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

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

**PRESENT:**

DENNIS MIETZ  
Chairperson

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

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

BRENDAN RYAN

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

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 (Upon 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 garbage, 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 Danieleles 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 Trail? 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 Zoghlin 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 than 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 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.

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21 HOLLY E. CASTLEMAN,  
22 Notary Public.  
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**BRIGHTON**  
**ZONING BOARD OF APPEALS**  
**MEETING**  
**DELIBERATIONS**

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

**PRESENT:**

DENNIS MIETZ  
Chairperson

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

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

BRENDAN RYAN

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,  
FORBES COURT REPORTING SERVICES, LLC  
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.

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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.)

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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.

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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.

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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.

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

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

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

4 **Findings of Fact:**

5 1. The granting of the requested variance will not  
6 produce an undesirable change in character of the  
7 neighborhood or be a detriment to nearby properties.  
8 The existing property is zoned technology office park  
9 and thus, the removal of the current single-family  
10 home and construction of a new 10,000 square-foot  
11 office building and associated parking will not appear  
12 out of place in the neighborhood.

13 2. The requested variance is not substantial in light  
14 of the fact that all other available alternatives for  
15 placement of the building would create a significantly  
16 smaller setback and would be a more substantial  
17 setback on the property.

18 3. The benefit sought by the applicant cannot  
19 reasonably be achieved by any other method or without  
20 a variance. The applicant demonstrated previously as  
21 well as through current testimony a series of plans  
22 submitted to the Town for consideration that would  
23 meet the applicant's needs. However, none of which  
24 would have provided more mitigation of setback  
25 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.)

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.

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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.

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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.)  
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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.

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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.)  
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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.

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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?

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

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

9 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.)

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 scribe taking down some additional notes.

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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.)

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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?

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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.)

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.

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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.)

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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.  
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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.)  
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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.)

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1 REPORTER CERTIFICATE

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3  
4 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.

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20 *Holly E. Castleman*

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22 HOLLY E. CASTLEMAN,  
23 Notary Public.  
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