
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

PRESENT:

DENNIS MIETZ
Chairperson

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

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

JASON HAREMZA

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
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 Quicklee'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 Quicklee'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.)
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REPORTER CERTIFICATE

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

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

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

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

PRESENT:

DENNIS MIETZ
Chairperson

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

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

JASON HAREMZA

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
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.

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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:**

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?

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1 **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.

15
16 **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.)
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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.

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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.)

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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.

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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.

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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.

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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.)

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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.

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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.)
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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 now 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 getting 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.)

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REPORTER CERTIFICATE

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

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

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

Holly E. Castleman

HOLLY E. CASTLEMAN, CR,
Notary Public.