under the impression that
16 those windows are probably at the same height. That's
17 how I --

18 CHAIRPERSON MIETZ: I just wanted to be
19 clear what -- you know, if someone's looking at it
20 later what it would be. Okay. All right. Okay.

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1 CHAIRPERSON MIETZ: All-righty. The next
2 application is Clover Street. Now, I think, Rick
3 correct me if I'm wrong or Ken, it sounds like both of
4 you have made clear to Mr. Texter what his remedies
5 are and it sounds like and we all heard the same thing
6 he would like to proceed with his application that he
7 testified to tonight and presented. We all agree with
8 that?

9 MR. GORDON: Yes.

10 CHAIRPERSON MIETZ: Okay. Very good.

11 MR. DiSTEFANO: Yes.

12 CHAIRPERSON MIETZ: Okay. All right. So
13 let's go around on this one. Ed, what do you think?

14 MR. PREMO: I don't have any problem with
15 it. I took a look out there. I think kind of the way
16 it's edged in there to the site won't create too much
17 of a problem and I can certainly see the idea of
18 wanting to have more deck area.

19 CHAIRPERSON MIETZ: Uh-huh. Yeah. That's a
20 tough lot. Okay. Kathleen?

21 MS. SCHMITT: I did not have a problem with
22 it.

23 CHAIRPERSON MIETZ: Okay. Good. Andrea?

24 MS. TOMPKINS-WRIGHT: I think it's the
25 classic configuration of a lot leading to a setback.

1 So I have no issue.

2 CHAIRPERSON MIETZ: Okay. And Heather?

3 MS. MCKAY-DRURY: No concerns.

4 CHAIRPERSON MIETZ: Okay. So I have this
5 one. Okay.

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1 **Application 1A-02-22**

2 Application of John Texter, owner of
3 property located at 265 Clover Street, for an Area
4 Variance from Section 205-2 to allow a deck to extend
5 11.5 feet into the existing 33 foot rear setback where
6 a 60 foot rear setback is required by code. All as
7 described on application and plans on file.

8 Motion made by Mr. Mietz to approve
9 Application 1A-02-22 based on the following findings
10 of fact.

11 **Findings of Fact:**

- 12 1. Due to the irregular shape of the lot no other
13 location for the proposed deck could produce the
14 desired result.
- 15 2. The variance requested is the minimum variance
16 which can allow for the wraparound deck design of this
17 proposed deck.
- 18 3. No negative effects on the character of the
19 neighborhood will likely result from this approval
20 since the deck will be minimally visible from the
21 street due to existing landscaping.

22 **Conditions:**

- 23 1. This is based on the drawings submitted and
24 testimony given as to the location and size of the
25 deck.

1 2. All required building permits shall be obtained.

2 (Second by Mr. Premo.)

3 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;

4 Ms. Tompkins-Wright, yes; Mr. Premo,

5 yes; Mr. Mietz, yes.)

6 (Upon roll motion to approve carries with
7 conditions.)

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1 CHAIRPERSON MIETZ: The next application is
2 387 Bonnie Brae related to the addition on the home.
3 So let's go around on this. Heather, your thoughts?

4 MS. MCKAY-DRURY: Obviously it's a very
5 substantial addition. I believe that the data that
6 was provided is very helpful. Also however, there is
7 the question of whether the lot sizes were not
8 expressly considered. So I have a little bit of
9 reservations. I overall tend to believe that this
10 will not probably impact the character. So that's
11 probably how I'm coming down on it but with the
12 acknowledgement that this will double -- or --
13 actually it will double the square footage. So it is
14 quite large for the lot.

15 CHAIRPERSON MIETZ: Okay.

16 MR. DiSTEFANO: Can I just make a comment?

17 CHAIRPERSON MIETZ: Sure. Go ahead.

18 MR. DiSTEFANO: So that's the interesting
19 thing, it is a large addition. However, it is only
20 300 square feet over what the Code allows. It's 300
21 plus or minus over what the Code allows. So basically
22 if they were to cut 300 feet off of it, you know, they
23 wouldn't be in front of us for a variance, but they
24 would still almost be doubling the size of the house.

25 So it's kind of -- keep that in mind when

1 you're thinking about this variance is that they can
2 do almost the entire thing without the variance. So
3 keep that in your thought process.

4 CHAIRPERSON MIETZ: And also, you know,
5 related -- you know, again it would have been nice to
6 have both of those calculations related to the lots.
7 But if you look at the tax map or the map that
8 provides, you can see the comparable ones that are
9 there. Many of them are similar sizes of lots. You
10 know, we don't have the exact dimensions. A couple of
11 them look a little bit larger, but I don't think we're
12 dealing with a situation where we're comparing to lots
13 that are, you know, one and half times this lot or
14 whatnot. It looks like a fairly represented lot on
15 the street. Okay.

16 MS. TOMPKINS-WRIGHT: But I -- this is
17 Member Wright. When I tried to eyeball it, it looked
18 like the other ones were considerably large, like 250
19 Bonnie --

20 CHAIRPERSON MIETZ: Yeah. There were a few.

21 MS. TOMPKINS-WRIGHT: -- Brae. I mean,
22 maybe it's just to --

23 (Simultaneous conversation.)

24 CHAIRPERSON MIETZ: Go ahead.

25 MS. TOMPKINS-WRIGHT: I said I appreciate

1 the comment though Rick that -- because I was
2 struggling with the fact that it's going from 1,500
3 to essentially 3,400. It's a massive addition. It's
4 hard to say it's the minimum necessary to meet the
5 needs of adding one person to reside in the home. But
6 I understand that point about they could reduce it by
7 300 and not need a variance. It's hard for me to look
8 at this and say couldn't you reduce it by 300 and not
9 need a variance? It still seems massive for the lot,
10 but your point is it's not. You know, the Code
11 wouldn't allow it to be just shy of this anyway.

12 Sorry, Ed. I cut you off.

13 MR. PREMO: So I -- I wrote -- I actually
14 wrote this up as a denial. And I have to admit I view
15 this as a close situation. But I am troubled by it.
16 There's kind of a couple different ways I'm troubled
17 by it.

18 One is, of course, it's increasing the size
19 of the existing house I think by 213 percent, more
20 than doubling it. It's creating a two-story
21 projection into the rear yard, which will cut off the
22 next door neighbors lights and stuff, if you kind of
23 look at how that is. It would be out of character
24 with the two houses that are right next to them, which
25 are the same size as the existing house. So you're

1 going to have kind -- if you can call it a little
2 neighborhood, it's going to be a pretty substantial
3 change.

4 I agree with Andrea about she -- it wasn't
5 mentioned in the application the desire to build this
6 for the mother. But when I look at it, I say, boy,
7 this is -- this is much larger than what I think a
8 typical in-law addition would be. I mean, it's to
9 have a master bath, master bedroom, laundry room, all
10 that space was identified. So it does seem to be more
11 than is necessary. And we are supposed to grant the
12 minimum variance necessary.

13 The other problem I have is just kind of
14 the -- you know, part of the reasoning of this is that
15 the real estate market is tight. It's tough for the
16 applicant to find another property. I acknowledge
17 that. But that is a condition that almost anybody in
18 that area could say exists. And I was particularly --
19 I was trying to think how to articulate that because
20 it's kind of like everyone could get an area advance
21 then.

22 And even the applicant mentioned the
23 neighbors were interested in pursuing similar
24 variances if they -- if this went through. So I think
25 it could create a whole -- almost a change in the

1 district if this was the precedent we're setting. So
2 I'm concerned about it. I mean, I don't know. I
3 guess trying to be comfortable with it. I guess I
4 would like to see the information as a comparison of
5 the sample houses to the lot sizes to see how that
6 compares.

7 I trust that the neighbors really do support
8 this, but, I guess, it would be nice if we had
9 information from them about that to let us think about
10 that. And I don't know why they can't reduce it
11 390 square feet and not have to come before us. But I
12 think this has a potential to have a detriment to the
13 health, safety and welfare and character of the
14 community more so than the benefit to the applicant.

15 And I also think the applicant could
16 continue to look for other bigger homes in the area or
17 could knock this down 400 feet and still accomplish
18 the goals.

19 CHAIRPERSON MIETZ: Okay. All right.
20 Kathleen, what are your thoughts?

21 MS. SCHMITT: Clearly everyone knows that I
22 am into trying to do the minimum that -- you know,
23 that's an important requirement. So I support Ed on
24 that comment. I was actually though wondering if this
25 isn't something we should invite -- I don't know

1 Lindsay's last time, but invite Lindsay to come back
2 with the neighbors' statements because to me that
3 would help a great deal. While it's not that don't
4 trust her, I really would like to see that in writing
5 because it is a substantial build-out.

6 I would also say that this is my
7 neighborhood. I'm on Bonnie Brae as you all know.
8 And it is the norm. I would say since we moved in
9 almost every person, including myself, has blown out
10 major portions of their sides and backs to put in
11 extra bathrooms, extra bedrooms, in-law suites, et
12 cetera. So I'm not inherently opposed to a big
13 addition to add that extra space, but I really do need
14 to hear from the neighbors. And I would like a little
15 bit more about what they could possibly do to reduce
16 that so they do not need the variance.

17 MR. DiSTEFANO: Can I just make a comment
18 about the neighbors? Usually in a situation like this
19 if the neighbor had an objection, you'd hear from it.
20 You'd hear from them saying, wow, this is pretty big.
21 It's going to block off my rear yard, et cetera, et
22 cetera. I hate to require an applicant to go to a
23 neighbor saying hey, I need a letter from you so that
24 I can get my variance. It puts a lot of pressure on
25 the neighbors.

1 I don't think it's something that we should
2 require from an applicant to provide to us. I think
3 the fact they are notified that if they have a problem
4 they would be sending a letter in opposition. So I'm
5 a little leery about making that, if you were to table
6 it, making that condition of tabling.

7 MR. GORDON: If I could just jump in.

8 CHAIRPERSON MIETZ: Sure. Go ahead, Ken.

9 MR. GORDON: Thanks. I don't know that it
10 is necessary to state that as a requirement. It
11 appears to me that the owner is still on the Zoom
12 meeting, is listening to the deliberations. I think
13 if the matter was to be tabled with a request that the
14 applicant submit the lot sizes and the comparison with
15 those larger homes to their lot sizes, also to submit
16 either an explanation as to why the project could not
17 be reduced by the 390 square feet to bring it into
18 compliance, and any other materials which they believe
19 would be helpful to the Board, I think that might be
20 sufficient.

21 MR. DiSTEFANO: Also I'd personally like to
22 hear from the architect, who --

23 CHAIRPERSON MIETZ: Yeah.

24 MR. GORDON: Yeah. I think --

25 MR. DiSTEFANO: -- put the whole thing

1 together.

2 MR. PREMO: I -- I --

3 MR. DiSTEFANO: The applicant made the --
4 she talked about the angle of the garage. And I kind
5 of understood that because -- because they have to
6 angle it, they don't want a big straight line and they
7 couldn't turn it 90 degrees So you drive straight in,
8 that angle adds square footage.

9 CHAIRPERSON MIETZ: That's what the
10 testimony was.

11 MR. DiSTEFANO: Right. That adds square
12 footage. And it would be nice to hear from the
13 architect to say, this is the only way we could do it
14 because of roof lines, et cetera, and see what happens
15 from that --

16 CHAIRPERSON MIETZ: Okay.

17 MR. DiSTEFANO: -- from a professional
18 standpoint.

19 CHAIRPERSON MIETZ: My thought is really
20 that, you know, again, while I appreciate what Rick
21 said about the -- their right to have an addition
22 that's close to 300 square feet to what was proposed,
23 I think, you know, it's important due to, you know,
24 our whole discussion about these additions, which goes
25 back a number of years for those of you who have been

1 on the Board for a while or are a citizen of Brighton,
2 that we're a little careful what happens related to a
3 particular neighborhood.

4 So I think the statistics related to lot
5 sizes are important. And so I would certainly be
6 supportive of tabling for that primary reason, but the
7 other two reasons that both Ken and Rick and I guess
8 Kathleen and everyone have brought up would be
9 reasonable as well. The applicant probably -- you
10 know, again the architect telling her to survey and
11 whatnot, but only doing half of what we should have
12 surveyed probably didn't help. So I think they should
13 at least have an opportunity with the investment they
14 are proposing here to, you know, see if we can't get
15 the correct information so that we can make a fair
16 assessment.

17 MR. GORDON: And it's important -- Dennis,
18 if I could just supplement what you said. It's
19 important that the applicant know and the architect of
20 the applicant know that they should submit whatever
21 information they think would be helpful to the Board.

22 CHAIRPERSON MIETZ: Right.

23 MR. GORDON: I don't want to have this Board
24 or Town staff or staff from the Architectural Review
25 Board -- because I think this did go to ARB I think --

1 have control over what the applicant --

2 CHAIRPERSON MIETZ: Correct.

3 MR. GORDON: -- submits. That should be up
4 to the applicant. It's the applicant's application.
5 The architect should help her out. And that's how it
6 should work.

7 CHAIRPERSON MIETZ: Yeah. What we generally
8 try to do is -- and Ken and Rick I think will agree
9 with this -- is that we try to give them at least some
10 direction what the minimum we would request for the
11 reason that we tabled the application. However, you
12 know, they're certainly within their rights to bring
13 any other additional information that they see fit.
14 So we can certainly be clear about that. And I think
15 I should point out the applicant is hearing this
16 discussion. And if they have questions if we decide
17 to table it, then I'm sure Rick will provide any
18 explanations or --

19 MR. PREMO: Do we -- Dennis, should we
20 reopen the public hearing and leave it open for
21 submissions?

22 MR. DiSTEFANO: If we table it, we should
23 reopen it so that we can hear from possibly the
24 architect --

25 CHAIRPERSON MIETZ: Correct.

1 MR. DiSTEFANO: -- and get those additional
2 questions of the applicant.

3 CHAIRPERSON MIETZ: Yes. Okay.

4 MR. PREMO: So I can try to do this.

5 CHAIRPERSON MIETZ: Yeah. I think you can
6 go ahead, Ed.

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1 **Application 1A-05-22**

2 Application of Lindsay Agor, owner of
3 property located at 387 Bonnie Brae Avenue, for an
4 Area Variance from Section 209-10 to allow livable
5 floor area, after construction of an addition, to be
6 3,415 square feet in lieu of the maximum 3024.8 square
7 feet allowed by code. All as described on application
8 and plans on file.

9 MR. PREMO: I move that we table Application
10 1A-05-22 and request that the applicant provide
11 information concerning the lot size and lot coverages
12 with respect to the example of larger homes they
13 submitted in this application and also that they
14 submit information from their architect justifying the
15 size of the proposed addition and in particular why it
16 could not be reduced by 390 feet to be in compliance
17 with code and still provide the applicant the
18 necessary benefit along with any other information the
19 applicant may wish to submit to us.

20 I also move that we reopen the public
21 hearing and allow it to remain open to allow the
22 submission of additional information.

23 (Second by Ms. McKay-Drury.)

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

25 Ms. Tompkins-Wright, yes; Ms. McKay-Drury,

1 yes; Mr. Premo, yes.)
2 (Upon roll motion to table application and
3 to reopen public hearing passes.)
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1 CHAIRPERSON MIETZ: Okay 1A-06. No one
2 showed up to make a presentation for that application.
3 How would we like to handle this?

4 MR. DiSTEFANO: I would just table it for
5 representation. It's all you got to do. You never
6 opened the public hearing.

7 MR. PREMO: Hey, Rick, just on the sign
8 issue. Do they submit an affidavit that they posted
9 the sign?

10 MR. DiSTEFANO: They do submit a signed -- I
11 wouldn't call it an affidavit, Ed. But they do submit
12 a signed piece of paper that they posted the sign. I
13 don't think I -- doing stuff the way we're doing it
14 sometimes we get that sheet signed before the sign
15 goes up --

16 MR. PREMO: Yeah.

17 MR. DiSTEFANO: -- because we're taking so
18 much stuff electronically.

19 CHAIRPERSON MIETZ: Right.

20 MR. DiSTEFANO: Usually that sheets come to
21 us in delay of the meeting due to the fact that they
22 posted the sign accordingly.

23 CHAIRPERSON MIETZ: Yeah.

24 MR. PREMO: I couldn't see a sign when I was
25 out there. I don't know --

1 CHAIRPERSON MIETZ: Ed, I was out there too
2 and I didn't see it either.

3 MS. SCHMITT: I think it's part of the
4 signage they eliminated.

5 CHAIRPERSON MIETZ: They eliminated the
6 whole thing.

7 MR. PREMO: And I know then -- I mean, and
8 then you have the problem like -- with the one on
9 Jefferson Road out by RIT, the use variance when I
10 went out there, that sign is now so old and tattered
11 you can't read it.

12 CHAIRPERSON MIETZ: You have no idea, Ed,
13 how many years we worked on that property.

14 MR. DiSTEFANO: So yeah. So I think we
15 should just table it for representation.

16 CHAIRPERSON MIETZ: Okay. Kathleen, it's
17 yours. Can you do that please?

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1 **Application 1A-06-22**

2 1A-06-22 Application of Clinton Signs, Inc.,
3 agent and Dorell, Inc., owner of properties located at
4 2654 West Henrietta Road (Tax ID #148.16-1-15) and
5 2674 West Henrietta Road (Tax ID #(148.16-1-16), for
6 Sign Variances form Section 207-32B to allow for the
7 Installation of nonbusiness identification signs on
8 two (2) building's frontage where not allowed by code.
9 All as described on application and plans on file.

10 MS. SCHMITT: I move to table Application
11 1A-06-22 to allow the applicants to advocate for the
12 approval of their application in February.

13 (Second by Mr. Premo.)

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

17 (Upon roll motion to table application
18 carries.)

1 CHAIRPERSON MIETZ: Okay. So the final two
2 applications relate to the Whole Foods plaza. As you
3 know we've had numerous appeals on this previously.
4 There's a lot of information that we had to digest and
5 there was a lot more information given this evening.

6 So generally our thought process here is to
7 be able to have the time to digest all of this
8 information. So I don't know how you feel about that Andrea.

9 MS. TOMPKINS-WRIGHT: Yeah. I was prepared
10 to move to table it in order to digest, draft and
11 review a motion relative to this application for 07.
12 I assume Ed is prepared to do for 08.

13 These appeals are identical in most respects
14 to previous appeals. So I don't really have any new
15 information, but it will take to draft and very review
16 and be all on the same page for a motion.

17 CHAIRPERSON MIETZ: Okay.

18 MR. PREMO: I agree.

19 CHAIRPERSON MIETZ: Ed, you agree? Okay.
20 So I think we should move on these separately though.
21 So why don't we go ahead, Andrea.

22 MS. TOMPKINS-WRIGHT: Yeah. So -- but just
23 to be clear, I am keeping -- I'm not moving to reopen
24 the public hearing. I don't believe there's any
25 additional information.

1 **Application 1A-07-22**

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

12 MS. TOMPKINS-WRIGHT: I move to table
13 application 1A-07-22 in order to permit the Zoning
14 Board to draft and review an appropriate motion
15 related to this application.

16 (Second by Mr. Premo.)

17 (Ms. Schmitt, yes; Mr. Mietz, yes:

18 Mr. Premo; yes, Ms. Tompkins-Wright, yes.)

19 (Upon roll motion to table application and
20 keep the public hearing closed carries.)

1 **Application 1A-08-22**

2 Application of Brighton Grassroots, LLC,
3 appealing the issuance of two building permits (4th
4 Building and 5th building) 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 and plans on file.

9 MR. PREMO: I move to table application
10 1A-08-22 to allow the opportunity for the Zoning Board
11 of Appeals to prepare and review an appropriate motion
12 and decision for the next meeting in February.

13 (Second by Ms. Tompkins-Wright.)

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

15 Ms. Tompkins-Wright, yes; Mr. Premo, yes.)

16 (Upon roll motion to table application and
17 keep the public hearing closed carries.)

1 MR. GORDON: And just to be very clear on
2 the record on this, I don't want to give the
3 impression that the Zoning Board of Appeals is going
4 to be meeting to draft any kind of resolutions or
5 findings. Actually I'll be working on that and I will
6 be submitting something to the Board, which will then
7 be posted online for the public to see as well once
8 that draft is done.

9 CHAIRPERSON MIETZ: Correct.

10 MR. DiSTEFANO: And just let me finish the
11 motion to table and keep the public hearing closed
12 carries.

13 CHAIRPERSON MIETZ: Okay. Very good. Okay.

14 MR. DiSTEFANO: Is Heather back now?

15 CHAIRPERSON MIETZ: Yes. I think so.

16 MR. DiSTEFANO: Did she leave us for the
17 night?

18 MS. MCKAY-DRURY: Back.

19 MR. DiSTEFANO: It looks like we're going to
20 be pretty business next month especially with stuff
21 that was carried, held over and the stuff that we've
22 tabled. And that doesn't include any new applications
23 that we're going to receive for February. So I just
24 want to -- just make sure that everybody's aware of
25 that and be prepared that it could be a lengthy

1 evening.

2 CHAIRPERSON MIETZ: Yes.

3 MR. PREMO: Just for everyone's information
4 I will probably be unavailable for the March meeting.

5 MR. DiSTEFANO: Thank you, Ed.

6 CHAIRPERSON MIETZ: Okay.

7 MS. TOMPKINS-WRIGHT: Real quick. I might
8 be totally off on this, but I thought that the Town
9 order for virtual meetings expired in mid-January. Is
10 that extended?

11 MR. DiSTEFANO: Ken?

12 MR. GORDON: Well, we're waiting on word
13 from Albany, Andrea. So I've been in contact with
14 general counsel at the Associations of Towns. Nothing
15 has been taken up yet by either the Governor's office
16 or the State legislature as of Monday. Monday was the
17 last time I checked on it.

18 CHAIRPERSON MIETZ: So stay tuned.

19 MR. PREMO: We do anticipate --

20 MR. GORDON: So we can all expect that that
21 will be continued. So we're going to be putting out
22 notice that the meetings will continue virtually. And
23 that's what you should plan for the next meeting at
24 least. And if things are going to go the way we think
25 they're going to go, that is likely to be extended

1 through the end of April of '22. And then we'll take
2 another look at it then. But they're going to wait
3 until -- I don't know. It goes through January 15th.
4 So they're probably going to wait until January 15th
5 to take any action.

6 CHAIRPERSON MIETZ: Okay. Well, stay tuned
7 again for future developments.

8 MR. GORDON: And I will certainly let all of
9 you and Rick know or Rick will reach out to you. We
10 talk daily.

11 CHAIRPERSON MIETZ: Okay good. All right.
12 Thank you, everybody.

13 MR. DiSTEFANO: Thank you.

14 CHAIRPERSON MIETZ: Happy New Year and
15 thanks for all your work. And we will talk next
16 month.

17 (Proceedings concluded at 9:01 p.m.)

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REPORTER CERTIFICATE

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

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

Dated this 5th day of January, 2022
at Rochester, New York.

-----*Holly E. Castleman*-----

Holly E. Castleman,
Notary Public