

**BRIGHTON  
ZONING BOARD OF APPEALS  
MEETING**

August 3, 2022  
At approximately 7 p.m.  
Brighton Town Hall Zoom  
2300 Elmwood Avenue  
Rochester, New York 14618

## 10 | PRESENT:

DENNIS MIETZ  
Chairperson

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

19 JASON HAREMZA

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

1                   CHAIRMAN MIETZ: Welcome, everyone. This is  
2 the August 22nd meeting of the Brighton Zoning Board  
3 of Appeals. Welcome.

4                   Just very quickly I just want to let you  
5 know how we handle our meeting. This is a Zoom call  
6 obviously. What we do is your application is called.  
7 You will identify yourself. We will have you speak  
8 and let us know as Board members why we should approve  
9 your application. Board members may ask a couple  
10 questions.

11                  After that, we will open it up for anyone  
12 that would like to speak regarding your application.  
13 Once that's completed then the public hearing is  
14 closed and we move to the next item.

15                  And when we finish the items, we will maybe  
16 take a minute or two break if we need to. If not,  
17 we'll move into the deliberations.

18                  You're welcome to listen to those if you  
19 wish. If you don't want to do that and hear the  
20 result of your application, you can call Rick  
21 DiStefano in the building office tomorrow.

22                  Okay, Rick. So let's get her rolling. Can  
23 you call the roll please?

24                  MR. DiSTEFANO: Yes. Just before I call the  
25 roll, if I could ask everybody who's in the audience

1 to turn your video off until you address the Board.  
2 It just keeps our screen a little clearer for us to  
3 manage. So if I could ask everybody to do that, I'd  
4 appreciate it.

5 CHAIRMAN MIETZ: Okay. Go right ahead,  
6 Rick.

7 (Whereupon the roll was called.)

8 MR. DiSTEFANO: Please let the record show  
9 that Ms. Schmitt has not joined us yet.

10 CHAIRMAN MIETZ: Okay. Very good. When she  
11 does, we will acknowledge her.

12 The minutes I gather, Rick, is going to wait  
13 until the September meeting; correct? The July  
14 meeting?

15 MR. DiSTEFANO: That is correct.

16 CHAIRMAN MIETZ: Okay. Was the meeting  
17 properly advertised?

18 MR. DiSTEFANO: Yes, Mr. Chairman. They  
19 were advertised in the Daily Record of July 28th,  
20 2022.

21 CHAIRMAN MIETZ: Okay. Very good. Is there  
22 anything you would like to address the Board on?

23 MR. DiSTEFANO: Yeah. I would like to make  
24 a comment in regards to applications 8A-04, 8A-05 and  
25 8A-06. I received numerous communication after the

1 final agenda was already posted. So they did not  
2 appear on that agenda. Members, you will be getting  
3 copies of all that communication. And it will be  
4 posted with the next agenda. I just wanted to make  
5 everybody aware of that.

6 MR. GORDON: I would like to note for the  
7 record that Member Schmitt has now joined the meeting.

8 CHAIRMAN MIETZ: Great. Go ahead, Rick.

9 MR. DiSTEFANO: I am not sure if any of the  
10 members have any questions in regards to any  
11 applications. We're all good?

12 CHAIRMAN MIETZ: Yes. Have we heard  
13 anything on the old business whether --

14 MR. DiSTEFANO: Nothing on the old business  
15 at this point in time. I think we can talk about that  
16 when we get there, Dennis.

17 CHAIRMAN MIETZ: Okay. That's fine. Okay.  
18 Well, then I guess it's time to roll.

19 **Application 8A-01-22**

20 Application of John Inzinna and Jacylyn  
21 Whitney, owners of property located at 325 Antlers  
22 Drive, for an Area Variance from Section 207-2A to  
23 allow a 6.5 foot high fence in a front yard area where  
24 a maximum 3.5 foot high fence is allowed by code. All  
25 As described on application and plans on file.

1                   CHAIRMAN MIETZ: Okay. And who do we have  
2 speaking for this application?

3                   MR. DiSTEFANO: Jason, I think J Whitney is  
4 here to speak. Can you unmute them?

5                   MS. WHITNEY: Just was able to be unmuted.  
6 This is Jacylyn. Can you hear me?

7                   CHAIRMAN MIETZ: Yes, ma'am.

8                   MS. WHITNEY: All right.

9                   CHAIRMAN MIETZ: Okay. Can you just  
10 identify yourself and your address please for the  
11 record?

12                  MS. WHITNEY: Yup. Jacylyn Whitney, 325  
13 Antlers Drive.

14                  CHAIRMAN MIETZ: Okay. Very good. Please  
15 proceed.

16                  MS. WHITNEY: We submitted a variance over a  
17 year ago. It was approved. The variance hasn't  
18 changed. It just expired because we had to go through  
19 and solicit and obtain vendor quotes because the first  
20 one had gone out of business.

21                  So we're just re-requesting the variance,  
22 the same variance that was submitted, except with a  
23 different vendor.

24                  CHAIRMAN MIETZ: Okay. So no changes  
25 whatsoever?

1 MS. WHITNEY: None.

2 CHAIRMAN MIETZ: Okay. Very good.

3 MR. DiSTEFANO: Can you for the record just  
4 explain the type and style of fence and how far out  
5 it's going to extend into the front yard?

6 MS. WHITNEY: Yeah. I'm on the corner of  
7 Elmwood and Antlers. And there is a fence that will  
8 go from the back of our house to the neighbor's fence.  
9 So it's like -- it's a corner yard. It faces Elmwood.  
10 Our house faces Antlers. So we have a house and then  
11 a lot adjacent to it. So it's not a front yard. It's  
12 a side yard that the fence is going to be placed on.

13 And then the material, we've gotten quotes  
14 for -- the original quote for wood. But wood has gone  
15 up in two or three times the cost. So it may be vinyl  
16 unless wood drops by the time we get another vendor  
17 within a year when the permits expire to put the fence  
18 up.

19 CHAIRMAN MIETZ: Is your plan, ma'am, to get  
20 it done this fall before the winter season?

21 MS. WHITNEY: I certainly hope so, but every  
22 time I call there's a backlog.

23 CHAIRMAN MIETZ: Understood. But that's  
24 your plan?

25 MS. WHITNEY: Yes.

1                   CHAIRMAN MIETZ: Okay. Any questions by the  
2 Board members? Okay.

3                   Is there anyone who'd like to speak  
4 regarding this application? Okay. There being none,  
5 then the public hearing's closed.

6 **Application 8A-02-22**

7                   Application of Michael Jachles, owner of  
8 property located at 135 Edgemoor Road, for an Area  
9 Variance from Section 205-2 to allow a deck to extend  
10 6 +/- feet into the 40 foot rear setback required by  
11 code. All as described on application and plans on  
12 File.

13                  CHAIRMAN MIETZ: Okay. And who do we have  
14 speaking?

15                  MR. JACHLES: Hi. I'm Christina Jachles and  
16 this is my husband Michael Jachles. And we live at  
17 135 Edgemoor railroad.

18                  CHAIRMAN MIETZ: Okay. Great. Please  
19 proceed.

20                  MR. JACHLES: So we are hoping to build a  
21 deck. And this deck would be a total of 13 by 17  
22 feet. And it would be built at 28 inches above grade.

23                  And based on that sizing and the location of  
24 the rear exit of our home through the sliding glass  
25 doors behind us, it would go just somewhat into the

1                   setback.

2                   So right now there's supposed to be a 40  
3                   foot setback. And this would go into that by 6 feet,  
4                   creating a 34 foot setback.

5                   CHAIRMAN MIETZ: Okay.

6                   MR. JACHLES: It's fairly similar in terms  
7                   of many of our surrounding neighbors have similar side  
8                   decks or additions on their homes that are already  
9                   built into the setback by that and sometimes more.  
10                  Actually our neighbors on either side have that.

11                  The deck would be fully located in the rear  
12                  of the home. So it wouldn't really be visible or  
13                  change the character or appearance of the neighborhood  
14                  at all.

15                  MR. JACHLES: We want it to be 28 inches so  
16                  that it's flush with the sliding door out to the  
17                  backyard so that there's no step down or anything just  
18                  from a safety standpoint. We got two young kids. So  
19                  just considering that as well as some of our, you  
20                  know, older family members that come over. You know,  
21                  wanting to be as safe and simple as possible.

22                  CHAIRMAN MIETZ: Okay. Board member  
23                  questions?

24                  MS. MCKAY-DRURY: I just have a quick one  
25                  for you. This is Member McKay-Drury. Have you -- in

1       terms of the size of the deck, have you attempted to  
2       make it the minimum size necessary for your uses and  
3       what you intend to do on the deck in terms of, you  
4       know, keeping the infringement into the setback as  
5       minimal as possible? Can you speak to that at all?

6               MS. JACHLES: Yeah. It's essentially the  
7       size that would be required in order to hold like a  
8       table, an outdoor table that fits like six chairs more  
9       or less and also, you know, just have a little space  
10      next to it.

11              But as far as the depth of it, it really  
12      needs that depth in order to accommodate, you know, a  
13      table with chairs that aren't going to be falling off  
14      the edge.

15              MS. MCKAY-DRURY: Thank you.

16              CHAIRMAN MIETZ: Okay. Board members, any  
17      other questions for these folks? Okay.

18              Is there anyone on the Zoom call that would  
19      be interested in speaking regarding this application?  
20      Okay. There being none, then the public hearing's  
21      closed.

22              **Application 8A-03-22**

23              Application of Meaghan Fee Spencer, owner of  
24      property located at 111 Hampshire Drive, for an Area  
25      Variance from Section 203-2.1B(7) and 203-9A(4) to

1 allow an air conditioning unit to be 4 feet from a lot  
2 line in lieu of the minimum 5 feet required by code.  
3 All as described on application and plans on file.

4 CHAIRMAN MIETZ: Okay. And who do we have  
5 speaking for this application?

6 MR. DiSTEFANO: Hold on.

7 MR. SPENCER: Can you hear me? Can you hear  
8 me?

9 UNIDENTIFIED SPEAKER: This is not the right  
10 Megan.

11 MR. SPENCER: Hello? Anyone? Can you hear  
12 me?

13 MR. D'AUGUSTINE: Looks like Justin Spencer  
14 is trying to --

15 MR. SPENCER: Can you hear me?

16 MR. DiSTEFANO: Yes.

17 MR. GORDON: You can be heard. If you get a  
18 little closer to your mice so you're a little louder  
19 please.

20 MR. SPENCER: All right. I'll try. How  
21 about now?

22 MR. GORDON: Perfect.

23 MR. SPENCER: All right. When are we going  
24 to go back in person so I don't have to play with this  
25 computer?

1                   CHAIRMAN MIETZ: Ask the Governor.

2                   MR. SPENCER: Can you see me or just hear  
3 me?

4                   MR. DiSTEFANO: We can see you also.

5                   MR. SPENCER: Okay. I can't see myself. So  
6 I'm confused. I'm trying here. I don't know what's  
7 going on.

8                   All right. So we currently --

9                   CHAIRMAN MIETZ: Sir. Sir. Could you just  
10 identify yourself --

11                  MR. SPENCER: Oh, sorry. Justin Spencer.

12                  CHAIRMAN MIETZ: -- and give us your address  
13 please?

14                  MR. SPENCER: My wife is the owner of 111  
15 Hampshire Drive.

16                  CHAIRMAN MIETZ: Okay. And you're the  
17 resident of 111 Hampshire Drive. Okay. Very good.  
18 Go ahead.

19                  MR. SPENCER: All right. So we currently  
20 have the permit and gone through the Zoning Board  
21 already to build an addition and garage in the rear of  
22 our house.

23                  The process has gone through. We thought we  
24 were going to get the permit until it was noted that  
25 our air conditioner was going to be too close to the

1 line. So then we had to file for another variance for  
2 this air conditioner.

3 Currently we just have -- I only have 7.6  
4 from the house to the property line to work with and  
5 it's required to have 5 foot. So in order to get it  
6 in there, we need to file for variance because we  
7 don't have enough space. These houses were never  
8 intended to have air conditioning units and everything  
9 this close. So that's the only spot that we could fit  
10 it in accordance to the plan.

11 MR. DiSTEFANO: Jason, can you scroll down  
12 to the floor plan? I think it shows the garage  
13 addition and everything so the Board members remember  
14 what we granted --

15 MR. SPENCER: The first one is for the  
16 garage. Yeah. Right there.

17 So from the house to the property line it's  
18 only 7 foot 6. So that's why to have -- you know, to  
19 have clearance off the house and then, you know, a  
20 two, three foot air conditioner. So that's why we did  
21 file for the variance.

22 CHAIRMAN MIETZ: Yup. Okay. Do you have  
23 anything else to add, sir?

24 MR. SPENCER: I do not, no.

25 CHAIRMAN MIETZ: Okay. And the back of the

1 garage at the property line is a little over 5 feet;  
2 correct?

3 MR. SPENCER: Correct.

4 CHAIRMAN MIETZ: Okay.

5 MR. SPENCER: Yes.

6 CHAIRMAN MIETZ: Okay. Very good. And we  
7 presume that you have no other potential location that  
8 this air conditioner could be placed.

9 MR. SPENCER: No. Because we go to the  
10 driveway side on the other side. And to be compliant  
11 on this side of the rear of the yard, that's our only  
12 spot we could realistically put it.

13 CHAIRMAN MIETZ: Okay. For the record.  
14 Very good. All right.

15 Other questions by Board members please?

16 MS. TOMPKINS-WRIGHT: This is Member Wright.  
17 Are you planning any kind of screening or landscaping  
18 around the air conditioner?

19 MR. SPENCER: That's the plan per the code I  
20 guess. Yeah. Have it fenced or something to help  
21 block it. So we'll -- bushes, shrubbery, something  
22 will be placed in there to help stop the view from the  
23 street obviously.

24 MS. TOMPKINS-WRIGHT: Okay.

25 CHAIRMAN MIETZ: Okay. So you haven't

1       really decided how you'll do that, but you're willing  
2       to agree to do something?

3                    MR. SPENCER: Oh, absolutely. Yes.

4       Anything to get this project moving and going along.

5       So, yes. Anything that's needed, we will do.

6                    CHAIRMAN MIETZ: Okay. Very good. And is  
7       your plan to proceed this building season?

8                    MR. SPENCER: Not -- yes.

9                    CHAIRMAN MIETZ: Okay. That's the plan?

10                  MR. SPENCER: The plan is, yes.

11                  CHAIRMAN MIETZ: Okay. Great. Everybody's  
12       plans are tentative, sir.

13                  MR. SPENCER: Yeah.

14                  CHAIRMAN MIETZ: Okay all right. Okay. Are  
15       there any other questions by the Board? Okay. Great.

16                  Is there anyone on the Zoom call who would  
17       like to speak regarding this application? Okay.

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

19                  **Application 8A-04-22**

20                  Application of PEMM, LLC, contract vendee,  
21       and Bristol Valley Homes, LLC, owner of property  
22       located at 3108 East Avenue, for a Use Variance from  
23       Section 203-44 to allow a gas station with convenience  
24       store to be located in a BE-1 Office and Office Park  
25       District where not allowed by code. All as described

1 on application and plans on file.

2 **Application 8A-05-22**

3 Application of PEMM, LLC, contract vendee,  
4 and Bristol Valley Homes, LLC, owner of property  
5 located at 3108 East Avenue, for an Area Variance from  
6 Section 207-6B to allow an accessory structure (gas  
7 canopy) to be located in a front yard in lieu of the  
8 rear yard as required by code. All as described on  
9 application and plans on file.

10 **Application 8A-06-22**

11 Application of PEMM, LLC, contract vendee,  
12 and Bristol Valley Homes, LLC, owner of property  
13 located at 3108 East Avenue, for Area Variances from  
14 Section 205-18 to 1) allow parking of vehicles to  
15 within 2 feet for a side lot line (north) where  
16 A 10 foot setback is required by code, and 2) allow  
17 paved areas / aisles up to the front lot line where a  
18 20 foot setback is required by code. All as described  
19 on application and plans on file.

20 CHAIRMAN MIETZ: Okay. And who do we have  
21 speaking for this?

22 MR. PREMO: Just one thing real quick. I  
23 just note that I recuse myself on these three  
24 applications.

25 CHAIRMAN MIETZ: Okay, Ed. Thank you.

1               Okay. So who do we have speaking for these  
2 applications please?

3               MS. BRUGG: Hi. Good evening. This is  
4 Betsy Brugg. I'm on -- I'm representing these  
5 applications.

6               I know this is short notice, but I needed to  
7 Zoom on tonight to request an adjournment. These are  
8 kind of complicated applications that we were  
9 preparing for today. And then due to some personal  
10 conflicts and illnesses, I've literally lost most of  
11 my team. You know, there's questions about traffic  
12 and engineering issues. I don't have my engineer. I  
13 don't have my property owner.

14               So we are asking for an adjournment to next  
15 month.

16               CHAIRMAN MIETZ: Okay. Very good. Well, as  
17 you're aware, Betsy, there are quite a few people who  
18 came on the Zoom call to speak.

19               MS. BRUGG: Yup.

20               CHAIRMAN MIETZ: So I think what we're going  
21 to do is we'll allow the public hearing to remain  
22 open. We'll listen to comments tonight and then we'll  
23 hold it open and we'll move to table your application.

24               MS. BRUGG: Great. We appreciate that. We  
25 will be prepared to give you a full presentation at

1 the future meeting.

2 CHAIRMAN MIETZ: Okay. Good luck with the  
3 illnesses.

4 MS. BRUGG: Thank you.

5 CHAIRMAN MIETZ: Okay. All right. So at  
6 this time does the Board have any comments before we  
7 open it up? Everybody okay with that? Okay. Good.  
8 All right.

9 So who do we have interested in speaking  
10 regarding the three applications? If you can identify  
11 yourself and then, Jason, I think you can handle that.

12 Do we have anyone that is interested in  
13 speaking regarding these applications? Guys, I can't  
14 see anything. Can you?

15 MR. DiSTEFANO: Yeah. I'm not seeing any  
16 hand raised. There's one hand raised for Katie  
17 Hartford.

18 CHAIRMAN MIETZ: Okay.

19 MR. DiSTEFANO: Let her in.

20 CHAIRMAN MIETZ: Okay. All right. Are you  
21 on, Katie?

22 MS. HARTFORD: Yes, I am. Hi.

23 CHAIRMAN MIETZ: Okay. Can you identify  
24 yourself and your address? And then please go ahead  
25 and you can speak.

1                   MS. HARTFORD: Katie Hartford, 161 Brookside  
2 Drive. And I'm going to keep this brief because I saw  
3 the other letters submitted by my neighbors as well as  
4 an attorney representing our neighbors who I think go  
5 into the arguments in depth in a way that makes most  
6 of these points.

7                   I just wanted the record to reflect that I  
8 and my family are concerned about the proposed  
9 variances for not only the reasons articulated by our  
10 neighbors in the letters submitted well by Attorney  
11 Peter Weishaar. Sorry if I'm mispronouncing that.

12                  But primarily for us what's personal is the  
13 concern of traffic, increased traffic. The  
14 intersection of Allens Creek and East Ave for anyone  
15 familiar is it is an intersection that over the years  
16 our community has addressed extreme concern about  
17 safety of that location. The Town Board's familiar  
18 with that. We've had concerns about traffic there  
19 often. People coming from outside of the area,  
20 outside the neighborhood, often pass through there.  
21 Particularly because we have young children who will  
22 be attending Allens Creek school and will be walking  
23 to school.

24                  There used to be a crossing guard at that  
25 location, which has since been removed. And I walk in

1 that area with my two young children and husband often  
2 and are constantly concerned for our safety in that  
3 intersection.

4                   So I think that the purposed -- the purposed  
5 variance allowing the gas station and convenience  
6 store along with additional development intended,  
7 including Whole Foods, as well as the Kilbourn  
8 Apartments, et cetera, in progress just all  
9 compounding upon one another, it's kind of a recipe  
10 for disaster for that location.

11                  We also have concerns about possible hours  
12 of operation and a change in the character of the  
13 neighborhood.

14                  So for those reasons as well as those  
15 articulated by our other neighbors and the attorney  
16 and submissions, we have extreme concerns about the  
17 proposed variances. Thank you.

18                  CHAIRMAN MIETZ: Thank you. Okay. Rick,  
19 who else do we have trying to get in?

20                  MR. DiSTEFANO: Peter, would you state your  
21 full name for the record?

22                  MR. WEISHAAR: Peter Weishaar. Can you hear  
23 me okay?

24                  CHAIRMAN MIETZ: Yes.

25                  MR. WEISHAAR: Okay. Thank you for giving

1 me the opportunity to speak tonight. I submitted a  
2 letter on behalf of my clients, Robert and Karen  
3 Bentley. They live at the corner of Elmwood and East,  
4 which is kind of across the street from the proposed  
5 location here. And I'm not going to -- I just want to  
6 kind of summarize three points really that are --

7 CHAIRMAN MIETZ: Sure. That'd be great.

8 MR. WEISHAAR: -- in greater depth in our  
9 correspondence.

10 I also want to make sure you're aware that  
11 the letter that was attached to the agenda did not  
12 include the -- copies of the minutes that we also did  
13 submit. So if anybody wants, we did submit those.  
14 There is a letter as well.

15 Those are the minutes from the 1995  
16 proceedings where basically a very similar,  
17 substantially similar application was made by the  
18 owner -- by the immediate predecessor I think to this  
19 owner.

20 There was, you know -- so the three points  
21 I'd make, number one, is about the past precedent.  
22 There is -- in September 1995 there was an application  
23 to put some canopies that were actually the combined  
24 area is less than the proposed area of the new  
25 canopies. The original canopies in '95 were also not

1 as tall I believe. They were only 14 feet versus 17  
2 feet.

3                   And at the time this Board denied that  
4 application and they made findings that indicate  
5 that -- you know I restated the findings in my letter.  
6 But they're very -- they're very important to review  
7 those today, in particular the first three findings.

8                   The Board in 1995 found that the proposal of  
9 building canopies to be a total change in the  
10 character of a residential neighborhood. The  
11 construction of canopies would create an undesirable  
12 change in the character of the neighborhood and that  
13 it would be a detriment to nearby properties.

14                   And the request, the building of canopies is  
15 a substantial variance in changing the character and  
16 use of the property.

17                   So, you know, if this were a situation where  
18 administrative res judicata applied, the applicant  
19 wouldn't be allowed to reargue those same, you know,  
20 requests without there really being significant  
21 changes.

22                   Now, even if res judicata doesn't apply,  
23 kind of plain preclusion, the Board is still bound by  
24 kind of precedent. And it would be -- in order to  
25 reach a different result, it would really need to

1 explain why there should be -- the significant  
2 differences.

3 We think that the current application  
4 because it's covering a larger area and is a taller  
5 canopy, that on the area variances is more substantial  
6 than the prior application that was denied.

7 We also think from reading the minutes it  
8 looks like that this may actually be the third request  
9 for canopies. There was -- in the minutes of the '95  
10 hearing there was a reference to a prior application  
11 like five or seven years earlier. I don't have that  
12 information, but I think there is that reference in  
13 the minutes.

14 The second point I want to make -- the  
15 second and third point really relate to the use  
16 variance. As you know use variances are very  
17 difficult to obtain and they require kind of a higher  
18 burden of proof than an area variance. And we think  
19 that they failed to meet at least three of the  
20 elements here. And I want to focus on two of those  
21 elements.

22 The first element that they need to show is  
23 the dollar and cents proof that they can't achieve a  
24 reasonable return. And, you know, there's a couple of  
25 points we highlight on that. The first is they

1 described that they've been marketing this property,  
2 but they really don't go into detail about how they  
3 marketed the property and found it to be, you know --  
4 unable to get their reasonable return.

5 They have nothing in the record about what  
6 is the actual market value of this property. What was  
7 the price that they were offering to sell or lease the  
8 property for? They don't have any proof on those  
9 points.

10 And probably the most significant concession  
11 that they make, when they talk about how expensive  
12 it's going to be to renovate this property, they talk  
13 about how in disrepair it is. There's no -- you know,  
14 the wiring needs to be redone. I think they say  
15 something about the roof. They say something about --  
16 I mean, they -- they have a laundry list of things  
17 that need to be done to this property.

18 And then they acknowledge that the building  
19 needs a complete renovation for any occupant no matter  
20 what use. So they haven't shown that it's going to  
21 cost them X amount of dollars above what they already  
22 say it's already going to cost in order to -- in order  
23 to make this a legally permitted office use, it's  
24 going to cost me so much more money. Then I'm not  
25 going to be able to get a reasonable return. So, you

1 know, we don't think they met that element.

2 And the last thing I wanted to talk about  
3 was another, and probably even the easiest way to deny  
4 this application on the use variance, is that we  
5 believe it's a self-created hardship. When this  
6 property was purchased, it was already no longer a gas  
7 station. It was purchased by somebody or one of the  
8 principals of this business as an admitted experienced  
9 developer with over 40 years of experience.

10 And, you know, they -- if they didn't know  
11 what the zoning was, they should have known what the  
12 zoning was given the level of experience they have.  
13 And as this Board is well aware, you know, a hardship  
14 in the context of zoning is self-imposed where the  
15 applicant for a variance required -- acquired the  
16 property subject to the restrictions from which he or  
17 she now seeks relief.

18 So we think this is clearly a self-created  
19 hardship. And that alone should be a basis to deny  
20 the application for a use variance.

21 So I submitted all of this in writing in  
22 greater detail. And, you know, thank you for allowing  
23 me to speak. I don't know if you have time limits,  
24 but I'm sure I've gone over. So thank you.

25 CHAIRMAN MIETZ: Okay. You did fine. Thank

1 you very much. I appreciate you keeping it to the  
2 subject. Okay.

3 Who else do we have that would like to  
4 speak?

5 I'm sorry? Could you identify yourself  
6 please.

7 MS. BENTLEY: Yes. This is Karen and Robert  
8 Bentley. We live at 3939 Elmwood Avenue. We live  
9 directly across the street.

10 CHAIRMAN MIETZ: Okay. Very good. Go right  
11 ahead.

12 MS. BENTLEY: Yup. We leave directly across  
13 the street from the proposed variance request. And we  
14 just want to reiterate what our attorney and the  
15 neighborhood representative attorney has said.

16 We have bedrooms that are directly across  
17 the street that would be -- that would suffer from  
18 light, noise, additional traffic.

19 The -- the basic concern of property value  
20 in a, what most people would consider, the East Avenue  
21 affluent neighborhood is very important to us. As one  
22 of the major investments we've made as a couple and a  
23 family is that we've purchased a house in this  
24 neighborhood. And that investment we would like to  
25 maintain the value of and in the future actually make

1 money on a sale later on.

2 So I and my husband are absolutely against  
3 any approval of variances. And we hope the Board will  
4 oppose and not award the variances. Thank you very  
5 much.

6 CHAIRMAN MIETZ: Okay. Ma'am, I just have  
7 one quick question. How long have you lived in your  
8 location?

9 MS. BENTLEY: Almost three years.

10 CHAIRMAN MIETZ: Okay. Thanks. Who else do  
11 we have, Rick?

12 MR. HAREMZA: We have Miranda.

13 MS. HARRIS-GLOCKER: My name is Miranda  
14 Harris-Glocker. It's G, as in George, L-O-C-K-E-R.

15 I'm a local physician. My husband's a local  
16 physician. We have three kids. We live at 944 Allens  
17 Creek Road.

18 CHAIRMAN MIETZ: Okay. Go ahead.

19 MS. HARRIS-GLOCKER: And all three of our  
20 children go -- or -- one just graduated from Allens  
21 Creek. My main points are that we are frequent  
22 runners, bikers. Our kids walk the neighborhood to  
23 their friends' houses. They bike to their friends'  
24 houses.

25 I will say my husband and I both have had

1 near catastrophic accidents where we've nearly been  
2 hit by cars running already from people trying to cut  
3 across Allens Creek Road from Monroe Avenue to the 490  
4 area, Linden, et cetera.

5                   And during the shutdown of COVID, we were  
6 asked because they're short on bus drivers to take our  
7 children to school, walk if we could, drive them if we  
8 could. And we started walking last year. And our  
9 nanny and three children were nearly hit when a car  
10 jumped the curb trying to race through the  
11 intersection.

12                   So it's already a concerning traffic area.  
13 And I worry about the safety of our kids having  
14 another busy, you know, place where people are  
15 entering and exiting frequently.

16                   So I second everyone's concerns that have  
17 already been shared in the community and just ask that  
18 the variance not be granted. Thank you for your time.

19                   CHAIRMAN MIETZ: Thank you. Okay, Rick.

20                   MR. HAREMZA: We have Carla Casulo.

21                   MS. CASULO: Thank you. It's "Casulo." My  
22 name is Carla Casulo. I'm a resident at 49 Brookside  
23 Drive. We've lived here for approximately five years.  
24 I'm also a local physician.

25                   And I wanted to echo our extreme and strong

1 option to the approval of this use variance for  
2 reasons that have similarly been stated. This  
3 grants -- this variance, if granted, would be  
4 permanent. And it would cause significant detriment  
5 to our neighborhood.

6 So we feel that this would create  
7 unnecessary and burdensome traffic as has been  
8 described. This area is already very traffic heavy.  
9 And there are already areas of the sidewalk that are  
10 eroded where cars can jump the curb and pose a danger  
11 to not only us but the small children in our area.

12 I also have two small children. They also  
13 attend at Allens Creek. They also walk to school  
14 frequently. And I think that one of the things that  
15 has not been articulated by the applicants is what the  
16 position of the school board is given that Allens  
17 Creek is 300 yards from this proposal.

18 And it's to me incomprehensible that alcohol  
19 and tobacco is being proposed to be sold very close to  
20 a school where small children attend and in a  
21 residential community.

22 So I think that this is a -- would be a very  
23 serious mistake. This is a very close net, and I  
24 would highlight, residential community that has  
25 expressed serious concern about this project for a

1 long period of time.

2                   And we feel that the process of getting this  
3 approval has provided inconsistent information,  
4 incomplete site plans. There have been an  
5 underestimation of the risks and complications of  
6 these fuel storage tanks. The answers that have been  
7 provided have been very vague. And we think that this  
8 is not accessible for our community.

9                   And I really strongly urge the Board to take  
10 our concerns very seriously as you have an obligation  
11 serving our community to take our concerns seriously.  
12 We've invested time. We've invested money. We've  
13 invested a personal interest in our community. And we  
14 really strongly urge you to deny this variance. And I  
15 thank you for your time.

16                   CHAIRMAN MIETZ: Thank you. Okay. Any  
17 other speakers?

18                   MR. HAREMZA: We have Megan Henry.

19                   CHAIRMAN MIETZ: Okay.

20                   MS. HENRY: Hi. So -- sorry. I am unable  
21 to start my video. But this is Megan Henry. I live  
22 at 980 Allens Creek Road. And I've lived here since  
23 2007.

24                   And I will probably not be as articulate as  
25 Dr. Casulo and my other neighbors who have already

1 spoken. But in addition to all the points that they  
2 have already made and the points that I made in my  
3 letter, I just want to re-emphasize a couple of  
4 things.

5 One, there's been very little discussion  
6 around the impact of the gas tanks, what that will do,  
7 whether it's replacing or installing new ones.

8 The proximity to Allens Creek. I'm  
9 concerned about the environmental impact, that there  
10 may -- that there may be difficulty with the soil,  
11 with the water table, this proximity of the creek.

12 And I do think in the application a  
13 representation of this is -- that this is a urban  
14 location is just false. We have deer, fox, waterfowl,  
15 all sorts of animals here in the area. So from an  
16 environmental perspective I'm concerned.

17 From a non-environmental perspective, a very  
18 practical point is in a meeting that a representative  
19 from Quickele's held with a small number of people  
20 from the neighborhood in a Zoom meeting that was cut  
21 off at 40 minutes, one of the things was around the  
22 fueling of the gas tanks. And it was -- it was  
23 mentioned to the neighborhood that even Quickele's did  
24 not have any influence over the timing that the vendor  
25 would be showing up to fill the underground gas tanks.

1                   And so I just imagine those neighbors that  
2 are directly across the way being woken up in the  
3 middle of the night -- because they said that they do  
4 that primarily in the nonbusiness hours -- to a tanker  
5 in their front yard basically filling up those tanks.

6                   And so I just -- it will completely destroy  
7 the neighborhood from the residential perspective.  
8 And, again, the sale of -- my last point would just be  
9 to re-emphasize the sale of alcohol and tobacco so  
10 near the elementary school seems unnecessary to me.

11                  But I'll stop there. And I appreciate the  
12 time to share my thoughts. Thank you.

13                  CHAIRMAN MIETZ: Thank you, Ms. Henry.

14                  MR. HAREMZA: Next we have Bridget Stone.

15                  MS. STONE: Good evening. I'm Bridget Stone  
16 and I live at 1110 Allens Creek Road, which is also  
17 directly across from this project.

18                  My husband and my four children and I have  
19 lived there since 2005. We've lived here for 18  
20 years. We were here when Gordias was in operation,  
21 which is a completely different animal. It was a  
22 small repair shop really. It wasn't even a  
23 convenience store. He sold a couple beverages and  
24 auto supplies and things like that. But his function  
25 was really repair. It wasn't even to sell gas.

1                   He was opened -- he opened at 7 in the  
2 morning until 6. And there was really a neighborhood  
3 kind of an operation where we would all get our cars,  
4 you know, worked on there. And it was just -- it's --

5                   When the applicant is comparing this has  
6 always been a gas station, it's always been the use,  
7 it's not the same. It's very different when you have  
8 a convenience store that is now all glass, lit up,  
9 from 5 in the morning until 10 at night. You're  
10 selling beer. You're selling alcohol.

11                  And you have this humongous canopy about the  
12 same size of the building that's not even going to let  
13 you see the building. It's going to basically obscure  
14 the building. If you look at any of the site plans  
15 you never see a straight on look at the gas station  
16 because they don't want you to see it because you  
17 won't see the building. Every view on the site plan  
18 is a side view or an aerial view because you won't see  
19 the building.

20                  And I also want to point out, and I think  
21 Megan pointed out as well, that I've learned a lot in  
22 this whole process because -- I found out about this  
23 project when I received a letter before the May  
24 Planning Board meeting. It was like three days before  
25 the meeting. So in the last four months I've learned

1 a ton about how this process worked. And I've also  
2 learned that I need to pay attention and be better  
3 informed of these projects that are going on. Because  
4 these applicants had no intentions of soliciting our  
5 feedback, meeting with us. Right in the meeting --  
6 the meeting minutes and I stated it in my letter that  
7 I sent -- well, I sent two letters, one to address the  
8 use variance and one to address the area variance.

9                   But it stated right in my letter several  
10 different boards suggested that they reach out to the  
11 neighbors and they said they had no plans to do so,  
12 until we all stood up in May in the meeting that went  
13 until almost 1 o'clock in the morning. A few of us  
14 stayed on and spoke our piece. And that was the only  
15 reason that there was a Zoom meeting that was, as  
16 Megan said, 40 minutes. It wasn't even 40. It was  
17 30. It just ended. It just abruptly ended. We had  
18 several questions that we were told we would get  
19 follow up. No follow up.

20                   Month later I emailed one of the  
21 representatives and said, hey, let's -- you know,  
22 where are all those answers? So couple days later we  
23 get some answers. He was also going to share the Zoom  
24 link because he recorded the meeting. And for some  
25 reason he can't figure out how to do that either.

1           I just feel like this -- they're avoiding us  
2 because they know that is not right for this  
3 neighborhood. And I ask you to deny this variance.  
4 Thank you for your time.

5           CHAIRMAN MIETZ: Thank you.

6           MR. HAREMZA: Okay. We have Mary Boyd.

7           MS. BOYD: Hi. I'm Mary Boyd. My husband  
8 and I have lived for 33 years on Meadow Lane in the  
9 neighborhood. I will say that I agree with the  
10 previous objections.

11           But I would like to add the previous Sunoco  
12 station was not profitable and thus closed and went  
13 out of business. So what is the business plan for  
14 making a new gas station, new mini-mart profitable?  
15 I'd like to see a business plan. Maybe it's been  
16 offered. I haven't seen it. I may be late to this  
17 conversation. But I would like to know what the  
18 business plan is.

19           And if the business fails, then what's next?  
20 What -- what Pandora's box just opened up by a  
21 possible failure of the business.

22           There are gas stations relatively close by.  
23 There's some on the corner of the Monroe and Elmwood,  
24 Monroe and Allen's Creek. And I'm sure there are  
25 others. But if the previous gas station was not

1      profitable, what's the business case for making this  
2      one profitable? Selling sundries, cokes, candy,  
3      alcohol. You know, alcohol is a high profit margin,  
4      sure. But, you know, is that enough to make it  
5      profitable? And if it fails, what Pandora's box gets  
6      opened up?

7              My husband and I have been here, as I say,  
8      33 years on Meadow Lane. It's a wonderful residential  
9      neighborhood. This particular proposal is not  
10     compatible with the neighborhood. And there are all  
11     kinds of reasons, but it really -- in my mind comes  
12     down to incompatibility. And I would strongly urge  
13     you to deny their request. Thank you.

14              CHAIRMAN MIETZ: Thank you.

15              MR. HAREMZA: This is Jason. I am not  
16     seeing any more hands raised at this time.

17              CHAIRMAN MIETZ: Okay. Very good.

18              MS. TOMPKINS-WRIGHT: It looks like someone  
19     named Linda.

20              MR. HAREMZA: Sorry. We have a couple late  
21     comers. We have a Linda. Go ahead, Linda.

22              MS. STEVENSON: Hello. This is Linda  
23     Stevenson. I live at 12 Creekdale Lane. I'm trying  
24     to start my video.

25              I wrote a long letter and submitted it

1       yesterday. One point that people haven't talked about  
2       is the new apartment complex that's just -- it's  
3       seven-tenths of a mile up the road. That's a concern  
4       for me for the increased traffic that's potentially  
5       going to be able to occur.

6           And when you look at the road where the gas  
7       station is and how small the gas station is and how  
8       many parking spaces they want and the tankers coming  
9       in and also the trucks for the beer, the trucks for  
10       the cigarettes, the trucks for the food the trucks --  
11       they all -- they have to come in when the store is  
12       open. So when you have those large trucks coming in  
13       during the day and you have increased traffic, then  
14       what everybody else has said about the danger to the  
15       children, the danger to people running. And nobody  
16       has mentioned the increased pollution.

17           These are serious concerns. And the noise,  
18       everything about that whole scenario is very  
19       detrimental to our homes, our style of living, what we  
20       paid for, the taxes we pay, and our safety. It's just  
21       not worth our safety to grant this -- excuse me. But  
22       the nicest word I can think of is loosey-goosey plan,  
23       which isn't a plan, to say hey, we want to do this  
24       pretty much based upon numbers in the sand.

25           So I don't think that the applicants are

1 giving the neighbors the respect we deserve by giving  
2 us a plan that is solid. And I think the reason why  
3 they can't give us that plan that is solid is because  
4 there is no real solidity in anything that they're  
5 offering. Given the size of the gas station, what  
6 they want to do with it, what they're proposing to  
7 sell, it's just not a viable solution. So thank you  
8 very much for allowing me to speak.

9 CHAIRMAN MIETZ: You're welcome. And thank  
10 you.

11 MR. HAREMZA: We have Larry I think would  
12 like to comment.

13 MS. JACKSON-RAY: Yes. First of all, I'm  
14 also Julie Jackson-Ray with my husband Larry Ray. And  
15 liked to speak first briefly. I wrote a letter.

16 CHAIRMAN MIETZ: Ma'am. Ma'am. Excuse me.  
17 What is your address please?

18 MS. JACKSON-RAY: 3861 Elmwood Avenue. So  
19 we're on a corner of Brookside and Elmwood.

20 CHAIRMAN MIETZ: Okay.

21 MS. JACKSON-RAY: We've been at this address  
22 for 32 years. I -- you know, the one thing that is  
23 wonderful about Brighton is that they have been very  
24 responsible to our concerns in the past. And I'd like  
25 to point to the sidewalk that was not in the original

1 plans for the redesign at the intersection at East Ave  
2 and Elmwood. However, with our -- the neighborhood  
3 input, it was included. And that was -- how many  
4 years ago?

5                   But the point being I never -- the positive  
6 impact that sidewalk meant, I never could have  
7 anticipated how positive it was. People value this  
8 neighborhood as a -- it has created the neighborhood  
9 by people being able to walk around it and everything.

10                  Now, on the opposite side of this is the  
11 fact that -- so that's one thing that made a positive  
12 impact. I think -- I agree with the concerns of all  
13 the other speakers this evening in our neighborhood.

14                  And while it might be the interest of one  
15 person who bought this property -- and it's zoned  
16 office -- the impact of this if this plan is -- you  
17 know, continues it's going to be -- I think we cannot  
18 even -- we have a very good reason to be concerned  
19 about the negative impacts as have been outlined. And  
20 my husband I think will follow after me.

21                  MR. RAY: Hi. This is Larry. As my wife  
22 Julie said, we've lived here for 32 years at 3861  
23 Elmwood Avenue.

24                  I was actually looking where is the nearest  
25 retail outlet along East Avenue from this site? If

1 you're headed towards the site the first one is near  
2 Winton. There's nothing between East Avenue and  
3 Winton and Elmwood to Winton. Going the other way,  
4 you've got to go a long, long way. It's basically  
5 just nothing until you get to Marsh Road.

6 Now, if you head east/west, what's the  
7 closest retail store? That's at Twelve Corners.  
8 Headed the other way you got to go at least to  
9 Panorama Trail and you have to get off Panorama trail  
10 or go all the way to Penfield. There's no retail  
11 outlets here. This is the only retail store within  
12 miles. This is residential. There's no need for  
13 another gas station.

14 Plus the Town of Brighton's been pretty much  
15 trying to be environmentally conscious in promoting a  
16 lot of environmentally-positive things. Having  
17 another gas station -- we don't need another gas  
18 station. We're trying to get ourselves off of fossil  
19 fuels. This is going in the wrong direction. This is  
20 not the right step for Brighton to be taking. Thank  
21 you.

22 CHAIRMAN MIETZ: Thank you, Mr. Ray. Okay.  
23 Is there anyone else that would like to  
24 speak? Okay. Well, thank you everyone for your  
25 comments. The public hearing is going to remain open.

1                   And Rick, we can move along.

2                   MR. DiSTEFANO: Yeah. That's it for the  
3 public hearings, Mr. Chairman. I think we can just  
4 tell the people interested in the three applications  
5 that they will present hopefully at our next meeting.  
6 And you certainly have the right to speak again  
7 depending on what you hear as part of that public  
8 hearing.

9                   So I apologize for you having maybe to come  
10 back a second time. But I hope you understand the  
11 situation. And we'll certainly keep up-to-date on the  
12 activity of this Board.

13                  CHAIRMAN MIETZ: Okay. That's very good.  
14 Yes. Okay. So Rick at this point I guess we move  
15 into old business. We have no new business; correct?

16                  MR. DiSTEFANO: Correct. I think old  
17 business we can just handle as part of our decision  
18 process, Mr. Chairman. I think if you want to go  
19 right into making --

20                  CHAIRMAN MIETZ: Sure. That'd be fine.  
21 That'd be fine. Okay.

22                  Does anyone need any kind of break or are we  
23 okay?

24                  MS. TOMPKINS-WRIGHT: Just to confirm,  
25 there's no one -- no one here to speak on application

1 5A-01 and 02?

2 CHAIRMAN MIETZ: Correct.

3 MR. DiSTEFANO: We can't reopen the public  
4 hearing even if there was.

5 CHAIRMAN MIETZ: Okay. Does anyone need a  
6 break or are we okay?

7 MR. DiSTEFANO: Dennis, before we go on I  
8 just want to make sure, Ken, did you get in all right?  
9 I know you had an issue.

10 MR. GORDON: There we go. Thanks, Jason.  
11 Yeah. My power went out. It is now back on. So here  
12 I am.

13 CHAIRMAN MIETZ: You're down there in the  
14 south woods. Is there a storm? Storms down there,  
15 Ken?

16 MR. GORDON: No. Apparently a power line  
17 came down for no apparent reason and hit 1,700 homes.  
18 But we're back up.

19 (Public hearing proceedings concluded.)

20

21

22

23

24

25

1 | **REPORTER CERTIFICATE**

2

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

7

8 true and accurate transcription of my said  
9 stenographic notes taken at the time and place  
10 hereinbefore set forth.

11

12 Dated this 3rd day of August, 2022  
13 at Rochester, New York.

14

15

16

17

18

19

20

21

22

23

24

25

*Holly E Castleman*  
HOLLY E. CASTLEMAN, CR,  
Notary Public.

## BRIGHTON

## ZONING BOARD OF APPEALS

## MEETING

## **DELIBERATIONS**

August 3, 2022  
At approximately 7 p.m.  
Brighton Town Hall Zoom  
2300 Elmwood Avenue  
Rochester, New York 14618

## 10 | PRESENT:

DENNIS MIETZ  
Chairperson

EDWARD PREMO ) Board Members  
13 HEATHER McKAY-DRURY )  
JUDY SCHWARTZ )  
14 KATHLEEN SCHMITT )  
ANDREA TOMPKINS-WRIGHT )  
15 MATTHEW D'AUGUSTINE )

16 KEN GORDON, ESQ.  
Town Attorney

18 RICK DiSTEFANO  
Secretary

19 JASON HAREMZA

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

1                   CHAIRMAN MIETZ: Okay. Great. We will --  
2 we're about to proceed with the 8A-01-22 application.  
3 Okay. This is 325 Antlers Drive.

4                   Does anyone have concerns about this  
5 application relative to the fence situation? It's  
6 just a rekindlement of last year's approval.

7                   MS. SCHWARTZ: Judy. Can you hear me?

8                   CHAIRMAN MIETZ: Yes.

9                   MS. SCHWARTZ: Okay. I missed -- I'm not  
10 sure, but did they say that if they do go with  
11 vinyl -- did they describe what it's going to be?

12                  CHAIRMAN MIETZ: Well --

13                  MS. SCHWARTZ: Is it going to match or --

14                  CHAIRMAN MIETZ: Judy, we only heard her say  
15 that due to price and whatnot that they were  
16 considering going to vinyl.

17                  MS. SCHWARTZ: But they might go to wood?

18                  CHAIRMAN MIETZ: Well, they were trying to  
19 do wood and she said there was an excessive cost or  
20 delay or whatnot. And that's why they were  
21 considering --

22                  MS. SCHWARTZ: Right.

23                  CHAIRMAN MIETZ: But if she could get wood,  
24 I think that was my understanding of her.

25                  MR. DiSTEFANO: Judy, I think the basic

1 style is going to be the same, whether it's wood or  
2 vinyl.

3 CHAIRMAN MIETZ: Right.

4 MS. SCHWARTZ: Okay. Would it be the dark  
5 color do you think?

6 MR. DiSTEFANO: I don't know what color they  
7 would be getting.

8 MS. SCHWARTZ: Okay. Okay. Thank you.

9 CHAIRMAN MIETZ: All right. Does anyone  
10 have any concerns here other than what Judy just --  
11 no? Okay. All right, Mr. D. You're up.

12 MR. D'AUGUSTINE: All right.

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   **Application 8A-01-22**

2                   Application of John Inzinna and Jacylyn  
3                   Whitney, owners of property located at 325 Antlers  
4                   Drive, for an Area Variance from Section 207-2A to  
5                   allow a 6.5 foot high fence in a front yard area where  
6                   a maximum 3.5 foot high fence is allowed by code. All  
7                   as described on application and plans on file.

8                   Motion made by Mr. D'Augustine to approve  
9                   Application 8A-01-22 based on the following findings  
10                   of fact.

11                   **Findings of Fact:**

12                   1. The property in question is on a corner lot on a  
13                   busy road and homeowners experience substantial road  
14                   noise due to RG&E and the Town removing trees and  
15                   other shrubs that had previously reduced that road  
16                   noise.

17                   2. The requested 6.5 foot tall fence would be in  
18                   keeping with the fence height and style of the rear  
19                   neighbor's fence and also not alter the character of  
20                   the neighborhood.

21                   3. The alleged hardship was not created by the  
22                   applicant.

23                   **Conditions:**

24  
25

1                   MR. DiSTEFANO: Can I stop you for a second,  
2 Matt?

3                   MR. D'AUGUSTINE: Yeah. Sure.

4                   MR. DiSTEFANO: Can you just add a finding  
5 that the fence will still be substantially back from  
6 the front property line as shown at 57 feet or  
7 something to that --

8                   MS. TOMPKINS-WRIGHT: And maybe that thus  
9 the variance isn't substantial or something like that.

10                  MR. D'AUGUSTINE: Okay. So is that -- okay.

11                  Is that okay that goes after the alleged  
12 hardship?

13                  MR. DiSTEFANO: Yeah. Make it number four.  
14 Make a finding --

15                  MR. D'AUGUSTINE: So the -- say that again  
16 one more time, Rick?

17                  MR. DiSTEFANO: Finding of fact number 4 is  
18 just basically that the variance is not substantial.

19                  The fence will be located a minimum of 57  
20 feet from the front property line.

21                  CHAIRMAN MIETZ: Okay. That's -- are you  
22 okay with that Matt?

23                  MR. D'AUGUSTINE: Yeah. I'm just typing  
24 that.

25                  MR. DiSTEFANO: I'm sorry, Ken. We screwed

1 that up, didn't we?

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

### Findings of Fact:

2       1. The property in question is on a corner lot on a  
3       busy road and homeowners experience substantial road  
4       noise due to RG&E and the Town removing trees and  
5       other shrubs that had previously reduced that road  
6       noise.

7       2. The requested 6.5 foot tall fence would be in  
8       keeping with the fence height and style of the rear  
9       neighbor's fence and also not alter the character of  
10      the neighborhood.

11       3. The alleged hardship was not created by the  
12       applicant.

13      4. The variance is not substantial due to the fact  
14      the fence will be 57 feet from the property line.

### Conditions:

17 1. The variance only applies to the fence in the  
18 style and location as per plans submitted and  
19 testimony given.

20 2. All necessary building permits shall be obtained.

21 (Second by Ms. Schwartz.)  
22 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;  
23 Mr. Mietz, yes; Ms. Tompkins-Wright, yes;  
24 Mr. Premo, yes; Ms. Schwartz, yes;  
25 Mr. D'Augustine, yes.)

1 (Upon roll motion to approve with conditions  
2 carries.)  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   CHAIRMAN MIETZ: Okay. One down. A lot to  
2 go. All right. So the next application is 135  
3 Edgemoor. This is the deck situation.

4                   Does anyone have concerns about this deck?

5                   MS. SCHWARTZ: No.

6                   CHAIRMAN MIETZ: Okay. I don't either.

7                   Heather?

8                   MS. MCKAY-DRURY: Yup.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   **Application 8A-02-22.**

2                   Application of Michael Jachles, owner of  
3                   property located at 135 Edgemoor Road, for an Area  
4                   Variance from Section 205-2 to allow a deck to extend  
5                   6 +/- feet into the 40 foot rear setback required by  
6                   code. All as described on application and plans on  
7                   file.

8                   Motion made by Ms. McKay-Drury to approve  
9                   application 8A-02-22 based on the following findings  
10                   of fact.

11                   **Findings of Fact:**

12                   1. The variance will not result in a substantial  
13                   change in the neighborhood because the deck is in the  
14                   rear of the house and will blend into the surrounding  
15                   properties that have similar decks in the setback  
16                   area.

17                   2. The difficulty necessitating the variance cannot  
18                   be solved in any other manner because the deck of 13  
19                   by 17 feet is what will meet the homeowners needs and  
20                   create safer access to their yard.

21                   3. The requested variance is not substantial. It is  
22                   6 feet, leaving a 34 foot setback.

23                   4. The variance is the minimum necessary for safe  
24                   access through the rear door and enjoyment of the yard  
25                   with enough space for the dining table, which is the

1 purpose of the deck.

2 5. The variance will not have an adverse effect on  
3 the physical or environmental conditions in the  
4 neighborhood where there are multiple decks and houses  
5 are also built into the setback area where necessary.

6 **Conditions:**

7 1. It is based on the application and testimony  
8 provided.  
9 2. The homeowners will obtain all necessary building  
10 permits.

11 (Second by Ms. Tompkins-Wright.)

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

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

18

19

20

21

22

23

24

25

1                   CHAIRMAN MIETZ: Okay. The next one is the  
2 air conditioner on the side of 111 Hampshire. Very  
3 narrow lots over there.

4                   So does anyone have any concerns about the  
5 placement of this air conditioner?

6                   MS. SCHWARTZ: No.

7                   CHAIRMAN MIETZ: Okay. I've got this.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   **Application 8A-03-22.**

2                   Application of Meaghan Fee Spencer, owner of  
3                   property located at 111 Hampshire Drive, for an Area  
4                   Variance from Section 203-2.1B(7) and 203-9A(4) to  
5                   allow an air conditioning unit to be 4 feet from a lot  
6                   line in lieu of the minimum 5 feet required by code.  
7                   All as described on application and plans on file.

8                   Motion made by Mr. Mietz to approve  
9                   application 8A-03-22 based on the following findings  
10                   of fact.

11                   **Findings of Fact:**

- 12                   1. The proposed location is the only alternative  
13                   which will meet the needs of the applicant on the lot.
- 14                   2. 1 foot requirement of the variance in this  
15                   purposed location is not significant and will be  
16                   barely noticeable.
- 17                   3. No negative effect on the character of the  
18                   neighborhood will occur since many homes in the  
19                   subject area have AC units on the sides of their homes  
20                   adjacent to the property line.

21                   **Conditions:**

- 22                   1. This variance is based on the testimony given and  
23                   plans submitted as to the specific location of the air  
24                   conditioner.
- 25                   2. All necessary permits shall be obtained.

1       3. Mitigation with landscaping shall be added to  
2       buffer the air conditioning unit.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   MR. DiSTEFANO: Dennis, in case they want to  
2 do a fence, it's not --

3                   CHAIRMAN MIETZ: Okay. Why don't we just  
4 say they will mitigate with either landscaping or  
5 fencing.

6                   MR. DiSTEFANO: Just -- yeah. That's fine.

7                   CHAIRMAN MIETZ: Okay. Yes. They did  
8 say -- they said one or the other.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 conditions:

2 1. This variance is based on the testimony given and  
3 plans submitted as to the specific location of the air  
4 conditioner.

5 2. All necessary permits shall be obtained.

6       3. Mitigation with landscaping or fencing shall be  
7       added to buffer the air conditioning unit.

8 (Second by Ms. McKay-Drury.)

9 (Ms. Schwartz, yes; Mr. Premo, yes,  
10 Ms. Tompkins-Wright, yes; Mr. D'Augustine,  
11 yes; Ms. Schmitt, yes; Ms. McKay-Drury,  
12 yes; Mr. Mietz, yes.)

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

15

16

17

18

19

20

21

22

23

34

25

1                   CHAIRMAN MIETZ: Okay. The next three  
2 applications, we have -- the applicant requested  
3 tabling. They left the public hearing. I know Ed has  
4 recused himself from these.

5                   So Kathleen, you're next up. Would you be  
6 willing to offer that please?

7                   MS. SCHMITT: To do the --

8                   CHAIRMAN MIETZ: I think we can group them  
9 together, Rick?

10                  MR. DiSTEFANO: Yeah. Do them all together.  
11 Just make a motion to table, the public to be left  
12 open.

13                  CHAIRMAN MIETZ: Yup.

14

15

16

17

18

19

20

21

22

23

24

25

1                   **Application 8A-04-22**

2                   Application of PEMM, LLC, contract vendee,  
3 and Bristol Valley Homes, LLC, owner of property  
4 located at 3108 East Avenue, for a Use Variance from  
5 Section 203-44 to allow a gas station with convenience  
6 store to be located in a BE-1 Office and Office Park  
7 District where not allowed by code. All as described  
8 on application and plans on file.

9                   **Application 8A-05-22**

10                  Application of PEMM, LLC, contract vendee,  
11 and Bristol Valley Homes, LLC, owner of property  
12 located at 3108 East Avenue, for an Area Variance from  
13 Section 207-6B to allow an accessory structure (gas  
14 canopy) to be located in a front yard in lieu of the  
15 rear yard as required by code. All as described on  
16 application and plans on file.

17                  **Application 8A-06-22**

18                  Application of PEMM, LLC, contract vendee,  
19 and Bristol Valley Homes, LLC, owner of property  
20 located at 3108 East Avenue, for Area Variances from  
21 Section 205-18 to 1) allow parking of vehicles to  
22 within 2 feet for a side lot line (north) where  
23 A 10 foot setback is required by code, and 2) allow  
24 paved areas / aisles up to the front lot line where a  
25 20 foot setback is required by code. All as described

1 on application and plans on file.

2                   Motion made by Ms. Schmitt to table  
3 applications 8A-04, 05 and 06-22 based on the request  
4 of the applicant. The public hearing will remain open  
5 and testimony provided by residents shall be part of  
6 the record.

7                   (Second made by Mr. D'Augustine.)

8                   (Ms. Tompkins-Wright, yes; Ms. Schwartz,  
9 yes, Mr. Mietz, yes; Ms. McKay-Drury, yes;  
10 Mr. D'Augustine, yes; Ms. Schmitt, yes.)

11                   (Upon roll motion to table and keep the  
12 public hearing open carries.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   CHAIRMAN MIETZ: Okay. So what do you want  
2 to tell us about the old business applications 5A-01  
3 and 02?

4                   MR. DiSTEFANO: Basically I haven't heard  
5 anything from the applicant at this point in time. I  
6 know at the last month they did say that they were  
7 working towards a resolution with the neighboring  
8 property, that the attorneys were involved, trying to  
9 sort things out.

10                  I have not gotten an update since that time.  
11 I -- I don't see a big issue with giving them one more  
12 month. However, it's up to you guys whether or not  
13 you want to carry it over, deny it without prejudice,  
14 deny it flat out, approve it. Kind of leave it at  
15 that.

16                  MS. TOMPKINS-WRIGHT: Yeah. I definitely  
17 don't feel like we can approve based on the testimony  
18 that they gave and sort of the uncertainty around  
19 parking.

20                  I would -- I vote to just deny it without  
21 prejudice for lack of information.

22                  MR. PREMO: Rick, is there any indication,  
23 have they gone before the Planning Board?

24                  MR. DiSTEFANO: No. They have not made an  
25 application to the Planning Board because of the -- I

1 believe still because of the whole easement question.

2 MS. SCHMITT: Is there a downside to just  
3 moving it to give them one more opportunity to come  
4 forward and let us know? Normally I would support  
5 what Andrea said. But if they reached out to you to  
6 let you know they're trying work something out --

7 MR. DiSTEFANO: Yeah. That is -- there's no  
8 downside to that, giving them one more shot. You  
9 know, usually we try not to carry these things over  
10 too long. But we did hear from them last month saying  
11 that, you know, we are trying to work some things out.  
12 I haven't gotten an update this time.

13 But I personally, staff, don't have a  
14 problem with leaving it open for one more month. I  
15 certainly can reach out to them and say, hey, this is  
16 what the Board said. You got a month to figure this  
17 out or, you know, withdraw or we'll make a decision on  
18 it, which might not be in your best interest.

19 MS. TOMPKINS-WRIGHT: Right, but --

20 MS. SCHMITT: Right --

21 MS. SCHWARTZ: This is Judy. If we were to  
22 deny without prejudice, would there be enough left for  
23 them to make a -- would they have to make a new  
24 application? If so, would there be enough difference  
25 in it to really be a new application?

1                   MR. DiSTEFANO: Well, they can come back  
2 with the exact same application --

3                   MS. SCHWARTZ: They can. Okay.

4                   CHAIRMAN MIETZ: Right.

5                   MR. DiSTEFANO: Rather than them doing that,  
6 hopefully they would wait until they had a decision  
7 based on that easement situation.

8                   MS. SCHWARTZ: Right. Okay.

9                   MS. MCKAY-DRURY: I think that  
10 particularly -- I think if particularly the attorneys  
11 are involved they should know they need to contact us  
12 between meetings. And it sounds like there's been no  
13 correspondence between the most -- our most recent  
14 meeting and this meeting. And the fact that there's  
15 not been, I think it's perfectly reasonable to dismiss  
16 it without prejudice.

17                  They can re-file the exact same thing, but  
18 we shouldn't keep our docket locked here like this  
19 when we aren't betting any contact. So that's my take  
20 on it.

21                  MS. TOMPKINS-WRIGHT: Just to follow up,  
22 Rick, can you confirm the time when you say that they  
23 said they were working on it? That was prior to the  
24 July meeting; right?

25                  MR. DiSTEFANO: No. It was just prior to

1 the July meeting. Yeah. I mean, I heard from them  
2 like, you know, a day or two before the July meeting  
3 that the attorneys were working on it. And I heard  
4 that from the engineer.

5 MR. GORDON: And Rick, this is Ken. If I --  
6 I don't think at this point in time I have, I don't  
7 think you have told them anything like, look, you  
8 better get in touch with us before the next meeting or  
9 else. I don't think we've delivered that kind of a  
10 message to them at this point in time. Would you  
11 agree with that?

12 MR. DiSTEFANO: I agree with that, yeah.

13 MR. GORDON: Yeah. And the other thing to  
14 think about is if it's denied without prejudice, you  
15 can certainly do that, then the applicant is probably  
16 losing a month. We're probably not going to hear this  
17 back in August -- or -- September. What month is it?  
18 Good, God. We're probably not going to hear about  
19 it -- hear from these folks until at least October.

20 So we are not only delaying them, but we're  
21 delaying our own decision. And then we'll have to get  
22 back up to speed on it a little bit.

23 I mean, it's -- either one is fine. I think  
24 Rick has pointed out that. But do think about the  
25 fact that if you did deny it without prejudice, it's

1       unlikely they're going -- when is the meeting -- the  
2       application deadline for September, Rick?

3                    MR. DiSTEFANO: Next -- oh. It'd be two  
4       weeks from yesterday.

5                    MR. GORDON: Yeah. So, I mean, maybe they  
6       could get it in. But I would think -- basically what  
7       we're doing is we're saying to them by denying without  
8       prejudice, we're saying to them fix your problem in  
9       two weeks or else you're pushed out until at least  
10      October or beyond. Otherwise we said to them we're  
11      just going to push it out one more month, then we're  
12      saying you got 30 days to figure this out. That's  
13      sort of how I think of it.

14                  MR. D'AUGUSTINE: I agree with that as well.

15                  CHAIRMAN MIETZ: All right. We have a  
16      couple people who think we should deny it without  
17      prejudice. The rest of you haven't exactly spoken.

18                  So I -- just my own personal opinion about  
19      it is I think, you know, if we're going to allow them  
20      another month, then Rick needs to make it clear to  
21      them that they need to make a presentation or they  
22      could withdraw their application. They could do a lot  
23      of different things.

24                  But, yeah. I think the communication's  
25      important also and, you know, respect for the process.

1       So I would personally be okay with giving them another  
2       month as long as Rick makes it clear on them.

3                    What about -- who else hasn't -- Ed? What  
4       do you think?

5                    MR. PREMO: Yeah. I agree with you, Dennis.

6                    CHAIRMAN MIETZ: All right. Who else?

7       Matt?

8                    MR. D'AUGUSTINE: Yeah. No. I agree that  
9       we should let them know, give them the 30 days.

10                  CHAIRMAN MIETZ: Okay.

11                  MR. D'AUGUSTINE: Then we can deny it next  
12       month if we don't hear back.

13                  CHAIRMAN MIETZ: Yeah. That would pretty  
14       much be the end of it. Okay.

15                  And how about, let's see, Judy?

16                  MS. SCHWARTZ: Judy. I agree with you,  
17       Dennis.

18                  CHAIRMAN MIETZ: Okay. So it sounds like we  
19       have votes to do that then to -- to continue.

20                  Now, Rick, do we need to do anything tonight  
21       then?

22                  MR. DiSTEFANO: No, we -- why don't we make  
23       a motion to continue tabling it?

24                  CHAIRMAN MIETZ: I'll make that motion then.

25                  MR. DiSTEFANO: Yeah. Continue tabling for

1 additional information.

2 CHAIRMAN MIETZ: Okay. So I move that we  
3 table --

4 MR. GORDON: Wait. Hold on. Can I --

5 (Simultaneous conversation.)

6 CHAIRMAN MIETZ: Hold on. Hold on. We got  
7 too many people talking. Go ahead, Ken.

8 MR. GORDON: Thank you. Once a matter is on  
9 the table, you don't have to continue it on the table.  
10 You actually have to bring a motion to bring it off  
11 the table. So it stays on the table.

12 CHAIRMAN MIETZ: Okay. Good.

13 MR. GORDON: You do not need to make a  
14 motion.

15 CHAIRMAN MIETZ: That makes it even easier.  
16 Okay. Rick has obviously heard our comments to talk  
17 to the folks and I'm sure he will. Okay.

18 Any other concerns please on this? Okay.  
19 All right I guess we're finished.

20 MR. DiSTEFANO: Just in regard to the 3108  
21 East Avenue application, is there anything any members  
22 want from me? Yes, there were some previous  
23 applications made back in the late '80s and early '90s  
24 in regards to canopies. Let me know if you want to  
25 see minutes from those or --

1                   MR. D'AUGUSTINE: Yes.

2                   MR. DiSTEFANO: -- anything like that.

3                   MS. MCKAY-DRURY: There was reference to  
4 those minutes and then they have not provided them to  
5 us --

6                   MR. DiSTEFANO: The attorney did provide  
7 them as part of the attachment. But they were so  
8 massive and I wasn't going to give them out to you if  
9 they came in yesterday. So I was able to get the  
10 letter up on the agenda, but I wasn't able to get all  
11 correspondence along with that up.

12                  So I certainly can get those referenced  
13 minutes out to you as part of --

14                  MS. MCKAY-DRURY: Yeah. It's part of the  
15 record.

16                  MR. D'AUGUSTINE: Yeah. I would like to see  
17 that if possible.

18                  MR. DiSTEFANO: I can do that.

19                  CHAIRMAN MIETZ: That sounds good Rick.

20                  MS. TOMPKINS-WRIGHT: I know that we can get  
21 to this information, but it might just be easier if  
22 you can kind of copy our email. Can you provide the  
23 allowable uses for that zone that it's in? Because I  
24 know it's office, but obviously it's more expansive  
25 than just office. So do you mind providing that?

1 Like just a copy of that code provision via email to  
2 the group?

3 MR. DiSTEFANO: Yeah. I'll send you a link  
4 to the zone outline that articulates that portion.

5 CHAIRMAN MIETZ: That's good. Okay. Very  
6 good.

7 MR. GORDON: Hey, Dennis and Rick, once the  
8 meeting is adjourned and the recording is stopped, can  
9 you guys stay on Zoom with me to just chat about a  
10 couple procedural issues?

11 CHAIRMAN MIETZ: Sure.

12 MR. GORDON: Thank you.

13 CHAIRMAN MIETZ: Okay. Thank you,  
14 everybody.

15 (TIME: 8:18 p.m.)

16 \* \* \*

17

18

19

20

21

22

23

24

25

1 | **REPORTER CERTIFICATE**

2

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

7

8 true and accurate transcription of my said  
9 stenographic notes taken at the time and place  
10 hereinbefore set forth.

11

12           Dated this 3rd day of August, 2022  
13           at Rochester, New York.

14

15

16

17

18

19

20

21

23

22

24

25

Holly E Castleton

HOLLY E. CASTLEMAN, CR,  
Notary Public.