

1

2

BRIGHTON

3

ZONING BOARD OF APPEALS

4

MEETING

5

6

7

February 2, 2022
At approximately 7 p.m.
Brighton Town Hall Zoom
2300 Elmwood Avenue
Rochester, New York 14618

10

11

PRESENT:

12

DENNIS MIETZ
Chairperson

13

14

EDWARD PREMO) Board Members
HEATHER McKAY-DRURY)
ANDREA TOMPKINS-WRIGHT)
JUDY SCHWARTZ)
KATHLEEN SCHMITT)

16

17

KEN GORDON, ESQ.
Town Attorney

18

19

RICK DiSTEFANO
Secretary

20

BRENDAN RYAN

21

22

23

24

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

25

1 CHAIRPERSON MIETZ: Okay. At this time I'd
2 like to welcome you to the -- excuse me. I'm sorry --
3 February 2022 meeting of the Brighton Zoning Board of
4 Appeals.

5 Just quickly for those of you who don't
6 know -- well, let's call the meeting to order, Rick.
7 Was the -- I'm going to sneeze again. I'm so sorry.

8 Can you call the roll please?

9 (Whereupon the roll was called.)

10 MR. DiSTEFANO: Please let the record show
11 all members are present.

12 CHAIRPERSON MIETZ: Okay, very good. And,
13 Rick, was the meeting properly advertised?

14 MR. DiSTEFANO: Yes, Mr. Chairman. It was
15 advertised in the Daily Record of January 27th, 2022.

16 CHAIRPERSON MIETZ: Okay. Very good. Just
17 to let everyone know how we handle this meeting if
18 you're not familiar, we go through the agenda as it
19 was published. When your application is called, you
20 would announce yourself. We'll make sure that you're
21 in proper view to present your application. You'll
22 present it. The members will ask any questions they
23 wish. Once they finish asking questions, we'll ask
24 anybody on the Zoom call that might like to speak
25 regarding the application to speak. And once they

1 finish, then we close the public hearing and move to
2 the next application.

3 After we complete them all, we then take
4 maybe a break if they need. If not, we will start
5 deliberating in the order that the applications were
6 presented. And you're welcome to listen to that
7 deliberation. There's no discussion with the Board
8 members or additional information accepted or taken.
9 And then we render our decision.

10 If you choose not to stay on the call and
11 listen to the end, you can call Rick DiStefano in the
12 building office tomorrow and he will give you the
13 result of your application. Okay.

14 So we have minutes to go over, Rick.

15 MR. DiSTEFANO: Yeah. Just before that,
16 Mr. Chairman, let me state we did receive two
17 communications in regard to application 2A-01-22 very
18 late in the day today, which did not make it on the
19 agenda. So I'll just make that comment for the
20 record.

21 CHAIRPERSON MIETZ: Okay. We can discuss
22 that during the presentation then and deal with how'd
23 we like to handle that. Okay. Very good.

24 All right. So minutes. Do we have any
25 issues on the minutes? Judy, go right ahead.

1 MS. SCHWARTZ: Okay. On page 32, line 13,
2 the third word should be "be," B-E.

3 On page 39, line 5, it should be setbacks
4 "are," A-R-E.

5 Page 44, line 16, insert the word "we" after
6 so. So we.

7 Page 57, line 2, insert the word "see" after
8 can, can see.

9 Page 56, line 2, the word is presents,
10 P-R-E--S-E-N-T-S.

11 Page 65, line 2 towards the end, the word is
12 "shed."

13 Page 67, the last word on line 5 is "back,"
14 B-A-C-K.

15 Page 89, line 17, the word should be
16 "gutters."

17 Page 93, line 3, insert the word "need," do
18 need.

19 Page 97, line 10, the first word should be
20 "following."

21 Page 98, line 19, insert the word "go,"
22 after could. Line 21, insert the word "we," after
23 what.

24 Page 101, the last word in line 6, I believe
25 should be "creek."

1 And on page 116, line 19, the second word
2 should be "stay." And that's all I have.

3 CHAIRPERSON MIETZ: Okay. Does anyone have
4 anything else?

5 MR. PREMO: I move we approve the minutes as
6 amended.

7 CHAIRPERSON MIETZ: And a second please.

8 MS. TOMPKINS-WRIGHT: Second. Member
9 Wright.

10 CHAIRPERSON MIETZ: Okay.

11 MR. DiSTEFANO: The motion is to approve the
12 December minutes with corrections.

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

16 (AUpon roll motion to approve carries.)

17 CHAIRPERSON MIETZ: Okay. Very good. Okay.
18 Is there anything else you wanted to tell us, Rick,
19 about the agenda or anything?

20 MR. DiSTEFANO: No unless any members have
21 questions regarding any of the applications?

22 CHAIRPERSON MIETZ: Okay. Well, when you're
23 ready, please begin with 12A-01-21.

24 MR. DiSTEFANO: I'll read the next -- the
25 first two together.

1 Application 12A-03-21

2 Application of Jerry Goldman, attorney, and
3 Jagdish Kaur, owner of property located at 30
4 Jefferson Road, for a Use Variance from Section
5 203-93A to allow a retail liquor store to be located
6 in an IG Light Industrial District where not allowed
7 by code. All as described on application and plans on
8 file.

9 Application 12A-04-21

10 Application of Jerry Goldman, attorney, and
11 Jagdish Kaur, owner of property located at 30
12 Jefferson Road, for an Area Variance from Section
13 205-18A to allow front yard parking where not allowed
14 by code. All as described on application and plans on
15 File.

16 CHAIRPERSON MIETZ: Who do we have speaking
17 for these applications?

18 MS. BRUGG: Hi. Good evening. It's Betsy
19 Brugg. I am representing this application tonight.

20 CHAIRPERSON MIETZ: Okay.

21 MS. BRUGG: I'm representing Jagdish, whose
22 family owns the property.

23 CHAIRPERSON MIETZ: Okay. Very good, Betsy.
24 When you're ready, then please proceed.

25 MS. BRUGG: Sure. Good evening. Nice to

1 see everyone, even if it's still on the small screen
2 here.

3 So some of the Board members probably are
4 familiar with this property from years ago. This is
5 the property at 30 Jefferson Road. It's at the corner
6 of Jefferson and East River Road at the very edge of
7 the Town of Brighton. It's a property that has had a
8 history of challenges over the years.

9 The current applications before you are for
10 a -- essentially a reinstatement and reduction of a
11 previous use variance and an area variance. The
12 property has been -- it's a vacant gas station with a
13 canopy. The current owners after owning this property
14 for many years and having, you know, marketed it for,
15 you know, really any type of use. They really
16 have marketed without any kind of restrictions and
17 have not been able to get much interest in the
18 property, you know, since they acquired it.

19 They themselves are business owners and
20 operators. So they decided that they are going to
21 open a liquor store here and clean up the property.

22 The property's basically been vacant since
23 about 2002. The gas station building is still there.
24 The canopy is still. The tanks were removed a number
25 of years ago, I think, by the prior owner. The

1 condition of the property, you really can't see
2 because it's all covered in snow right now, but the --
3 all the asphalt [sic] is really deteriorated. It's
4 down to its subsurface. There's weeds growing
5 everywhere and it's really a mess.

6 So really the proposal is to clean it up,
7 operate a liquor store there, clean up the parking.
8 They would reduce the amount of asphalt and pavement,
9 tighten that up. The gas station canopy would be
10 removed. And essentially the sight would be really
11 cleaned up and made viable again. And they would
12 operate a liquor store there.

13 As the Board may know from the history of
14 this property, there was a use variance granted for
15 the operation of the retail convenience store and gas
16 station. Multiple variances were granted for the
17 canopy. Those variances were renewed year after year
18 I think from about 2002 until about 2010 or so. I may
19 be wrong on the year it lapsed. But eventually it
20 just -- the variances just lapsed as the property
21 remained vacant throughout that time.

22 Multiple commercial brokers have had the
23 listing over the years. You have a letter -- a couple
24 letters, I think, from the current broker describing
25 their marketing efforts and the various challenges

1 marketing the -- marketing the property for permitted
2 uses. It is the Industrial Zoning District, but it is
3 a very small building. It is 1,600 square feet
4 measured on the exterior. You have a letter from the
5 architect. I think the interior is about 1,400. He
6 describes some of the challenges with the renovation
7 and the size of the property and what its viable use
8 would be.

9 Essentially the -- the uses that are largely
10 allowed in the Industrial District are a variety of
11 types of business, office type uses. This is a very
12 small building. It really is most suitable for retail
13 use. That is, you know, what it was essentially
14 constructed for.

15 So we're here for two variances. One is for
16 a use variance. Again, this is a lesser variance than
17 was granted before because we're going to a straight
18 retail for the liquor store as opposed to the gas
19 station that was included in the previous variance.

20 The area variances, the only variance we're
21 requesting -- again, it's a reinstatement of a
22 variance that's been granted in the past multiple
23 times -- is to allow parking in the front yard.

24 In my -- in the submission you have, you
25 have a site plan that's marked up to show -- show you

1 that it is actually physically impossible to construct
2 anything code compliant on this property. You
3 actually cannot build any type of a building because
4 this is a nonconforming lot. The lot size is, you
5 know, approximately half of what code would require.
6 The -- I think the depth of the lot also is, you know,
7 150 feet. The code requires 200 feet. So it's a
8 noncompliant lot.

9 This is a big improvement to the existing
10 condition. These are experienced business operators.
11 So they think they can, you know, make a go of it.
12 And that is essentially their proposal.

13 As far as the variance standards, you know,
14 it's been a few years since the Board has seen this
15 property. So we did put evidence of the financial
16 hardship, essentially the cost of improving this
17 property for permitted uses would exceed the market
18 value of the property for permitted uses. We are in a
19 very kind of isolated area. There aren't a lot of
20 neighboring uses. It's largely industrial. There's,
21 you know, significant vacant property in the area.
22 Again, the broker kind of detailed some of the
23 challenges with the neighborhood and the neighborhood
24 character and how it's really not suited for permitted
25 uses, partly because of the character of the

1 neighborhood, partly because of the other available
2 property. And again, the cost of the renovation, the
3 amount of investment that would be required to make
4 this appropriate for a permitted use.

5 There's also more suitable locations that
6 are more suitable for office-type spaces. And there's
7 a lot of competition. We're on the line with
8 Henrietta. And I think we comment on the fact that,
9 you know, you're competing with Henrietta space. You
10 know, again, there's a lot of vacant office space in
11 Henrietta. The tax rate is favorable in Henrietta.

12 So there's a lot of reasons that this
13 property just has not been successful. It's been
14 demonstrated in the past and nothing has really
15 changed, you know, in that respect.

16 So I'd be happy to go through more of the
17 data that we've been given you if you'd like. As far
18 as the area variance for the parking, again, we're
19 improving on the existing condition. It's a
20 significant improvement to the physical condition of
21 the property, to clean up the pavement, you know,
22 improve the appearance of property, reduce the amount
23 of asphalt.

24 The amount of parking that's proposed is
25 appropriate, you know, to support the use of the

1 building without being excessive. It's a low -- it's
2 a small building. It's going to be a low intensity
3 kind of an operation, low intensity use.

4 We did address the area variance criteria in
5 writing as well. And, again, I would be happy to go
6 through them. I know you got a long agenda, but I do
7 think we satisfied all of the criteria for both the
8 granting of the use variance and the area variance.

9 CHAIRPERSON MIETZ: Okay. Thanks, Betsy.
10 Questions by the Board?

11 MS. SCHWARTZ: Yes. Judy. You talked about
12 improving the site and so forth. Will you be able to
13 put any landscaping between the road and your front
14 yard parking?

15 MS. BRUGG: I think there is some space to
16 do that. We don't show that on plan, but that
17 certainly would be possible.

18 MS. SCHWARTZ: That would soften it a bit.
19 Thank you.

20 MS. BRUGG: Yup.

21 MR. DiSTEFANO: I believe you do have a
22 revised site plan in the packet. Brendan can you
23 scroll down one? I think that would be a rendering.

24 MR. RYAN: That's all I got.

25 MR. DiSTEFANO: That's all you got?

1 MS. TOMPKINS-WRIGHT: This is Member Wright.
2 Can you tell us the previous use of the gas station
3 with intended resale, do you know if there was
4 alcohol -- not necessarily liquor, but beer sold at
5 that gas station when it was operating?

6 MS. BRUGG: So I believe -- I was not
7 involved with the plans, but I believe at one point
8 there was that restriction and I believe that
9 restrictions was removed. And I think part of the
10 reason I think there was -- I think it's actually
11 preemptive. I'm not sure what the issue was at the
12 time because I didn't handle the application. But I
13 do believe they were able to get that restriction
14 removed.

15 MS. TOMPKINS-WRIGHT: And then, Rick, this
16 is probably more of a question for you, but just
17 something I want kind of addressed. Our zoning code
18 addresses liquor stores in the same way that it
19 addresses all over retail stores in the City? It's
20 not as if retail -- liquor stores are permitted in
21 some zones as others, it's just straight retail?

22 MR. DiSTEFANO: Right.

23 MS. TOMPKINS-WRIGHT: Thank you.

24 MR. DiSTEFANO: On your screen, Judy, you
25 see what they've got proposed for some landscaping and

1 site improvements.

2 MS. SCHWARTZ: Thank you.

3 CHAIRPERSON MIETZ: Right.

4 MS. TOMPKINS-WRIGHT: Thanks, Rick.

5 CHAIRPERSON MIETZ: Are there other
6 questions by the Board related to these applications,
7 plural? Betsy --

8 MR. DiSTEFANO: Betsy, do you feel that the
9 parking that you show on the site is the maximum or
10 the -- you know, the amount that you're going to need
11 for this use and you don't propose any additional
12 front yard --

13 MS. BRUGG: Correct.

14 MR. DiSTEFANO: -- disturbance?

15 MR. BRUGG: They're actually cleaning it up,
16 tightening it up. I believe we're removing some of
17 the asphalt. There's, I think, more than what's
18 reacquired by code. You know, it provides good
19 traffic circulation for vehicles to enter and exit, a
20 truck, if necessary.

21 MR. DiSTEFANO: And just for the Board's
22 knowledge, this does need to go in front of the
23 Planning Board for site plan modification. It will be
24 looked at by both the Conservation Board and the
25 Planning Board as it moves forward.

1 CHAIRPERSON MIETZ: Okay. All right. Other
2 questions by the Board members? Okay. Very good.
3 Thank you, Betsy.

4 MS. BRUGG: Thanks.

5 CHAIRPERSON MIETZ: All right. Is there
6 anyone on this call that would like to speak regarding
7 application 12A-03 or 12A-04?

8 MR. DiSTEFANO: If there is, please use the
9 raise your hand function for Zoom.

10 CHAIRPERSON MIETZ: Okay. Do we see
11 anything? Doesn't look like it. Okay. Then at this
12 point then the public hearing is closed on these two
13 applications.

14 MS. BRUGG: Thank you.

15 CHAIRPERSON MIETZ: Okay.

16 MR. DiSTEFANO: Two applications I will
17 again read together.

18 **Application 1A-03-22**

19 1A-03-22 Application of FSI
20 Construction/Frank Imburgia, owner of property located
21 at 3300 Brighton Henrietta Town Line Road, for an Area
22 Variance from Section 205-8 to allow an office
23 building to be constructed with a 42 foot front
24 setback (Brighton
25 Henrietta Town Line Road frontage) in lieu of the

1 minimum 75 foot front setback required by code. All
2 as described on application and plans on file.

3 **Application 1A-04-22**

4 Application of FSI Construction/Frank
5 Imburgia, owner of property located at 3300 Brighton
6 Henrietta Town Line Road, for an Area Variance from
7 Section 203-129B to allow a new office building and
8 other site improvements (e.g. parking area) to
9 encroach into the 100 foot natural vegetative
10 watercourse EPOD buffer where not allowed by code.
11 All as described on application and plans on file.

12 CHAIRPERSON MIETZ: And, Mr. Chairman, I am
13 going to bump up application 2A-02-22 because this is
14 the same property, same property owner.

15 **Application 2A-02-22**

16 Application of FSI Construction / Frank
17 Imburgia, owner of property located at 3300 Brighton
18 Henrietta Town Line Road, for an Area Variance from
19 Section 203-164A to allow front yard parking (along
20 Brighton Henrietta Town Line Road and Canal View
21 Boulevard) Where not allowed by code. All as
22 described on application and plans on file.

23 CHAIRPERSON MIETZ: Okay very good and who
24 do we have on all three applications?

25 MR. SUDOL: Good evening. My name is Jeff

1 Sudol with Passero Associates here on behalf of FSI
2 Construction/Frank Imburgia.

3 CHAIRPERSON MIETZ: Okay. Very good. So
4 when you're ready, please proceed. And if you can
5 walk down through them in order and speak to each of
6 the applications.

7 MR. SUDOL: Sure. Well, good evening
8 members of the Board. This is actually an application
9 that was originally heard over two years ago back in
10 2019. At that point based on work with both this
11 board and also the Planning Board and Conservation
12 Board, we went through a number of iterations with
13 this parcel to try and arrive at the best possible
14 layout for the site against several challenges,
15 notably the geometry of the parcel itself.

16 There's a tributary along the west and north
17 side. And also the setbacks and EPOD limitations.
18 The site itself is 2.2 acres located in the north side
19 of Brighton Henrietta Town Line Road just west of
20 Winton Road. It's a 10,000 square foot medical office
21 building, which is approximately half of what would be
22 normally allowed by code just sheerly based on the
23 density requirements and the size of the lot. Excuse
24 me.

25 So we essentially have three variances here,

1 which are all interrelated; the encroachment into the
2 EPOD, which is a hundred foot setback; also the
3 tributary that previously mentioned; and the front
4 setback for the building itself; and also the parking
5 in the front yard, which you can see all that of on
6 the site plan that's in front of you.

7 Essentially what we arrived at when we
8 originally went through this back in 2019 was the more
9 north-south oriented building configuration and
10 rectangle. What we're doing here is taking advantage
11 of the area that's been previously disturbed based on
12 the existing use there, which is a single-family home,
13 and we're trying to preserve the areas that are, you
14 know, within the EPOD in the floodplain.

15 In terms of the north-south configuration
16 which is requiring the front setback of the building
17 and the parking for the front yard, we're kind of
18 wedged in between the EPOD limits and the front
19 setbacks. So similar to the previous application,
20 it's essentially impossible here to bring forth a
21 proposal that does not encroach in one of those two.

22 And what we've done here and what did really
23 two years ago, nothing has changed from that, is, you
24 know, essentially a balancing act of trying to limit
25 our impact both in the -- you know, along the front

1 yard, along Brighton Henrietta Town Line Road and
2 along that EPOD to the north.

3 If you're familiar with the corridor, there
4 are other buildings and pavement on adjacent uses that
5 have a consistent setback with what we're currently
6 proposing. So it's certainly not out of the character
7 with the community. The current layout maximizes our
8 ability to provide a buffer along that previously
9 creek and to also landscape that front yard to provide
10 some mitigation for the potential impact for both the
11 parking and the building. You can see some of that
12 here on this plan.

13 So, you know, I'm not sure how many members
14 of this Board were there in 2018 when we, you know,
15 spent a lot more time going through these iterations.
16 I do think it's important to mention that, you know,
17 nothing has changed. You know, what happened to our
18 applicant is the same thing that's happened to a lot
19 of people in the construction industry. That is
20 between COVID and the rising construction prices, it's
21 taken them a while to get the financial numbers to
22 work.

23 So we did file for a couple of extensions,
24 which have set to expire. We believe we're to the
25 point now that we can execute the project and hence

1 our pursuing the approval of the variance.
2 Subsequently will be going before the Planning Board
3 to request site plan approval, which is also expired.
4 But, again, absolutely nothing has changed in the last
5 two years since the Board has seen this project.

6 So with that, I'm happy to answer any
7 questions specific to and of the three variances and
8 go from there.

9 CHAIRPERSON MIETZ: Okay. Questions?

10 MS. SCHWARTZ: Yes. Do you have a specific
11 medical tenant?

12 MR. SUDOL: Not yet. We have a multitude of
13 interested parties, but nobody is willing to sign a
14 letter of intent until we can demonstrate that we have
15 a site plan approval and all required entitlements.
16 So until we have all these items in place, we can't
17 secure a tenant.

18 MS. SCHWARTZ: Okay. So you are assuming
19 that you would have more than one tenant perhaps?

20 MR. SUDOL: Potentially. To be honest, you
21 know, it's a 10,000 square foot building. We would
22 love it if it was a single tenant. That would be the
23 easiest and cleanest. But we are looking at other
24 options.

25 MS. SCHWARTZ: Okay. The reason I ask is

1 that you could probably, in my opinion, avoid most of
2 these problems if you considered a two-story building,
3 half the footprint, saving the environment and
4 certainly the setback. It's really close.

5 So my question is, did you consider a
6 two-story building?

7 MR. SUDOL: We did. At Passero we do a lot
8 of these types of buildings. And really in order for
9 a two-story building to be financially viable, not
10 just on this site, but really anywhere USA, you have
11 to have a building footprint of at least 15,000 square
12 feet, probably closer to 20.

13 And the reason for that is if you, you know,
14 do the simple math and say let's do instead of 10,000
15 square foot, let's do a 5,000 square foot building.
16 Now, keep in mind that the parking requirement would
17 still be the same and it would not impact the parking
18 variance or the encroachment into the EPOD, but it
19 would simply reduce the building footprint, which
20 would allow us to reduce that setback.

21 The problem is when you follow the building
22 code and you start to incorporate areas for
23 circulation and elevators and, you know, multiple
24 staircases, very quickly the buildings become much
25 more expensive and much more inefficient with less

1 square footage. So until you can really get to a 15,
2 16,000 square foot footprint and above, it's very
3 detrimental to -- for this type of medical use to go
4 to a second story.

5 CHAIRPERSON MIETZ: Okay. So follow-up
6 questions, Judy? Anything?

7 MS. SCHWARTZ: And as the building is facing
8 us, what will that elevation look like facing Town
9 Line Road?

10 MR. SUDOL: The elevation is on file with
11 the Town. I'm not sure if Mr. DiStefano has the
12 ability to pull it up or not, but it did go through an
13 extensive review with the Town Architectural Review
14 Board as part of the original approvals.

15 MS. SCHWARTZ: And so the building would
16 look identical to what you proposed two years ago is
17 what you're saying?

18 MR. SUDOL: Yes, that's correct. Yeah.
19 There's been essentially -- well, there's really been
20 zero changes to the application since it was last
21 presented.

22 MR. DiSTEFANO: Yes, Judy. And
23 Architectural Review Board approvals do not expire.

24 MS. SCHWARTZ: They are. Okay. And they
25 did approve it is what you're saying?

1 MR. DiSTEFANO: Yes. They approved it
2 originally as part of their -- you know, the final
3 approvals from the Planning Board two years ago. And
4 ARB approvals don't change. So we would verify that
5 it was the same prior to them being able to pull a
6 building permit.

7 MS. SCHWARTZ: Okay. Thank you.

8 CHAIRPERSON MIETZ: Okay. Other questions
9 by the Board members? We did spend quite a bit of
10 time on this the last time. And I think since
11 nothing's really changed on the application, that's
12 good. There's not a lot else to sort out. And so I
13 have no other questions.

14 But I guess at this point then we will find
15 out if anyone on this call would like to speak
16 regarding this application -- or these applications,
17 plural. Okay.

18 There being none, then the public hearing on
19 these three applications is closed. And thank you.

20 MR. SUDOL: Thank you very much,
21 Mr. Chairman.

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. TABLED AT THE JANUARY 5, 2022
5 MEETING - PUBLIC HEARING REMAINS OPEN.

6 CHAIRPERSON MIETZ: Okay. And who do we
7 have speaking for Bonnie Brae?

8 MS. AGOR: Thank you for unmuting me.
9 Lindsay Agor and then I also have the architect,
10 Patrick Morabito.

11 CHAIRPERSON MIETZ: Okay. One thing, can
12 you just give us your address for the record please?

13 MS. AGOR: Yup. My current address is 387
14 Bonnie Brae Avenue, Rochester, New York 14618.

15 CHAIRPERSON MIETZ: Okay. Go right ahead
16 and please proceed.

17 MS. AGOR: So do I -- I can just take it up
18 from where we kind of left off in the application.

19 MR. DiSTEFANO: Yeah.

20 CHAIRPERSON MIETZ: Yeah. You know, you
21 submitted some clarifications, whatever. You should
22 present what changes or what additional information or
23 what else you have to offer us please.

24 MS. AGOR: So the Board had requested some
25 additional data. And I provided it down -- I think it

1 was down, rather than up. So if we could scroll --

2 CHAIRPERSON MIETZ: Sure.

3 MS. AGOR: Still further. Maybe too far.

4 There. Thank you very much.

5 So I did remove from my original list,
6 you'll see I crossed out 39 Antlers. That was my
7 mistake. I did not realize that Antlers continued
8 across the street on Elmwood. So that's not in the
9 Meadowbrook neighborhood. So that's why that's
10 crossed out.

11 So what you see here is I compared the lot
12 size to the square footage size and then calculated up
13 the maximum square footage allowance for the lot size
14 for the houses that I have discussed about previously,
15 and then calculated out what the overages would be, if
16 there were any.

17 And then just because I like data, I was
18 curious, you know, what the percentage of overage was.
19 So that's the overage as a percentage of the whole is
20 the first percentage. And then overage as a
21 percentage of the maximum allowed is the second
22 percentage.

23 And then I think at the very bottom you will
24 see where 387 as proposed would come in. So it would
25 be 390 square feet above which is 0.134 of -- that

1 size is 11 percent of the total as proposed. And it
2 would be 13 percent above the maximum allowed.

3 I'm so sorry. I thought I had sorted this
4 differently, but obviously I did not. You can see up
5 towards the top there are some other houses in the
6 neighborhood that do go from 0.13 percent all the way
7 up to 0.31 persons. Mainly it's just those three
8 larger ones on the top.

9 And then I additionally went around and took
10 some pictures just so you guy would have as visual if
11 you weren't familiar with driving around in the
12 neighborhood of some of these houses to see that the
13 size-wise and how they're built out because I know
14 some of the concern was that there's house -- that
15 what I'm proposing is essentially doubling -- more
16 than doubling the current size and would it be
17 outside -- sick out like a sore thumb. So I wanted to
18 show you guys kind of the look and the feel of what's
19 around for what people have modified.

20 And then I brought my architect, Pat. And
21 he's welcome to speak as well to speak to the question
22 about how that extra square footage kind of was
23 created by, from my understanding, the angle of the --
24 sorry, my dog was barking, -- the angle of the garage
25 and how it had to be adjusted to allow for safe

1 passage of the corner of the house.

2 CHAIRPERSON MIETZ: Okay.

3 MR. MORABITO: I guess I will start talking.
4 This is Patrick Morabito. I'm the architect for the
5 project.

6 CHAIRPERSON MIETZ: Just give us your
7 address, Pat, if you would just for the record please.

8 MR. MORABITO: My address is 121 Sully's
9 Trail, Suite 4, Pittsford, New York.

10 CHAIRPERSON MIETZ: Okay. Good.

11 MR. DiSTEFANO: Patrick, before you start,
12 can I ask Brendan just move up the site plan so we can
13 look at that footprint.

14 MR. MORABITO: Yeah. You might want to go
15 up to the site plan and then maybe scroll down through
16 the plan itself and I can describe a little bit about
17 what was done and why --

18 MR. DiSTEFANO: Right there.

19 MR. MORABITO: -- variance request.

20 CHAIRPERSON MIETZ: Okay.

21 MR. MORABITO: Okay. So this house is one
22 of the -- the really cute Tudors on Bonnie Brae in
23 that entire neighborhood. It's one of my favorite
24 neighborhoods.

25 Anyway. And it had an attached garage and

1 a -- sort of a trellis on the backside of the garage.
2 We're removing that existing garage and as -- when
3 Lindsay hired us to work on the project, it was
4 twofold. One of them was to renovate her kitchen,
5 provide a family room in generally the space that the
6 garage takes up; and then put in a brand new garage
7 that would then be able to store two vehicles; and
8 then put a master bedroom up on the second floor; and
9 also then create a space that her mom could move into
10 and they could be together. As -- you know, as mom
11 gets older and it would be a really nice thing to be
12 able to do that.

13 So anyway, when we developed this footprint,
14 I don't know if you've noticed, in the letter that I
15 sent you basically our lot coverage is only 21.5. Got
16 to get my glasses. 21.5 and 25 percent is allowed.
17 So the problem in the variance application for the
18 extra square footage is not lot coverage.

19 Basically the -- it's the space generated
20 over the garage to create her mother's apartment. Her
21 mother's apartment is roughly 500 -- a little over 500
22 square feet. And 400 of it is out of compliance with
23 the zoning requirements.

24 So, you know, we had talked about thinking
25 about maybe adjusting the footprint and trying to pull

1 the garage closer to the front of -- front yard. My
2 concern for that is being able to maneuver vehicles in
3 and out properly without taking the side of the house
4 out. So I didn't -- I don't feel that's necessarily
5 the right answer.

6 But as I mentioned the bulk of this square
7 footage that's over the maximum allowable is the space
8 that's generated over the garage. If I took that
9 space and made it -- if it wasn't a finished area over
10 the garage, we would not be before you. You know what
11 I'm saying? It's -- wait a minute. I'd be happy to
12 answer your questions.

13 CHAIRPERSON MIETZ: Could you just -- could
14 you just tell us, you know, the size of, we'll call,
15 the suite, the 500-square foot, you know, what other
16 alternatives were there? Is it the minimum? What --
17 how did you approach the size of that area?

18 MR. MORABITO: Perhaps you could scroll down
19 to the second floor and I could kind of walk you
20 through what it is. Okay.

21 So that her -- the mother's area is the area
22 over the garage, which includes the sitting area,
23 the -- which has a little kitchen in it, a bath and
24 bedroom. So what we wanted -- what Lindsay's goal was
25 was not only provide a space for her mom to be able to

1 share the house, if you will, but also a way to -- a
2 place she could go and have some privacy and have some
3 autonomy. And that's why we ended up doing this
4 scenario.

5 Even if he we took and limited this project
6 to a bedroom and a bathroom, I still think we would be
7 over because, again, the area of that is the -- the
8 sitting area, bath three, bedroom, landing going down
9 to the first floor, that's pretty close to -- it's a
10 little over 500-square feet. I could open my CAD file
11 because I have the numbers on there if you wanted to
12 look --

13 CHAIRPERSON MIETZ: That's close enough I
14 think.

15 MR. MORABITO: It's basically 500 square
16 feet. So in order to comply, I'd have -- I'd have to
17 make that space a hundred square feet. And we all
18 know that that's not going to do -- I mean, it just
19 physically doesn't work from a functional standpoint.
20 I mean, it's a 10 by 10 space basically.

21 CHAIRPERSON MIETZ: Okay.

22 MR. MORABITO: So, I mean, that's really
23 what drove this. Again, if that space was unfinished,
24 there would be no variance application because we
25 would be a couple hundred -- at least a hundred square

1 feet under the maximum. It's all kind of
2 underneath -- it's all underneath the envelope of --
3 or the -- yeah. The envelope of the building. I
4 mean, it's -- anyway. That's what I'm thinking.

5 CHAIRPERSON MIETZ: Okay. All right. So
6 questions by the Board, other Board members please?

7 MR. PREMO: YEAH. This is Member Premo.
8 The decision for the mother's area, that would still
9 be part of the overall house; correct? It won't be a
10 separate living unit?

11 MR. MORABITO: Oh, it's part of the house,
12 yes. It's not a separate -- it's not a separate --
13 not meant to be a separate living unit.

14 MR. PREMO: And for -- and I don't know if
15 this is to Ms. Agor or to you, but one thing I think
16 we may consider is a condition that it be considered
17 part of the house, that it remains a single-family
18 home and that there will not be a separate living unit
19 established there. Is that agreeable?

20 MS. AGOR: Yes, that is. I think we talked
21 about that last time as well --

22 CHAIRPERSON MIETZ: Yes.

23 MS. AGOR: -- if I remember. Yup. And that
24 was perfectly agreeable.

25 MR. PREMO: Okay. Thank you.

1 CHAIRPERSON MIETZ: Okay. Questions by the
2 rest of the Board please.

3 MS. AGOR: I did forget to let you guys know
4 that one of my neighbors had sent an email to me to
5 send over to you guys and I did include that in the
6 packet because I know that was a question about if the
7 neighbors were in support or not.

8 CHAIRPERSON MIETZ: Okay.

9 MS. AGOR: Sorry. About forgetting that.

10 CHAIRPERSON MIETZ: All right. Okay.

11 MR. DiSTEFANO: Just one question,
12 Mr. Chairman, for Pat.

13 So basically Pat, what you're saying is that
14 if this was an open garage -- open rafter garage, to
15 look from the street or to look from the neighbors',
16 you're not going to be able to tell the difference
17 from just the garage there or if that garage had a
18 finished second floor; correct?

19 MR. MORABITO: The only thing you would
20 notice different would have been that side dormer. If
21 you look at the front elevation page and you look at
22 the straight-on elevation of the garage, you see a
23 shed dormer coming off of the side there.

24 MR. DiSTEFANO: That could be -- that could
25 be an architectural feature, again, regardless if

1 there was --

2 MR. MORABITO: Exactly.

3 CHAIRPERSON MIETZ: Living space or not.

4 Right.

5 MR. DiSTEFANO: Okay. Thank you.

6 CHAIRPERSON MIETZ: Okay. Very good. Any
7 other questions by the Board members? Okay. Is there
8 anyone in the audience that would like to speak
9 regarding this application, 1A-05? Okay. There being
10 none, then the public hearing is closed.

11 MS. AGOR: Thank you very much.

12 MR. MORABITO: Thank you.

13 CHAIRPERSON MIETZ: Thank you.

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

15 Application of Clinton Signs, Inc., agent
16 and Dorell, Inc., owner of properties located at 2654
17 West Henrietta Road (Tax ID #148.16-1-15) and 2674
18 West Henrietta Road (Tax ID #(148.16-1-16), for Sign
19 Variances form Section 207-32B to allow for the
20 installation of nonbusiness identification signs on
21 two (2) building's frontage where not allowed by code.
22 All as described on application and plans on file.

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

25 MR. DiSTEFANO: It should be Mike Mammano.

1 MR. MAMMANO: I'm trying. Good evening. My
2 name is Mike Mammano. I'm with Clinton Signs at 1307
3 Empire Boulevard in Webster. And also we have Mike
4 Hobbs with me as well speaking at our sign proposal.

5 We provided quite a few drawings and quite a
6 bit of information as to what we propose to do with
7 the Conway site. There is quite a bit of signage
8 there that we would like to take down and remove and
9 dispose of. And there's a couple signs we want to add
10 as well as a couple we want to move around.

11 It is a little bit confusing on our
12 proposal. I can give you all the square footages and
13 I can tell you what's being deleted, what's being
14 moved. And if you referenced the drawings we
15 provided, it might help a little as well.

16 The site is two property addresses. If we
17 go right to the first drawing, which we're calling PG
18 1, that one right there. We are going to remove
19 pretty much everything you see on the -- over the
20 Conway Volvo Truck and Bus and the two cabinets above
21 as well as the little service hours sign to the right.

22 And then in our after photo the new signage
23 would be the Conway Beam Truck Group and to the left
24 of it a parts sign. There are generally buildings
25 left over there from what used to be service and sales

1 and parts. So they're trying to obviously identify
2 entrances so they get the customers in the right place
3 now.

4 Any questions on that?

5 CHAIRPERSON MIETZ: Can you just describe
6 the signs for us just for the record?

7 MR. MAMMANO: The removals are independent
8 HO high output light box cabinets. The removals of
9 the Empire, the leasing and the Volvo. The Volvo sign
10 we're -- we're going to relocate the Volvo sign.

11 And the Conway letters on the -- on that
12 portion of the building are just plastic letters.
13 Those will be removed and eliminated.

14 The new sign is going to be an aluminum
15 cabinet with individual LED letters on the face of the
16 cabinet.

17 CHAIRPERSON MIETZ: Okay.

18 MR. MAMMANO: The Conway Beam as well the
19 park sign. And the signs are called out in the
20 drawings there.

21 CHAIRPERSON MIETZ: So what's going to light
22 up and --

23 MR. MAMMANO: Just the white.

24 CHAIRPERSON MIETZ: Just the letters. Okay.

25 MR. MAMMANO: Yeah. The blue is the

1 background.

2 CHAIRPERSON MIETZ: Okay.

3 MR. MAMMANO: On the next drawing, which
4 we're calling PG 2, we're going to leave the Mack sign
5 where it is. We're going to take down that small
6 service department with the hours. We're going to
7 eliminate that. We're going to pull that Volvo sign
8 from the other building and put it on this building.
9 And leave the Cummins sign. I think we've got to
10 shuffle the Cummins sign a little bit to the right to
11 make everything fit properly. Okay.

12 MR. DiSTEFANO: So Mike, the Mack sign --
13 obviously the Mack sign and the Cummins sign are
14 currently there.

15 MR. MAMMANO: Yes.

16 MR. DiSTEFANO: Do you know if there are any
17 other variances or everything for those --

18 MR. MAMMANO: I don't know. That was pretty
19 much before my time. That's kind of why we're putting
20 all this proposal together. We're encompassing
21 everything that's on the building and calling out all
22 the square footages.

23 If you look at the beginning of our proposal
24 we're showing -- we're actually going to be
25 eliminating ten signs at 377 square feet. And we're

1 going to only add three new signs at 152 square feet.

2 So if you look at the grand scheme of things
3 a lot is going away. Whether it was permitted or
4 varianced previously, I'm sure there may be some
5 existing variances that I don't know about, but --

6 CHAIRPERSON MIETZ: Rick, the issue on that
7 elevation we're looking at is probably not square
8 footage, it's multiplicity of the signs?

9 MR. DiSTEFANO: Well, it's not even the
10 number of signs because it -- it's the fact that
11 they're not business identification signs. They're
12 product signs basically. And the code is specific
13 that you can allow for business identification only.
14 So product signs is what requires the variance.

15 CHAIRPERSON MIETZ: So at this point there
16 are no variances for this elevation?

17 MR. DiSTEFANO: Not that I'm aware of, no.
18 So I was curious that -- those signs might be up there
19 for eons. I don't know. They may have just gone up
20 without necessary approvals. I'm not sure.

21 But at this point in time what I think we
22 need to do is look at it as a whole, make sure that
23 the variances that we approve, if we approve
24 variances, encompass all of the signage, whether it's
25 existing or proposed, to allow for what they're

1 asking.

2 CHAIRPERSON MIETZ: Okay. That certainly
3 makes sense. So you couldn't find anything related to
4 this buildings --

5 MR. DiSTEFANO: No, I couldn't.

6 CHAIRPERSON MIETZ: Okay. Okay. Questions
7 by the Board members please? Anything? Okay. Very
8 good. Mike -- go ahead.

9 MS. TOMPKINS-WRIGHT: This is Member Wright.
10 Sorry I had trouble getting to the unmute button.

11 Do we have other -- I guess this is more for
12 Rick, do we approve other car dealerships, repair
13 service businesses, et cetera, with that sort of
14 vendor signage or product signage?

15 MR. DiSTEFANO: Yes, we have, Andrea. I
16 think the most obvious one is the Cortese Dodge Ram
17 Jeep building. They basically have their Cortese
18 dealership and then we allowed for them to also have
19 that Dodge Ram Jeep on the building.

20 MS. TOMPKINS-WRIGHT: Okay. All right.
21 Thanks.

22 MR. DiSTEFANO: And also I believe the
23 Kia -- excuse me -- the Hyundai dealership on the
24 opposite side of the road. They came in a number of
25 years ago for some service signs, parts signs, that we

1 did permit to be on the front part of that building.

2 CHAIRPERSON MIETZ: Yeah. Yeah. Those
3 move --

4 MR. DiSTEFANO: This is somewhat common for,
5 you know, this type of business.

6 MS. TOMPKINS-WRIGHT: Okay. Thanks.

7 CHAIRPERSON MIETZ: Okay. Okay. Other
8 questions by the Board? Okay. Very good. Okay.
9 Thank you very much.

10 Is there anyone in the audience that would
11 like to speak? The audience. Oh, boy. Anyone on the
12 call that would like to speak to this application?
13 Okay. There being none, then the public hearing's
14 closed.

15 MR. MAMMANO: Thank you very much.

16 CHAIRPERSON MIETZ: Thank you.

17 **Application 2A-01-22**

18 Application of Daniele SPC, LLC, owner of
19 property located at 2740 Monroe Avenue, for an Area
20 Variance from Sections 203-84B(20)(a) and
21 203-84B(20)(e) to allow for outdoor storage in a side
22 yard unscreened in lieu of the rear yard screened by a
23 6 foot high fence as required by code. All as
24 described on application and plans on file.

25 CHAIRPERSON MIETZ: Okay. Very good. Who

1 is speaking for this application?

2 MR. DiSTEFANO: Jerry's here.

3 CHAIRPERSON MIETZ: Okay.

4 MR. DiSTEFANO: Yeah. Hold on. We'll get
5 you guys.

6 MR. GOLDMAN: Thank you. Mr. Chairman and
7 members of the Board, my name is Jerry Goldman. I'm
8 the attorney and agent for Daniele SPC, LLC, the
9 developer of the Whole Foods plaza.

10 The Whole Foods plaza is located primarily
11 in the BF2 zoning district and has received incentive
12 zoning approval to allow for certain incentives, which
13 basically are variations from the code, in exchange
14 for amenities. That was done through the Town Board.

15 As we have gone forward and developed the
16 site and the site plan, various tenants have come to
17 us with requests, some of which require a variance.
18 In this particular case the Whole Foods store has
19 requested the ability to put outdoor displays in front
20 of their store.

21 Now, with me this evening on this
22 application is Anthony Daniele. We're here this
23 evening to ask for a couple of variances. Because
24 outdoor display and storage is allowed with a
25 conditional use permit in the BF2 district under

1 section 283-849(b). But there are two -- there are
2 two issues relative to that.

3 One is that there's a requirement that
4 outdoor storage and display be in the rear yard. And
5 in addition that outdoor storage and display be behind
6 a 6-foot fence. I think that is more practically
7 applicable to outdoor storage or perhaps outdoor
8 display if you're like a Home Depot are some other use
9 where you would have materials fenced in some area.

10 But outdoor display in general is something
11 which typically has occurred in front of stores
12 throughout -- throughout the Town and elsewhere. And
13 Whole Foods is looking for similarly to allow that to
14 occur here.

15 I have provided a few slides, which I think
16 that Rick or Brendan can display, showing in Town
17 where we have those particular displays out in front.
18 First one, it's not in the application materials.
19 It's in -- there were separate slides. So I'm not
20 sure if they're in there or not. If you don't have
21 them available, I can tell you orally where they are.

22 MR. DiSTEFANO: We do have them. It will
23 just take them a second to get to them, Jerry.

24 MR. GOLDMAN: Okay. That's fine. What we
25 are seeking tonight is -- is area variance relief from

1 those two particular sections. We understand that the
2 Board may not be voting on this tonight. We may be
3 awaiting the Planning Board in addition. I don't know
4 if County Planning has come back with their review.

5 So we are here tonight to pretty much
6 introduce and to explain our proposal and to -- and to
7 seek the Board's review.

8 The first slide that we have is a 7-Eleven
9 Store, which is located at South Clinton and Elmwood.
10 As you can see from the slide, there's a lot of
11 merchandise out in front of the store and that's not
12 untypical.

13 Second slide I believe we have is Weider's
14 Hardware, which is near the Twelve Corners on Monroe
15 Avenue. And in that particular store we do have
16 storage, which is out in front as well. And it's
17 depicted right there.

18 Typically food stores do have these displays
19 and we couldn't get a picture of Tops because Tops
20 right now in Brighton because of the seasonal
21 considerations really doesn't have anything outside.
22 But we do have two slides from Wegmans stores. And we
23 had two slides from Whole Foods. And just like to
24 point out on these that the merchandisers generally do
25 a very good job of keeping these displays in order.

1 And the Whole Foods one you can see in particular are
2 pretty well contained and pretty well shown. So
3 that -- to that extent we believe that relief would be
4 appropriate for this type of a display.

5 We have area variance standards that we have
6 to consider. The primary variance standard is the
7 benefit to the applicant as opposed to any detriment
8 to the health, safety and welfare of the neighborhood.
9 Certainly the applicant and the user is benefited by
10 being able to display their goods out in front,
11 generally seasonal. So to that extent, there is a
12 visual amenity of bringing a new and fresh look to the
13 front of the store. We do not foresee any detriment
14 to the public health, safety and welfare.

15 In addition to that primary legal standard,
16 we have five -- we have five measuring standards,
17 which also have to be evaluated. And they're called
18 out in our letter of intent. We do not believe
19 there's an undesirable change produced in the
20 character of the neighborhood. We also believe that
21 the benefits could not be achieved by some method
22 feasible for the applicant to pursue other than an
23 area variance.

24 We don't believe that this should be
25 considered substantial to the extent that it is

1 contained and it does rotate and is seasonal. In
2 addition to that, we have no impact on the physical or
3 environmental conditions of the neighborhood.

4 This type of display is common. So to that
5 extent we have some degree of self-creation, but
6 because it is common, it is not a disqualifying
7 standard for an area variance.

8 I understand that the letter -- the letter
9 or two letters or three letters or whatever did come
10 in relative to this application. We haven't seen
11 them. I assume that since on the Zoom we have the
12 attorneys for Brighton Grassroots and Save Monroe Ave.
13 Inc. present as well as attorney representative for
14 Clover Allen Street Neighborhood Association, that
15 I'll be hearing for the first time what the arguments
16 are. If, in fact, they're legal in nature,
17 Mr. Chairman, I'd like to reserve a couple of minutes
18 to be able not to address anything factual, but to
19 perhaps make a comment on the legal arguments that may
20 be presented.

21 Anthony, I don't know if you have anything
22 to add at this point.

23 CHAIRPERSON MIETZ: Okay.

24 MR. GOLDMAN: I don't know if he needs to be
25 unmute.

1 MR. DiSTEFANO: Brendan, can you please
2 unmute Anthony and Danny Daniele in case they want to
3 speak?

4 MR. DANIELE: Yeah. I believe I'm unmuted.
5 So I certainly appreciate this Board taking --

6 CHAIRPERSON MIETZ: Anthony -- Anthony, can
7 you just give us your address for the record please?

8 MR. DANIELE: Oh, I'm sorry. Sure. Anthony
9 Daniele, 31 Monroe Avenue, Pittsford 1453.

10 CHAIRPERSON MIETZ: Okay. Great. Go ahead.

11 MR. DANIELE: I just want to say thank you
12 to the Board for considering this. I -- you know, it
13 was our feeling, frankly, when we started this process
14 that outdoor storage was akin to the special use
15 permit for a grocery store since, you know, there are
16 things like shopping carts and other normal activities
17 that you would consider to be part of a grocery store.
18 And, you know, having a pumpkin display before
19 Halloween, you know, we didn't really think it needed
20 variance at all, which is why it was never requested.

21 But as this process has continued and the
22 attacks have continued both to this Board and, you
23 know, to others and -- which I'm sure will continue
24 tonight. But we appreciate the patience of this Board
25 and the thoughtful contemplation. And hopefully this

1 is a relatively simple decision and certainly not
2 something that we would consider to be a -- you know,
3 a big deal. But that's it. Thank you.

4 CHAIRPERSON MIETZ: Okay. Very good.

5 MR. DANIELE: This is Danny Daniele. Just
6 to reiterate real quick with Jerry. The reality is
7 like Jerry said briefly, Whole Foods doesn't intend to
8 do this 12 months out of the year. It's a very
9 seasonal thing, much like some of the other stores.
10 I'm sure once the Wegmans funded opposition groups
11 begin their arguments, just keep in mind that it's
12 just going seasonal. It's not a year-round display.
13 That's all.

14 CHAIRPERSON MIETZ: Okay.

15 MR. GOLDMAN: A final factual comment I'd
16 just like to add, it wouldn't be Halloween without
17 pumpkins out in front of the store I think.

18 CHAIRPERSON MIETZ: All right.

19 MR. GOLDMAN: Thank you very much.

20 CHAIRPERSON MIETZ: Okay, Jerry. Very good.
21 That was inspirational. That's good. Okay. All
22 right. So questions from the Board members for these
23 fine gentlemen?

24 MR. PREMO: Yeah. This is Member Premo.
25 And I guess I'll address it to Jerry. But it might

1 involve the Danieles too.

2 First of all, thank you, Anthony Daniele,
3 for explaining why this wasn't part of the original
4 incentive zoning request. That was -- that was
5 helpful.

6 Jerry, has there been any other area
7 variances granted with respect to this project for
8 other stores since it went through the incentive
9 zoning process?

10 MR. GOLDMAN: There have not, as of yet,
11 since we only have one operating tenant on-site.
12 We -- we haven't really had a need at this point to
13 make any other area variance applications here.

14 But I will say in the context of incentive
15 zoning, we certainly have received area variances for
16 other incentive zoning projects for later discovered
17 needs. In particular I was involved with Jewish
18 Senior Life and on the cottages, the large buildings
19 that are in front of Jewish Senior Life. There were
20 some additional refinements that were made to their
21 plants after -- before construction actually, but
22 after the incentive zoning approval.

23 And we did go through area variance
24 processes. And this Board granted area variances. I
25 don't recall exactly what they were for. I think it

1 dealt with the location of generators and the like.
2 But again, this is not something which was addressed
3 in the Incentive Zoning itself.

4 So if we were to look to vary from an
5 incentive that was granted, there may be a different
6 take on this. But this is -- this is totally separate
7 from anything related to the Incentive Zoning. And
8 the Incentive Zoning only deals with an exchange of
9 incentives and amenities. So it doesn't preclude and
10 the code does not preclude any ability to apply for
11 variances from this Board.

12 MR. PREMO: Yeah. I -- as you said, I
13 suspect that this may be tabled. You know, certainly
14 to the extent there are examples of area variances
15 being granted after incentive zoning, I would
16 certainly be interested in seeing those. I haven't
17 been on the Board long enough to be involved in one of
18 those.

19 MR. GOLDMAN: Okay.

20 MR. PREMO: That might be very helpful to me
21 personally.

22 MR. GOLDMAN: Yeah. Rick should be able to
23 pull out and we can -- we can certainly research it
24 and get that done as well. But those were done as
25 part of the Incentive Zoning I think was granted in

1 2011 or 2015. So it wasn't that long ago.

2 MR. PREMO: Okay.

3 CHAIRPERSON MIETZ: Okay. Very good.

4 MS. SCHWARTZ: Judy.

5 CHAIRPERSON MIETZ: Yes. Go ahead, Judy.

6 MS. SCHWARTZ: I see a difference between
7 having flowered plants neatly displayed and pumpkins
8 versus shopping carts around. I have never seen a
9 supermarket with shopping carts just thrown around out
10 in front. I have seen displays, which I think are
11 fine. But you mentioned shopping carts. Is there not
12 going to be an interior space for them to be stored
13 rather than outside?

14 MR. GOLDMAN: I can let Anthony or Danny if
15 they're unmuted to address it, but I can tell you
16 based on my experience in the Whole Foods -- looking
17 at the Whole Foods Plaza in Buffalo, their carts are
18 stored all inside.

19 MS. SCHWARTZ: They are.

20 MR. GOLDMAN: They have full inside storage
21 areas inside their alcoves. So it's not intended for
22 this to be -- I don't believe it's intended to be a
23 cart corral. So I think, Danny, do you have any
24 additional comments?

25 MR. DANIELE: Yeah. I mean, if I could add,

1 the reason I made that -- that comments, Ms. Schwartz,
2 is because, you know, you often will have carts that
3 are in like collector -- I forget what they actual --
4 what the technical term is -- but out in the park lot,
5 you know a parking spot where you return your carts.

6 And then you're correct. At night the carts
7 are stored indoors. And that's where they will
8 normally be stored. But there are also collection
9 areas outside.

10 MS. SCHWARTZ: Right outside the store?

11 MR. DANIELE: Not right outside the store.
12 I would say in the parking lot.

13 MS. SCHWARTZ: Okay. Because I did see them
14 right up at the front. So it's good to know that it
15 would just be more aesthetically pleasing outdoor
16 seasonal displays. And as far as your benches are
17 concerned, are these going to be like a park bench?
18 Do you anticipate having benches and tables where
19 people will be eating outside? What is the use of
20 those benches primarily?

21 MR. DANIELE: Typically a Whole Foods does
22 have some outdoor seating areas where, you know -- you
23 know Mr. Jones could be inside shopping and Mrs. Jones
24 is sitting outside having a coffee and reading her
25 book or, you know, the kids are waiting outside or

1 something like that. It's -- it is public access. So
2 that's what those benches are for.

3 MS. SCHWARTZ: So there will be eating
4 outside then?

5 MR. DANIELE: Yes. There is no restaurant,
6 but people can get a sandwich and go outside and sit
7 down and have a cup of coffee and eat a sandwich.
8 That's correct.

9 MS. SCHWARTZ: And there will be containers
10 for disposal of --

11 MR. DANIELE: Yes. Yes. Garbage, typical
12 trash receptacles that you would find outside of any
13 store, big grocery store.

14 MR. DANIELE: Right. At the same time if
15 someone wants to take their Starbucks and walk over
16 there, they can do that as well. Or if someone is
17 coming off the path and wants to -- and wants to sit
18 down and use their water bottle or whatever or grab
19 food at either Starbucks or Whole Foods or any place
20 else. If they have stuff in their backpack, if they
21 want to take it out, you know, they're welcome to do
22 it. It is a public seating area.

23 MR. DANIELE: And this is Dan. Just to
24 clarify there is cart storage -- permanent cart
25 storage indoors. Obviously in the wintertime they

1 don't want to store anything outside. The only time
2 there'll be a cart outside is if someone chooses not
3 to bring it back to the corral.

4 CHAIRPERSON MIETZ: Okay. Very good. All
5 right. Other questions by the Board members please?
6 Okay. All right. Okay. If there are no other
7 questions by the Board members, let me open up and see
8 who would like to speak regarding this application.
9 Please identify yourself.

10 MR. MALCOMB: Good evening, Mr. Chairman.
11 Charles Malcomb, representing Save Monroe Avenue. Can
12 you guys hear me?

13 CHAIRPERSON MIETZ: Yes.

14 MR. MALCOMB: Earlier today --

15 CHAIRPERSON MIETZ: Excuse me, Charles. Can
16 you just give us your address please for the record.

17 MR. MALCOMB: Sure 140 Pearl Street,
18 Buffalo, New York 14020.

19 CHAIRPERSON MIETZ: Okay. Great. Go right
20 ahead.

21 MR. MALCOMB: I'm with the law firm Hodgson
22 Russ and I represent Save Monroe Ave. As was
23 mentioned by Mr. DiStefano, I submitted a letter that
24 addressed the application. And I just ask that that
25 be included as part of the public hearing record.

1 I'm just going to go through and highlight
2 some of my main concerns -- some of my client's main
3 concerns with this particular application that we've
4 kind of established in this letter. And I think
5 Member Premo kind of hit the nail on the head and
6 honed in on kind of the threshold issue with respect
7 to this application that the Board needs to wrestle
8 with and I think mandates denial of the application.
9 And that's the jurisdiction of the ZBA to consider the
10 application.

11 And quite frankly, the application was made
12 to the wrong board. As Mr. Goldman noted, this
13 project received an Incentive Zoning approval from the
14 Town Board, which allowed significant deviations from
15 the code, use deviations, setback deviations, all
16 sorts of, in the form of incentives, deviations from
17 the requirements of the code. Those were specified in
18 the Incentive Zoning application. And in exchange for
19 that, the developer was required to identify
20 amenities.

21 Now, we have challenged that approval in
22 court on a number of grounds, including the fact that
23 the amenities were inappropriate for the incentives
24 that were granted. But having said that, what the
25 developer is really seeking is to amend that approval.

1 They want more incentives without modifying the
2 amenities.

3 So quite frankly, if they want to go and
4 change the incentive calculation, they need to do that
5 at the Town Board level, not short circuiting the
6 process in chapter 209 by coming to the ZBA and trying
7 to an end run around the Incentive Zoning process that
8 they themselves chose to utilize for this project.

9 I would also note that if you look at
10 schedule E2 of the Incentive Zoning approval, there's
11 a very specific condition that says "The food market,
12 Whole Foods, shall not exceed 50,000 square foot."
13 While this application seeks to expand the food market
14 into the side yard, which is in excess of 50,000
15 square feet. And quite simply, the ZBA does not have
16 authority to override a condition that the zoning --
17 that Town Board placed on this project through the
18 Incentive Zoning process.

19 So if the developer wants to change the
20 Incentive Zoning formula that the Town Board approved
21 by getting more incentives, and if the developer wants
22 to modify that condition of the Incentive Zoning
23 approval by having more retail space than what was
24 allowed by expanding the market into the side yard,
25 they have to go to the Town Board and get the Town

1 Board's approval to do that.

2 With respect to SEQRA, I'm not exactly sure
3 what they're trying to do here, because in the
4 application materials there's a short environmental
5 assessment form that describes the action as only
6 approval of outdoor display in front of a Whole Foods
7 store. Now, it looks like they're trying to segment
8 the SEQRA review from the remainder of the project and
9 ask this Board to issue a neg dec for some pallets in
10 front of the store. That's improper for a number of
11 reasons.

12 Number one, as I mentioned, this Board
13 doesn't have any jurisdiction. So it's not an agency
14 and can't make a case or determination of any kind,
15 but even if you assume just for arguments sake that
16 the Board does have jurisdiction, the Board would be
17 an involved agency and would have to issue SEQRA
18 findings before making any determination with respect
19 to this project.

20 With respect to the area variance factors
21 the -- I think quite frankly the effort to satisfy
22 those factors was little light on facts and substance.
23 You know, for the first time I saw some proposed
24 renderings of what this outdoor storage/display was
25 going to look like. In the undesirable change factor,

1 there was some conclusory language by Mr. Goldman that
2 it's not going to have an impact, but there was really
3 no explanation or examples. Tonight there was some
4 examples, but there was really no commitment on what
5 these displays were going to look like other than some
6 pictures of other stores' displays.

7 Now there were some variations. Quite
8 frankly, I thought the 7-Eleven display looked like a
9 disaster. You know, having pallets of washer fluid on
10 the sidewalk, I think that would be an undesirable
11 change in the neighborhood.

12 How's that going to affect the pedestrian
13 access? Is there going to be room for pedestrians to
14 be able to walk safely? Is -- what's the visibility
15 going to be like particular with respect to -- from
16 the roadways and the Auburn Trial? Those are things
17 that we haven't had any information on with respect to
18 application.

19 The factor of whether this -- the objectives
20 can be achieved through some other method. Well, I
21 mentioned the other method is go to the Town Board and
22 modify your Incentive Zoning approval, which is the
23 required path. But also there's no discussion of why
24 the interior of the store is insufficient for these
25 displays within the 50,000 square foot retail

1 limitation that the Town Board set in the Incentive
2 Zoning approval.

3 On the substantial factor, you're talking
4 about locating the outdoor storage display in a
5 completely different location and then removing the
6 fencing completely to make it entirely visible.
7 That's a massive difference from what the code allows.
8 So under any definition that's substantial.

9 So -- and the developer admits it's
10 self-created and that this is something that should
11 have been included in Incentive Zoning approval -- or
12 the Incentive Zoning request in the first place.

13 So these are just some of the issues that we
14 have with this application. And for these reasons we
15 believe the application should be denied by the ZBA
16 and this application should be directed towards the
17 Town Board. Thank you.

18 CHAIRPERSON MIETZ: Okay. All right. And
19 who else do we have that is interested in speaking
20 regarding this application.

21 MR. ZOGHLIN: Hi there. This is Jacob
22 Zoghlion to be heard.

23 CHAIRPERSON MIETZ: And your address, Jacob.

24 MR. ZOGHLIN: Yes. My office address is 300
25 State Street, Suite 502, Rochester, New York 14614.

1 I'm an attorney with the Zoghlin Group and represent
2 Brighton Grassroots.

3 We submitted a letter as well regarding this
4 application. And I just ask that that letter be
5 included in the public record related to this matter.

6 So as you guys know, this property involves
7 the BF2 commercial district. But it also has
8 significant overlap with RLA low density residential.
9 And so that's a big consideration in terms of how this
10 is going to impact the neighborhood and the community.

11 As you know, the developer is seeking not
12 just outdoor display and storage in the side yard, but
13 total relief from the requirement of having that
14 6-foot-high screening fence, which obviously is going
15 to impact how that is seen by the neighboring
16 community. This is particularly troubling because the
17 developer expressly told the Planning Board when it
18 was seeking site plan approval that it was not going
19 to seek these permanent outdoor seating or display
20 storage areas for this building. And we've now heard
21 from the developer their apparently intending to use
22 this area not just for outdoor seating, but also to
23 allow people to eat there and that they're seeking
24 this approval via -- they have not sought conditional
25 use permit for, you know, outdoor seating, you know,

1 to allow that type of use. You know, outdoor seating
2 like that for food and eating is only available for
3 legally established restaurants on the same parcel,
4 which doesn't exist here and hasn't been sought.

5 So those are some preliminary things I
6 wanted to mention. For outdoor dining facilities the
7 Town code has a number of requirements that would also
8 need to be addressed and that hasn't been sought here.
9 Town Code Section 202-84 says that outdoor dining
10 facilities shall only operate during the hours of
11 operation of the associated restaurant, which doesn't
12 exist here. Shall only be used for dining by seated
13 patrons. Shall not be used for food or alcohol
14 service. Must be located and configured to ensure
15 safe and unhindered passage for pedestrians and
16 vehicles. We mentioned that, you know, this could
17 obstruct the visibility for pedestrians and vehicles.
18 And it may be required to have aesthetically pleasing
19 barriers such as this screening to ensure safe and
20 unhindered passage.

21 So those are some preliminary things I
22 wanted to address before I get into the area variance
23 discussion. I won't duplicate the discussion that
24 Mr. Malcomb covered regarding jurisdiction and SEQRA
25 review, but we do incorporate those arguments as well.

1 Leading into the area variance analysis, the
2 applicant doesn't even really make any substantive
3 effort to address the criteria for an area variance,
4 which is that the benefits sought by the applicant
5 needs to be outweighed by the -- need to outweigh the
6 detriment to the health, safety, welfare of the
7 community. And in this case it doesn't.

8 The -- the detriment to the health, safety,
9 welfare of the community, far outweighs the meager
10 benefits sought here. And we can apply the five
11 factor test established by State law to see just that.

12 And it's pretty telling that in their
13 application the applicant really doesn't offer any --
14 other than maybe one or two pictures that they
15 submitted for the first time tonight, they offer no
16 independent evidence to support the factor or the
17 required showing and instead rely on self-serving
18 statements -- in from the developers or their
19 attorneys. And those kind of conclusory statements
20 are not the evidence or facts that would be required
21 to support this.

22 So going right on into the five factor
23 analysis. First, the variance here will cause an
24 undesirable change in the neighborhood and create a
25 detriment to the neighbors. Traffic, internal

1 circulation were huge issues during the Incentive
2 Zoning process. But the Incentive Zoning process
3 didn't include any consideration of this new use for
4 which the variance is now sought or how this new use
5 would impact interior traffic circulation, parking,
6 nearby residential communities or the Auburn Trail,
7 which everyone knows, goes right across this property,
8 or any of the other environmental impacts that we
9 believe would be caused here.

10 So this will cause an undesirable change in
11 the neighborhood and a detriment to the nearby
12 properties by effecting exactly these unstudied issues
13 and by creating new outdoor storage and display
14 seating and dining area in a location that would not
15 have otherwise had that and that wouldn't have the
16 intensity associated with those type of uses.

17 This is not just going to harm the
18 commercial district, but also because it's going to be
19 visible from the adjacent RLA district and the Auburn
20 Trail, it's going to harm those neighborhoods and
21 districts as well. It's also plainly going to be out
22 of character with the neighborhood because these uses
23 aren't permitted in these neighborhoods.

24 The outdoor display would also be the first
25 such use on this property. And create an unscreened

1 display visible to the RLA district and the Auburn
2 Trail. And I think it's pretty clear that having a
3 first of its kind, you know, use in an area like this
4 is clearly a change in the community character.

5 Likewise, by having outdoor seating where
6 they admitted that they're inviting unauthorized
7 outdoor dining and congregation is not just storage
8 and display. This is about having people eat there.
9 And, you know, all of the refuse and animals that that
10 could attract, which could also interfere with
11 pedestrian use and, you know, vehicular traffic.

12 You know, these weren't issues that were
13 considered during the SEQRA review, the Incentive
14 Zoning review or the site plan process. So, you know,
15 clearly they're going to be significant changes here.

16 Also the location of these uses is so, so
17 close to the traffic circulation is really uncommon in
18 this community. I mean, most other outdoor dining
19 areas have a lot more space separating where the
20 people are going to be sitting and dining from
21 internal traffic and the resulting exhaust and fumes
22 that are created. And these new unconsidered issues
23 would -- are the reason that the ZBA would have to
24 reopen the SEQRA process as Mr. Malcomb discussed.

25 So, you know, outdoor dining like this is --

1 as we discussed, is really a new use that's going to
2 change this area. And BGR and its members have
3 firsthand knowledge of what is an undesirable change
4 in this neighborhood. And they have firsthand
5 knowledge of the existing community character and what
6 would be a detriment to the nearby properties, because
7 these people live in this area. And as people who
8 live in this area, they have the most direct knowledge
9 and experience of these facts. And the developer has
10 simply not offered any comparable evidence, testimony
11 or knowledge by people similarly situated. So, you
12 know, I think it's pretty clear that they've not
13 satisfied their burden on that fact. And so that
14 weighs against granting area variance.

15 Second, the benefit sought by the applicant
16 can clearly be achieved without a variance. What
17 they're seeking is to have the display visible and
18 accessible to customers. There's no reason the
19 displays have to be outdoors for them to be visible
20 and accessible to customers. An indoor display right
21 inside the entrance would obviously be visible and
22 accessible to them. And there's, you know, the rear
23 yard could also achieve the benefit without requiring,
24 you know, this variance.

25 And, you know, it's kind of a little

1 surprising that they've asserted in their application
2 that -- that it wouldn't -- they wouldn't be able to
3 achieve the benefit if it were in the backyard because
4 the developer has in this exact property a Starbucks
5 building that has outdoor seating in the backyard. So
6 I don't see how they can really make the argument that
7 that's not visible or accessible to the Starbucks
8 customers. So clearly that factor also weighs against
9 granting the variance.

10 Third, the variance is quite substantial.
11 The proposed variance here as we can see on the map
12 that's on everyone's screen covers almost the entire
13 side of the grocery store, which is a pretty large
14 building. And so that's clearly a substantial
15 variance.

16 Also the fact that they're putting this
17 under an outdoor canopy and, you know, putting out
18 benches and stuff for people, they're inviting people
19 to come there and sit and use it for outdoor dining.
20 And as the developer admitted, that's their intention.
21 They want people to eat there, which is a more intense
22 use than was studied or approved by any of the Boards
23 that have looked at this to date and raises new
24 concerns, again, about the related traffic, parking,
25 pedestrian safety and internal circulation.

1 It's also substantial because of how
2 uncommon it is for Brighton businesses to have outdoor
3 seating in side yards and how uncommon it is for
4 grocery stores in Brighton. Neither the Tops store or
5 R's Market has outdoor dining in the side that's being
6 proposed like this. And so by comparison that is very
7 substantial.

8 And lastly, the proximity of those dining --
9 this proposed dining area to the RLA district and the
10 Auburn Trail is much more substantial, you know, than
11 it would be if it was just, you know, in the middle of
12 the commercial area. So I believe this demonstrates
13 that it's substantial and that this factor also weighs
14 against granting the variance.

15 The fourth factor here, the adverse affect
16 or impact on physical or environmental conditions in
17 the neighborhood or distinct also plainly weighs
18 against granting the variance. You know, outdoor
19 seating for dining so close to drive land and parking,
20 it just unnecessarily increases risk, not just to
21 drivers or pedestrians you know -- or not just to
22 diners but also to the pedestrians and motorists
23 especially because they're trying to seek complete
24 relief from the screening requirement.

25 You know, without the required 6-foot tall

1 physical barrier to separate these uses, you know,
2 it's -- you're exposing the diners and pedestrians not
3 just to physical collision, but to internal conflict
4 and exposure to unsafe exhaust and fumes. And to have
5 that right next to an eating area where -- I mean,
6 that's just -- that clearly is a physical and
7 environmental hazard that is really unnecessary, also
8 that they can just have it in their front yard -- or
9 side yard near the entrance, I mean --

10 Also apparently by expanding the size of the
11 store by having more space for the displays and
12 outdoor seating and dining, would have to take space
13 from somewhere else; right? So they're apparently
14 reducing the drive space or the space for the curbside
15 pickup and grocery loading. I mean, it's got to come
16 from somewhere, which by eating into that space would
17 further interfere with internal circulation.

18 So, I mean, these were things that were
19 looked at without this variance during the Incentive
20 Zoning process and the site plan process. And now
21 they're changing all the calculations and
22 considerations that the Planning Board and Town Board
23 carefully, you know -- the things that they
24 considered. So, I mean, that's another reason that
25 these things need to go back to the Board that

1 actually has jurisdiction as Mr. Malcomb discussed.

2 Finally, with respect to the adverse
3 impacts, you know, this is going to obviously have
4 visual impacts, not just to the nearby residential
5 district, but everyone passing by the Auburn Trail. I
6 mean, the comprehensive plan, you know, wanted to
7 promote, you know, the use of the Auburn Trail for
8 recreational purposes. It wanted it to be tranquil
9 and have it be a peaceful area. I mean, the Town is
10 supposed to keep this in park-like conditions.

11 So to have this kind of -- not only is it
12 now surrounded by this massive parking lot and grocery
13 store, but now it's intended for outdoor storage and a
14 dining area. It really makes this an adverse visual
15 impact both from the Auburn Trail and for the nearby
16 residential community. Last -- and so I believe that
17 also weighs against granting the area variance.

18 And I'll wrap up with the last factor, which
19 isn't very difficult to get your head around, which is
20 that the developer and his attorney both admit that
21 this difficulty is self-created. The developer knew
22 the Town Code limits when they proposed this project.
23 And frankly, anyone that has familiarity with the
24 Whole Foods building knows that they would have wanted
25 to do outdoor storage. So they probably knew that

1 they -- that the Whole Foods store wanted this as well
2 when they started this -- the Incentive Zoning
3 project. And yet they still failed to seek this
4 approval from the Town Board, which, you know, the
5 effect of that is that, of course, they're now seeking
6 to modify the deal that they made with the Town Board
7 without going through that process, effectively an end
8 run around that. So in that way the difficulty is
9 self-created and that factor again weighs against
10 granting the variance.

11 So in conclusion the benefit sought is
12 definitely, you know, nothing compares to the harm to
13 the health, safety and welfare of the community. And
14 so the area variance should be denied. Again, there's
15 no jurisdiction here. The developer has not even
16 sought all the approvals required for the anticipated
17 use. They didn't satisfy the five factors. And for
18 these reasons we ask that this application be denied.

19 If, however, the ZBA is inclined to go
20 forward on this, we do believe that it must condition
21 any approval on site plan modification and Incentive
22 Zoning modification essentially saying they have to go
23 back to the appropriate Boards and get approval from
24 them and they would have to reopen SEQRA and consider
25 the adverse environmental impacts.

1 I know there was a lot to go through on this
2 application. Thank you for taking the time to listen
3 to Brighton Grassroots' concerns. I appreciate your
4 time tonight and thank you.

5 CHAIRPERSON MIETZ: Okay. Very good. Is
6 there anyone else on the call that would like to speak
7 regarding this application? Okay.

8 MR. DANIELE: This is Danny Daniele. If I
9 may, I'll be less than two minutes.

10 MR. PREMO: Mr. Chairman, if I could just
11 ask some questions.

12 CHAIRPERSON MIETZ: Oh, yeah. That's fine.

13 MR. PREMO: For Charles and Jacob.

14 CHAIRPERSON MIETZ: Okay, Ed. That's fine.
15 But let me speak first here.

16 Danny, just understand that because I know
17 you guys have had adequate experience with this Board
18 that, you know, I will allow you to add something.
19 That's fine. But this is not going to be an
20 interrogatory discussion about the kind of --

21 MR. DANIELE: I just want to make a
22 clarification.

23 CHAIRPERSON MIETZ: Okay. I just want you
24 to be clear about it. I didn't know what you wanted
25 to say. But I just want to not have to stop you or

1 stop anybody else. So go right ahead though.

2 And then Ed, you can go.

3 MR. DANIELE: So the -- somehow we started
4 talking about outdoor seating. This application is
5 for outdoors display of pumpkins and mums and flowers.
6 That's the extent of it. Whether they want to come
7 back and get outdoor seating, that is not what we're
8 asking for. That's up to the Board. I had no idea
9 that requesting to put some pumpkins and mums outside
10 a store was going to affect the entire Town of
11 Brighton. It's Armageddon.

12 But the other piece I want to add into this,
13 the reason stores put flowers and pumpkins outside of
14 the store and not inside is because it's a living
15 thing. It's got flies. It's got bugs. There's
16 health regulations that stipulate that you should have
17 that stuff outside. They try not to put it inside.
18 They kept on saying there's no reason why you can't
19 put it inside. That's one of the reasons that it goes
20 out there. And just want to clarify that.

21 Again, I apologize. If the Board thinks
22 that pumpkins is going to ruin the Town of Brighton,
23 then by all means, use your judgment. I don't want to
24 do anything to the Town.

25 CHAIRPERSON MIETZ: Gladly consider it all

1 as you know. So thank you.

2 MR. DANIELE: Thank you.

3 CHAIRPERSON MIETZ: All right. So Ed, you
4 had something.

5 MR. PREMO: Yeah. For Charles and Jacob, I
6 guess whoever wants to take this. Obviously saying
7 that the Zoning Board of Appeals has lost its
8 authority given to by Town Laws Section 267(d) is a
9 big deal. In particular given the situation where you
10 have rezonings and the Zoning Board of Appeals still
11 has the authority after rezoning to grant a variance.

12 Do you have any legal support for this idea
13 that Incentive Zoning is somehow different in that it
14 deprives the Board of the jurisdiction granted by the
15 state legislator?

16 MR. MALCOMB: So the Town Code, Chapter 209
17 sets forth the process for Incentive Zoning. So
18 it's -- the developer chose to utilize Incentive
19 Zoning for this particular project. So the zoning on
20 this project and how this particular project is
21 permitted and all of the deviations that have been
22 allowed for this project and the configuration that's
23 been permitted and all the deviations from the
24 impervious surfaces that are allowed, the use
25 deviations, and I think we counted 53 specific

1 deviations from the applicable Code provisions. Those
2 are permitted through Incentive Zoning.

3 And then the Town goes further and
4 conditions the Incentive Zoning approval on the fact
5 that the retail use, the Whole Foods Market, shall not
6 exceed 50,000 square feet. It doesn't say the
7 building, the store. It says the market shall not
8 exceed 50,000 square feet. So you have the developer
9 choosing to utilize Chapter 209. You have -- that
10 process is totally in the Town Board realm. There is
11 no role for the ZBA in Chapter 209. This entire
12 layout, everything that this project is allowed to do
13 versus not allowed to do, is through Incentive Zoning.

14 And when the Town Board approved it, they
15 said the Whole Foods market is limited to 50,000
16 square feet. Now they're coming to you and they're
17 saying, well, despite the fact we told the Town Board
18 what incentives we wanted and how we were going to
19 configure this plaza and we are only going seek these
20 incentives and we were going only provide this
21 amenity, now we're going to ask you for more
22 incentives, but we're not going give a separate
23 amenity and we're going to want to violate the
24 conditions that the Town Board put on the Incentive
25 Zoning approval.

1 So when you combine the Chapter 209
2 requirements, okay, and the fact that the developer
3 chose to utilize that, they could have gone to see you
4 guys in the first place. They didn't have to go to
5 the Town Board. They could have gone under Town Law
6 267(b), gotten all the variances.

7 And I know Danny Daniele's back there
8 laughing, but he knows it's true. They could have
9 gone to the ZBA and gotten 53 variances for this
10 project. But they didn't. They went to the Town
11 Board and used Chapter 209 and got Incentive Zoning.
12 And the Town Board put that condition on there. The
13 ZBA doesn't have authority to relieve them from that
14 requirement.

15 CHAIRPERSON MIETZ: Okay.

16 MR. PREMO: So -- just so I understand what
17 you're saying. You're saying that somehow there's a
18 provision in 209 that deprives the ZBA of
19 jurisdiction?

20 MR. MALCOMB: Chapter 209 Incentive Zoning
21 is the process by which the developer chose to
22 utilize. And there's no role in 209 for the ZBA.
23 That's a Town Board approval. So when this project
24 was approved, it was approved under Incentive Zoning.
25 So that's the first argument.

1 The second argument is that the Town Board,
2 when it approved this particular application, put a
3 condition on the Incentive Zoning approval that said
4 that the Whole Foods Market is limited to 50,000
5 square feet. Then they want to come to the ZBA to
6 essentially override a condition that the Town Board
7 put on the application. And so my point is once you
8 go Incentive Zoning under Chapter 209 for a project
9 approval, because you're approving the whole project
10 under 209, there's no role for the ZBA at an Incentive
11 Zoning project. You get -- the proper procedural
12 path, 209, is to go back to the Town Board and amend
13 your application. Okay? That's the first thing.

14 The second thing is there's a condition on
15 that approval that the Town Board said -- it says you
16 can't have a retail use more than 50,000 square feet.
17 And now they want -- they're asking you to spill out
18 into the side yard with a retail use. So there's two
19 separate bases as to why that's not permitted.

20 CHAIRPERSON MIETZ: Okay.

21 MR. PREMO: You know, certainly I'm not
22 going to keep on arguing with you.

23 CHAIRPERSON MIETZ: Yeah. We really can't,
24 Ed.

25 MR. PREMO: I'd be curious to see any legal

1 precedent you may have on that point.

2 CHAIRPERSON MIETZ: Okay. That's fair.
3 And, again, you know, we really have to take the
4 opportunity to --

5 MR. PREMO: I'm not arguing with you. I was
6 raising questions. I just want to be clear.

7 CHAIRPERSON MIETZ: Okay.

8 MR. MALCOMB: No. I appreciate the
9 question. You know, I know Mr. Goldman cites some
10 past precedent of a prior Zoning Board of Appeals that
11 may have tried it. I -- you know, I'm happy to
12 provide further briefing on this subject, you know, in
13 advance of further meetings. But I think it's pretty
14 clear under Chapter 209 that if you look at it there's
15 no role for the ZBA. And we all know who chose to go
16 Incentive Zoning.

17 And the condition is a separate issue. It's
18 not -- it's a Town Board condition that limits what
19 the developer can do. And so they're asking you
20 essentially to overrule the Town Board.

21 MR. GOLDMAN: We are not. We are not --

22 MR. MALCOMB: Think about what kind of a
23 position --

24 CHAIRPERSON MIETZ: Okay. Hold on. Hold
25 on.

1 (Simultaneous conversation)

2 CHAIRPERSON MIETZ: That's enough. Okay. I
3 mean, I don't want to have to mute you guys. I mean
4 everyone understands what happens with these comments.
5 And the Board has to take the opportunity to
6 deliberate. You all have offered your opinions.
7 That's what they are. And, you know, that's our job
8 to be able to ascertain what we believe to be the case
9 or verify or whatever we would need to do. But we're
10 not going to have a debate here. It's not an
11 appropriate forum for it when we allow people to
12 speak.

13 So if somebody else on the call has
14 something else to add that would like to speak, I'm
15 happy to do that. But I'm not happy to entertain, you
16 know, a discussion where we're going back and forth
17 trying to figure out who's right or wrong or what not.
18 Okay?

19 Go ahead, Jerry. You're muted, Jerry.

20 MR. GOLDMAN: I'm not going to engage in a
21 debate with chuck. Okay? I only want to say that we
22 strongly disagree with every single one of the
23 positions that he has taken. And note, you can't have
24 a decision tonight because County Planning has not
25 come back. So to that extent instead of having a

1 verbal haranguing back and forth, we would like to
2 just state that we are going to respond in writing to
3 the letter that we haven't seen yet and the oral
4 comments that we've received this evening. I don't
5 want to extend this board's evening any further since
6 we aren't going to get to any decision anyway.

7 CHAIRPERSON MIETZ: Okay.

8 MR. GOLDMAN: But I want to be on the record
9 to say we disagree with each and every point.

10 CHAIRPERSON MIETZ: Okay. That's fine.

11 MR. GOLDMAN: And Jacob too.

12 CHAIRPERSON MIETZ: All right. I appreciate
13 that. Okay. Is there anyone else that would like to
14 speak regarding this application? Okay. Thank you
15 very much. At this point the public hearing is
16 closed. Okay. Let's move on.

17 MR. GOLDMAN: Mr. Chairman, if we close the
18 public hearing, I don't want to preclude our written
19 response coming in. And I know -- and I know that we
20 will hear from other counsel that -- if the public
21 hearing is closed that further written submission
22 cannot be considered. So I am asking either to allow
23 this Board to allow us to have a written submission to
24 be included in the record or to hold the hearing open.

25 CHAIRPERSON MIETZ: Okay. How about --

1 we'll discuss that in the deliberations as it relates
2 to it. It's our general procedure when we finish the
3 comments to close the public hearing at that point.
4 We can decide to do otherwise if we, you know, so
5 choose. And you can hear that in the deliberations.
6 Okay? But I take your point.

7 All right. Are we all set then, Rick?

8 MR. DiSTEFANO: Yes. Ken, do you have
9 anything you want to offer or no?

10 MR. GORDON: No. I was just going to echo
11 what Dennis just said, which is I think when we take
12 this project up to discuss as the Board, we'll discuss
13 what we'll do about -- my guess is is that
14 Mr. Malcomb, Mr. Zoghlin and Mr. Goldman are all going
15 to want to be able to submit additional papers. And
16 so we can discuss how we're going to make that happen.

17 I suspect that those papers are going to be
18 more in the nature of legal argument then they are
19 going to be anything factual for the record per se.
20 So it may be okay to close the record with the
21 understand that we will be receiving --

22 CHAIRPERSON MIETZ: Okay.

23 MR. GORDON -- legal arguments from counsel.
24 We'll talk about it later.

25 CHAIRPERSON MIETZ: Agreed.

1 MS. SCHWARTZ: Dennis, I think there's still
2 one hand up.

3 MR. DiSTEFANO: No. I think we're -- we're
4 done.

5 MS. SCHWARTZ: You're done? Okay.

6 MR. DiSTEFANO: Yeah.

7 CHAIRPERSON MIETZ: Okay. All right.

8 MR. DiSTEFANO: It's your call,
9 Mr. Chairman, but I think we've heard everything that
10 we need to hear.

11 CHAIRPERSON MIETZ: Okay. Yeah. The old
12 business.

13 MR. DiSTEFANO: So we're done with the
14 public hearing. So if you want to take a break.

15 CHAIRPERSON MIETZ: Yes. Does anyone need
16 five minutes?

17 MR. DiSTEFANO: Yeah. Why don't we take a
18 five-minute break?

19 MR. PREMO: Five minutes sounds good.

20 CHAIRPERSON MIETZ: Very good.

21 (End of public hearing.)

22

23

24

25

1 REPORTER CERTIFICATE
2
3
4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing proceeding, which was taken down
8 by me in a verbatim manner by means of machine
shorthand.

9 Further, that the proceeding was then
10 reduced to writing in my presence and under my
11 direction. That the proceeding was taken to be used
12 in the foregoing entitled action. That the said
13 deponent, before examination, was duly sworn by me to
14 testify to the truth, the whole truth, and nothing but
15 the truth, relative to said action.

16
17
18
19
20 *Holly E. Castleman* -----
21 HOLLY E. CASTLEMAN,
22 Notary Public.
23
24
25

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

9
10 PRESENT:11 DENNIS MIETZ
12 Chairperson13 EDWARD PREMO) Board Members
14 HEATHER MCKAY-DRURY)
15 MS. TOMPKINS-WRIGHT)
16 JUDY SCHWARTZ)
17 KATHLEEN SCHMITT)18 KEN GORDON, ESQ.
19 Town Attorney20 RICK DISTEFANO
21 Secretary

22 BRENDAN RYAN

23 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
24 FORBES COURT REPORTING SERVICES, LLC
25 21 Woodcrest Drive
Batavia, NY 14020

1 CHAIRPERSON MIETZ: Okay. See we'll go
2 through the agenda and then we can go through the old
3 business; correct?

4 MR. DiSTEFANO: Correct.

5 CHAIRPERSON MIETZ: Okay. All right. So I
6 guess at this point we'll start with applications
7 12A-03 and 12A-04 which is the property at 30
8 Jefferson Road. So Andrea, I know you have one of
9 those applications and Heather has the other. Do we
10 want to do --

11 MR. DiSTEFANO: Why don't we start with the
12 use variance and --

13 CHAIRPERSON MIETZ: Yeah. That's fine.
14 Okay. All right. So thoughts by the Board members on
15 the use variance?

16 MS. TOMPKINS-WRIGHT: I wrote up the
17 application -- I wrote up the approval for this. I
18 felt like it was -- it did demonstrate the lack of
19 ability to have a reasonable economic return for the
20 property based on the costs of renovations. I also --
21 just the fact that the property being the size that it
22 is, the location that it is, and the size of the
23 building itself and the lack of a connection to sewer,
24 you know -- I worked in real estate. I don't see any
25 kind of industrial office use ever coming into this

1 property and ever being used. It is clearly meant for
2 someone sort of an open concept retail store.

3 I did confirm -- that was why I asked, Rick.
4 My only concern was whether or not liquor store versus
5 some kind of other open-concept-type retail store, if
6 that was an expansion of a previous variance, for lack
7 of a better term. And our Code treats liquor the way
8 that they treat all other retail stores. So I am
9 convinced that they meet all the criteria and this is
10 a better use for this property than what it is
11 currently.

12 CHAIRPERSON MIETZ: Okay. Other thoughts by
13 the Board?

14 MR. GORDON: Technically, if I could just --

15 CHAIRPERSON MIETZ: Yeah. Go ahead.

16 MR. GORDON: Let me just comment on what
17 Andrea just said. Technically there are a few retail
18 uses that are allowed in the IG. So we don't treat
19 all retail establishments the same. I just want to
20 make that point. So there are a few retail uses, the
21 ones that come to mind are vaping retail. That
22 certainly is allowed under the Vaping Law.

23 I know that the Town Board is about to next
24 week adopt the Cannabis Law, which is going to allow
25 cannabis establishments in IG as retail as well. So

1 just be aware of that.

2 MR. DiSTEFANO: Ken, you might want to add
3 adult uses, for instance adult bookstores --

4 MR. GORDON: Right.

5 MR. DiSTEFANO: -- as permitted in the IG
6 zoning district.

7 MR. GORDON: Yup.

8 MS. SCHWARTZ: After listening to all of
9 you, I think this is the best use.

10 CHAIRPERSON MIETZ: Okay.

11 MS. SCHWARTZ: Well -- and the thing of it
12 is, I think truly -- I mean this has gone back for
13 eons and eons. From what they're doing, I think this
14 business will lend itself to really cleaning up the
15 site. And I think it's really needed. So, you know,
16 that's my two cents.

17 CHAIRPERSON MIETZ: Okay. Any other
18 comments by the rest of the Board related to the use
19 variance?

20 MR. PREMO: No. I'm for it.

21 CHAIRPERSON MIETZ: Okay. Yeah. And I
22 agree too. I mean, those of us who've been on the
23 Board awhile know the history of this property. I
24 mean, it looks -- the investment here looks real.
25 And, you know, obviously cleaning up this location,

1 you know, not at the guise of bringing in some type of
2 a business is going be a detriment to the area, which
3 I don't believe a liquor store would be, then I think
4 then, you know, the applicant's ability to get some
5 kind of return out of this property for carrying it
6 for this many years seems reasonably. Okay, Andrea --

7 MR. DiSTEFANO: Andrea and Heather, just so
8 you guys think about this as your conditions, please
9 remember that it does require site plan modification
10 approval from the Planning Board.

11 MR. GORDON: And we need a SEQRA
12 determination on this.

13 MR. DiSTEFANO: And we need a SEQRA
14 determination as part of your approvals.

15 CHAIRPERSON MIETZ: Okay.

16 MR. GORDON: And last thing before they
17 start, Dennis, I'm sorry. Is it possible for Brendan
18 to take down the Whole Foods plan while we go
19 through -- thank you.

20 CHAIRPERSON MIETZ: Okay. There we go.
21 Okay. So let's handle just 12A-03. And then we'll
22 speak with Heather a bit about 12A-04. Go ahead
23 Andrea.

24 MS. TOMPKINS-WRIGHT: Quick question. Do we
25 need to condition the use variance on site plan

1 approval by the Planning Board because while I
2 understand that certainly any kind of parking variance
3 would need that condition, I'm wondering if saying,
4 hey, look, however you can figure out how to put a
5 liquor store on this site, we would be okay with it,
6 even it ends of being, you know, different -- you
7 know, I guess that's my thought.

8 Obviously to put anything on the site is
9 going to require Planning Board approval I would
10 assume, but does it really need to be a condition? I
11 guess that's my question.

12 MR. DiSTEFANO: I don't think it hurts. And
13 I kind of like -- the parking variance and use
14 variance go hand in hand. You can't have one without
15 the other because there's no place really to park on
16 that lot except for in the front yard.

17 I do think it's important that the use
18 variance -- the only use variance that could be
19 permitted that might not need a parking variance would
20 be a gas station, repair shop which is allowed use in
21 the district.

22 So I don't think there's any use variance
23 that wouldn't need some form of site plan modification
24 and front yard parking. So I think it's certainly
25 something that we should add to both the approvals.

1 MS. TOMPKINS-WRIGHT: Okay got it. Okay.

2 CHAIRPERSON MIETZ: All right. Go ahead
3 please.

4 MS. TOMPKINS-WRIGHT: Sorry. I'm trying --
5 I didn't realize I needed --

6 MR. DiSTEFANO: Yeah. I sent it over in
7 that email to you yesterday along with the statement,
8 yesterday's email.

9 MS. TOMPKINS-WRIGHT: Let me grab it.
10 Sorry.

11 MR. DiSTEFANO: It's an attachment, the
12 SEQRA statement.

13 MR. PREMO: You had one specifically for
14 this one; right?

15 MR. DiSTEFANO: There is a -- yes. There is
16 a -- as attached to the information --

17 CHAIRPERSON MIETZ: Right.

18 MR. DiSTEFANO: There is a neg dec specific
19 to this application.

20 MS. TOMPKINS-WRIGHT: Got it. Yeah. Thank
21 you.

22

23

24

25

1 **Application 12A-03-21**

2 Application of Jerry Goldman, attorney, and
3 Jagdish Kaur, owner of property located at 30
4 Jefferson Road, for a Use Variance from Section
5 203-93A to allow a retail liquor store to be located
6 in an IG Light Industrial District where not allowed
7 by code. All as described on application and plans on
8 file.

9 The board having considered this information
10 presented by the applicant and having conducted the
11 required review pursuant to SEQRA with respect to
12 application 12A-03-23 adopts the negative declaration
13 prepared by Town staff and determines that the
14 proposed action will not likely have a significant
15 environmental impact.

16 Motion made by Ms. Tompkins-Wright to
17 approve Application 12A-03-21 based on the following
18 findings of fact.

19 **Findings Of Fact:**

20 1. Under the applicable zoning regulations the
21 applicant has been deprived of a reasonable economic
22 use or benefit from the property in question, which
23 has been demonstrated by competent financial evidence.
24 The property has been vacant since 2002 and was
25 actively marketed from at least 2017 through 2020 and

1 passively marketed from 2020 through the present by a
2 realtor with little interest and only one offer that
3 did not survive attorney review. Interest in the
4 property was almost exclusively for retail uses, which
5 are generally not permitted in the zone. The high
6 cost associated with renovating property for an
7 attractive permitted use would outweigh the market
8 value of that renovated property and thus also be
9 unable to produce a reasonable economic return.

10 2. The need for a use variance here is unique to the
11 applicant's property and does not apply to a
12 substantial portion of the neighborhood and is not
13 self-create as it stems from the limited size and
14 shape of the property, which is well under the minimum
15 lot size and lot depth per Code, as well as the very
16 limited size of the building, which is not conducive
17 to offset general industrial uses, but which would be
18 conducive to an open floor retail use such as the
19 proposed liquor store. It is also due to its lack of
20 public sewer hookups that limit its utility and
21 attractiveness for uses permitted in the district.

22 3. The requested use variance will not alter the
23 essential character of the neighborhood as the
24 property was previously used as a convenience store
25 with gasoline sales. And thus a return to a retail

1 store is consistent with the neighborhood
2 historically.

3 4. The use variance requested is the minimum
4 necessary to grant relief from the hardship as there
5 are no other uses more suitable for this site that
6 would produce income and that would comply more
7 closely with the Zoning Code or be more consistent
8 with historical uses. In fact, this use variance
9 represents a reduction from the variance previously
10 granted at this site.

11 5. There is no evidence that the health, safety and
12 welfare of the community will be affected by the
13 granting of this variance.

14 **Conditions:**

15 1. The use approved pursuant to this use variance
16 shall be as a liquor store only.
17 2. This approval is conditioned upon all approvals
18 and necessary permits including Planning Board approval.

19 (Second by Ms. Schwartz.)

20 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;
21 Mr. Mietz, yes; Mr. Premo, yes;
22 Ms. Schwartz, yes; Ms. Tompkins-Wright,
23 yes.)

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

1 MR. DiSTEFANO: Can you -- Andrea, do you in
2 any way want to be specific on the use itself in this
3 approval or do you feel that we're approving per what
4 they requested for the application.

5 MS. TOMPKINS-WRIGHT: My -- my findings of
6 fact all refer to it as a liquor store. So I think we
7 could condition it if we want, but I think that
8 we're -- they presented it as liquor store, we're
9 approving it as a liquor store.

10 MR. DiSTEFANO: Typically we state that just
11 so it's clear --

12 MS. TOMPKINS-WRIGHT: Okay.

13 MR. DiSTEFANO: -- just so in the future if
14 somebody pulls it out, they don't have to go back to
15 the minutes to figure that out.

16 MS. TOMPKINS-WRIGHT: Okay. So I'll -- the
17 condition number 1 will be the use approved pursuant
18 to this use variance shall be as a liquor store only.
19 And number two all necessary Board approvals and
20 permits shall be obtained including without limitation
21 Planning Board Approval.

22

23

24

25

1 CHAIRPERSON MIETZ: Okay. All right. So
2 next we have the parking situation. Again, this is a
3 longstanding issue again too. So what are people's
4 thoughts on that one? Heather, you have this one.
5 Did you have specific thoughts?

6 MS. MCKAY-DRURY: I approved it as an
7 approval, which sounds consistent with how Member
8 Wright had reviewed it as well. I didn't have any
9 concerns given that it seems necessary in order to
10 have the liquor store there.

11 CHAIRPERSON MIETZ: Okay. Very good. Does
12 anyone else have any other comments related to that?

13 MS. TOMPKINS-WRIGHT: I'm good.

14 MR. PREMO: I think that's good.

15 CHAIRPERSON MIETZ: And there's a lot of
16 improvements on this site obviously on this drawing
17 compared to what we see there today.

18 MR. PREMO: That's good, Judy, you brought
19 out there's going to be landscaping and stuff.

20 MS. SCHWARTZ: Yeah. Yeah. Thank you.

21 MS. MCKAY-DRURY: I did want to actually
22 during our discussion talk about should that be a
23 condition?

24 MS. SCHWARTZ: Yes.

25 MS. MCKAY-DRURY: A separate condition?

1 MR. DiSTEFANO: I think you can make it a
2 general condition because if it gets tweaked by the
3 Conservation Board, the Planning Board, I think we
4 would be okay with that as a Board. I'm kind of
5 speaking for you guys. I think we'd be okay with
6 that.

7 And the Conservation Board and the Planning
8 Board might have a little more expertise in maybe, you
9 know, what plant materials should be used and maybe a
10 little more green space here rather than there. But I
11 definitely think you need to add something there.

12 MS. SCHWARTZ: Can't we say something
13 that -- I don't know the right wording, but that
14 they're -- it's good to see that there is landscaping
15 planned to mitigate the front yard parking.

16 MR. DiSTEFANO: That would be a finding.
17 That would be a finding.

18 MS. SCHWARTZ: Oh, yeah. Yeah. Okay.

19 MR. DiSTEFANO: And then the condition there
20 that they do something similar to what was submitted.

21 MS. SCHWARTZ: Okay.

22 MR. DiSTEFANO: However, let the Planning
23 Board and Conservation Board have the ability to
24 modify that.

25 CHAIRPERSON MIETZ: Yeah. Generally --

1 Rick, generally how we've handled this, I think, is
2 that we would say something in the effort of -- you
3 know, efforts shall be made to screen or to enhance or
4 whatever we'd like --

5 MR. DiSTEFANO: I want to be more specific
6 than that, Dennis, because they submitted that as part
7 of the -- as part of the package. But I don't want --

8 CHAIRPERSON MIETZ: I understand that.

9 MR. DiSTEFANO: -- to be so specific that we
10 tie them into that plan.

11 CHAIRPERSON MIETZ: Right. The plan does
12 show landscaping, but I think the comment that was
13 made in the discussion was, you know, is there
14 something additional and the applicant suggested that
15 they might consider something additional. That was
16 what the comment was.

17 MR. DiSTEFANO: Well, the plan -- actually
18 the plan shows more than just landscaping. It shows
19 additional green space. It shows the reduction of
20 pavement.

21 CHAIRPERSON MIETZ: Correct.

22 MR. DiSTEFANO: So I want to make sure part
23 of that is they're going to reduce the pavement like
24 they said. They're going to add landscaping like they
25 said. But I don't want to tie their hands that they

1 can't fluctuate that a little bit per Planning Board
2 and Conservation Board. That's all.

3 CHAIRPERSON MIETZ: Okay. Yeah. And I
4 think typically we never do that because we're not
5 landscape designers or anything.

6 MR. DiSTEFANO: But sometimes we tie them
7 into the site plan. So I don't want to tie them into
8 the specific site plan.

9 CHAIRPERSON MIETZ: You might have to help a
10 little bit.

11 MR. DiSTEFANO: I think Heather's probably
12 got this.

13 CHAIRPERSON MIETZ: All right. Let's hear
14 it and then go from there. Okay, Heather. Go right
15 ahead.

16

17

18

19

20

21

22

23

24

25

1 **Application 12A-04-21**

2 Application of Jerry Goldman, attorney, and
3 Jagdish Kaur, owner of property located at 30
4 Jefferson Road, for an Area Variance from Section
5 205-18A to allow front yard parking where not allowed
6 by code. All as described on application and plans
7 on.

8 File.

9 The Board having considered the information
10 presented by the applicant and having conducted the
11 required review pursuant to SEQRA adopts the negative
12 declaration prepared by Town staff and determines that
13 the proposed action will not likely have a significant
14 environmental impact.

15 Motion made by Ms. McKay-Drury to approve
16 Application 12A-04-21 to allow a small amount of front
17 yard parking where prohibited by code based on the
18 following findings of fact.

19 **Findings of Fact:**

20 1. The requested variance will not produce an
21 undesirable change in the character of the
22 neighborhood. The property is a former site of a gas
23 station. The variance is consistent with approvals
24 previously granted and the neighboring commercial
25 properties that are visible on the site plans as

1 submitted, which also some of them feature front yard
2 parking. The plans also show screening through green
3 space and landscaping that will encourage there not to
4 be a change to the character of the neighborhood.

5 2. The benefit sought cannot be achieved through
6 other means then the variance. The property is
7 located on a corner and thus has two fronts. Based on
8 the size, configuration and lack of a public sewer,
9 it's virtually impossible to construct any building on
10 the site of sufficient size to allow customer access
11 absent having the front parking.

12 3. The requested variance is not substantial for the
13 parking at a proposed retail store, specifically a
14 liquor store, where customers will not be staying for
15 long periods of time.

16 4. The variance requested is the minimum necessary to
17 grant the relief for the difficulty faced given the
18 orientation of the current structure and the septic
19 system including septic fields in the rear of the
20 building which cannot have parking, the front parking
21 is necessary.

22 5. The proposed variance will not have an adverse
23 effect on the physical or environmental conditions of
24 the neighborhood. There's already an existing parking
25 lot in the front of the lot. And the plan entails

1 actually removing some of the asphalt.

2 **Conditions:**

3 1. The variance only applies to the present
4 application and testimony. It will not apply to
5 additional parking considered in the future and not
6 included in the present application.

7 2. This variance is subject to the applicant
8 obtaining necessary inspections including site plan
9 modification from the Planning Board approvals and
10 SEQRA review.

11 3. That some efforts will be made consistent with the
12 plan with respect to general purposes of adding green
13 space, reducing pavement, and providing for
14 landscaping to create some barrier between the road
15 and the visibility of the front yard parking.

16 (Second by Mr. Premo.)

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

20 (Upon roll motion to approve carries with
21 conditions.)

22

23

24

25

1 MR. DiSTEFANO: And I would just change
2 number 1. We use -- I think maybe instead of
3 structures, additional parking. So if you could read
4 that back and instead of saying structure, say
5 possibly additional parking.

6 MS. MCKAY-DRURY: Okay. So just amending
7 the first condition. The variance only applies to the
8 present application and testimony. It will not apply
9 to additional parking considered in the future and not
10 included in the present application.

11 MR. DiSTEFANO: Thank you.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: So we have three to do
2 that relate to the same property on Town Line Road.
3 That's 1A-03, 04 and 2A-02. So we can talk about
4 them, but we'll obviously have to deal with them on an
5 individual basis as far as the action.

6 So the first one, you know, relates, you
7 know, to the front setbacks. Again, this project
8 materially was represented and I think, Rick, when
9 staff reviewed again, there were no material changes;
10 correct?

11 MR. DiSTEFANO: That's correct. It's the
12 same plan.

13 CHAIRPERSON MIETZ: Yeah. So basically this
14 is something that we have attacked before. And, you
15 know, the front setback issues are all along Brighton
16 Henrietta Town Line Road in that area. Judy, it's
17 yours. Do you have thoughts about it?

18 MS. SCHWARTZ: I am not in favor of it. I'm
19 really not. I just -- I mean, it's just such an
20 environmentally sensitive area. And I just think
21 they're going to make matters worse.

22 I have a problem with saying it's, you know,
23 economically feasible. There is a way to do it. And
24 I think that we need to start thinking about the
25 welfare of our community and especially that area. I

1 mean, Town Line is very sensitive. And they can put a
2 two-story in. They may not want to, but I will not
3 approve -- I mean I would deny a one-story as it is.

4 To me it's a very substantial variance.

5 Okay? I mean it should be 75 feet and they only want
6 42. I just -- I can't see it.

7 CHAIRPERSON MIETZ: Okay. Well let's go
8 around the room on this one then. Ed, what do you
9 think about it please?

10 MR. PREMO: Go ahead.

11 CHAIRPERSON MIETZ: Question or --

12 MS. TOMPKINS-WRIGHT: It's just a question
13 because -- kind of a -- Rick, typically when we are
14 granting an extension or something like that on an
15 approval, you'll actually give us copies of our
16 approvals from a previous one. I understand that this
17 is a brand new approval because too much time has
18 passed, but is there a possibility to email us now a
19 copy of the approval from the last version? Because
20 these are all repeats. I mean, we discussed this and
21 voted on this and decided on it. Not that we have to
22 do the same decision, but I think it would be helpful
23 to see what we said about it and voted that time.

24 MR. DiSTEFANO: Yeah. Kind of a funny
25 story, Andrea. When I went to look for that because I

1 was going to email all you guys, I went back to look
2 specifically for the EPOD encroachment decision. And
3 for some reason that entire decision was left out of
4 the minutes. Although I know we approved it.

5 MS. TOMPKINS-WRIGHT: Yeah. I remember it.

6 MR. DiSTEFANO: Right. But for some reason
7 I couldn't find it. It was back in 2019.

8 MR. PREMO: Well, I --

9 MR. DiSTEFANO: So, you know, I think we
10 just need to recreate the -- if we are going to
11 approve it, just recreate the approval process.

12 CHAIRPERSON MIETZ: Yup. Okay.

13 MR. PREMO: I think it is relevant to our
14 considerations because to the extent we have granted
15 prior variances and approvals, you really should
16 extend them unless you can point to the change in
17 conditions. And --

18 MR. DiSTEFANO: I don't disagree with that,
19 Ed.

20 MR. PREMO: Yeah. So I'm particularly
21 interested in what he did before.

22 MR. DiSTEFANO: We approved everything. We
23 gave everything extensions and then the extensions
24 lapsed. So that's why they're back under basically a
25 brand new applications.

1 So you're correct in if the Board had
2 approved the variances in the past, unless something
3 drastic has happened to the area for whatever reason,
4 I think it's difficult for us now to say, no, you
5 don't get the variances.

6 MR. PREMO: Yeah.

7 MR. DiSTEFANO: I don't see enough changing
8 out there to preclude the variances being granted.

9 Now, again, that doesn't mean a member back
10 two, three years ago may not have approved it then.
11 That's their right to continue to feel that there is
12 something that is not -- that there's something to be
13 done to lessen their impact.

14 MR. PREMO: Well, I -- based upon that
15 history, my understanding and even having driven by
16 the site, I would -- I would tend to approve all these
17 variances.

18 CHAIRPERSON MIETZ: Okay. Very good. All
19 right. Heather?

20 MS. MCKAY-DRURY: The concern sounded to be
21 primarily environmental. What approvals were already
22 granted and will those be redone now?

23 CHAIRPERSON MIETZ: Go ahead. I'm not sure
24 I understand --

25 MR. DiSTEFANO: Yeah. I am not sure of the

1 question Heather. The three applications that we're
2 hearing tonight from them, they were all approved in
3 2019 --

4 CHAIRPERSON MIETZ: Previously.

5 MR. DiSTEFANO: -- and then extended in
6 2020. And then they fell away after that.

7 MS. MCKAY-DRURY: Do they have a negative
8 declaration SEQRA review?

9 MR. DiSTEFANO: The SEQRA review was done
10 back in 2019 both from the Planning Board and this
11 Board and basically given a negative declaration,
12 which you guys have that in your packet.

13 So I think they mitigated the encroachment
14 into the EPOD. I mean, that's what we're here to
15 discuss. Did they mitigate it enough for us to feel
16 that, one, it's not environmental -- it's a negative
17 declaration that we can issue; and, two, it's not
18 creating a substantial variance into that
19 encroachment.

20 MS. SCHWARTZ: And the reason I did what I
21 did is because I did not like it the first time
22 around.

23 CHAIRPERSON MIETZ: That's fine.

24 MS. SCHWARTZ: So. Just to let you know.

25 CHAIRPERSON MIETZ: All right. Okay.

1 Heather, did you have other comments about this?

2 MS. MCKAY-DRURY: No. I mean, I'm inclined
3 to believe that if we granted it in the past, unless
4 something has changed, we should continue that.

5 CHAIRPERSON MIETZ: Okay. Very good. Okay.
6 Kathleen?

7 MS. SCHMITT: Well, I understand Judy's
8 concerns and I -- it did give me pause, I think for
9 the reasons Heather just stated, we have to go with
10 what we did in the past without someone being able to
11 identify a significant change or really any change.

12 CHAIRPERSON MIETZ: Okay. Very good.
13 Andrea?

14 MS. TOMPKINS-WRIGHT: I remember this
15 application and I was a yes then. I thought -- I
16 think it was the application -- I think we spent more
17 time talking about the last -- two years ago. But I
18 think it's a good project for this location and I
19 think that they've mitigated the negative effects of
20 it.

21 CHAIRPERSON MIETZ: Very good. I agree. So
22 I guess, Judy, you really do not favor 1A-03. So
23 would someone else be willing to present this one? Or
24 I guess we can work together. Andrea, would you be
25 willing to help with it?

1 MS. TOMPKINS-WRIGHT: It's always me.

2 MR. PREMO: It's because you're good on your
3 feet, Andrea. That's why.

4 CHAIRPERSON MIETZ: And all that extensive
5 education you have.

6 MS. TOMPKINS-WRIGHT: I want to make sure --
7 I want to look and see if I actually have -- just to
8 see if I wrote the application last time.

9 CHAIRPERSON MIETZ: I don't remember. Yeah.
10 I remember the exhaustive discussion about it, but I
11 don't -- I don't remember who did it.

12 This is the setback, so this one isn't too
13 bad. We're doing 1A-3.

14 MS. TOMPKINS-WRIGHT: Yeah. Sorry. My
15 computer just froze. I tried to run a word search
16 for --

17 CHAIRPERSON MIETZ: Oh.

18 MS. TOMPKINS-WRIGHT: And now my computer is
19 frozen. I'll wing it a little bit.

20 CHAIRPERSON MIETZ: Okay. We can help.

21 MS. TOMPKINS-WRIGHT: I move to approve --
22 oh, I need a SEQRA. Have to find it again.

23 MS. MCKAY-DRURY: Question, does the whole
24 motion have to be stated by one member?

25 CHAIRPERSON MIETZ: For the record -- I

1 mean, anybody can chime in. We always work together
2 on these, Heather. So it's fine.

3 MS. MCKAY-DRURY: Because I could read that
4 if Andrea's having computer --

5 CHAIRPERSON MIETZ: Yeah. Just for speed,
6 sure. Go right ahead.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **Application 1A-03-22**

2 1A-03-22 Application of FSI

3 Construction/Frank Imburgia, owner of property located
4 at 3300 Brighton Henrietta Town Line Road, for an Area
5 Variance from Section 205-8 to allow an office
6 building to be constructed with a 42 foot front
7 setback (Brighton Henrietta Town Line Road frontage)
8 in lieu of the minimum 75 foot front setback required
9 by code. All as described on application and plans on
10 file.

11 The Board, having considered the information
12 presented by the applicant and having conducted the
13 required review pursuant to SEQRA, adopts the negative
14 declaration prepared by Town staff and determines that
15 the proposed action will not likely have a significant
16 environmental impact.

17

18

19

20

21

22

23

24

25

1 MR. GORDON: Hold on. Hold on. Since we
2 have two members making motions here, let's just vote
3 on Heather's motion that you just made.

4 CHAIRPERSON MIETZ: Okay. We can do it that
5 way if you want. That's fine.

6 MS. TOMPKINS-WRIGHT: I second.

7 MR. DiSTEFANO: Motion is to adopt a
8 negative declaration for 1A-03-22.

9 (Mr. Premo, yes; Ms. Schwartz, no;
10 Ms. Tompkins-Wright, yes; Mr. Mietz, yes;
11 Ms. Schmitt, yes; Ms. McKay-Drury, yes.)

12 (AUpon roll motion to adopt the negative
13 declaration passes.)

14 MR. GORDON: Now you can proceed with the
15 main motion.

16
17
18
19
20
21
22
23
24
25

1 Motion made by Ms. Tompkins-Wright to
2 approve Application 1A-03-22 based on the following
3 findings of fact.

Findings of Fact:

1. The granting of the requested variance will not
2 produce an undesirable change in character of the
3 neighborhood or be a detriment to nearby properties.
4 The existing property is zoned technology office park
5 and thus, the removal of the current single-family
6 home and construction of a new 10,000 square-foot
7 office building and associated parking will not appear
8 out of place in the neighborhood.
- 9 2. The requested variance is not substantial in light
10 of the fact that all other available alternatives for
11 placement of the building would create a significantly
12 smaller setback and would be a more substantial
13 setback on the property.
- 14 3. The benefit sought by the applicant cannot
15 reasonably be achieved by any other method or without
16 a variance. The applicant demonstrated previously as
17 well as through current testimony a series of plans
18 submitted to the Town for consideration that would
19 meet the applicant's needs. However, none of which
20 would have provided more mitigation of setback
21 variance or be more aesthetically pleasing or

1 appropriate for the site.

2 4. There is no evidence that the proposed variance
3 will have an adverse effect or impact on the physical
4 or environmental neighborhood or district.

5 **Conditions:**

6 1. The variance granted herein applies only to the
7 building described in and the location as depicted on
8 the application and in the testimony given.
9 2. All necessary Planning Board approvals shall be
10 obtained.

11 (Second by Mr. Premo)

12 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;
13 Ms. Schwartz, no; Mr. Mietz, yes; Mr. Premo,
14 yes; Ms. Tompkins-Wright, yes.)

15 (Upon roll motion to approve carries with
16 conditions.)

17

18

19

20

21

22

23

24

25

1 MR. DiSTEFANO: I had number two and I can
2 help you out with the condition because --

3 MS. TOMPKINS-WRIGHT: Okay.

4 MR. DiSTEFANO: Number 2, all necessary
5 Planning Board approvals shall be obtained.

6 Basically the first one was what we had the
7 last time and two, all necessary Planning Board
8 approvals.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: Okay. So the next one
2 is the EPOD, which is 1A-04. Any thoughts about that?
3 Again, this was approved professionally. Thoughts?
4 Concerns?

5 MR. PREMO: I think it's the same issue. We
6 previously approved. So let's go.

7 CHAIRPERSON MIETZ: Okay. Very good. Okay
8 I have this. So let's do the SEQRA, right, Rick,
9 first?

10 MR. DiSTEFANO: Please.

11 MR. PREMO: Since it's a neg dec for the
12 same project, doesn't the neg Dec cover all these?

13 MR. DiSTEFANO: Yeah. I think it would.
14 And maybe we just make the statement that the neg dec
15 as adopted in 1A-03.

16 CHAIRPERSON MIETZ: That's fine. Is that
17 okay, Ken?

18 MR. GORDON: So if my recollection serves me
19 well, I think that each of the neg decs refers
20 specifically to the applications. I mean, to answer
21 Ed's question that he's not asking, couldn't we have
22 done all three of these applications under one? We,
23 sure. We could have, but we didn't get them --

24 MR. PREMO: Sorry.

25 MR. GORDON: Let's make it happen with neg

1 dec on this one.

2 CHAIRPERSON MIETZ: Okay, then. We can make
3 that so. It's one of the easier things we do.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **Application 1A-04-22**

2 Application of FSI Construction/Frank
3 Imburgia, owner of property located at 3300 Brighton
4 Henrietta Town Line Road, for an Area Variance from
5 Section 203-129B to allow a new office building and
6 other site improvements (e.g. parking area) to
7 encroach into the 100 foot natural vegetative
8 watercourse EPOD buffer where not allowed by code.
9 All as described on application and plans on file.

10 The Board, having considered the information
11 presented by the applicant and having conducted the
12 required review pursuant to SEQRA, adopts the negative
13 declaration prepared by Town staff and determines that
14 the proposed action will not likely have a significant
15 environmental impact.

16 Motion made by Mr. Mietz to approve
17 Application 1A-04-22 based on the following findings
18 of fact.

19 **Findings of Fact:**

20 1. The approval of this variance will not present a
21 negative change in the character of the neighborhood
22 or subject areas since the project will enhance
23 landscaping and restoration of the buffer area.
24 2. No other alternative designs will meet the
25 objectives of the applicant to use the property for

1 the intended purpose.

2 3. The variance requested is the minimum necessary to
3 meet the needs of the applicant and will cause no
4 negative impact to neighboring similar properties.

5 **Conditions:**

6 1. It's based on the testimony given and plans
7 submitted.
8 2. All necessary Planning Board approvals shall be
9 obtained.

10 (Second by Ms. Tompkins-Wright)

11 (Mr. Premo, yes; Ms. Schwartz, no;
12 Ms. McKay-Drury, yes; Ms. Schmitt, yes;
13 Ms. Tompkins-Wright, yes; Mr. Mietz, yes.)

14 (Upon roll motion to approve carries with
15 conditions.)

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: No we got Bonnie Brae we
2 got to do.

3 MR. DiSTEFANO: No. While we're on this,
4 let's get go to 2A --

5 CHAIRPERSON MIETZ: Oh, that's right. I'm
6 sorry. That's right. I forgot. I had put them all
7 together. So the last one related to 3300 is front
8 yard parking.

9 MS. MCKAY-DRURY: I have that one.

10 CHAIRPERSON MIETZ: Is there any concerns
11 there by any of the Board members?

12 MS. MCKAY-DRURY: No, not for me.

13 CHAIRPERSON MIETZ: Anyone else?

14 MR. PREMO: No.

15 CHAIRPERSON MIETZ: Yeah. I'm okay with it
16 too. Okay, Heather.

17

18

19

20

21

22

23

24

25

1 **Application 2A-02-22**

2 Application of FSI Construction / Frank
3 Imburgia, owner of property located at 3300 Brighton
4 Henrietta Town Line Road, for an Area Variance from
5 Section 203-164A to allow front yard parking (along
6 Brighton Henrietta Town Line Road and Canal View
7 Boulevard) Where not allowed by code. All as
8 described on application and plans on file.

9 The Board, having considered the information
10 presented by the applicant and having conducted the
11 required review pursuant to SEQRA, adopts the negative
12 declaration prepared by Town staff and determines that
13 the proposed action will not likely have a significant
14 environmental impact.

15 Motion made by Ms. McKay-Drury to approve
16 Application 2A-02-22 based on the following findings
17 of fact.

18 **Findings of Fact:**

19 1. The proposed variance will not create a
20 substantial change in the neighborhood or subject
21 area. The area is commercial and industrial in
22 nature. The location of the parking is similar to
23 other uses in the area including multiple lots across
24 Brighton Henrietta Town Line Road. And the plan will
25 enhance the landscaping buffer between the parking and

1 the road.

2 2. The difficulty necessitating the variance can't be
3 solved in another manner not involving variances.

4 Moving the parking further north to avoid a front
5 setback would result in the need for rear and side
6 setbacks, but parking within the floodplain and
7 floodway limits.

8 3. The requested variance is not substantial. It is
9 for 67 parking spaces in total, not all of them
10 located directly in front along Brighton Henrietta
11 Town Line Road. And the variance request is the
12 minimum necessary to grant relief from the difficulty.

13 4. Other alternative plans would require other
14 variances and impact the pre-existing environmental
15 features on the site.

16 5. The proposed variance is consistent with
17 surrounding properties so as to not have an adverse
18 effect on physical or environmental conditions of the
19 neighborhood. Again, front parking is part of the
20 plan that most limits the impact on the environmental
21 areas on the site.

22 6. Though not strictly required, the difficulty which
23 leads to this variance was not self-created and the
24 environmental features are pre-existing.

25 **Conditions:**

1 1. The variance only applies to the present parking
2 lot layout as submitted in the current application and
3 testimony. It will not apply to additional parking
4 considered in the future.

5 2. All necessary Planning Approvals must be obtained.

6 (Second by Ms. Tompkins-Wright.)

7 (Mr. Premo, yes; Mr. Mietz, yes;

8 Ms. Schmitt, yes; Ms. Schwartz, no;

9 Ms. Tompkins-Wright, yes; Ms. McKay-Drury.)

10 (Upon roll motion to approve carries with
11 conditions.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. DiSTEFANO: Heather, can I suggest some
2 conditions for you.

3 MS. MCKAY-DRURY: Yes, you may.

4 MR. DiSTEFANO: I suggest number 1, the
5 variance applies only to the parking lot layout as
6 shown on the plans submitted and per testimony given.
7 And may I suggest application number two, all
8 necessary Planning Board approvals shall be obtained.

9 MS. MCKAY-DRURY: Okay.

10 MR. DiSTEFANO: Do you accept my
11 suggestions?

12 MS. MCKAY-DRURY: I do accept them. I also
13 would like input with respect to a landscaping or
14 green space condition.

15 MR. DiSTEFANO: How do you want to word
16 that?

17 MS. MCKAY-DRURY: I think that a general
18 condition similar to the other front parking one could
19 be helpful where we're not expressly limiting them to
20 exactly what's in the plan, but that there be some
21 kind of buffer. So that's what I propose to do.

22 MR. DiSTEFANO: I think I need a little
23 something more specific so it will reflect in the
24 record of exactly how we're proposing that condition.

25 CHAIRPERSON MIETZ: Are we -- what we're

1 discussing is the mitigation of landscaping for the
2 front parking setback? You want something, Rick, more
3 specific as to location?

4 MR. DiSTEFANO: No. I think I want --

5 CHAIRPERSON MIETZ: This is kind of what we
6 were talking about in the other one.

7 MR. DiSTEFANO: Well, the other one was a
8 little more specific because it hadn't gone to
9 Planning Board and was going to. This has already
10 gone through preliminary Planning Board approval. And
11 going back for final -- or actually they're just going
12 back after they came from the Planning Board. I don't
13 think we need it here, Heather, to be honest with you.
14 I don't think in this case -- the plan is the plan
15 that you're seeing. The Planning Board has already
16 seen that plan. They haven't seen the 30 Jefferson
17 Road yet.

18 CHAIRPERSON MIETZ: Yeah. There's a
19 difference.

20 MS. MCKAY-DRURY: Okay. I understand the
21 distinction. So I would propose the following two
22 conditions.

23 One, the variance only applies to the
24 present parking lot layout as submitted in the current
25 application and testimony. It will not apply to

1 additional parking considered in the future.

2 Two, all necessary Planning Approvals must
3 be obtained.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: Now we move over to the
2 Bonnie Brae. We go some additional information
3 submitted. Ed, thoughts?

4 MR. PREMO: Yeah. This is mine, Dennis.
5 The last time I was -- I guess wanted more
6 information. I've been satisfied personally by what
7 was given. I thought it was quite comprehensive. I
8 thought the comments from the architect was extremely
9 helpful. I suggest that we approve the variance.

10 CHAIRPERSON MIETZ: Okay. Does anyone else
11 have any concerns from either the last discussion or
12 this one tonight?

13 I agree -- I personally agree with Ed that
14 they certainly cleared up -- getting the data was
15 certainly helpful. Okay. Any other thoughts by
16 anyone else related to this?

17

18

19

20

21

22

23

24

25

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 form 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 Motion made by Mr. Premo to approve
10 Application 2A-05-22 based on the following findings
11 of fact.

12 **Findings of Fact:**

13 1. The requested area variance is for a single-family
14 use. It is a Type II action pursuant to 6 NYCRR §
15 617.5(c)(17) and no further action is required
16 pursuant to SEQRA.

17 2. The requested area variance is the minimum
18 variance necessary to address the benefit sought by
19 the applicant. The applicant wishes to expand the
20 livable floor area to allow living area for the
21 applicant's mother and to allow better configuration
22 for the garage. The applicant's architect has
23 submitted information establishing that the extra
24 390.2 square feet of floor area is necessary to meet
25 these goals.

- 1 3. No other alternatives can alleviate the difficulty
- 2 and produce the desired result. The applicant has
- 3 submitted testimony that her efforts to purchase a
- 4 larger home in the area have been unsuccessful.
- 5 4. There will be no unacceptable change in the
- 6 character of the neighborhood and no substantial
- 7 detriment to nearby properties. The applicant has
- 8 submitted substantial information that the proposed
- 9 size of the home, the lot coverage and requested
- 10 variance are in line with existing conditions of many
- 11 properties in the area.
- 12 5. While the overall increase in livable area is
- 13 large, the requested variance is not substantial. The
- 14 requested variance is for 390.2 square feet for
- 15 approximately 13 percent over code and similar to
- 16 other properties in the area.
- 17 6. While the need for the variance may be
- 18 self-created, the applicant has shown she has
- 19 considered other options which did not work. To the
- 20 extent the variance need is self-created, it does not
- 21 prevent the granting of the variance.
- 22 7. The health, safety and welfare of the community
- 23 will not be adversely affected by the approval of the
- 24 variance.
- 25 8. The public record will include all submissions

1 herein including the letter from applicant's
2 architect, Patrick J. Morabito, and the applicant's
3 additional 37-page submission on the 20 largest houses
4 in the area and email of Maryn Karahan, dated
5 January 29, 2022.

6 **Conditions:**

- 7 1. The variance is based on the application submitted
8 including various drawings, plans and testimony and
9 only authorizes the project described therein.
- 10 2. Subject to all necessary Building Department
11 permits and inspections and approval by the
12 Architectural Review Board.
- 13 3. That the additional living space shall remain
14 connected to the whole house, that the expanded house
15 constitutes a single-family unit and no separate
16 living unit will be established.

17 (Second by Ms. McKay-Drury.)

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

21 (Upon roll motion to approve carries with
22 conditions.)

23

24

25

1 CHAIRPERSON MIETZ: Okay. Next we have the
2 signage changes on the Beam Mack building over on West
3 Henrietta Road. Does anyone have -- let's see. It's
4 Kathleen. I think it's your application. What are
5 your thoughts, Kathleen?

6 MS. SCHMITT: I did not have a problem with
7 it.

8 CHAIRPERSON MIETZ: Okay. All right. Does
9 anyone have any concerns about it? And it's clearly a
10 big improvement. So we got to thank them for their
11 help. All right.

12 And, Rick, do you have some thoughts about
13 the issue of the multiple signs? I mean --

14 MR. DiSTEFANO: I think that we need and I
15 think realizes that we condition it just upon signs
16 that were --

17 CHAIRPERSON MIETZ: Proposed.

18 MR. DiSTEFANO: -- shown in this
19 application. No additional signs in the future. All
20 necessary Architectural Review and Planning Board
21 approvals need to be obtained. And you might want
22 to -- I know they talked about square footage in that.
23 You might want to limit the square footage, total
24 square footage allowed.

25 CHAIRPERSON MIETZ: Okay. We don't have the

1 calculations. So we -- what you're suggesting is that
2 we limit it to the signs that were proposed and as
3 depicted, or whatever, then -- is that going to be
4 good enough for you?

5 MR. DiSTEFANO: Yeah. That's going to be
6 good enough.

7 CHAIRPERSON MIETZ: Okay.

8 MR. DiSTEFANO: And I think also square
9 footage is shown in the application. You don't need
10 to be specific with the square footage. I thought it
11 was shown somewhere on the drawings, but maybe not.

12 CHAIRPERSON MIETZ: Okay. Okay. Kathleen,
13 are you comfortable with all that?

14 MS. SCHMITT: Hopefully I was a fast
15 scribner taking down some additional notes.

16
17
18
19
20
21
22
23
24
25

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

2 Application of Clinton Signs, Inc., agent
3 and Dorell, Inc., owner of properties located at 2654
4 West Henrietta Road (Tax ID #148.16-1-15) and 2674
5 West Henrietta Road (Tax ID #(148.16-1-16), for Sign
6 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 The Board, having considered the information
11 presented by the applicant and having conducted the
12 required review pursuant to SEQRA, adopts the negative
13 declaration prepared by Town staff and determines that
14 the proposed action will not likely have a significant
15 environmental impact.

16 Motion made by Ms. Schmitt to approve
17 Application 1A-06-22 based on the following findings
18 of fact.

19 **Findings of Fact:**

20 1. The variance request is to allow the installation
21 of non-business identification signs and two
22 buildings' frontage were not allowed by the code.
23 2. The variance results from the applicant redoing
24 their signage to eliminate many existing signs for a
25 total net reduction of 220 feet of signage.

1 3. The elimination of some of the existing signage
2 will clean up the appearance of the front of the two
3 buildings and will be an overall improvement to the
4 look of those buildings.

5 4. While some of the proposed signs are non-business,
6 they relate to the business operation and will assist
7 the public in identifying the proper entry points for
8 sales and service.

9 5. The buildings are in a commercial area on a main
10 thoroughfare.

11 6. The granting of this variance will not produce an
12 undesirable change in the character of the
13 neighborhood or be a detriment to nearby properties in
14 that there are similar variance requests granted
15 regarding signage to nearby properties for vehicle
16 sales.

17 7. There's no evidence that there will be a negative
18 impact on the health, safety, and welfare of the
19 neighborhood.

20 **Conditions:**

21 1. The variances will apply only to that which is
22 described in the application and testimony provided
23 and limited to the signs in the application itself and
24 will not apply to future projects.

25 2. Applicant must obtain Architectural Review Board

1 and Planning Board approvals.

2 (Second by Ms. McKay-Drury.)

3 (Ms. Schwartz, yes; Ms. Tompkins-Wright,

4 yes; Mr. Premo, yes; Mr. Mietz, yes;

5 Ms. McKay-Drury, yes; Ms. Schmitt, yes.)

6 (Upon roll motion to approve with conditions

7 carries.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: Okay. So next we're
2 going to Whole Foods on the outdoor storage and et
3 cetera, et cetera, et cetera. Okay.

4 MS. MCKAY-DRURY: Can I just say something
5 before we get started. In consultation with the Town
6 attorney and in light of my employment with the New
7 York State Attorney General's Office and out of an
8 abundance of caution, I'm going to recuse myself from
9 these applications.

10 CHAIRPERSON MIETZ: Okay. That's probably
11 wise. Okay. Thank you. So just to open here and
12 then we can chitchat about it here. Obviously we
13 received those additional materials at the eleventh
14 hour tonight. And obviously we heard all of the
15 discussion back and forth. So there's a lot of
16 material to absorb here.

17 So why don't we go around and at least get
18 general thoughts on this. Andrea?

19 MR. GORDON: Actually, Dennis, if I could --

20 CHAIRPERSON MIETZ: Go ahead.

21 MR. GORDON: So I also read through the
22 letters submitted by SMA and BGR for the first time
23 today just like all of you did. And I would like an
24 opportunity to have some time to do some research and
25 give some serious consideration to the arguments they

1 raised --

2 CHAIRPERSON MIETZ: Agreed.

3 MR. DiSTEFANO: Ken froze.

4 CHAIRPERSON MIETZ: Ken, Ken.

5 MR. GORDON: I am going to suggest -- I do
6 believe that Mr. Goldman -- yeah. Go ahead.

7 MR. DiSTEFANO: You're freezing up, Ken.

8 That's all.

9 MR. GORDON: All right. I'm sorry. I
10 also -- I also understand that Mr. Goldman and
11 Mr. Zoghlin and Mr. Malcomb all likely want an
12 opportunity to submit legal arguments. I would like
13 to give them the opportunity to do that. I think the
14 mechanism to do that is to close the public hearing
15 and allow counsel to submit legal memorandum to the
16 Board secretary by a fixed date. I would suggest two
17 weeks from today, February 16th, to give them time to
18 submit it and then give us all time to see them,
19 review them, think about them, and --

20 MS. SCHMITT: Can I just -- rather than
21 close, only because I'm curious as to what the other
22 board might say. And based on that I might have some
23 questions. So --

24 MR. GORDON: What do you mean what the other
25 board might say?

1 MS. SCHMITT: I thought -- and, again, not
2 feeling a hundred percent.

3 CHAIRPERSON MIETZ: Go ahead.

4 MR. DiSTEFANO: Kathleen --

5 MS. SCHMITT: In the letter --

6 MR. DiSTEFANO: You're right.

7 MS. SCHMITT: In the letter -- pardon?

8 MR. DiSTEFANO: You're right. It does need
9 Planning Board approval.

10 MR. GORDON: It does. Yes.

11 MS. SCHMITT: So there seemed to be in the
12 letter that was written that -- and again, I just saw
13 it this afternoon -- but I thought it said there was
14 testimony provided that was contrary and there was
15 some discussion regarding what the Planning Board
16 would be doing. And that seemed to me it might raise
17 questions from us based on what they find.

18 MR. GORDON: So they have not yet presented
19 to the Planning Board. They will be presenting to the
20 Planning Board. We do not need to keep the hearing
21 open to be on notice, administrative notice of what
22 the hearing board finds and determines. And the other
23 thought is if this Board decides that it does want to
24 ask more questions or take more testimony, we can vote
25 to reopen the public hearing.

1 What I don't want to do is give the
2 impression that we're not fully satisfied with the
3 factual information -- that's really the purpose of
4 the public hearing -- that's been presented. The
5 applicant has presented their facts. The opponents
6 have provided facts, but really mostly legal argument.
7 I think really we're done to at this point in time
8 some legal issues. That's why I suggested submission
9 of legal memorandum.

10 And I think it would be most efficient to
11 close the public hearing now and allow them to submit
12 legal memorandum.

13 MR. PREMO: Well, Ken --

14 MS. SCHMITT: May I ask a question though?
15 Because I do have a factual question.

16 MR. GORDON: Yeah.

17 MS. SCHMITT: And that was -- I was curious
18 whether the seating is seating that would allow a
19 parent with a child sit on a bench outside a store and
20 eat a cookie --

21 MR. DiSTEFANO: Yes.

22 MS. SCHMITT: -- type seating, or as Mr.
23 Daniele said, I believe he said someone's going to
24 grab a cup of coffee from the store and maybe sit down
25 because they're tired of their wife shopping or

1 husband shopping inside, or perhaps an elderly person
2 whose worn out from walking across the parking lot and
3 then sitting down type seating, which is pretty common
4 outside of most stores, or having cafe tables outside
5 of what you would think of as a food establishment.
6 And I don't think that was fully answered on what type
7 of seating. And I thought it was perhaps it was going
8 to be answered in some other paperwork that was going
9 to be submitted.

10 MR. DiSTEFANO: Well, can I just say,
11 Kathleen, our outdoor dining is specific to
12 restaurants. There's no restaurant associated with
13 the Whole Foods. Therefore, it's not outdoor dining.

14 MS. SCHMITT: Okay.

15 MR. DiSTEFANO: It's seating. So --

16 MR. GORDON: And, Rick, there's no
17 application to request approval for outdoor dining
18 here.

19 MR. DiSTEFANO: Correct.

20 MR. GORDON: So it was -- it was really --
21 and this is just me as attorney and my opinion, it was
22 really just a straw man that was being set up to get
23 knocked down. There is no application for outdoor
24 dining that is part of this variance application
25 before this Board. It doesn't exist.

1 MS. SCHMITT: I just wanted to make sure
2 because what I did not want to happen was someone to
3 say that the Board was somehow -- if this should be
4 approved that we were somehow deceived or we didn't
5 understand that there would be these benches and these
6 benches would allow people to sit and on these benches
7 people might get a sandwich or a cup of coffee --

8 MR. GORDON: They could buy food down at
9 Wegmans and drive down the block and sit in front of
10 Whole Foods on a bench and eat it. They could smoke a
11 joint.

12 MS. TOMPKINS-WRIGHT: Whoa, Ken. Whoa.

13 MR. GORDON: No. It's true.

14 MS. TOMPKINS-WRIGHT: I'm just joking.

15 MS. SCHMITT: I just want to --

16 MR. GORDON: They could take a nap.

17 MS. SCHMITT: I just want to make sure that
18 the record's kind of more clear that we understood
19 that what kind of chairs they were and that was all
20 right to us or we understood the kind of chairs that
21 were going be there or seating that would be available
22 and we didn't like it and said that we rejected it.
23 That's all I was trying -- to make sure that we were
24 all on the same page.

25 CHAIRPERSON MIETZ: I think the testimony

1 the way the it went, you know, the applicant was asked
2 a direct question, could some sit there and eat
3 something. And I think they answered it honestly,
4 just like Ken is suggesting that on any bench anywhere
5 in Brighton, someone could sit down and eat something.

6 So I think that's, you know, drastically
7 different then saying there's going to be permanent
8 outdoor seating and arrangements made. And I didn't
9 hear anybody asking for that. I don't think it was
10 asserted.

11 MR. GORDON: I thought it was a wonderfully
12 honest answer.

13 CHAIRPERSON MIETZ: Yes. I agree.

14 MR. GORDON: I mean, they could have said,
15 well, no it's not intended for that. But it was a
16 wonderfully honest answer, of course, someone could
17 sit there and eat. You know, they can sit there and
18 whistle Dixie too.

19 CHAIRPERSON MIETZ: That's when we say no
20 good deed gets unfinished; right?

21 MS. SCHMITT: Well, again, I had raised it
22 because it was in the letter that said that there was
23 a section related to seating. And honestly, I think
24 as a parent I always enjoyed, whether it was a bench
25 offered to me, because I frequently had to sit outside

1 with one of them. So I'm not opposed to seating. I
2 just wanted to make sure we're okay with that.

3 MR. GORDON: It's not an outdoor dining
4 application.

5 CHAIRPERSON MIETZ: Okay. I think we got
6 it. All right.

7 MS. TOMPKINS-WRIGHT: I --

8 MR. PREMO: I have a question too after
9 Andrea.

10 CHAIRPERSON MIETZ: Go ahead. Go ahead.

11 MS. TOMPKINS-WRIGHT: Just -- I fully agree
12 about not wanting to open this up to be another back
13 and forth again at a public hearing. The one caveat
14 to that is that I did think that the -- the factors
15 presented by the applicant were rather light, lighter
16 than I would have anticipated and being more
17 conclusory then I would have anticipated them being.
18 And I don't think it would be inappropriate -- in
19 fact, I would think it's appropriate for us to accept
20 some additional factual support about the size of the
21 outdoor displays and is there a little bit clearer
22 definition of what they contain and where they are.
23 Because I don't think their presentation was as much
24 as I would have wanted to approve something that was
25 this contentious as an application.

1 So there are factual things that I feel like
2 I would still like to see some more support for and
3 see some more. I can appreciate that most of what I'm
4 looking for are response letters and a legal analysis
5 to understand what we're really dealing with here.

6 CHAIRPERSON MIETZ: Okay.

7 MR. PREMO: I guess along the same lines of
8 what might be factual or not is as I said, I am
9 interested to know about other Incentive Zoning
10 projects and other variances we've granted for those.
11 Like did St. John's Meadows have an area variance
12 after it was built? Did the Jewish Home, I mean? You
13 know -- and I don't if that's factual information or
14 that's legal information.

15 MR. DiSTEFANO: It's factual information,
16 Ed, in regards, especially, to the Jewish Home because
17 that was the most common. We granted generator
18 location --

19 CHAIRPERSON MIETZ: Maintenance building --

20 MR. DiSTEFANO: -- size and height of
21 accessory structures, fence heights, fence locations.
22 And our Town staff is under the impression that if a
23 variance request has nothing to do with one of the
24 Incentives that the applicant applied for, then the
25 Zoning Board can act on it. If it was -- if they came

1 in for a variance specific to an incentive, we would
2 not act on it. We'd say no, that was an Incentive
3 Zoning approval by the Town Board. You got to go back
4 to the Town Board and for that particular setback or
5 square footage or something like that.

6 But if it's outside of the scope of the
7 Incentive Zoning approval, we can act as a Zoning
8 Board to approve or deny variance requests.

9 MR. GORDON: Yeah. And let me just, you
10 know, step on those coattails, Rick, because, I mean,
11 it struck me as I was listening to the argument that
12 the argument that Mr. Malcomb and Mr. Zoghlin seemed
13 to be presenting is once a project is approved for
14 Incentive Zoning, it no longer qualifies in any way
15 for any variance for what? The life of the project?
16 20 years from now, you know, something, you know,
17 changes and they want to come in for a variance, well,
18 I'm sorry. It was an Incentive Zoning. You've got to
19 go back to the Town Board and -- I just can't imagine
20 that is the scheme that the state legislature had in
21 mind with passing Incentive Zoning laws.

22 And more to the point, I'm very interested,
23 and I know Mr. Goldman and Mr. Zoghlin and Mr. Malcomb
24 are listening in, I'm very interested in seeing what
25 case law they can come up with or statutory reference

1 they can come up with to establish that -- the power
2 of the Zoning Board to grant variances is somehow
3 prohibited or eliminated upon the issuance of an
4 Incentive Zoning application.

5 Ed, you were driving at that point I think
6 in your question. But that's -- you know, if the
7 statute doesn't prohibit it and both of these powers
8 exist statutorily, it doesn't seem sensible that the
9 Zoning Board would somehow say well, we no longer have
10 that power. So, sorry. But if there's something out
11 there, gentlemen, I would be very much interested.
12 And just -- I'm hearing that the Board wants to keep
13 the public hearing open and allow for submissions.
14 And that's fine. That's why you guys get to make the
15 decisions. I just make recommendations.

16 But I will say to you Mr. Malcomb,
17 Mr. Zoghlin and Mr. Goldman, if you're going to get me
18 a legal memorandum, please get it to me by the 16th of
19 February so I have time to read it, do my own
20 research, do my own evaluation and come into the March
21 meeting with, you know, a good recommendation for this
22 Board because that will be very helpful.

23 CHAIRPERSON MIETZ: Okay. Well, we got to
24 fashion all that together. Okay. Okay. So I just --

25 MS. SCHWARTZ: Dennis, it's Judy, I also

1 don't know if -- there really to me
2 wasn't clarification -- I don't know how the others
3 feel, but to me there's a big difference between
4 pallets and storing stuff out there versus a nice, you
5 know, arrangement of flowering pots or even pumpkins.

6 CHAIRPERSON MIETZ: Right.

7 MS. SCHWARTZ: I mean pallets can sit out
8 there for months on end and whatever. So I don't
9 know, you know, what they really meant by storage.

10 CHAIRPERSON MIETZ: Okay.

11 MR. DiSTEFANO: Yeah. And I think -- I
12 can't remember. Somebody was driving towards that
13 point, that give us -- I think Andrea was saying it.
14 Give us a little more idea of what this is going to
15 look like. I mean, I think it really did them a lot
16 of harm by showing 7-Eleven. Because I'll tell you
17 right now, 7-Eleven doesn't have any approvals. You
18 know. They do a lot of things they shouldn't be
19 doing.

20 CHAIRPERSON MIETZ: Okay.

21 MR. DiSTEFANO: So that did them a
22 disservice unfortunately.

23 CHAIRPERSON MIETZ: Okay. We can obviously
24 give them the opportunity for clarity. That's what we
25 do when we act on applications all the time. So --

1 but I guess the question before we move forward is on
2 the public hearing, because I think that's where the
3 debate is going back and forth about our reasons, why
4 we might want to leave it open or close it and what
5 not.

6 So it sounds like the general sentiment of
7 the Board members is we need some additional
8 information. There might be some clarification based
9 on the Planning Board or whatever. And the legal
10 briefs obviously are those and they kind of stand on
11 their own. Obviously the gentlemen are all hearing
12 this discussion. So I don't know that we have to
13 clarify that very much.

14 But what are our thoughts on the public
15 hearing because we do need to clear that up?

16 MR. PREMO: I think we have to leave it
17 open.

18 CHAIRPERSON MIETZ: Andrea?

19 MS. TOMPKINS-WRIGHT: I agree.

20 CHAIRPERSON MIETZ: Okay. Yeah. I kind of
21 agree too.

22 MR. GORDON: And Kathy wanted it open and I
23 don't know about Judy, but --

24 CHAIRPERSON MIETZ: Yeah. And obviously it
25 gives lots of liberty, but I think we have to have

1 some clarity to what information we would like to
2 request as we always try to do because it's unfair to
3 applicants to say we'd like additional information or
4 something and not make it clear what we're looking
5 for.

6 MR. GORDON: And my request for briefs by
7 the 16th is only that, a request. I mean, if you're
8 going to leave the public hearing open, then the rule
9 is, you know, submissions to the Zoning Board of
10 Appeals can be made up through the close of the public
11 hearing. Right? That's the whole point.

12 So it just would be much more helpful to
13 have something in advance --

14 MR. DiSTEFANO: Ken, I will say though, what
15 would be -- when we table a public hearing and
16 leave -- table an application and leave the public
17 hearing open, it's usually because we want additional
18 information from the applicant. And we always put a
19 stipulation that that information has to come in two
20 weeks prior to the meeting date.

21 I don't understand why we should hold the
22 applicant any different than anybody else in this case
23 wanting to submit information to us to try to prove a
24 point. Sure, they can submit it when they want, but I
25 don't know to what degree we have to review it.

1 CHAIRPERSON MIETZ: But -- yeah.

2 MR. GORDON: Let me just speak to that,
3 Rick, because I think it's important. I think it is
4 absolutely required that if factual information,
5 testimony and evidence is presented to the Board at
6 any time up until close of the public hearing, that is
7 part of the record and this Board is obligated to
8 consider it. How much weight it gives, that's a
9 different issue. But it must consider it.

10 Legal brief is different. Legal brief is
11 not factual information. A legal brief is not -- or
12 legal memorandum is not factual information. It's not
13 testimony. It's not evidence. It's their arguments
14 and case law. I'm asking for that in advance. I
15 don't want to have a back and forth where I have one
16 side's brief and the other side responds and the other
17 side responds. That's why I'm asking get them to me
18 by the 16th of February that -- whatever legal
19 memorandum you want to submit so we have that.

20 If you submit something after that, I may or
21 may not look at being that it is -- I mean, it'll go
22 to the Board, but, you know, I can't -- I can't
23 promise that's it's going to be -- you know, I'm going
24 to have the time to evaluate it in the same way.

25 CHAIRPERSON MIETZ: Okay.

1 MS. TOMPKINS-WRIGHT: Ken, is it possible to
2 vote to close the public record on February 15th? Is
3 that possible to do today? Where we -- we're leaving
4 the public record open for written submissions --

5 MR. GORDON: Yup.

6 MS. TOMPKINS-WRIGHT: -- but it closes
7 February 15th. Period. So if written submissions
8 aren't in by then --

9 MR. GORDON: Yes. But, I mean, I was the
10 one advocating for closing the public hearing. But
11 let me tell you why you don't want to do that from
12 what I've heard. Because some of you have questions.
13 So you get written submissions and then we get to your
14 March meeting and you want to ask those questions and
15 you really can't ask those and can't take new evidence
16 in unless you re-open the public hearing at that point
17 in time.

18 CHAIRPERSON MIETZ: Which would be silly.

19 MS. SCHWARTZ: I do want to say in all
20 honesty and this is a -- I don't want a repeat in the
21 next meeting of what went on tonight when -- with
22 going back and forth. We don't do that. I just found
23 that -- well, I just -- that's why I would say close
24 it.

25 MR. GORDON: I think we can avoid that too,

1 Judy. I sort of jumped in sort of silently and muted
2 everyone there when it started going back and forth.
3 I think we just need to be a little more -- when
4 somebody's done talking, they get muted so that they
5 don't accidentally jump in and start interrupting
6 somebody else.

7 MS. SCHWARTZ: Dennis, did a good job. He
8 had a hard job.

9 MR. GORDON: Dennis's comments were on
10 point, Dennis.

11 MS. SCHWARTZ: Right. Right.

12 CHAIRPERSON MIETZ: Well, and we have to
13 have some decorum here. And we've stood on these
14 principals. It has nothing to do with this
15 application. This is how we always handle it because
16 we could have these debates every night between
17 professionals. And while they might be interesting to
18 somebody, it's not really what we're here to do.
19 That's why we're tasked to do this.

20 So I think we made it clear. But yes, the
21 technology could certainly help if someone doesn't
22 want to listen because it's not the Jerry Springer
23 show here. So we're not going to go back and forth
24 for --

25 MR. GORDON: So I think there's three

1 options here. Option one is close the public hearing
2 tonight, tell them to submit legal briefs by the 16th
3 and, you know, that's it. We're done and then --
4 we're done.

5 Two is leave the public hearing open, just
6 leave it open. And they can hopefully submit their
7 legal briefs by the 16th, but they can present
8 evidence and testimony right up to the close of the
9 public hearing at the next meeting.

10 And the third option is, as Andrea
11 suggested, say that the public hearing is closed, but
12 written comments will be accepted through a specific
13 date. But that precludes you from asking questions
14 once you get to that March meeting unless you vote to
15 reopen.

16 CHAIRPERSON MIETZ: All right.

17 MR. PREMO: I guess I'd go with
18 option number two, Ken.

19 CHAIRPERSON MIETZ: Yeah. I think so too.
20 I think it's pretty clear to the professionals
21 listening that if they really would like careful
22 consideration of the legal briefs or whatever they
23 submitted, if they submit it the day before, that it's
24 not going to really be considered very well. So
25 that's really their option, I guess, Ken, to -- you

1 know, how they would like to submit it. We're
2 certainly asking for courtesy here so we can do a
3 professional analysis as they would wish or anyone
4 else would wish. Okay.

5 All right. So given -- is everyone okay
6 with leaving the public hearing open?

7 MR. DiSTEFANO: Yeah. I guess my question
8 is can we just table, leave the public hearing,
9 period. Do we have to tell anybody what we're looking
10 for? We can make the requirement that we're tabling
11 it because we need to do SEQRA on it and maybe because
12 we're waiting to hear what the Planning Board might
13 say. And that's why we're tabling it, keeping the
14 public hearing open.

15 CHAIRPERSON MIETZ: There's been no SEQRA to
16 the rest of the discussion, which is in many
17 applications. We don't write down exactly give us
18 this and give us that.

19 MR. DiSTEFANO: Right.

20 MR. GORDON: It's -- I know useful to give
21 reasons as to why we're tabling it because it's cues
22 to the applicant. It is absolutely not required.
23 Somebody makes a motion to table, it's a non-debatable
24 motion. You take a second -- you take a vote. You're
25 done.

1 MR. DiSTEFANO: Okay.

2 MS. SCHMITT: Ken and I are on the same
3 wavelength because I wrote it up to table it. And I
4 did not have a reason.

5 CHAIRPERSON MIETZ: How about proceeding
6 then?

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **Application 2A-01-22**

2 Application of Daniele SPC, LLC, owner of
3 property located at 2740 Monroe Avenue, for an Area
4 Variance from Sections 203-84B(20) (a) and
5 203-84B(20) (e) to allow for outdoor storage in a side
6 yard unscreened in lieu of the rear yard screened by a
7 6 foot high fence as required by code. All as
8 described on application and plans on file.

9 Motion made by Ms. Schmitt table Application
10 2A-01-22 until the March 2022 meeting and keep the
11 public hearing open.

12 (Second by Mr. Premo.)

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

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

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: Okay. So we've finished
2 the agenda. And now we have old business. And we
3 have two applications from January where we requested
4 some additional information and assistance. So
5 Andrea, you have the first one which is --

6 MR. GORDON: And Heather, you're still
7 recused on these two I believe as well.

8 CHAIRPERSON MIETZ: I think she was last
9 month.

10 MS. MCKAY-DRURY: Okay. Sounds good.

11 CHAIRPERSON MIETZ: Okay. So information
12 was given to all the Board members related to this.
13 Andrea, it's your application 1A-07. Do you have
14 thoughts?

15 MS. TOMPKINS-WRIGHT: No. I'm good. I'm
16 ready to make the motion.

17 CHAIRPERSON MIETZ: Does anyone else have
18 any concerns about the materials we received? Okay.
19 I'm good too. Go ahead please.

20
21
22
23
24
25

1 Application 1A-07-22

2 Application of Save Monroe Ave., Inc. (2900
3 Monroe Avenue LLC, Cliffords of Pittsford L.P., Elexco
4 Land Services, Inc., Julia Kopp, Mike Boylan, Anne
5 Boylan and Steven DePerrior) appealing the issuance of
6 two building permits (4th building and 5th building)
7 by the Town of Brighton Building Inspector (pursuant
8 to Section 219-3) to the Daniele Family Companies,
9 developer of the Whole Foods project located at 2740 /
10 2750 Monroe Avenue. All as described on application
11 and plans on file. TABLED AT THE JANUARY 5, 2022
12 MEETING.

13 WHEREAS, on or about December 9, 2021, Save
14 Monroe Ave, Inc. (2900 Monroe Avenue, LLC, Cliffords
15 of Pittsford, L.P., Elexco Land Services, Inc., Julia
16 D. Kopp, Mark Boylan, Ann Boylan and Steven M.
17 Deperrior) (collectively, "SMA") filed Application
18 1A-07-22 (the "Appeal") with the Town of Brighton
19 Zoning Board of Appeals (the "ZBA") appealing the Town
20 of Brighton Building Inspector's issuance of Building
21 Permit No. 20210374 (the "Fourth Building Permit") and
22 Building Permit No. 20210373 (the "Fifth Building
23 Permit") to the Daniele Family Companies (the
24 "Developer") for the Whole Foods Plaza project located
25 at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe

1 Avenue, a portion of 175 Allens Creek Road and a
2 portion of 2259 Clover Street; and

3 WHEREAS, the Appeal requests that the ZBA:
4 (i) annul and reverse the issuance of the Fourth
5 Building Permit and Fifth Building Permit; (ii)
6 determine that the Developer has failed to confirm
7 that it has met all of the required conditions set
8 forth under New York State law, and in the Brighton
9 Town Code and the Incentive Zoning and Site Plan
10 approvals necessary for the issuance of the Fourth
11 Building Permit and Fifth Building Permit; and (iii)
12 award SMA all costs and fees associated with the
13 Appeal; and

14 WHEREAS, on January 5, 2022, the ZBA held a
15 regular meeting, which was duly noticed and published
16 as required by law; and

17 WHEREAS, on January 5, 2022, the ZBA held a
18 properly noticed public hearing with respect to the
19 Appeal, and during the public hearing all persons
20 desiring to speak on the Appeal were heard, and such
21 persons also submitted documents and other
22 correspondence for consideration by the ZBA, and all
23 those materials were considered by the ZBA as part of
24 the record for the Appeal; and

25 WHEREAS, on January 5, 2022, the ZBA closed

1 the public hearing and commenced deliberations with
2 respect to the Appeal; and

3 WHEREAS, on February 2, 2022, the ZBA held a
4 regular meeting, which was duly noticed and published
5 as required by law, where the ZBA continued its
6 deliberations with respect to the Appeal.

7 NOW, THEREFORE, on Motion of Andrea
8 Tompkins-Wright, I hereby move that the following
9 resolutions be made;

10 RESOLVED, each of the Whereas Clauses in
11 this Resolution are incorporated by reference as
12 specific findings of this Resolution and shall have
13 the same effect as the other findings herein, and be
14 it further.

15 RESOLVED, that after duly considering all
16 the evidence before it, the ZBA in all respects
17 accepts, approves, adopts, and confirms the Findings
18 set forth as Attachment A, which Findings are
19 incorporated herein in their entirety; and

20 RESOLVED, in accordance with the records,
21 proceedings, and Findings set forth as Attachment A,
22 the ZBA affirms the issuance of the Fourth Building
23 Permit and Fifth Building Permit; and be it further

24 RESOLVED, in accordance with the records,
25 proceedings, and Findings set forth as Attachment A,

1 the Appeal is denied.

2 (Second by Mr. Premo.)

3 (Ms. Schwartz, yes; Mr. Mietz, yes;

4 Ms. Schmitt, yes; Mr. Premo, yes;

5 Ms. Tompkins Wright, yes.)

6 (Upon roll motion to deny carries.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRPERSON MIETZ: All right. Ed, your
2 thoughts? You're all set.

3 MR. PREMO: I am all set. We have all
4 received the draft resolution and the attachments and
5 I agree with them and am ready to go forward.

6 CHAIRPERSON MIETZ: Okay.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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.
8 All as described on application and plans on file.

9 TABLED AT THE JANUARY 5, 2022 MEETING.

10 WHEREAS, on or about December 10, 2021,
11 Brighton Grassroots, LLC ("BGR") filed Application
12 1A-08-22 (the "Appeal") with the Town of Brighton
13 Zoning Board of Appeals (the "ZBA") appealing the Town
14 of Brighton Building Inspector's issuance of Building
15 Permit No. 20210374 (the "Fourth Building Permit") and
16 Building Permit No. 20210373 (the "Fifth Building
17 Permit") to the Daniele Family Companies (the
18 "Developer") for the Whole Foods Plaza project located
19 at 2740 Monroe Avenue, 2750 Monroe Avenue, 2800 Monroe
20 Avenue, a portion of 175 Allens Creek Road and a
21 portion of 2259 Clover Street; and

22 WHEREAS, the Appeal requests that the ZBA:
23 (i) determine that the Developer has failed to confirm
24 that it has met all of the required conditions set
25 forth under New York State law, and in the Brighton

1 Town Code and the Incentive Zoning and Site Plan
2 approvals necessary for the issuance of the Fourth
3 Building Permit and Fifth Building Permit; (ii) annul
4 and reverse the issuance of the Fourth Building Permit
5 and Fifth Building Permit; (iii) grant the Appeal;
6 (iv) order the Developer to immediately stop work
7 related to the Fourth Building Permit and Fifth
8 Building Permit; (v) direct the relevant Town
9 employees to immediately issue a stop work order to
10 the Developer with respect to any work related to the
11 Fourth Building Permit and Fifth Building Permit; and
12 (vi) award BGR all costs and fees associated with the
13 Appeal; and

14 WHEREAS, on January 5, 2022, the ZBA held a
15 regular meeting, which was duly noticed and published
16 as required by law; and

17 WHEREAS, on January 5, 2022, the ZBA held a
18 properly noticed public hearing with respect to the
19 Appeal, and during the public hearing all persons
20 desiring to speak on the Appeal were heard, and such
21 persons also submitted documents and other
22 correspondence for consideration by the ZBA, and all
23 those materials were considered by the ZBA as part of
24 the record for the Appeal; and

25 WHEREAS, on January 5, 2022, the ZBA closed

1 the public hearing and commenced deliberations with
2 respect to the Appeal; and

3 WHEREAS, on February 2, 2022, the ZBA held a
4 regular meeting, which was duly noticed and published
5 as required by law, where the ZBA continued its
6 deliberations with respect to the Appeal.

7 NOW, THEREFORE, on Motion of Edward Premo, I
8 hereby move that the following resolutions be made;

9 RESOLVED, each of the Whereas Clauses in
10 this Resolution are incorporated by reference as
11 specific findings of this Resolution and shall have
12 the same effect as the other findings herein, and be
13 it further

14 RESOLVED, that after duly considering all
15 the evidence before it, the ZBA in all respects
16 accepts, approves, adopts, and confirms the Findings
17 set forth as Attachment A, which Findings are
18 incorporated herein in their entirety; and

19 RESOLVED, in accordance with the records,
20 proceedings, and Findings set forth as Attachment A,
21 the ZBA affirms the issuance of the Fourth Building
22 Permit and Fifth Building Permit; and be it further

23 RESOLVED, in accordance with the records,
24 proceedings, and Findings set forth as Attachment A,
25 the Appeal is denied.

1 (Second by Ms. Tompkins-Wright.)
2 (Ms. Schwartz, yes; Mr. Mietz, yes;
3 Ms. Schmitt, yes; Ms. Tompkins-Wright, yes;
4 Mr. Premo, yes.)
5 (Upon roll motion to deny carries.)

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

1 MR. DiSTEFANO: Thank you, everyone.

2 CHAIRPERSON MIETZ: That was fun. Okay.

3 So. Yeah I think we're good. And we'll see what all
4 the other materials we get back and go from there.

5 All right, everybody. Have a good night.

6 Thanks very much.

7 (Proceedings concluded at 10:22 p.m.)

8 * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER CERTIFICATE
2
34 I DO HEREBY CERTIFY as a Notary Public in and
5 for the State of New York, that I did attend and
6 report the foregoing proceeding, which was taken down
7 by me in a verbatim manner by means of machine
8 shorthand.9 Further, that the proceeding was then
10 reduced to writing in my presence and under my
11 direction. That the proceeding was taken to be used
12 in the foregoing entitled action. That the said
13 deponent, before examination, was duly sworn by me to
14 testify to the truth, the whole truth, and nothing but
15 the truth, relative to said action.16
17
18
19
20 *Holly E. Castleman*
21 -----
22 HOLLY E. CASTLEMAN,
23 Notary Public.
24
25