

B R I G H T O N
Z O N I N G B O A R D
O F
A P P E A L S

MARCH 2nd, 2022
at approximately 7:00 p.m.
2300 Elmwood Avenue
Rochester, New York 14618

10 PRESENT:

DENNIS MIETZ, Chairperson

12 HEATHER MCKAY-DRURY)
13 KATHLEEN SCHMITT) BOARD MEMBERS
13 JUDY SCHWARTZ)
13 ANDREA TOMPKINS WRIGHT)

15 KEN GORDON, ESQ.
TOWN ATTORNEY

RICK DISTEFANO
SECRETARY

18 NOT PRESENT:
EDWARD F. PREMO, II

19. *U. S. Fish and Wildlife Service, Biological Report, 1980, Vol. 1, Part 1, pp. 1-10.*

22 REPORTED BY: Rhoda Collins, Court Reporter
23 FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, New York 14020

CHAIRPERSON MIETZ: Good evening, everyone.

This is the March session of the Brighton Zoning Board of Appeals. And, just a couple quick things, we have only one application to review tonight, so we will go on with that in short order here.

But first, Mr. DiStefano, can you call the meeting to order?

MR. DiSTEFANO: Please let the record show that Mr. Premo is not present.

CHAIRPERSON MIETZ: Okay. And, Rick, was the meeting properly advertised?

MR. DiSTEFANO: Yes, Mr. Chairman, it was properly advertised in the Daily Record of February 24th, of 2022.

CHAIRPERSON MIETZ: Okay. Minutes, what do we got?

MR. DiSTEFANO: Minutes, I apologize. I did receive the January minutes a few weeks ago, but unfortunately they got lost in my box and I wasn't able to get them out to you. So, they will be in your next packet and hopefully along with the February minutes. So, we'll have to handle those at the March meeting.

CHAIRPERSON MIETZ: Okay, that's fine.

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3 MS. SCHWARTZ: This is the March meeting. The
4 April meeting.

5 MR. DiSTEFANO: I'm sorry, at the April
6 meeting.

7 CHAIRPERSON MIETZ: Yeah. And maybe you can
8 send them a little early or separately or something and maybe
9 people can have a little more time to read them. Very good.

10 So, other than that, is there anything you
11 want to talk to us about, Rick, about tonight's meeting?

12 MR. DiSTEFANO: Just, I did receive a letter
13 late this afternoon in regards to Application 03-01-22, it
14 was from property owners at 2177 East Avenue. And, Greg Bell
15 who was also representing the GETC Association, that is the
16 board association for the condos that backs up to
17 45 Grosvenor Road which is our application for tonight.

18 He has just some concerns and some comments in
19 regards to the placement of the generator. So, we can talk a
20 little bit about that when we get into the application, if
21 you so desire.

22 CHAIRPERSON MIETZ: Okay. Maybe he will be
23 present.

24 MS. TOMPKINS WRIGHT: Rick, did you e-mail
25 that letter out to us?

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3 MR. DiSTEFANO: No. It came in very late, so
4 I didn't want to, you know, burden you guys by something else
5 that you might have missed anyways.

6

MS. TOMPKINS WRIGHT: Okay.

7

MR. DiSTEFANO: So, I'm just explaining that
8 we received it late.

9

CHAIRPERSON MIETZ: All right. Well, we could
10 always put it up later, if you want, I guess.

11

Let's see if the gentleman is going to be here
12 to speak and we will go from there, okay?

13

Anything else?

14

MR. DiSTEFANO: Just for the record,
15 Application 2A-01-22 has withdrawn, so that is removed from
16 the agenda.

17

CHAIRPERSON MIETZ: Okay, very good. Okay.

18

Well, at this time I guess we can begin.

19

APPLICATION 3A-01-22

20

Application of Mark Campisi, contractor, and
21 Eric Bach, owner of property located at 45 Grosvenor Road,
22 for an Area Variance from Section 203-2.1B(6) to allow a rear
23 yard generator to be located in the northwest corner of the
24 rear yard in lieu of in the rear yard behind the house as
25 required by code. All as described on application and plans

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3 on file.

4

5 CHAIRPERSON MIETZ: Okay. And who do we have

6

7 MARK CAMPISI: I am Mark Campisi.

8

9 CHAIRPERSON MIETZ: Hi, Mark. Can you just

10

11 give us your address for the record, please?

12

13 MARK CAMPISI: 607 Phillips Road in Webster,

14

15 New York.

16

17 CHAIRPERSON MIETZ: Okay, great. So, proceed

18

19 MARK CAMPISI: What we're looking to do is,

20

21 I did go back and get the permanent -- well,

22

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3 north, to aid in that, both visual and any potential sound
4 that there might be from the generator in the --

5 CHAIRPERSON MIETZ: Excuse me, Mark. So, what
6 you're saying, it would be like a 90-degree projection of
7 those? Okay.

8 MARK CAMPISI: Correct. Along the rear
9 property and the north property line.

10 CHAIRPERSON MIETZ: Okay, just wanted to make
11 sure it's clear to everybody. Thanks.

12 MARK CAMPISI: And I can answer any questions
13 that you may have on the decibel rating of the generator or
14 any of that.

15 CHAIRPERSON MIETZ: Do you want to just go
16 ahead and discuss that?

17 MARK CAMPISI: Yeah. In the information you
18 have, the generator decibel ratings were listed at 67. And
19 this is a large generator, however that 67 decibel rating is
20 the same generator that your neighbors might have that they
21 bought at Home Depot. Any 22 KW generator is just as loud or
22 quiet as this generator is.

23 This one has a few advantages with a better
24 sound enclosure, it only runs at 1800 RPM and not 3600 RPM,
25 as a typical residential generator is. So, going to this

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3 size generator did help with a lot of those issues that might
4 be addressed from that.

5 CHAIRPERSON MIETZ: Okay. Do you know how far
6 away the nearest structure is from the location of this
7 generator?

8 MARK CAMPISI: Well, I know that there is a
9 shed to the north of the property. I believe it's -- I don't
10 know the address, but the one property to the north there's a
11 shed that's going to be the closest, and then probably
12 another closest might be the town homes to the west.

13 CHAIRPERSON MIETZ: And could you approximate
14 the distance?

15 MARK CAMPISI: From the town homes?

16 CHAIRPERSON MIETZ: Yes.

17 MARK CAMPISI: 70 or 80 feet, maybe. And
18 that's a guess. I guess I could try and get that --

19 CHAIRPERSON MIETZ: No. Just an approximation
20 is fine.

21 MARK CAMPISI: I would say 70 or 80 feet. The
22 exhaust on this generator, the gentleman called me today --
23 and I apologize because I forgot his name -- he was concerned
24 that it might echo back there, but the exhaust on this style
25 generator goes straight up. So, it won't have that ping

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3 ponging sound, if you will, bouncing off the brick wall
4 that's back there.

5 CHAIRPERSON MIETZ: Okay.

6 Heather, have you got questions?

7 MS. MCKAY-DRURY: I was hoping to have some
8 clarification about the discussion in the application of
9 pre-existing plans for the pool, pool equipment, and
10 generator. I just wanted clarification. Are you talking
11 about pre-existing as in put in place by a previous owner and
12 the project was started? What do you mean by that?

13 MARK CAMPISI: Well, this is all a new build
14 that started last year for the pool and everything.

15 Honestly, when we were called in to quote this, the pool was
16 probably 90 percent done. So, I don't know if they had
17 somebody else that started the project, didn't get their -- I
18 don't know.

19 But, when we got to the work, you know,
20 everything was already started as far as the pool was in, the
21 walls were in. So, we had to get going kind of quickly on
22 getting the landscapers, to the stonework, and everything.
23 So, this is all new construction, I guess, if that answers
24 your question.

25 MS. MCKAY-DRURY: Okay, thank you.

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3 CHAIRPERSON MIETZ: Okay.

4 Board members, anyone else with any questions?

5 MS. SCHWARTZ: Yeah, I'm curious, Judy. Where
6 are the utilities on the house itself, if the generator were
7 placed appropriately behind the house? Where are they in
8 relation to that?

9 MARK CAMPISI: Well, the gas meter is in the
10 basement in the front of the house, and the electrical meter
11 is in the opposite corner, it would be the southwest corner.
12 It comes, it's an underground service off the pole and the
13 meter is on that side of the property.

14 MS. TOMPKINS WRIGHT: Do you know how the
15 decibel rating of this type of a generator compares to the
16 decibel rating of like a pool pump? Because there's
17 obviously going to be significant equipment in that same
18 area, so just from a sound intrusion perspective.

19 MARK CAMPISI: Right. I did check with the
20 pool people. Apparently what they had there was the quietest
21 pumps that are made on the market that are available. I
22 don't have any decibel ratings, but that was a concern of the
23 owner. And, apparently they had a conversation, so the pool
24 equipment is as quiet as can be purchased. But, I have no
25 values for that, and this generator is the same decibel

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3 rating as any other generator that you would find anywhere
4 that you can purchase anywhere. It's the same rating,
5 67 decibels at full load.

6 MS. SCHMITT: And when is it going to be
7 making the noise? Is it only going to be when the generator
8 switches into use when the power is out, or more frequently
9 than that?

10 MARK CAMPISI: It is set up to just run once a
11 week for ten minutes, just as an exercise. And, that can be
12 programed to be done at any time, certainly it will most
13 likely be during the day as not to cause any disruption to
14 anyone sleeping. And then, yes, of course, when power is
15 lost, it will be on.

16 CHAIRPERSON MIETZ: Okay. Other questions for
17 Mark?

18 MR. DiSTEFANO: Yes, I did. Mark, you said
19 67 at full load decibel rating. That's with a level one
20 sound encloser?

21 MARK CAMPISI: Correct.

22 MR. DiSTEFANO: Your submittal shows a level
23 two sound enclosure, which would have had a 63-decibel
24 rating. So, have you changed the sound enclosure --

25 MARK CAMPISI: No.

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3 MR. DiSTEFANO: -- to one?

4 MARK CAMPISI: No, I'm sorry, it is a level
5 two. That's my error, I apologize. It is a level two
6 enclosure, so it's slightly quieter than any other generator
7 you have ever heard run. If you've heard a generator run in
8 anyone's neighborhood, it is going to be a little bit quieter
9 than that then.

10 MR. DiSTEFANO: And I want to remind the Board
11 that when they do sound readings for generators, it's done at
12 22 feet from the generator itself. So, it's not like it's
13 63 right at the generator, it's 63 at 23 feet from the
14 generator.

15 So it would be louder, if you were standing
16 next to the pool pump. Next to this generator, you're not
17 going to hear the pool pump, you're going to hear the
18 generator. But a level two enclosure is pretty good.

19 MARK CAMPISI: Yes.

20 MS. SCHWARTZ: I have another question. Could
21 you please repeat why there shouldn't be a concern with the
22 sound of the generator bouncing off of those brick walls?
23 Could you?

24 MARK CAMPISI: What the landscape plan is on
25 the west side of the property behind the pool equipment and

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3 generator, and also on the north side of that same equipment.
4 They're planting what is called a green giant arborvitae and
5 apparently these start out at seven feet tall. And, they
6 will help buffer any of the sounds that is made either from
7 the pool equipment or the generator. And again, that
8 generator will just run once a week for 10 minutes, unless
9 power is lost.

10 CHAIRPERSON MIETZ: Okay. So, other questions
11 for Mark? Okay, very good.

12 All right, we thank you for your presentation.

13 So, at this time is there anyone on the Zoom
14 call that would like to speak regarding this application? If
15 you would, just put your hand up in the chat function there.

16 MR. GORDON: Rick, this is Ken. Could you
17 just put into the record the correspondence that we have
18 received just so it is part of the Public Hearing record
19 please? Just the stuff that has been already circulated
20 first.

21 MR. DiSTEFANO: Yes. We have received letters
22 from the property owner at 2175 East Avenue in opposition of
23 the request; and a letter from James Kiley, who is
24 representing property owner from 30 Grosvenor Road, who had
25 some concerns regarding the request; and then, again the

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3 letter I received later today from Greg Bell who is
4 representing the association, the condo association, his
5 address is 2177 East Avenue with questions and concerns
6 regarding the generator location.

7 MR. GORDON: And the first two pieces of
8 correspondence that you mentioned have been posted to the
9 town website and circulated to the Zoning Board of Appeals
10 members. That last letter from Mr. Bell came in so late that
11 it could not be circulated or posted.

12 I was wondering if you would mind reading that
13 into the record so that the Zoning Board of Appeals members
14 can have the benefit of understanding what was said in the
15 letter.

16 MR. DiSTEFANO: Sure. It is a lengthy letter.
17 So, bear with me.

18 MS. TOMPKINS WRIGHT: Could I interrupt for
19 one moment? I did not receive a copy of the first two
20 letters.

21 MR. DiSTEFANO: That was attached -- it wasn't
22 in the packet, it was attached with the final agenda that
23 went out yesterday. So, if you get the final agenda and you
24 scroll down it is attached to that.

25 CHAIRPERSON MIETZ: It's right below it.

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3 MR. GORDON: When you say lengthy letter, do
4 you mean more than three pages, or?

5 MR. DiSTEFANO: No. But it's like a single,
6 almost a full page.

7 MR. GORDON: Okay. I think it's fine to go
8 ahead and read that into the record just so the Board members
9 can hear it.

10 CHAIRPERSON MIETZ: Yeah, that's fine.

11 MR. DiSTEFANO: Sure. Again, this is from
12 Gregory Bell. Mr. DiStefano, my wife and I are the owners of
13 the townhouse located at 2177 East Avenue, a condominium at
14 Grosvenor East Townhouse Community which is located directly
15 behind 45 Grosvenor Road. I'm writing on behalf of GETC
16 Association and its Board of managing directors of which I am
17 a member.

18 We are requesting that if the application for
19 an area variance from Section 203-21B6 to allow a rear yard
20 generator located in the northwest corner of the rear yard is
21 approved, it would be subject to conditions that protect the
22 quiet enjoyment of my property and those of my neighborhoods
23 who own the property located behind 45 Grosvenor Road.

24 Other members of our community may be
25 submitting separate objections or comments. Personally, I

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3 spend a lot of time on our deck and currently work from home
4 from a home office, both of which directly overlook
5 45 Grosvenor Road.

6 While this variance request does not relate to
7 the large pool, lighting and brick surround -- lighting and
8 brick which surround the owners and their contract -- I'm
9 sorry.

10 While this variance request does not relate to
11 the large pool, lighting and brick surround that the owners
12 and their contractors have been building over the past year
13 or so, it is relevant to our concerns about the generator and
14 its location.

15 They have applied for a variance for the 50k
16 watt generator to be located near the pool equipment in the
17 northwest corner of 45 Grosvenor Road property, facing our
18 property, about as far from their house as it can be, and
19 behind a brick wall that separates it from the pool and
20 house.

21 This raised troubling questions as to whether
22 the property owner expects that it and the pool equipment
23 will create noise that will disturb them or their guests, but
24 without concern as to whether it will disturb their
25 neighbors. The wall could easily have been continued around

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3 the pad to build a full encloser, for the pads, for the
4 generator and pool equipment. The latter of which has now
5 been installed on the pad as pictured in the application.

6 If it is built now, it will reflect and
7 possibly amplify noise created by the generator and
8 equipment. For us, the proposed variance also raises the
9 question about whether the intended use of the generator
10 would be for emergency power outage purposes only, or for
11 some other purposes.

12 If it was just to run the house, why was it
13 placed about as far from the house as possible? The 50k watt
14 size of the generator also seems inconsistent with
15 residential use. There's been no attempt by the property
16 owner at 45 Grosvenor Road to communicate with any of the
17 owners of the property abutting their property, or with the
18 Board of managers of our condominium association or our
19 property manager.

20 During the prolonged construction period of
21 this project, a lot of our objections might have been avoided
22 if they had. We believe the contractors should have sought
23 the variance before the construction of the wall and pad were
24 complete as the zoning requirements are clear. But, instead
25 have applied after all construction and preparation for

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3 installation have been completed. It is also clear that it
4 is not just the generator is in question, but also the pool
5 and its equipment.

6 We and our neighbors in the Grosvenor
7 Townhouses community fear that this project will in the end
8 undermine the quiet enjoyment of our own properties. If the
9 variances is granted, we would request that it be conditioned
10 on additional soundproofing to be added to a full enclosure
11 of the generator and pool equipment, or otherwise.

12 Thank you for your consideration.

13 CHAIRPERSON MIETZ: Okay.

14 MR. GORDON: Thank you, Rick.

15 CHAIRPERSON MIETZ: All right. So, is there
16 anyone on the Zoom call that did want to speak regarding this
17 application?

18 MARK CAMPISI: That was the gentleman that did
19 call me today, and if I could address some of the points in
20 his letter?

21 CHAIRPERSON MIETZ: Hang on, Mark.

22 MARK CAMPISI: Okay.

23 CHAIRPERSON MIETZ: Okay. Do the Board
24 members have any questions related to what the letter said?

25 Generally, Mark, we don't, like, rebut things

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3 back and forth.

4 So, do the Board members -- are they clear
5 about what's been stated or are there questions?

6 MS. TOMPKINS WRIGHT: This is more of a
7 question for Rick, but I'd rather ask it now in case there's
8 some kind of information for the applicant.

9 CHAIRPERSON MIETZ: Okay.

10 MS. TOMPKINS WRIGHT: The location of the pool
11 and the location or decibel rating of the pool equipment, is
12 not before us at all but is perfectly within code as it is
13 being constructed now?

14 MR. DiSTEFANO: Correct.

15 MS. TOMPKINS WRIGHT: Okay. And then, the
16 other part is, the location of the generator, the decibel
17 rating is not requiring a variance. The -- it is only the
18 location, and if it were moved 20 feet to the south, in
19 exactly that same location just as close to the town homes as
20 it is now, but just 30 feet south so it's behind the house,
21 this would not require variance; is that right?

22 MR. DiSTEFANO: That is correct.

23 CHAIRPERSON MIETZ: Okay.

24 MS. TOMPKINS WRIGHT: Okay.

25 CHAIRPERSON MIETZ: All right, so does anyone

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3 else have any questions at this point?

4 MS. SCHWARTZ: Yes, I do too, yes. I'm sorry.
5 What is the normal, or if there is such, but what is the
6 usual decibel for a generator for a home? I know it depends
7 on size.

8 MR. DiSTEFANO: Well, we have a maximum
9 decibel rating of 72 decibels.

10 MS. SCHWARTZ: Okay.

11 MR. DiSTEFANO: But, to be honest with you,
12 Judy, that is outdated. And we very, very rarely see
13 generators coming in now with 72 or greater decibel rating.

14 MS. SCHWARTZ: So, what do we generally have?

15 MR. DiSTEFANO: 68, I mean, some of the
16 smaller ones that don't have these level two enclosures,
17 they'll run probably around 68 at full load. It's pretty
18 common of what I've seen come in.

19 MS. SCHWARTZ: Okay.

20 MR. DiSTEFANO: And 72 to 68, when you're
21 talking decibels, that's a fair amount of noise change.

22 MS. SCHWARTZ: Okay, thank you.

23 MS. SCHMITT: It's settled on 63 decibels for
24 this one?

25 MR. DiSTEFANO: 63 at full load with the level

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3 two enclosure.

4

5 CHAIRPERSON MIETZ: Okay. All right, so is
6 there anyone else that would like to speak regarding this
7 application?

8

9 MR. GORDON: I just have one other question.
10 I don't know if Rick or the applicant happened to know this.
11 Do we know whether any of the adjacent properties have
12 generators?

13

14 MR. DISTEFANO: I don't know for fact, Ken.

15

16 CHAIRPERSON MIETZ: I don't.

17

18 MARK CAMPISI: I do not know.

19

20 CHAIRPERSON MIETZ: Okay. So, if there's no
21 one else that would like to speak regarding the application,
22 then the Public Hearing is closed.

23

24 * * *

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3 REPORTER CERTIFICATE
45 I, Rhoda Collins, do hereby certify that I did
6 report in stenotype machine shorthand the proceedings held in
7 the above-entitled matter;8 Further, that the foregoing transcript is a true and
9 accurate transcription of my said stenographic notes taken at
10 the time and place hereinbefore set forth.11
12 Dated this 12th day of April, 2022.13 At Rochester, New York
14
1516 Rhoda Collins
17 Rhoda Collins
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4 **BRIGHTON**

5 **ZONING BOARD OF APPEALS**

6 **MEETING**

7 **DELIBERATIONS**

9 MARCH 2nd, 2022
10 at approximately 7:25 **p.m.**
11 Brighton Town Hall ZOOM
2300 Elmwood Avenue
Rochester, New York 14618

12 PRESENT:

13 DENNIS MIETZ, Chairperson

14 HEATHER MCKAY-DRURY)

15 KATHLEEN SCHMITT)

16 JUDY SCHWARTZ) BOARD MEMBERS

17 ANDREA TOMPKINS WRIGHT)

18 KEN GORDON, ESQ.
TOWN ATTORNEY

19 RICK DISTEFANO
SECRETARY.

20 NOT PRESENT:

21 EDWARD F. PREMO, II

22 (The Board having considered the information presented by the
Applicant in each of the following cases and having completed
the required review pursuant to SEQRA, the following
decisions were made:)

23 REPORTED BY: Rhoda Collins, Court Reporter
24 FORBES COURT REPORTING SERVICES, LLC
25 21 Woodcrest Drive
Batavia, New York 14020

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3 CHAIRPERSON MIETZ: Okay. So, we can begin
4 discussing it. Why don't we just go around the room here.

5 Kathleen, what's your thoughts there?

6 MS. SCHMITT: Well, I was hoping you wouldn't
7 start with me, because I was concerned about meeting the
8 standards, because the neighbors clearly believe this will be
9 an undesirable change. Whether or not it's true, I don't
10 know, but they believe that it's going to be -- have a
11 negative impact. And, I wasn't sure, I didn't see it in the
12 application and I didn't hear it in the testimony tonight, to
13 have an explanation as to why it could not comply with the
14 code.

15 What I heard was that they prefer to have it
16 someplace else, not that they could not find a way to make it
17 compliant with the code, and that bothered me. It doesn't
18 mean I couldn't be persuaded, but I think with the negative
19 feelings with the neighbors, saying that it's going to have a
20 negative impact, I am concerned.

21 CHAIRPERSON MIETZ: Okay.

22 Judy?

23 MS. SCHWARTZ: I know that vegetation can be a
24 buffer, but I'm very concerned, really, about that brick wall
25 and the closeness of the generator to it. And, I really

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3 agree with a lot that Kathleen just said. I think it, you
4 know, it's as far from the house as possible and almost as
5 close to the neighbors as can be. So, thank you.

6 CHAIRPERSON MIETZ: Okay. Andrea?

7 MS. TOMPKINS WRIGHT: The only thing I want to
8 point out is that it could still be as far from the house and
9 as close to those behind neighbors and be in compliance. The
10 real issue is just whether or not it can be farther -- closer
11 to One East Avenue.

12 One East Avenue is the property that's truly
13 affected by the fact that instead of putting it right behind
14 the house, they are moving 20 feet and putting it in a
15 portion of the yard that is not hidden by the house. To say
16 that moving it there is a change in the character of the
17 neighborhood, the noise would be the same to those people
18 living behind the home. It's whether or not the noise would
19 be the same to One East Avenue. If One East Avenue had sent
20 a letter or been here and was complaining that it was too
21 close to their property, that would hold a lot more weight
22 for me, because that is the property that actually is
23 affected by this move.

24 I'm not saying I don't know if we've missed --
25 met the requirements and brought as part of the testimony,

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3 you know, that it's not undesirable change and that it is

4 least restrictive, you know, that they need. But I think I

5 don't want to be distracted by complaints that would still be

6 a complaint even if they met every single letter of the code.

7 If they put it exactly where code allowed it,

8 I do think all of the neighbors would still be complaining

9 that it's too loud, it's too far from the home, and there's a

10 brick wall, all of that is permitted under the code. The

11 only thing that's not permitted is moving it 20 feet south --

12 or, I get really confused about north and south. North,

13 right?

14 CHAIRPERSON MIETZ: Yes.

15 MS. TOMPKINS WRIGHT: They're moving it three

16 feet north, that is the variance they are asking for. I

17 don't know, I think we can talk about it, I just don't want

18 to be distracted by the side issues of it's too loud, because

19 it's allowed to be that loud. It's too close to the back

20 neighbors, it's allowed to be that close to the back

21 neighbors.

22 CHAIRPERSON MIETZ: Okay. A couple points and

23 then we'll go to Heather here. I asked how far to the

24 nearest, and I would say the nearest structure just happens

25 to be a shed, but if we talk about the buildings or whatnot,

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3 the reported was 70 feet. I don't know, I guess we could
4 pull it up on Google Earth or whatever and try to calculate
5 it. But, it's a pretty -- I know when I looked at it, I
6 wasn't measuring, but it's a pretty significant distance.

7 And, if you will recall when we approve a lot
8 of these relocated locations for generators they're within
9 15 or 20 feet of another property. So, this is significantly
10 more. Okay? So, just throw that out there.

11 Heather, what do you got?

12 MS. MCKAY-DRURY: Yeah. My thinking was a lot
13 in mind with what Member Wright just explained, that what
14 we're analyzing is the substantial impact or not substantial
15 impact of the variance, and the variance that is requested is
16 literally shifting it along that rear lot line a little bit
17 further.

18 And so, therefore I don't think that that's a
19 substantial variance, and because of that I have written this
20 up as an approval.

21 CHAIRPERSON MIETZ: All right. So, at this
22 point then, so Judy and Kathleen, have you any more thoughts
23 related to this in the comments that either Andrea made or I
24 made or Heather made?

25 MS. SCHMITT: I truly appreciate the comments,

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3 but I do think that the homeowner has the duty to clearly
4 demonstrate that they meet those standards and I don't think
5 that they did. I think I understand that the problem is
6 still there, but in order to get the variance I thought you
7 had to meet those five standards. I just don't see how they
8 did.

10 MS. MCKAY-DRURY: The point is, that moving
11 it, what is it that Andrea has said, north?

12 CHAIRPERSON MIETZ: 20 feet.

13 MS. MCKAY-DRURY: 20 feet north. I --

14 MS. SCHMITT: Moving it 20 feet north is the
15 variance they are seeking. It's not distancing it further
16 from their own house, that's not the variance they're
17 seeking. It's not making it closer to the town homes, that's
18 not the variance they're seeking.

19 Literally, the variance they are seeking which
20 is what we analyze if it's substantial, if it's going to have
21 a substantial impact, is moving it 20 feet north along the
22 same rear property line that they could do.

23 Because, the requirement is that it has to be
24 directly behind the house and here it's just that their
25 driveway goes over to that side section. And so, it's not

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literally behind the house, from the front of the property,
it's not behind the house.

5 MS. MCKAY-DRURY: But, that's all that we are
6 talking about. I mean, I feel for people who might have a
7 neighbor with a generator that might make some noise, but if
8 the person could also just move it over 20 feet along the
9 same rear lot line and do it without our approval, then it
10 seems to me that it would be arbitrary to deny the variance
11 just because we have a problem with the noise.

12 MS. SCHMITT: But I'm not talking about the
13 noise, I'm just talking about the legal standard. I thought
14 they had to meet -- maybe Rick or Ken can correct me, but I
15 thought they had to -- we had to take into consideration that
16 the application itself says that you must clearly demonstrate
17 to the Board the following factors. And, I don't see how
18 they met those factors. That's all I'm saying.

19 MR. GORDON: Can you be specific on which
20 factor it is you think they didn't meet?

21 MS. SCHMITT: Well, from the letters that were
22 sent in from the neighbors, I don't believe they were able to
23 show that it does not produce an undesirable change in the
24 neighborhood, because direct neighbors said, it changes our
25 neighborhood in an undesirable way. Not by one person, but

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3 by, you know, again, we have three communications that say
4 that.

5 I also think that it needs to -- they need to
6 show that they didn't create this themselves. I did not hear
7 anything that clearly stated why they could not put it in the
8 backyard as opposed to they prefer to put it some place else.

9 MR. GORDON: So, as to the first standard that
10 you're concerned about the meeting, that's what Andrea and
11 Heather are trying to address. They're saying that the
12 variance, moving the generator 20 feet to the north doesn't
13 have a negative impact, at least from their point of view, on
14 the character of the neighborhood, nor does the testimony or
15 letters written by the neighbors show that, because those
16 neighbors aren't to the north. They are to the west.

17 And, those neighbors to the west, it would
18 have the impact whether it was located 20 feet further south
19 or where it's being proposed.

20 So, I think that's the point they're making is
21 from their point of view they believe that the negative
22 impact is not there because it's a negative impact from the
23 variance itself, not from the installation of a generator
24 somewhere on the site.

25 As to the self-created hardship, I wouldn't

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3 disagree with you, but it's not a necessary finding for an
4 area variance.

5 MS. TOMPKINS WRIGHT: Not one as you'd like to
6 find it, but if you find that it is self-created, you can
7 still approve the variance on that one. The one I think it's
8 fair to talk about is, we need to find that there aren't
9 other better options, there aren't other better options that
10 would require no variance or a less restrictive variance.

11 But, we have approved locations of generators
12 or these things for -- with the same type of evidence. That
13 there's a great location near other equipment that is
14 shielded from views by fences or what not, and said that's an
15 appropriate place for it and thus we think it is the best
16 option for it.

17 And, their application says that. Their
18 application says that they think other locations in the yard
19 that comply with code would be more visible to neighbors.
20 Whether or not that's true, none of the letters from the
21 neighbors, none of the presentations tonight disputed that,
22 that they could put it somewhere else that would be less or
23 more -- less visible.

24 That's what I'm kind of, you know, if it
25 wasn't for these neighbors' letters, this would be an easy

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3 approval for us. And those neighbors -- those letters
4 brought up issues that we shouldn't be considering. The
5 noise, and the location from the back. It doesn't change the
6 fact that this would have otherwise been easy. Yeah, I think
7 so, you know, based on what they're asking for.

8 CHAIRPERSON MIETZ: Okay. We have -- and I
9 know, Rick, you can comment on this too -- it's fairly
10 common, not so much with pools, but with air conditioning
11 units and what not, that many of the applications that
12 have -- we have received that cannot go in a rear yard
13 because -- or closer to a lot line or what not, are related
14 to adjacency with air conditioning units and other types of
15 equipment, would you agree with that?

16 MR. DiSTEFANO: Where the utilities are
17 located, yes, but also I think a little bit on Andrea's
18 point, I think the things they're doing to mitigate some of
19 the concerns that the neighbors have by putting that -- they
20 don't need a level two enclosure. They could get away with a
21 level one enclosure. But, they're providing a level two
22 enclosure to provide additional sound damping. I think
23 that's important and that certainly can be a condition placed
24 on them by this Board.

25 Also, the fact that they are proposing very

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3 substantial landscaping to help screen the generator, you
4 know, that was another concern of the neighbors was the view.
5 What am I looking at outside my window?

6

CHAIRPERSON MIETZ: All right.

7

8 MR. DiSTEFANO: They're addressing that by
9 adding these large arborvitae around it. So, I think what
10 they've done to mitigate the impact of its location,
11 certainly something we should consider and we can certainly
12 condition upon, if we approve.

13

14 CHAIRPERSON MIETZ: Sure. I think the
15 arborvitae at seven feet will help with the sound issue too
16 a little bit. It's not going to eliminate it, but it
17 certainly will muffle it some. Those are substantial
18 plantings at seven feet.

19

20 Okay, all right. So, at this point, Judy and
21 Kathleen, do you feel convinced at all by these arguments, or
22 do you stand on your comments?

23

24 MS. SCHWARTZ: I feel a little better, which
25 is unusual for me, but --

26

CHAIRPERSON MIETZ: Okay.

27

28 MS. SCHWARTZ: -- I still find it troublesome,
29 I really do. I mean, as Rick knows I have a generator behind
30 me and my house is closed up tight, wintertime, and I know

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3 every Friday when that thing goes on.

4 MR. DiSTEFANO: All right. You know, Judy,
5 that generator that you have behind you is probably closer
6 than 70 feet away and is an old generator.

7 MS. SCHWARTZ: It's old, I know.

8 MR. DiSTEFANO: And it probably has 72 or
9 greater decibel rating on it.

10 MS. SCHWARTZ: Could very well be, yeah.

11 MS. TOMPKINS WRIGHT: Just procedurally, if we
12 only have three yeses, we have to have four to approve this,
13 correct?

14 MR. DiSTEFANO: That is correct, yes.

15 CHAIRPERSON MIETZ: Okay.

16 MS. TOMPKINS WRIGHT: So, I'd like to say that
17 I -- if Kathleen and Judy are a no on this, I would rather --
18 I would rather vote to table it until next -- when we expect
19 to have a full Board next week rather than not act --

20 MR. DiSTEFANO: Yeah, Andrea, we can call the
21 roll, we can call the vote and Heather can make her motion.
22 And then, if it is not -- we do not have four, then she can
23 make a second motion to table it.

24 CHAIRPERSON MIETZ: Okay. That sounds like
25 a -- that sounds plausible there, yes.

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3 Okay. Are you willing to do that, Heather
4 please?

5 MS. MCKAY-DRURY: I am, yes.

6 CHAIRPERSON MIETZ: Okay. Please proceed.

7 MS. MCKAY-DRURY: Hopefully I'll do it right,
8 just tell me if I need to add.

9 CHAIRPERSON MIETZ: We will help you, no
10 problem.

11 MS. MCKAY-DRURY: Because right now I've put
12 some conditions in based on our discussions.

13 CHAIRPERSON MIETZ: Okay.

14 MS. MCKAY-DRURY: And I don't know if they're
15 going to need to be incorporated more into my findings of
16 fact. So, okay.

17 CHAIRPERSON MIETZ: Okay. Give it a shot.

18

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3 **APPLICATION 3A-01-22**

4 Application of Mark Campisi, contractor, and
5 Eric Bach, owner of property located at 45 Grosvenor Road,
6 for an Area Variance from Section 203-2.1B(6) to allow a rear
7 yard generator to be located in the northwest corner of the
8 rear yard in lieu of in the rear yard behind the house as
9 required by code. All as described on application and plans
10 on file.

11 Motion made by Heather McKay-Drury to approve
12 Application 3A-01-22 to allow a generator to be located on a
13 cement pad behind a six-foot high brick wall beyond the pool
14 in the northwest corner of the lot where code would require
15 the generator to be, quote, directly behind the house, end
16 quote, base on the following findings of fact.

17 **FINDINGS AND FACTS:**

18 1. The requested variance is not substantial because the
19 generator would still be located along the rear lot line,
20 albeit, not directly behind the house, will be blocked from
21 them by a six-foot brick wall, and is located a fair distance
22 away from neighboring town homes in the rear approximately
23 70 to 80 feet in distance. Additionally, the property has a
24 pre-existing pool project with this area intended to screen
25 pool equipment and the generator.

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3 2. There's no other alternative that can produce the desired
4 results as effectively, given the existing infrastructure on
5 this property including the cement pad and the pool equipment
6 location.

7 3. There will be no unacceptable change in the character of
8 the neighborhood and no substantial detriment to the
9 neighboring properties as a result of this variance because
10 the generator will be less visible to neighbors in the
11 screened location, including from the road, in light of the
12 six-foot brick wall. And, there is grown-in vegetation along
13 the north side lot line, as well as a plan to add vegetation
14 along the north and west lot lines. Although the hardship is
15 somewhat self-created in that, it is part of the overall plan
16 for the pool and pool equipment and generator, this is not a
17 factor that mandates denying the variance.

18 5. The health, safety and welfare of the community will not
19 be adversely affected by approval of this particular variance
20 request.

21

CONDITIONS:

22 1. This variance will apply only to the generator described
23 in the application and testimony. It will not apply to
24 additional structures considered in the future, and it will
25 be subject to certain restrictions to ensure the quiet

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3 enjoyment of the neighboring properties, including the town
4 homes to the rear.

5 2. The generator will be enclosed with a level two sound
6 enclosure as described in the application.

7 3. The time of the weekly ten-minute power ups will occur
8 between the hours of 9:00 a.m. and 5:00 p.m.

9 4. There will be the installation of seven-foot green giant
10 arborvitae along the north and west boundary lines of the
11 property in close proximity to the installation of the
12 generator and the pads to obscure the view of the generator
13 for the neighboring properties.

14 5. All necessary building permits shall be obtained.

15 (Second by Ms. Tompkins Wright.)

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

19 (Upon roll call, motion to approve with
20 conditions carries.)

21

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3 MR. DiSTEFANO: Heather, can I just stop you
4 there for a second? Your first condition only applies to the
5 generator as per plans submitted. Can we be very specific in
6 number two that this generator shall be enclosed with a level
7 two sound enclosure, with it specific that they have to use
8 the level two sound enclosure?

9

10

MS. McKAY-DRURY: I was getting to it, but,
yes.

11

12

MR. DiSTEFANO: Okay. I thought you kind of
said that and, okay.

13

14

MS. McKAY-DRURY: I know, yeah.

CHAIRPERSON MIETZ: All right.

15

16

Included for part of that first condition will
be that the generator will be enclosed with a level two sound
enclosure as described in the application.

17

18

CHAIRPERSON MIETZ: Okay.

19

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21

MS. McKAY-DRURY: And as a second set of
conditions that the time of the weekly ten-minute power ups
will occur between the hours of 9:00 a.m. and 5:00 p.m.
There will be substantial landscaping to obscure the view of
the generator for the neighboring properties.

22

23

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25

And that's actually it because we moved up the
level two enclosure.

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3 MR. DiSTEFANO: I just want to be clear, I got
4 it and I would like to also add all necessary building
5 permits shall be obtained.

6

CHAIRPERSON MIETZ: Right.

7

8 MR. DiSTEFANO: But let me just go through
this real quick.

9

10 One, is basically the variance applying to
this particular generator in the location as shown.

11

12 Second condition, is that the generator shall
be enclosed with a level two sound enclosure.

13

14 Condition number three, deals with the
15 landscaping along the north and west portions of the
generator.

16

17 Condition four is testing time between nine
and five.

18

19 And five is all necessary building permits.

20

21 Do I have that right?

22

23 MS. McKAY-DRURY: Yes, that is correct.

24

25 MR. GORDON: And, Rick, I would just add some
specificity to that landscaping to reflect exactly what the
application says. So, I believe that was the instillation of
green giant arborvitae along the north and west boundary
lines of the property in close proximity to the installation

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3 of the generator and the pads.

4

5 CHAIRPERSON MIETZ: You might want to put in
6 too, Ken, that they were specified to be seven foot, because
7 it makes a big difference.

8

9 MR. GORDON: Yes, I agree.

10

11 MR. DiSTEFANO: I just want to say, one good
12 point that might help Kathleen and Judy a little bit, one
13 good point that Heather brought up in her findings was
14 that -- can I not say anything, Ken?

15

16 MR. GORDON: Can we just get a second first?

17

18 MR. DiSTEFANO: Okay, sure.

19

20 MS. TOMPKINS WRIGHT: Second.

21

22 MR. GORDON: And now would be a fine time for
23 discussion.

24

25 MR. DiSTEFANO: Okay. One thing Heather
26 brought up was, one of the reasons we've always had the
27 generator behind the house, in the envelope of the house, was
28 to screen it from the road. They're providing screening, so
29 they are mitigating that variance request because they are
30 screening it with the brick wall. So, that is something to
31 keep in mind that they are taking care of one of the reasons
32 we like it to be behind the house.

33

34 CHAIRPERSON MIETZ: Okay, very good. Okay,

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any further discussion?

4 All right, Rick.

Very good. Thank you, everybody.

6 MS. TOMPKINS WRIGHT: Can we all agree never
7 to talk this much about generators?

8 MR. DiSTEFANO: That's fine.

9 CHAIRPERSON MIETZ: I think Rick's going to
10 fix this for us a little bit in the next code revision.

11 MR. DiSTEFANO: We will see. But, that's why
12 you always hate to be the only application on the agenda.

13 CHAIRPERSON MIETZ: He's like the old man of
14 the sea.

Okay, very good. So, thank you, everybody.

16 MR. DiSTEFANO: Just quick, April 6th, is the
17 next meeting. I expect a much heavier agenda than what we
18 saw tonight, so, you know, of course, it's going to catch up
19 to us.

20 So, thank you. Is everybody planning to be
21 here?

22 MS. SCHMITT: Still via Zoom?

23 MR. GORDON: Well, that's what I was going to
24 address. So, right now the governor's order extended through
25 March 16th, and only March 16th. The way things are opening

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3 up there is a good chance that we will be back live and in
4 person at that April meeting, so plan both ways. We're going
5 to send the public notice. We have created this sort of dual
6 public notice now that says we're going to meet on Zoom
7 unless we can't meet on Zoom, and then we're going to meet in
8 person.

9 So, that's the way it is. And whether we meet
10 live or whether we meet on Zoom, we are going to start the
11 meeting at 7:00 p.m.

12 MS. TOMPKINS WRIGHT: Okay.

13 MS. SCHWARTZ: Will there be masks if we're in
14 person?

15 MR. GORDON: I can't make that announcement,
16 because I'm not the supervisor of the Town of Brighton, but
17 you might be hearing something about that in the next few
18 days.

19 MS. SCHWARTZ: But, if we wish to wear one, we
20 certainly could?

21 MR. DiSTEFANO: Absolutely.

22 CHAIRPERSON MIETZ: Of course.

23 MR. GORDON: Absolutely. In fact, it's going
24 to be encouraged.

25 MS. SCHWARTZ: Good.

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3 CHAIRPERSON MIETZ: Okay, very good. Thank
4 you for the update.

5 Everybody all set?

6 MS. SCHWARTZ: Yes.

7 CHAIRPERSON MIETZ: Okay, thank you.

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3 REPORTER CERTIFICATE
45 I, Rhoda Collins, do hereby certify that I did
6 report in stenotype machine shorthand the proceedings held in
7 the above-entitled matter;8 Further, that the foregoing transcript is a true and
9 accurate transcription of my said stenographic notes taken at
10 the time and place hereinbefore set forth.11
12 Dated this 12th day of April, 2022.13 At Rochester, New York
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1516 Rhoda Collins
17 Rhoda Collins
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