

**BRIGHTON
ZONING BOARD OF APPEALS
MEETING**

September 7, 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 CHAIRPERSON MIETZ: Good evening, everyone.
2 This is the September meeting of the Brighton Town
3 Zoning Board of Appeals. Just a couple of things to
4 be aware of here. The -- well, let's call the meeting
5 to order first. Go ahead, Rick. Please call the
6 roll. Rick?

7 MS. SCHWARTZ: He's on mute.

8 CHAIRPERSON MIETZ: Yup.

9 (Whereupon the roll was called.)

10 MR. DiSTEFANO: Let the record reflect all
11 members are present.

12 CHAIRPERSON MIETZ: Okay. Very good. Thank
13 you. Okay. So let's just talk about the agenda and
14 how we do -- one other thing. I keep going on over
15 here. I apologize, Holly.

16 Was the Board meeting properly advertised,
17 Mr. DiStefano?

18 MR. DiSTEFANO: Yes, Mr. Chairman. It was
19 advertised in the Daily Record of September 1st, 2022.

20 CHAIRPERSON MIETZ: Okay. Very good. Okay.
21 So let's talk about the agenda. There are three times
22 8A-04, 5 and 6, which are holdovers with open public
23 hearings from last month.

24 So due to the amount of discussion that will
25 be with those, we're going to start with 9A-01 and go

1 through 9A-06. Then we'll go back to 8A-04. This way
2 people don't have to stay on as long to hear that
3 discussion. Anybody who would like to, please feel
4 free to stay on as long as you'd like. Okay.

5 Other than that is there anything else you
6 want to say before we get into the minutes here?

7 MR. DiSTEFANO: I have nothing. There
8 are -- there were some communications that came over
9 with the final agenda. I don't know if everybody got
10 those so take a look at that.

11 I also received a communication late in the
12 day today that did not appear on the agenda regarding
13 3108 East Avenue. It's the fourth of the requests of
14 the applicant for that.

15 I have nothing else unless some of the
16 members have any questions.

17 CHAIRPERSON MIETZ: Okay. Just for the
18 people on the call, what we do is we'll be reading
19 them in the order that I've suggested.

20 When your case comes up, could you please
21 identify yourself? And then you will be able to
22 speak. And your responsibility is to let us know why
23 you feel we should support your application. And the
24 Board members, if they have any questions, will ask
25 you current questions.

1 As soon as that's finished, we will ask if
2 there's anyone on the Zoom call that would like to
3 speak regarding your application. They will do that
4 and then we will close the public hearing and move to
5 the next case.

6 Once we finish the six and then move through
7 the three and there's a couple of old business things,
8 then we will maybe take a few minute break if
9 necessary or we will just get right into the
10 deliberations.

11 Now, you're welcome to listen to the
12 deliberations. We don't allow any discussion between
13 the Board and applicants or residents or anyone else,
14 but you're free to listen. And we try, unless there's
15 a reason to table an application, to finish them
16 tonight.

17 If you decide not to stay, then you can call
18 Mr. DiStefano in the building office tomorrow and hear
19 the result of any application.

20 Okay. So we have minutes from the July
21 meeting. Yes?

22 MR. DiSTEFANO: Yes for the July; no for the
23 August.

24 CHAIRPERSON MIETZ: That's correct. Okay.
25 So the July meeting, does anyone have any corrections,

1 additions, deletions, et cetera?

2 MR. DiSTEFANO: Judy? You're on mute, Judy.

3 MS. SCHWARTZ: Okay. I got it. Okay.

4 CHAIRPERSON MIETZ: Yes.

5 MS. SCHWARTZ: Page 39, line 12, the word is
6 "irrelevant."

7 Page 61, line 15, the first word is "will."

8 Page 66, condition number 1, line 12, I
9 believe the word is "approval." "The approval is
10 granted as per the application." You wouldn't say
11 "the application is granted per the application."

12 CHAIRPERSON MIETZ: Right.

13 MS. SCHWARTZ: It's approval. Okay.

14 Page 71, line 25, I think the word instead
15 of "applicant" should be "ample," ample parking.

16 Page 72, line 1, the first word -- I hope
17 you people will take a look at it. It's one of the
18 findings of fact, number 3. And it reads "landing of
19 the two tents will not result."

20 I think -- is it locating or something?
21 Does that make more sense? "Locating of the two tents
22 will not result in the change of the character..."
23 okay. So word number 1 is "locating."

24 Page 85, line -- oh. Line 2, again the
25 "approval." Approval.

1 Page 77, again, line 2, "approval" instead
2 of applicant.

3 Page 85, line 15, the first word is
4 "neighborhood."

5 Page 89, line 21, insert the word "due,"
6 D-U-E after needed. Needed due.

7 Page 91, line 18, oh, gosh. The word change
8 should be "chain," C-H-A-I-N.

9 And lastly, page 98, line 15, the second
10 word should be "front." The front.

11 And that's what I have.

12 CHAIRPERSON MIETZ: Okay. Very good. Does
13 anyone else have any other additions, corrections,
14 deletions? Okay.

15 So could we have a motion for the minutes as
16 amended?

17 MS. SCHMITT: This is Kathleen.

18 CHAIRPERSON MIETZ: Hold on.

19 MS. SCHMITT: I move to approve the minutes.

20 CHAIRPERSON MIETZ: And a second please.

21 MR. PREMO: Second.

22 CHAIRPERSON MIETZ: Okay. Ed, thank you.

23 MR. DiSTEFANO: Motion is to approve with
24 corrections.

25 (Mr. Premo, yes; Ms. Schwartz, yes;

1 Ms. Tompkins-Wright, yes; Mr. D'Augustine,
2 yes; Mr. Mietz, yes; Ms. McKay-Drury;
3 Ms. Schmitt, yes.)
4 (Upon roll motion to approve with
5 corrections carries.)

6 CHAIRPERSON MIETZ: Okay. Very good. All
7 right. So Rick, whenever you're ready.

8 MR. DiSTEFANO: Okay. Again, applications
9 8A-04, 8A-05 and 8A-06 will be held until we go
10 through the 9A applications. So we'll start with
11 9A-01-22.

12 **Application 9A-01-22**

13 Application of OAK Hill Terrace Apartments/
14 K of P LLC, owner of property located at 2470 East
15 Avenue, for an Area Variance from Section 207-2A to
16 allow a front yard fence to be 4 feet in height in
17 lieu of the maximum 3.5 feet allowed by code. All as
18 Described on application and plans on file.

19 CHAIRPERSON MIETZ: Okay. Who do we have
20 speaking for 9A-01? Is there anyone here to speak for
21 9A-01?

22 I don't know, Rick, that they go the time
23 with the other things ahead of it.

24 MR. KONSAVAGE: This is Andrew Konsavage
25 representing Oak Hill Terrace.

1 CHAIRPERSON MIETZ: Oh, wonderful. Thank
2 you, Andrew. Could you just give us your full name
3 and address please?

4 MR. KONSAVAGE: Yes. My address is 200 --
5 or -- excuse me. 155 Gateway Landing Boulevard.

6 CHAIRPERSON MIETZ: Could you spell your
7 last name please?

8 MR. KONSAVAGE: K-O-N-S-A-V, as in Victor,
9 A-G-E.

10 CHAIRPERSON MIETZ: Okay. Very good. Okay.
11 So when you're ready, please proceed.

12 MR. KONSAVAGE: Yeah. So we're asking for
13 the variance for the dog park located at Oak Hill
14 Terrace.

15 We put the dog park in. It was not one of
16 my projects. I inherited this. It was brought to my
17 attention that the permit was not pulled for that
18 project.

19 And so I went to obtain the permit and was
20 instructed that we needed a variance due to the height
21 of the fence.

22 The dog park itself is an amenity to the
23 residents of Oak Hill Terrace to walk their dogs as
24 well as let them exercise. Also it's not an eyesore
25 for the street. It's not within any easement. And

1 the cost to shorten a fence by roughly -- what is it,
2 8 inches -- would be I believe an undue burden
3 considering the cost we had already expended to
4 install it. That's all I have.

5 CHAIRPERSON MIETZ: Just a couple questions.
6 Have you had any issues or comments from neighbors or
7 anyone else related to the fence other than your own
8 residents?

9 MR. KONSAVAGE: I have not heard any
10 comments good or bad --

11 CHAIRPERSON MIETZ: Right.

12 MR. KONSAVAGE: -- from the neighborhood. I
13 have no complaints that I'm aware of.

14 CHAIRPERSON MIETZ: Okay. All right. Very
15 good. Board members, questions?

16 MS. TOMPKINS-WRIGHT: Sure. This is Member
17 Wright. Just a question about typical heights for a
18 dog park. Is it typical to have a 4 foot high fence?

19 MR. KONSAVAGE: That would be correct,
20 ma'am. It's just a standard chain link fence, one you
21 find at a dog park or a residential backyard.

22 CHAIRPERSON MIETZ: I think, sir, the
23 question was, you know, from the manufacturer of the
24 fence company or whatever do they generally suggest a
25 4 foot fence for a dog park?

1 MR. KONSAVAGE: I would say yes, it's a
2 standard fence overall, especially for dog parks.

3 CHAIRPERSON MIETZ: Okay. Board members,
4 questions?

5 MR. DiSTEFANO: What approximately is the
6 square footage of the fenced in area?

7 MR. KONSAVAGE: It is approximately
8 300 square feet.

9 MR. DiSTEFANO: Thank you.

10 CHAIRPERSON MIETZ: Okay. Board members,
11 other questions?

12 MR. GORDON: Dennis, I just --

13 MS. TOMPKINS-WRIGHT: This is Member
14 Wright -- oh. Go ahead, Ken.

15 MR. GORDON: No. I just -- just for the
16 record I just wanted to add a comment that in my work
17 with the animal control officers, we've had occasion
18 to review fencing for dogs. In fact, we currently
19 have a pending matter where we had a dangerous dog who
20 had attacked a jogger along the street. We had asked
21 the residents to put in a fence. And this dog happens
22 to be a very, very short-legged dog. And they're
23 installing a 3 and a half foot fence.

24 Bruce Blackman at the Animal Control office
25 said if it wasn't for the fact that this was a very,

1 very short dog he would find that a 3 and a half foot
2 fence would not be adequate to contain the dog.

3 CHAIRPERSON MIETZ: That's good --

4 MR. GORDON: Any larger dog, you're going to
5 want a higher fence.

6 CHAIRPERSON MIETZ: Okay. Excellent. All
7 right. I appreciate that. You know, he obviously
8 works with this every day and it's an important issue.
9 All right. So go ahead, Andrea.

10 MR. DiSTEFANO: You're on mute, Andrea.

11 MS. TOMPKINS-WRIGHT: Sorry. This is
12 just -- I just want to confirm the application
13 response to self-created, it says -- it mentions
14 Collins Avenue.

15 So I just want to confirm that's Clover.

16 MR. KONSAVAGE: I'm sorry. I believe it
17 should have been Clover, not Collins.

18 CHAIRPERSON MIETZ: Right. No Collins.

19 MS. TOMPKINS-WRIGHT: Okay.

20 CHAIRPERSON MIETZ: Okay. Very good. Any
21 other board members, questions? Okay. Very good.
22 Thank you very much, sir.

23 MR. KONSAVAGE: Thank you.

24 CHAIRPERSON MIETZ: Is there anyone else on
25 the Zoom call that would like to speak regarding the

1 dog park and fence height? Okay. There being none,
2 the public hearing is closed.

3 **Application 9A-02-22**

4 Application of Jeff Zimmer, Bear Creek
5 Landscapes, contractor, and Matthew and Min Hee
6 DeRosa, owners of property located at 148 Dale Road,
7 for an Area Variance from Section 207-2A to allow a
8 front yard fence to be 4 feet in height in lieu of the
9 Maximum 3.5 feet allowed by code. All as described on
10 application and plans on file.

11 CHAIRPERSON MIETZ: Okay. And who do we
12 have speaking for 9A-02?

13 MR. DeROSA: Hi. My name is Matt DeRosa. I
14 live at 148 Dale Road with my wife and family.

15 CHAIRPERSON MIETZ: Okay. Very good, sir.
16 Please proceed.

17 MR. DeROSA: We live on a corner lot. And
18 our variance is a -- at a 48 inch fence, which because
19 we're at corner lot we technically have two front
20 yards.

21 So the one side that faces Dale Road East
22 will have a 48 inch fence. And similarly our
23 intention for the 48 inch fence is for our dog and the
24 kids, so, you know, similar to the last request, the
25 purpose is to, you know, better have our dog in the

1 back yard.

2 CHAIRPERSON MIETZ: Okay.

3 MR. DeROSA: So I hope the request seems
4 reasonable to the group here.

5 CHAIRPERSON MIETZ: Okay. Very good. All
6 right. Board members, questions for Mr. DeRosa?

7 MR. PREMO: This is Member Premo. The fence
8 is going to be tied in with the existing fence that's
9 out there, the one that runs along part of the
10 backyard; is that correct?

11 MR. DeROSA: That's correct, yeah.

12 MR. PREMO: And have you talked to your
13 neighbors about tying in the fence there?

14 MR. DeROSA: I mentioned it to him in
15 conversation and he didn't have an with it. He only
16 asked that I put a gate there or something so he could
17 get to his hedges if he needed to. So that was the
18 extent of our conversation though.

19 MR. PREMO: Yes. And along Dale Road East
20 there's a stone driveway. That's one you use to take
21 your cars in and out; is that right?

22 MR. DeROSA: Yup.

23 MR. PREMO: And are you going to be putting
24 a gate in there also?

25 MR. DeROSA: Yes.

1 MR. PREMO: Okay. I don't have any further
2 questions. Thank you.

3 CHAIRPERSON MIETZ: Okay. Other Board
4 members?

5 MS. SCHWARTZ: Member Schwartz. I just want
6 to ask you on Dale East, how far up -- if you're going
7 to go beyond your little addition there and right up
8 to the house itself or like to the carport or what? I
9 was trying to figure that out for sure.

10 MR. DeROSA: So it will be down the hill a
11 little bit from our house. So, you know, between the
12 carport and the garage it will go down about 15 feet.
13 And then there's probably another 12 to 15 feet to the
14 road beyond that that's not shown as part of the
15 survey. So we can --

16 MS. TOMPKINS-WRIGHT: Just to clarify --

17 MR. DeROSA: Go ahead.

18 MS. TOMPKINS-WRIGHT: Sorry. Just to
19 clarify that. The fence will be approximately 15 feet
20 from, not necessarily the legal right-of-way, but
21 where the road actually meets the grass?

22 MR. DeROSA: I would say it's about 15 feet
23 from where the road is to where the fence will be.

24 CHAIRPERSON MIETZ: Okay. Very good. Board
25 members --

1 MR. PREMO: I just --

2 CHAIRPERSON MIETZ: -- any other questions?

3 MR. PREMO: Yeah. I just had a question
4 for -- maybe it's for Rick. Any requirement for ARB
5 approval or building permit?

6 MR. DiSTEFANO: Building permit, yes. ARB,
7 no.

8 MR. PREMO: Thank you.

9 CHAIRPERSON MIETZ: Okay.

10 MR. DiSTEFANO: Matt, can you just state for
11 the record the type of fencing you're going to have?

12 MR. DeROSA: It'll be a 48 inch aluminum
13 fence. So it will be part like -- partial screening.
14 You can see through it. It's pretty standard aluminum
15 fencing.

16 MR. PREMO: Mr. DeRosa, I assume it's a
17 chain link fence?

18 MR. DeROSA: No. It won't be chain link.
19 It will be -- I wish I included a picture of it. But
20 it will be a -- I don't know how you describe it. You
21 know, but it's an aluminum fence that -- yeah. I
22 don't know if anyone else is familiar with aluminum
23 fences, but it's not chain link. They have posts.
24 And they're probably like four inches apart.

25 CHAIRPERSON MIETZ: But are they -- sir, can

1 you see through it or not?

2 MR. DeROSA: You can see through it, yeah.

3 MR. DiSTEFANO: So it's similar to the
4 aluminum fences that go around pools and have -- you
5 usually see them. They're black aluminum fences that
6 go around pools with -- like a picket fence basically,
7 but a very thinner, smaller post; correct?

8 MR. DeROSA: Correct. Yeah.

9 MS. TOMPKINS-WRIGHT: I think I always refer
10 to it as wrought iron. Even though it's not wrought
11 iron, it kind of has that look to it.

12 MR. DiSTEFANO: Yeah.

13 MR. DeROSA: It's probably most similar to
14 wrought iron.

15 CHAIRPERSON MIETZ: Okay. Very good. Okay.

16 Other questions? Okay. Very good. All right.

17 At this point then is there anyone on the
18 call that would like to speak regarding the
19 application at 148 Dale Road? Hearing none, then the
20 public hearing is closed.

21 **APPLICATION 9A-03-22**

22 Application of Patrick Langsworth, owner of
23 property located at 159 David Avenue, for an Area
24 Variance from Section 205-2 to allow a front porch to
25 extend 5.75 feet into the 40 foot front setback

1 required by code. All as described on application and
2 Plans on file.

3 CHAIRPERSON MIETZ: Okay. And who do we
4 have speaking for this?

5 MR. LANGSWORTHY: Patrick Langsworthy.

6 CHAIRPERSON MIETZ: Okay. Hello, Patrick.
7 What's your address, Patrick?

8 MR. LANGSWORTHY: It's 159 David Avenue.

9 CHAIRPERSON MIETZ: Okay. When you're
10 ready, go for it.

11 MR. LANGSWORTHY: Okay. So I had wanted to
12 put on a front porch. And I had the architect draw
13 two different proposals. And one of them was within
14 the codes or setback or whatever you want to call it.
15 And one of them was just outside of -- it was bumped
16 up out into the setback.

17 And I went in front of ARB and I told them
18 this one fits, this one doesn't. And I let them pick.
19 And they picked the one I needed a variance for. That
20 was the one they liked better. So I just let them
21 pick. And here we are.

22 MR. DiSTEFANO: Just a little clarification
23 if I can. Basically the code allows a front porch to
24 extend up to 16 feet into the setback when the house
25 conforms to the front setback if it's no larger than 6

1 by 8.

2 So I think the first iteration that Patrick
3 showed met that code would not require a variance. By
4 making it actually wider than porch needs a variance
5 because I think it's not 6 -- basically 6 feet by --
6 what's the length on it, Patrick?

7 MR. LANGSWORTHY: I think it's either 10 or
8 12.

9 MR. DiSTEFANO: So by doing that that pushes
10 it into the variance. Because of the length of it,
11 not because of the depth of it.

12 CHAIRPERSON MIETZ: Right.

13 MR. LANGSWORTHY: Yeah. And like I said, I
14 had two drawings done because I know the ARB is
15 particular because I've dealt with them before. And I
16 just told them, you guys pick. I don't care. I'll
17 put whatever up -- one you want up.

18 CHAIRPERSON MIETZ: Okay.

19 MR. DiSTEFANO: Jason, could you go down and
20 show the two different iterations?

21 MR. HAREMZA: I don't know that we have both
22 of them here.

23 CHAIRPERSON MIETZ: Okay. I think this is
24 relevant anyway. Okay. But you got the dimensions
25 here on this one. It is 12 feet, 12.8 feet. All

1 right.

2 MR. LANGSWORTHY: Yeah. So I think on the
3 drawing on the screen it shows where the 8 foot one
4 would be and where the 12 foot one would be.

5 CHAIRPERSON MIETZ: Yeah. I guess you can
6 see it.

7 MR. DiSTEFANO: Yeah. You can see --

8 CHAIRPERSON MIETZ: Yes. Okay. But we're
9 looking at the 12 foot. So it's the relevance.
10 Patrick, is this porch intended to stay open?

11 MR. LANGSWORTHY: Yeah. There's going to be
12 two columns in the front that you can see there. And
13 then the sides and front will be open. Unless I need
14 to put railings in or something like that on the
15 sides.

16 CHAIRPERSON MIETZ: Right. But you have no
17 reason to think about enclosing it in any fashion
18 other than --

19 MR. LANGSWORTHY: No, no, no. I just --

20 CHAIRPERSON MIETZ: Just a safety reason if
21 you need the rails.

22 MR. LANGSWORTHY: Yup. No. This was just
23 intended so I have a roof when I'm walking in and it's
24 raining. That's the whole purpose.

25 CHAIRPERSON MIETZ: Okay. Good. Okay.

1 Board members, questions?

2 MS. SCHMITT: This is Board Member Schmitt.

3 I was a little confused. Is there currently a porch
4 now or are you creating a new porch?

5 MR. LANGSWORTHY: There is -- there's a
6 landing right now.

7 CHAIRPERSON MIETZ: Stoop.

8 MR. LANGSWORTHY: So the landing is concrete
9 and it's breaking apart. So I figured it had to be
10 redone anyways. So while I'm doing that I might as
11 well add a roof onto it.

12 MS. SCHMITT: Thank you. That makes sense.
13 I don't have any further questions.

14 CHAIRPERSON MIETZ: Okay. Anyone else?
15 Questions?

16 MS. TOMPKINS-WRIGHT: This is --

17 MS. MCKAY-DRURY: This is Member
18 McKay-Drury.

19 CHAIRPERSON MIETZ: Okay. Hold on. Andrea?

20 MS. TOMPKINS-WRIGHT: Just to confirm, there
21 are several other homes in this general area, on this
22 road, in this neighborhood -- or on this road that do
23 have front porches and some of which are wider than
24 would be permitted by code I guess based on the
25 setback requirements?

1 MR. LANGSWORTHY: There's all sorts of
2 variations around here.

3 MS. TOMPKINS-WRIGHT: Thank you.

4 CHAIRPERSON MIETZ: Heather, did you have a
5 question?

6 MS. MCKAY-DRURY: Yeah. Between the two
7 plans that you mentioned, is this the one that affords
8 seating and the other one did not?

9 MR. LANGSWORTHY: I believe the bigger one
10 does, yes.

11 MS. MCKAY-DRURY: And so that is what the
12 ARB was in favor of as well?

13 MR. LANGSWORTHY: I don't know if that was
14 the specific reason or if it was one of the reasons.
15 Like I said, I just had the drawings put in front of
16 them and told them they could pick.

17 MR. DiSTEFANO: There's also the scale
18 issue.

19 CHAIRPERSON MIETZ: Well, when you look at
20 the gable there, it'd probably be pretty narrow
21 looking if it was at 8 feet versus 12. So that might
22 be part of it.

23 MR. LANGSWORTHY: Yeah. It was all based on
24 the aesthetics that the ARB chose this one.

25 CHAIRPERSON MIETZ: Okay. Other questions?

1 Board members?

2 MR. GORDON: Dennis.

3 CHAIRPERSON MIETZ: Yes.

4 MR. GORDON: Just for clarification
5 purposes, on the application that I have in front of
6 me, I think it requests a 5 foot variance, but in the
7 summary on the agenda it talks about a 5.75 variance.
8 I don't if it's Rick or the applicant, can you clarify
9 exactly what is being sought?

10 MR. LANGSWORTHY: Like Rick said, I'm going
11 wider and not out into the setback. So it must just
12 be for that extra 5 and three-quarters feet wide if
13 you're allowed 8.

14 CHAIRPERSON MIETZ: Yeah. It would be --
15 yeah.

16 MR. DiSTEFANO: That is correct. And since
17 the house is a little bit -- Jason, could you go up
18 the site plan? And since the house is like 42 and
19 three-eighths back a little bit, so the actual
20 variance is going to be -- not quite -- you can so the
21 depth of it be 5 feet 11. But subtract the 2 inches
22 and it comes out to be about 5.75 feet.

23 CHAIRPERSON MIETZ: Okay. There is the
24 answer.

25 MR. GORDON: So just so I'm clear then Rick,

1 are you the one who calculated it to be 5.75 feet?

2 MR. DiSTEFANO: Yes.

3 MR. GORDON: And Mr. Langsworthy you're
4 amending your application to ask for that 5.57 feet;
5 correct?

6 MR. LANGSWORTHY: Yes. I have written down
7 5. That was incorrect.

8 CHAIRPERSON MIETZ: Okay. Very good. Thank
9 you for clarifying. Okay.

10 All right. Any other questions? Okay.
11 Very good. Thank you very much, Patrick.

12 Is there anyone in the Zoom call or on the
13 Zoom call that wants to speak regarding 159 David
14 Avenue? Okay. There being none, the public hearing's
15 closed.

16 MR. LANGSWORTHY: All right. Thank you.

17 CHAIRPERSON MIETZ: Thanks.

18 **Application 9A-04-22**

19 Application of Sarah Colvin Van Heusen,
20 owner of property located at 54 Brooklawn Drive, for
21 an Area Variance from Section 205-2 to allow a rear
22 addition (three season room) to extend 1.25 feet into
23 the 35.5 foot rear setback where a 40 foot rear
24 setback is required by code. All as described on
25 application and plans on file.

1 CHAIRPERSON MIETZ: Okay. And who do we
2 have speaking for 54 Brooklawn Drive?

3 MS. COLVIN: Sarah Colvin.

4 CHAIRPERSON MIETZ: Sarah, your address
5 please.

6 MS. COLVIN: 54 Brooklawn.

7 CHAIRPERSON MIETZ: Okay. Perfect. Please
8 proceed.

9 MS. COLVIN: We're looking to create a three
10 seasoned essentially room off of a pre-existing patio.
11 And the current situation is the back of our property
12 line is not straight.

13 So we're looking for a foot and a quarter
14 based on Jeff's measurement around to have the back of
15 the house flat. So it's a complete essential square
16 if you would to have a three season room.

17 CHAIRPERSON MIETZ: Okay. All right. So
18 Board members, questions for Sarah? Any questions?

19 MR. DiSTEFANO: Yeah. I think Dennis, this
20 is just one of those --

21 CHAIRPERSON MIETZ: Yes.

22 MR. DiSTEFANO: -- you know, catch-22s.

23 CHAIRPERSON MIETZ: Right.

24 MR. DiSTEFANO: The property is not exactly
25 straight. It's got a pre-existing nonconforming

1 setback now.

2 So even if you extend a tiny bit into that
3 pre-existing, nonconforming, you need a variance.

4 CHAIRPERSON MIETZ: Right.

5 MR. DiSTEFANO: You know, having to put that
6 wall at an angle just doesn't make a lot of sense.

7 CHAIRPERSON MIETZ: Right. Right. Sarah,
8 would you say that this is the minimum that you need
9 in order to make this work for you?

10 MS. COLVIN: Yes. These are going to
11 actually blow out, but in order to put the post and
12 have that in line with the back of the house, the
13 contractor said, you know, it's pretty straightforward
14 from there as long as you have approval.

15 CHAIRPERSON MIETZ: Okay. Great. Okay.

16 Any other questions of the Board members? Okay.
17 Thank you very much.

18 MS. COLVIN: Thank you.

19 CHAIRPERSON MIETZ: Is there anyone on the
20 Zoom call that would like to speak regarding 54
21 Brooklawn? Okay. Since there's none, then the public
22 hearing's closed.

23 **Application 9A-05-22**

24 Application of Todd Ennis and Amanda
25 McIntosh, owners of property located at 133 Summit

1 Drive for extension of an approved variance (9A-11-20,
2 9A-05-21 - previous extension) pursuant to section
3 219-5F allowing for a reduced front setback and
4 greater lot coverage. All as described on application
5 and plans on file.

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

8 MR. ENNIS: Hi. This is Todd Ennis, 133
9 Summit Drive. How you guys doing tonight?

10 CHAIRPERSON MIETZ: Okay. Great. Todd, go
11 right ahead.

12 MR. ENNIS: It's just a tale of woe. It's
13 been tough for me to get the project started. My
14 contractor got sick last year, couple months before we
15 were supposed to start. And he retired. Left me high
16 and dry. And I wasn't able to get the project moving.

17 So I'm asking for, yet again, another year
18 of extension on this for the variance.

19 CHAIRPERSON MIETZ: Okay. Do you have some
20 plan about what the timing to the best of your
21 knowledge is starting September 7th?

22 MR. ENNIS: Yeah. After interviewing five
23 or six other contractors, I've landed on McClazzio.
24 We have a time of April of breaking ground in the
25 first stage. So late spring, early summer would be

1 the break ground date once again.

2 CHAIRPERSON MIETZ: And you expect to be
3 finished when?

4 MR. ENNIS: October -- September, possibly
5 October at the latest.

6 CHAIRPERSON MIETZ: Okay. So about a year
7 from now.

8 MR. ENNIS: Yeah.

9 CHAIRPERSON MIETZ: Okay. Board members,
10 questions please.

11 MS. TOMPKINS-WRIGHT: This is Member Wright.
12 No changes to the application however with the
13 exception of time? It's the exact same expansion that
14 was previously planned and approved?

15 MR. ENNIS: That is correct. No changes.
16 Just a time extension.

17 CHAIRPERSON MIETZ: Very good. Board
18 members, other questions? Okay. Todd, thanks very
19 much.

20 MR. ENNIS: Thank you.

21 CHAIRPERSON MIETZ: Is there anyone on the
22 call that would like to speak regarding this
23 application? Okay. There being none the public
24 hearing's closed.

25 **Application 9A-06-22**

1 Application of Robert Piazza Palotto, owner
2 of property located at 2500 Elmwood Avenue, for an
3 Area Variance from Section 205-2 to allow a garage
4 addition to extend 3 feet into the existing 8.2 foot
5 side setback where a 10.8 foot side setback is
6 required by code. All as described on application and
7 plans on file.

8 CHAIRPERSON MIETZ: Okay. Very good who is
9 speaking for 2500 Elmwood? Is there anyone here to
10 speak for 2500 --

13 CHAIRPERSON MIETZ: Oh. Is he muted? I
14 don't see --

15 MR. D'AUGUSTINE: He just chatted --

16 MR. PALOTTO: I'm here, guys. Can you hear
17 me?

18 CHAIRPERSON MIETZ: Yes.

19 MR. PALOTTO: Sorry about that. For some
20 reason it wouldn't let me unmute myself.

21 CHAIRPERSON MIETZ: Okay. And could you
22 just Robert give us your address please?

23 MR. PALOTTO: Yeah. 2500 Elmwood Avenue.

24 CHAIRPERSON MIETZ: Okay. Great. Please
25 proceed.

1 MR. PALOTTO: Okay. Yeah. I actually
2 bought the house about a year ago. And I've been
3 remodeling it. And come to find out the existing
4 garage is a walkout in the back. And so there's a
5 lower level below the garage.

6 And the whole garage floor is crumbling in.
7 It's extremely unsafe. I've had several contractors
8 look at it because I tried to save the structure. But
9 it's telling me that there's no saving it. I've had a
10 few engineers look at it too.

11 And they're all making the recommendations
12 to remove the garage and rebuild it from scratch just
13 because the foundation and -- not only is the floor
14 coming in, but the foundation has been severely
15 damaged or structurally damaged with vertical cracks
16 going through the whole entire block.

17 So given the magnitude of what I've already
18 done to the property as far as fixing it up, the
19 garage is very dysfunctional in the essence that it's
20 only 11 and half feet wide. It's -- you can't even
21 really put a car in there. Not that it's just not
22 safe, but these cars are bigger today.

23 And, you know, being on a main road too,
24 it's hard to, you know, turnaround in the driveway and
25 come out the other way too. So it's just more of a

1 hardship for me.

2 And I have my girlfriend moving in with her
3 two kids that are 15 and 14. And my daughter is
4 coming back and moving in with me too as well. So
5 we're kind of a blended family. And, you know, not
6 only is the garage important to us, but, you know,
7 being able to have and utilize the garage to at least
8 have some space in there and storage. Because the
9 house isn't that big to begin with as well.

10 You know, we're asking for a three foot
11 extension, making the garage 11.6 to you know 14-feet
12 6 inches, 8 inches wide. And what it does is it puts
13 us a minimum of 5 feet from the side setback. And
14 this way we can have something a reasonable car can go
15 in and open up the doors and have a little bit of
16 storage too as well.

17 Realistically we're in bounds as far as the
18 front setbacks and rear setbacks. It's just mainly
19 going to the side right there.

20 I did have a chance to look at a lot of
21 properties, even on Elmwood, even like three houses
22 down from me. There's houses that are encroaching
23 within 5 feet. There's porches that are encroaching
24 the side within 5 feet too as well. There's quite a
25 bit of houses on Winton Road too that are within the

1 side setbacks.

2 So it's not like it's -- by going a little
3 bit wider, it's not -- what's the word I'm looking
4 for? It's not out of the realm of the neighborhood.
5 And plus it would be benefiting the values of the
6 property too by having a useful garage.

7 So if you want to for comparison and if we
8 look at 2530 and 2532, 25 -- or 2530 has an enclosed
9 porch. And that's probably within two or three feet
10 of the property line. That's only three houses down
11 from me.

12 And the one right to the right of that one
13 or the east -- actually it'd be the west of that one,
14 2532, has a porch that's probably about 3 feet within.

15 So, you know, I want to stay within 5 feet
16 just so that I don't need much more than that. But
17 having a 14 and a half foot wide garage would make it
18 usable. I'd be able to put a car in there and still
19 have an opportunity to have a turn around. And coming
20 out to Elmwood that would help out significantly too
21 as well.

22 CHAIRPERSON MIETZ: Okay. Very good. All
23 right. Questions for Mr. Palotto?

24 MR. D'AUGUSTINE: Member D'Augustine here.
25 Can you sort of describe sort of the layout? Kind of

1 how it's -- the garage is on ground level in the
2 front. But then in the back, what happens to the
3 terrain and what's underneath the garage?

4 MR. PALOTTO: It's open space. It's a full
5 foundation underneath it. And it does come out to a
6 walkout. And then you can see it right there.

7 MR. D'AUGUSTINE: Yeah.

8 MR. PALOTTO: The whole backyard is a full
9 walkout. I mean, we're talking ground level. So it
10 significantly drops.

11 And you see the step cracking and the
12 vertical cracks throughout the foundation. It's hard
13 to -- I mean, even if you look up a little bit on the
14 last picture, you can see how the ceiling is all
15 swelling and all the metal framing is all rotted.

16 MR. D'AUGUSTINE: Right. Okay. And -- go
17 ahead. I'm sorry.

18 MR. PALOTTO: No. That's essentially about
19 it. Yeah. So it's -- I couldn't save it. That's the
20 problem.

21 MR. D'AUGUSTINE: And would you say the
22 variance you're looking for is the minimum amount of
23 space to make it useable for the vehicles that you
24 have?

25 MR. PALOTTO: Yes.

1 MR. D'AUGUSTINE: Okay. Have you spoken to
2 your neighbor about what you're doing?

3 MR. PALOTTO: Yeah, I did. And I actually
4 went to him and -- you know, I'm all about trying to
5 be neighborly about it.

6 MR. D'AUGUSTINE: Okay.

7 MR. PALOTTO: So I say listen, this is
8 what's going on. I asked her if she could write me a
9 letter. And she did actually write a letter. And
10 she -- with this.

11 And, you know, I think her biggest concern
12 is that when you look at her house -- and I can share
13 my -- if you want me to share my screen. She's got a
14 side porch on the side of the garage.

15 MR. D'AUGUSTINE: Right. I saw that, yes.

16 MR. PALOTTO: And when you look at the side
17 porch, it faces my garage already.

18 MR. D'AUGUSTINE: Okay.

19 MR. PALOTTO: So it's not going to hinder
20 her -- any appearance on the garage. We're just going
21 3 feet wider in.

22 It's still going to have the same look when
23 she looks out her porch and -- or the side of her
24 porch. It's just that we're coming a little bit
25 closer in. Even though I'm going to be 5 feet from

1 the property line, her porch is 12 and a half feet
2 from the property line. So we're still going to be a
3 good 18, 17 and a half feet away from her side porch.

4 And, you know, she -- I said, you know,
5 listen, I want to be neighborly. And I want to make
6 sure you're happy with this. That's why I brought it
7 to her attention prior to.

8 And she goes, you know, if you put some
9 bushes there or something like that, I'd be very, very
10 happy.

11 And I said, I'm not -- I don't have a
12 problem with that.

13 MR. D'AUGUSTINE: Okay. So you'd be
14 amenable to putting some landscaping along the side
15 there?

16 MR. PALOTTO: Yeah. That's my -- that's
17 minor and I'll do whatever she wants me to do.

18 MR. D'AUGUSTINE: Okay. All right. That's
19 good. Thank you.

20 CHAIRPERSON MIETZ: Okay. Other questions
21 by the Board?

22 MR. DiSTEFANO: Yeah. Just for
23 clarification Robert, is there an overhang on that
24 side? Is that 5 feet taken from the foundation or is
25 that 5 feet taken from the overhang?

1 MR. PALOTTO: From the foundation. The
2 current home doesn't have any side overhangs. They're
3 flat. So I want to keep it consistent --

4 MR. DiSTEFANO: Okay.

5 MR. PALOTTO: -- with the structures or the
6 other side of the structures.

7 MR. DiSTEFANO: Right. Thank you.

8 CHAIRPERSON MIETZ: Questions by the Board?

9 MS. TOMPKINS-WRIGHT: Did I -- did the
10 applicant state that the neighbor did send a letter in
11 support?

12 CHAIRPERSON MIETZ: Yes.

13 MS. TOMPKINS-WRIGHT: Was that part of our
14 packet and I didn't see it?

15 CHAIRPERSON MIETZ: Yes.

16 MS. TOMPKINS-WRIGHT: It was? Okay.

17 CHAIRPERSON MIETZ: It's in there.

18 MR. DiSTEFANO: It might have come --

19 MR. PALOTTO: It was in the last email.

20 CHAIRPERSON MIETZ: With the agenda.

21 MS. TOMPKINS-WRIGHT: Thank you.

22 MR. DiSTEFANO: Robert, are you building in
23 the lower level or are you keeping the lower level
24 open with an elevated garage floor?

25 MR. PALOTTO: I'm going to keep it open with

1 the elevate -- because the house, it walks out to a
2 full basement. If I can utilize the lower level as
3 far as storage, that would be helpful.

4 MR. DiSTEFANO: Okay.

5 CHAIRPERSON MIETZ: Makes sense. Yup.
6 Okay. Other questions by the Board? Okay. Thank you
7 very much.

8 MR. PALOTTO: Thank you guys. Appreciate
9 it.

10 CHAIRPERSON MIETZ: Is there anyone on the
11 call that would like to speak regarding this
12 application? Okay. Since there are none, then the
13 public hearing's closed.

14 MR. DiSTEFANO: Okay. I will read the next
15 three applications. And we'll handle them as one.

16 **Application 8A-04-22**

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

24 **Application 8A-05-22**

25 Application of PEMM, LLC, contract vendee,

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

7 **Application 8A-06-22**

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

17 CHAIRPERSON MIETZ: Okay. Let me just --
18 before we start just give people a little background
19 if you're on the call and interested in these
20 applications.

21 So last month we did have a public hearing,
22 which we have open on all three of these cases and
23 people spoke that wished to. But yet the applicant
24 did not do a real formal presentation because they
25 were not able to do that evening for various reasons.

1 So what we will start with tonight is the
2 presentation by the applicant of these applications.
3 And then we will leave the public hearing open and if
4 anyone wishes to speak, just like we did with the last
5 six, it will be the same.

6 MR. PREMO: Mr. Chairman, I just want to
7 note that I'm recusing myself from these applications.

8 CHAIRPERSON MIETZ: Okay, Ed. All right.
9 So who do we have speaking for these applications
10 please? Do we have anyone identified to speak? I
11 thought I saw Betsy's name up here earlier.

12 MS. BRUGG: Yup. I'm just being let in
13 here. So --

14 CHAIRPERSON MIETZ: Okay.

15 MS. BRUGG: Give me a second here. It's not
16 letting me turn on my video.

17 CHAIRPERSON MIETZ: Okay. Take your time.

18 MS. BRUGG: It says the host has disabled
19 me.

20 CHAIRPERSON MIETZ: Oh. Well...

21 MS. BRUGG: So you can hear me, but I don't
22 think you can see me.

23 CHAIRPERSON MIETZ: No.

24 MR. DiSTEFANO: Yeah.

25 MS. BRUGG: If you want me to start, I can

1 go ahead and start while they --

2 CHAIRPERSON MIETZ: Yeah. Jason can see
3 what he can do about the video. Please.

4 MS. BRUGG: Okay. I think it's on your end.

5 This is Betsy Brugg. I'm with Woods Oviatt
6 Gilman. Yes, we are here tonight. I appreciate you
7 starting with that introduction, Mr. Chairman.

8 We had started preparing, you know, a
9 response and realized that, of course, we did not have
10 the opportunity to give a presentation because we had
11 some health issues and weren't ready to move forward
12 last week. But we did take in a lot of comments and
13 feedback from the public.

14 I just want to be upfront because I know
15 there's a lot of public interest in this application
16 that we do intend to engage with the neighborhood as
17 soon as we have some additional information to share
18 and as soon as we can figure out where we can meet.
19 With COVID and all, it's been difficult to find a
20 location.

21 I think -- I'm being allowed in now. There
22 we go. Okay.

23 CHAIRPERSON MIETZ: All right. Very good.

24 MS. BRUGG: Okay. Anyway. So our hope is
25 we can present this application to you. We're going

1 with the original application because we didn't want
2 to submit any last minute material that the Board
3 would not have an opportunity to review. But we've
4 got most of the team on.

5 Lou Terragnoli from PEMM, who is proposing
6 the Quickee's operation here, is on the call. Frank
7 Romeo from Bristol Valley, who is the property owner
8 is on the call. John Sciarabba, our project engineer
9 is on the call. And Amy Dake from SRF, our
10 transportation engineer, is also available tonight.

11 So with that we have a lot of material to
12 cover. So I will start with a presentation of the
13 application. I appreciate that you have the original
14 site plan up here.

15 So let's see here. So the plan that you
16 have here, you see East Avenue on the -- I'll look at
17 my copy here. It's easier. On the west.

18 So this property has been, was built as a
19 gas station, has been a gas station from my
20 understanding since 1929 and that it closed in 2017,
21 sometime around late 2017.

22 The current property owner acquired it in
23 2018 not long after it closed. And it's been vacant.
24 He's had it marketed. We are here requesting a use
25 variance. I'll get into the use variance shortly.

1 So let's talk about parcel size. So we're
2 in the BE1 zoning district, which is the Town's
3 office, office park district. But obviously we're not
4 in a neighborhood that has any other officers or
5 office parks.

6 We are a 0.358 acre parcel. So the code
7 requires 40,000 square feet. So this is a legally
8 pre-existing nonconforming parcel. It is only 15,614
9 square feet, which is less than half the required
10 parcel size under the code today.

11 There is an existing Tudor building there.
12 That building is a historic landmark designated and
13 protected by the Town.

14 The building is vacant, has been vacant.
15 The lot coverage is currently 74.5 percent. Again,
16 that is a legally pre-existing nonconforming
17 condition. Under today's code the maximum lot
18 coverage is 65 percent.

19 The rear setback of the existing building is
20 also nonconforming. Again, it is legally existing.
21 It's 17.5 feet where code currently requires 30.

22 There is currently no green space along the
23 frontage. And the building itself is exactly what it
24 is, an old gas station. The restrooms are on the
25 outside. It is -- you know, it's an old building.

1 It's not built to current kind of design standards.
2 And it is a total of 1,178 square feet in size, which
3 is relatively small, smaller than typical houses in
4 the area. And certainly it's very limiting in size
5 particularly since it is a regulated building. It's a
6 landmark it's not easy to add or modify the building.
7 And certainly it is restricted from demolition.

8 The context. Where are we located? So we
9 are at the intersection of East Avenue and you cannot
10 see Linden on here, but we are very close to Linden.
11 To the north of the site is the firehouse.

12 There used to be a smaller I think also
13 Tudor -- and Rick, you may have a better memory of it.
14 But I think it was an old Tudor firehouse at some
15 point. And I'm not sure, you know, what year it was
16 demolished and rebuilt. But there is now a very large
17 contemporary, modern firehouse there. So that is
18 probably what I would describe as more dominant --
19 probably most dominant feature kind of this immediate
20 area.

21 Across the street on the opposite side of
22 East Avenue on the north we have the golf course. On
23 the south we have a house. It -- until recently in
24 the last few years, I believe was the office of a
25 dentist. I think it was Dr. Kendal's office. My

1 understanding -- I saw correspondence from the current
2 owner of that house that that is now a residence. But
3 I'm not a hundred percent sure what's going on over
4 there. It does still have a very large commercial
5 parking lot on the East Avenue side. So I think it's
6 a house, but I'm not exactly sure what the use is.

7 There's other -- obviously a lot of
8 residential nearby. There's residential on the other
9 side of Linden. The Friendly Home is the east and the
10 south. There is a house directly behind this site.
11 That house is actually owned by the Friendly Home. I
12 believe it is -- my understanding is that it is
13 possibly used by the fire department, that they use
14 it.

15 There's another house just to the south. I
16 think it's been vacant for some time. But there is a
17 house there. And then a little further to the south
18 we have more residential and we have essentially
19 reached the elementary school.

20 So that is the context. As far as the
21 traffic, obviously East Avenue and Linden are both
22 streets with, you know, multiple lanes of traffic.
23 The exit and onramp on 490 on Linden is a pretty busy
24 place. It's right around the corner from this site.

25 So what is the proposal here? So we

1 basically have an existing vacant site. It's very
2 small. It is zoned for office use. The current owner
3 has had it marketed for office uses. He has had a lot
4 of interest in the property, but you know, nothing has
5 really come of it.

6 The most viable option, the only one that
7 has really gone under contract is the current use --
8 current user that we're proposing, which is for a
9 Quickee's, which we would essentially need to
10 re-establish the gas station use of the property.

11 I will say this is a very unusual gas
12 station proposal because the proposal is to reuse the
13 existing building, which is, again, just over -- less
14 than 1200 -- I'm sorry -- 11 -- I want to make sure I
15 get the square footage right. Yeah. Less than 1200
16 square feet in size.

17 So the proposal is to use that building, not
18 to make any additions to that building, but just
19 restore and improve the condition of that building and
20 operate a very, very small convenience store. Just
21 for perspective, I think a typical convenience store
22 is in the 4 to 5,000 square foot range if you were to
23 look at other types of convenience stores.

24 So this is a very, very small convenience
25 store that would be housed in the existing building.

1 The site would be cleaned up. Two pumps would be
2 added. There were two pumps here previously. I
3 believe the applicant's original project had a third
4 pump, but they have removed that at the request of the
5 Historic Preservation Commission.

6 So we're down to two pumps with a modest
7 sized canopy. The canopy has generated a fair amount
8 of interest from the public. We're going to have some
9 additional information to share on that. We're
10 getting photometrics prepared and some additional
11 information on that.

12 But I do want to point out that the Historic
13 Preservation Commission has seen this project I
14 believe on four different occasions. They hammered on
15 it. And I believe that they are ready to approve this
16 based on the design. So we're restoring a historic
17 building. And the canopy is going to be designed also
18 to conform to that historic character. It's going to
19 be a very small scale canopy with an appropriate
20 design. It is not going to light up the skies like
21 people are used to seeing at other types of larger gas
22 stations. But, again, we'll get you some visuals and
23 material to review on that later.

24 We are cleaning up the site. There is
25 existing pavement kind of everywhere here. So we're

1 actually going to add some green space where there
2 currently isn't any. We're going to bring the lot
3 coverage into conformity.

4 There's nothing we can do about the rear
5 setback. We're going to work with the existing, you
6 know, conditions there. We can't move the building
7 obviously.

8 There are area variances required to allow a
9 canopy for the location of the parking, which is I
10 guess on the north side. So we are closer than what
11 code would allow next to the firehouse. So it's an
12 existing condition, but it's next to the firehouse.
13 Just want to make sure that that's pointed out.

14 The pavement in the front, that is actually
15 going to be an improvement from existing conditions.

16 And did I miss one? Let's see. I think
17 that covers those -- the area variances.

18 So that is what's proposed, essentially a
19 small-scale convenience store and gas station. This
20 use, because we are in the BE1 zoning district, we do
21 require a use variance. It would not have been
22 required had the operation not closed and essentially
23 lost -- lost its grandfathering. It's just what
24 happened. But we do need a use variance.

25 We have submitted a fair amount of

1 information on the use variance. And we'll go through
2 that.

3 Would you like me to go through that first,
4 go through the use variance first and then touch on
5 the area variances?

6 CHAIRPERSON MIETZ: That's fine.

7 MS. BRUGG: Okay. Great. So the property
8 owner's on. So essentially since 2018 when Bristol
9 Valley acquired the property, they have been
10 marketing. Frank Romeo is on. He has over 40 years
11 of experience in the commercial real estate business.
12 He has developed a lot of property in the Rochester
13 area.

14 There's been a lot of interest. I think I
15 submitted a list of, you know -- that he provided with
16 all of the various inquiries that he's received on the
17 property. And -- let's see. He's also provided a
18 letter kind of explaining -- so hopefully you have had
19 a chance to look at that.

20 But he has had it marketed. Essentially the
21 property is not marketable for what the uses are that
22 are permitted by the code. The code essentially
23 allows office uses. That's what's allowed here are
24 office parks.

25 Obviously the property is not big enough for

1 an office park. Some of the conditional uses, I'll
2 just point them out because this is part of the
3 Board's responsibility to review. Most of the special
4 permit, again, are not -- they require a larger parcel
5 for the -- there just isn't much of a market for those
6 types of uses.

7 As far as the office use itself, that's what
8 we're really looking at. Can this property generate a
9 reasonable return for the uses that are allowed by
10 code? Is there someone who would invest in this
11 property and turn it into an office where there would
12 be -- where it just wouldn't be a money loser. And I
13 think we can demonstrate that it's just not
14 economically viable to use this property as an office.

15 So we've given you some examples. So the
16 current owner paid \$175,000 on the property. We've
17 given you an income expense statement, which
18 demonstrates that if it stays vacant, they're paying
19 taxes, insurance, maintenance. So he is losing money
20 on the property.

21 So with that investment he would need to
22 make significant improvements to convert this to an
23 office use. We do have a construction estimate. I
24 will note that there is a letter that was submitted
25 questioning whether that construction estimate was, in

1 fact, from a third-party contractor. And it was. We
2 will be addressing that separately in writing. But,
3 yes, the construction estimate that we provided is
4 very legitimate.

5 So the amount of investment required --
6 let's see. Just want to make sure I get the numbers
7 right here. So the work required is about \$220,000.
8 We've given you an outline and a description of the
9 work that is required and an estimate.

10 So in theory if someone were to pay even --
11 so the property -- let's just say the property is
12 on -- let's see. I believe the property is on the
13 rolls as -- just looking at what your assessed value
14 is. The assessed value is 336. Excuse me. I'm
15 getting this wrong. 3 -- just bear with me here.
16 Okay. I'm sorry. I lost my train of thought here.

17 So the amount paid was 175. I gave you an
18 example of half of the assessed value. So assuming
19 that he overpaid for the property, and I went with
20 116,000, which is half of the accessed value. So that
21 would make the property 2 -- I think close to 232.

22 So even if someone were to pay, you know,
23 half of the assessed value, which is significantly
24 less than what the property owner did buy, if they put
25 in the \$220,000 of improvements that are required, the

1 total investment would be 336 or \$284.75 a square foot
2 for this building.

3 And we went to several commercial brokers.
4 Mark Palazzo has given you a letter of opinion. He's
5 given you some comps for office property in the Town.
6 And I believe he has given you the market rate is
7 between 115 to \$170 a square foot in the Town of
8 Brighton. And that is significantly less than the
9 required investment.

10 We also gave you some comparisons based on
11 rental. And an investor would need to get \$25 a
12 square foot to rent the property, which is
13 significantly more than the market for rental
14 property, rental office property in Brighton, which is
15 in the \$12 to \$18 square foot range.

16 In Mr. Romeo's case he's paid \$175. His
17 actual hardship is actually higher. He would need \$40
18 a foot to break even.

19 I do want to point out, and I think the Town
20 staff may remember this, but he has come to the Town
21 in the last couple years with a couple of prospective
22 interested parties. Essentially everybody that's
23 looked at the property has needed a use variance and
24 relief from the Town. But he came in with ABVI, who
25 was looking at the property for a potential drop-off

1 site. But after they, you know, heard the concerns
2 from the Town they actually were scared off and did
3 not want to pursue a use variance.

4 There was also an office user that was
5 interested. They did present a plan to the Historic
6 Preservation Commission because they would have had to
7 put an addition on the building. And they wanted to
8 put an addition on -- you know, there's not much space
9 in the back of the building. So they were going to go
10 north with the addition. And they were discouraged by
11 the Historic Preservation that was not interested in
12 having an addition put on the building.

13 And both of those parties, they never
14 entered into contracts, but they did have an interest
15 in the property, explored it and walked away when
16 they, you know, were discouraged and turned way.

17 Let's see. Okay. So I'd be happy to talk
18 more about the financial hardship aspects of the
19 property. You know, our broker's opinion, and I think
20 this is actually common sense, speaks to the
21 challenges with marketing a property this small for an
22 office use with the character of the neighborhood.
23 It's not in an area with other offices. It's just
24 small. The limitations of the historic building and
25 what -- how big of an office someone would have on

1 this property, the physical limitations of the
2 property, the location, the historic restrictions on
3 the building, the size of the building, the size of
4 the property, the neighboring uses, I personally
5 myself wonder why anybody would ever want to put an
6 office next to a firehouse. I can't imagine that is a
7 great condition to have an office. But those are all
8 factors that just make this not particularly
9 marketable for, you know, an office-type use.

10 And I would say most of the users that have
11 been interested, have been interested either for gas
12 station convenience stores, service stations and uses
13 that are not permitted by the code.

14 So let's talk about the other factors that
15 the Board needs to consider. The uniqueness of the
16 hardship, this is the only property like this that
17 you're going to find. This is not a problem that
18 you'll find throughout the entire zoning district or
19 the neighborhood.

20 It is unique in respect to the small size of
21 the property and the unique conditions of the
22 property, that it is a historic building. It is a
23 very small building. It is a very small parcel. And
24 it is not in an office neighborhood. So there are
25 many challenges that are unique to this particular

1 property. It can't just be demolished and something
2 bigger and more modern built here. So there's a lot
3 of challenges specific to the property being isolated
4 and it's -- you know, it's physical condition and
5 location.

6 Whether the variance will alter the
7 essential character of the neighborhood, if anything,
8 we're going to clean up what is currently kind of an
9 outdated, obsolete piece of property. We're going to
10 add green space where there never was any. The use is
11 going to be restored to what historically has been the
12 use of the property. The size and the scale of what
13 is being proposed for a gas station is consistent with
14 the history of this property. And it is consistent
15 with the character of the neighborhood because this is
16 what it always has been.

17 It's going to maintain and restore an
18 existing historic building, which again, is consistent
19 with the character of the neighborhood. And I know
20 there's concern about adding a canopy. But the canopy
21 has been designed -- we are going to provide the
22 smallest possible canopy. And it is consistent in
23 design with the historic character of the building.

24 Whether the hardship is self-created and --
25 it is not self-created. It's created by the kind of

1 minimal market for this type of office use. I think
2 that's probably been hurt significantly by COVID and
3 more people working from home and needing less of this
4 type of, you know, small neighborhood office space.
5 But essentially it's small. It's limited in size.
6 It's in an isolated location. It's a landmark. All
7 of those factors are what generate the hardship for
8 the property.

9 Let's see. The area variances. Do you want
10 me to get into the area variances? Do you have any
11 questions? Do you want to talk more about the
12 financial hardship? How would you like me to proceed?

13 CHAIRPERSON MIETZ: Why don't you --

14 MS. BRUGG: I can't see. So I'm sort of
15 talking to myself.

16 CHAIRPERSON MIETZ: Okay. Betsy, I think
17 maybe you should just proceed. And then I think the
18 Board members then could ask questions instead of
19 breaking up your presentation here.

20 MS. BRUGG: Okay. Great. So our area
21 variances. So we have a area variance to allow a
22 canopy in the front yard because we need it for that
23 structure. It's the only place it can go. If you
24 look at the plan you can see that the rear yard is
25 nonconforming. So it would be impossible to put

1 anything back there.

2 We need an area variance for the parking
3 along the side lot line on the north. There's
4 existing pavement there. This is not a new condition.
5 It's existing. It will be striped and cleaned up from
6 what it currently is. But it is opposite or adjacent
7 to the firehouse, which also has a very large --
8 obviously a large paved area in the front with all of
9 their overhead doors.

10 The pavement area and island in the front
11 yard, obviously we need the pavement in the front yard
12 that's already there. If anything, we're actually
13 improving the condition of the pavement. As you can
14 see we're delineating the driveways and, you know --
15 so it's going to be, you know, a much cleaner design
16 in the front. Currently it's just all paved out
17 there. There's nothing green. We're going to add
18 some landscaping. I believe we're going to have some
19 stormwater management. I don't believe there is any.
20 So there's a lot of physical improvements that come
21 with the improvements to the pavement.

22 And with that comes the improvement of the
23 lot coverage. We are at 74 -- what'd I say? 74 and a
24 half present. We're over code. And I believe we're
25 going to bring it into compliance.

1 So those are the area variances. So we've
2 addressed the criteria in writing, but I'm going to
3 kind of go through them. I think overall we're going
4 to be making significant improvements. There's going
5 to be a much more attractive looking property with
6 this improvement. We're going to be restoring and
7 maintaining the existing building. So there's a lot
8 of pluses that benefit, not just for the applicant,
9 but for the neighborhood.

10 This project can't happen without these
11 variances. We can't put a gas station in there
12 without the variances. That is what historically has
13 been in here. I know I said that a few times.

14 The character of the neighborhood is not
15 going to be impacted. Again, we are -- we're going to
16 have a new drawing for you for the canopy. I will say
17 that we have been tightening up the canopy to make
18 some additional improvements. I think that we'll be
19 getting that to you in the next few weeks with our
20 response.

21 We're going to decrease the height a little
22 bit and we're also going to decrease the size. Again
23 Historic Preservation has seen the design and they're
24 comfortable with it.

25 The -- let's see. The lot coverage as I

1 said, is going to be decreased. We're actually going
2 to be less than the maximum, which is 65 percent.
3 We're going down to 63.3 percent. So even though we
4 need variances related to the pavement in the front,
5 we are significantly improving the lot coverage.

6 There's no alternative to the variances. We
7 need the canopy to operate a gas station. And we need
8 the variance to use the space because it's a very
9 small parcel. It's less than half the size the code
10 would require. And there's nothing that we can do
11 about that.

12 So we have to work with the existing
13 conditions and make the improvements as best we can,
14 the maximum improvements we can, to make this the best
15 possible site plan. So that is our focus.

16 The -- one, if the variance is substantial.
17 The variances are not substantial in amount, nature or
18 impact given the existing conditions, the
19 nonconforming lot size, the nonconforming conditions,
20 the existing historic landmark status, the fact that
21 we have to use the existing building in the current
22 footprint, the location and the history of the use of
23 the property as a gas station and the neighboring
24 uses.

25 So we are proposing two gas pumps, which is

1 consistent with what has been there for many, many
2 years. The -- let's see.

3 The parking if you can see, we've kind of
4 delineated the parking so most of the parking is up
5 here to the north. If you can see closer to the
6 firehouse, you have few other parking spaces, but they
7 are conforming.

8 So all in all, I think our variances are
9 minimized and will all be significant improvements to
10 the existing conditions.

11 Whether the variances will have any adverse
12 impacts on the physical or environmental conditions of
13 the neighborhood, if anything we're going to improve
14 the condition of the neighborhood by restoring the use
15 of an old landmark building. We're going to renovate
16 it, put it to a neighborhood-friendly use. It's a use
17 consistent with past use of the property.

18 It will have a convenience store, which I
19 understand is a change. However, it is a very small
20 convenience store. So a place for, you know, the
21 neighborhood to walk and buy, you know, a bottle of
22 milk, a loaf of bread, some snacks, that type of
23 thing. It's going to be very small, much smaller than
24 a typical convenience store.

25 As I mentioned the Historic Preservation

1 Commission has seen our architecture. You know, over
2 the course of several meetings, they have hammered on
3 the design to arrive at, you know, an approvable
4 design for the architecture of the building and for
5 the canopy. So we're pleased with that.

6 Let's see. Any other improvements -- in
7 respect to the pavement setback we are working with
8 what we have, but we're improving the existing
9 conditions.

10 As I mentioned, there is a -- some of the
11 physical and environmental improvements are the
12 addition of green space where there hasn't been any
13 green space, really leaning up the frontage of the
14 site along the street, delineating the driveway
15 location, adding green space, adding stormwater
16 management, and making some other physical
17 improvements to the property. So there are physical
18 and environmental improvements that come with this
19 project.

20 And again, the difficulties are not
21 self-created but arise from the physical conditions of
22 the property, the size of the property, its location,
23 the location of the existing building that cannot be
24 moved, cannot be altered, its landmark status and the
25 history of the property.

1 So I think that -- that is kind of my
2 presentation in a nutshell. I'd be happy to answer
3 any questions and got the rest of the team available
4 as well.

5 CHAIRPERSON MIETZ: Okay.

6 MS. BRUGG: We will be providing you some
7 updated information --

8 CHAIRPERSON MIETZ: Okay.

9 MS. BRUGG: -- as we go forward.

10 CHAIRPERSON MIETZ: Okay. So let's take
11 questions from the Board. Rick, do you have a problem
12 if the questions just relate to any one of the three
13 or would you like them to be taken separately?

14 MR. DiSTEFANO: I think it might -- we might
15 have somebody asking questions regarding both issues.
16 So let's just have the members ask whatever questions
17 they have.

18 CHAIRPERSON MIETZ: Yeah. I think that's
19 reasonable here. I think we can discern the
20 differences between the three things. Okay.

21 So Board members, questions for Betsy?

22 MS. SCHMITT: This is Member Schmitt. I
23 have a question. Could you talk -- could you explain
24 a little bit about why a canopy is required for a gas
25 station?

1 MS. BRUGG: Sure. Lou? Lou are you on? I
2 think I'm going to turn that over to Lou Terragnoli
3 because this is --

4 CHAIRPERSON MIETZ: Sure.

5 MR. TERRAGNOLI: Yes, I am.

6 CHAIRPERSON MIETZ: Lou, before you speak
7 could you just identify yourself, name and address
8 please?

9 MR. TERRAGNOLI: Lou Terragnoli. I'm the
10 director of real estate for Quickele's. And we're
11 headquartered here in Avon, New York.

12 CHAIRPERSON MIETZ: Okay. That's good. Go
13 right ahead.

14 MR. TERRAGNOLI: The question was why do you
15 need a canopy? It's really two-fold. One is it
16 protects the customers from the elements and inclement
17 weather. And it also protects the -- in a secondary
18 nature, the fuel equipment that's on-site. The
19 overriding need is for protection of the customers
20 when they're at the fueling stations in inclement
21 weather.

22 MS. SCHMITT: Is there a New York law or any
23 type of law that requires it or is it what -- is it
24 what you stated that it truly is for the customer and
25 the actual --

1 MR. TERRAGNOLI: That is correct. That is
2 correct.

3 MS. SCHMITT: Okay.

4 CHAIRPERSON MIETZ: All right.

5 MR. DiSTEFANO: Keeping on that Lou, there
6 is -- the need for fire suppressant is not required
7 within the canopy; correct?

8 MR. TERRAGNOLI: That is correct.

9 CHAIRPERSON MIETZ: More of a newer --

10 MR. DiSTEFANO: Yes. It is a new code
11 requirement, New York State code. Due to new
12 technology with the pumps, fire suppressant does not
13 need to be in the canopies anymore provides that you
14 maintain the newer equipment.

15 CHAIRPERSON MIETZ: Right.

16 MR. TERRAGNOLI: Correct.

17 CHAIRPERSON MIETZ: Okay. All right. More
18 questions please.

19 MS. SCHWARTZ: Judy.

20 CHAIRPERSON MIETZ: Yes.

21 MS. SCHWARTZ: Okay. I'm looking back at
22 the '95 minutes. And it's almost similar to what is
23 being asked for now. And I believe our code says that
24 nonconforming uses should go away. They cannot be
25 enlarged, altered, extended, restructured or restored.

1 Okay? Nor shall any external accessory structures be
2 increased by any means whatsoever.

3 And they're meant to go away. They're not
4 meant to be expanded upon. And to take the gas
5 station, the little building, the Historic
6 Preservation building, and turn it into a convenience
7 store is certainly intensifying the conditional use.

8 It's going in the wrong direction. This
9 will definitely have an effect on the neighborhood.
10 There are many things that have not been taken into
11 account, such as delivery to the convenience store,
12 such as the number of trucks that have to bring the
13 gas during the days of the week.

14 But my big concern is this is going against
15 our code, bottom line. So I wonder how you can
16 address that?

17 MS. BRUGG: I can address that a little bit.
18 So I absolutely appreciate -- we wouldn't be here for
19 a use variance if it was not -- that we have a use
20 that's not permitted by the code. We're here because
21 there is financial hardship. There is a problem.
22 This is a -- I mean, if anybody looks at this
23 property, put aside the zoning, it is a very small
24 piece of property. It's in a very challenging
25 location to make a viable use of this property.

1 It's between a firehouse and a Friendly
2 Home. It's boxed in. It's very small. It has a
3 historic building that has -- really it's regulated
4 what you can do it with. It has limited potential.
5 Can't demolish this building. Changes to this
6 building are strongly discouraged.

7 So while I appreciate that it would be great
8 if there was somebody who really wanted to put an
9 office in there and use it the way it is, the reality
10 is that is not a viable option, which is why the use
11 variance process exists. It exists -- the allows for
12 applicants to apply for use variances because if
13 there is -- there are situations where there is
14 financial hardship and it is simply not viable to
15 comply with the code because the code imposes such
16 hardship. And in this case the physical conditions of
17 the property really generate the hardship.

18 So while I appreciate that the code doesn't
19 allow the proposed use, it just happens to be the most
20 suitable use for this property. It's historically
21 what the property was used for. And while I do
22 understand that what we're proposing is a little
23 different from what used to be, you know, don't find
24 service stations around anymore. I don't think that
25 anybody would probably want a service station, you

1 know, because they're just not a common neighborhood
2 use anymore. So what we're proposing is something
3 that is consistent with a modern gas station
4 operation.

5 But I will point out that it is -- it is a
6 small -- it's been scaled to fit the property. So,
7 you know, you have a 15,000 square foot lot. Code
8 requires 40,000 square feet. If it was a 40,000
9 square foot parcel, we wouldn't be having this
10 conversation; right?

11 So we are boxed in here with a very small
12 property, with a very unique building. The law allows
13 for variances, specifically for these types of cases.

14 CHAIRPERSON MIETZ: Okay. Very good.
15 Additional questions by the Board please.

16 MS. TOMPKINS-WRIGHT: This is Member Wright.
17 I was wondering if you could speak a little bit about
18 the marketing efforts? I understand from the
19 materials that it was marketed for five years. It
20 looks like from the materials that it was -- I was
21 wondering what type of marketing was done. Was it
22 ever listed on things like LoopNet or marketed for
23 something expanded from office? Just what did that
24 marketing process look like?

25 MS. BRUGG: So I am now going to Frank. I

1 think Frank Romeo is on the Zoom as well. He is the
2 property owner. I think he can speak to this and
3 elaborate a little further.

4 CHAIRPERSON MIETZ: Okay.

5 MR. ROMEO: Excuse me. Good evening. It's
6 Frank Romeo, Bristol Valley Homes, 745 Titus Avenue in
7 Rochester.

8 CHAIRPERSON MIETZ: Okay. Great, Frank. Go
9 ahead please.

10 MR. ROMEO: Thank you. We typically do not
11 use LoopNet or any of these other multiple listing
12 services. I haven't personally had luck with them
13 over the years and I haven't bought a piece of
14 property using any of those.

15 We go out, send emails to other commercial
16 brokers. We direct market and call and solicit
17 prospective tenants. We work with a lot of office
18 tenants, a lot of medical tenants. And it's the same
19 thing, either the site is too small or they're not
20 interested in expanding at this time.

21 This was before COVID hit. Since COVID, you
22 know, the office market has contracted tremendously.
23 We get calls to this day and -- we do not have a sign
24 up. Since we entered into a contract with Quickele's,
25 we took the sign down. We still get calls. People

1 want to open restaurants, chain restaurants,
2 drive-through restaurants, you know, other convenience
3 store operators, gas-station-type, you know,
4 convenience stores. It's amazing the number of people
5 that actually call us.

6 But as soon as you tell them it's not zoned,
7 they're usually gone. Or you start talking to them
8 about the work that's involved, retrofitting this even
9 to go to a convenience store, there's not a lot of
10 companies that want to spend that money.

11 But when we did a deal with Quickee's, they
12 were very eager to try and work with the Town and try
13 and work with the Historic Commission and work with
14 me. And that's why we're here today.

15 CHAIRPERSON MIETZ: Okay. Does that address
16 your concern, Andrea?

17 MS. TOMPKINS-WRIGHT: Yeah. I wouldn't
18 necessarily call it a concern. It was just a
19 question.

20 So all marketing was directly done by -- no
21 brokers were hired by the property?

22 MR. ROMEO: No, no. I've developed
23 properties from Massachusetts to Nevada to Florida.
24 I've developed -- I can't even tell you how many
25 properties that we've built, we've bought, we've

1 marketed. And it's been done through our office.
2 We've been very successful at it.

3 We don't -- when we get a piece of property,
4 who's the potential tenant? This particular property
5 we had a tenant the wanted to do an office there. We
6 went to the Historical Commission. We wanted to about
7 a 1500 square foot addition on the property, keep it
8 very, very -- exactly like this building, you know, to
9 keep -- to make it look exactly as it was built that
10 way originally.

11 And the Historic Commission didn't want --
12 or preservation Board. I'm not sure what you call it
13 in Brighton right now. I'm sorry. But they don't
14 want to hear about it. They wanted to preserve this
15 building the way that -- they wanted to keep those
16 garage doors looking the way it was. Two of them said
17 that they would prefer to have a convenience store
18 there or a gas station. And, you know, they're not
19 the ones issuing the permit.

20 So this is my office company. I had a
21 financial company that wanted to go there, was very
22 interested. They got discouraged and pulled out.
23 Same thing happened with -- I think Betsy alluded to
24 it with ABVI Goodwill. You know, there's nothing in
25 the code in Brighton that allows Goodwill to go

1 anywhere for a drop-off location. As soon as they
2 heard that from the Town, they ran away.

3 We worked with a lot of people. We tried to
4 market this for offices, small offices. Talked to
5 insurance agents, talked to smaller accounting
6 practices, talked to small attorneys. You know, one
7 or two people that were interested in the smaller
8 firms. We didn't get anywhere.

9 I met Lou. We put a deal together and we're
10 here. Had I thought that we would have to come in
11 here someday and apply for a area or a use variance,
12 you know, I would have kept better track of every
13 single thing we did. But we got a lot of properties.
14 We got a lot of things we're marketing. I don't keep
15 track of everybody I talked to. The list we submitted
16 to, you know, that was a pretty comprehensive list.
17 You know, I know some people are criticizing it, you
18 know, you only talk to a hundred people. Well, that's
19 a lot of people to talk to to try to make a deal. You
20 know?

21 Plus all the ones we didn't keep track of,
22 that we didn't write down. When the phone rings, I
23 don't always write it down. I'm not looking to, you
24 know, get into this battle with everybody, but, you
25 know, what are you going to do with this property? We

1 found somebody that would use it the way it is.
2 That's what's important. We got somebody that'll use
3 it the way it's been used for the last 100 years.

4 CHAIRPERSON MIETZ: Okay. Very good. Thank
5 you.

6 MR. ROMEO: I'm done, Mr. Chairman.

7 CHAIRPERSON MIETZ: Thank you. Appreciate
8 it.

9 MS. MCKAY-DRURY: This is Member
10 McKay-Drury. I have a couple of questions and some of
11 this piggybacks off what Member Wright was just
12 speaking about.

13 I'm curious having reviewed some of the
14 materials from the application that came before the
15 Board in 1995, I'm -- there was a reference to
16 potentially selling it to the Brighton Fire
17 Department. I'm wondering if that has come up in more
18 recent years?

19 MR. ROMEO: Yeah. I talked to Brighton Fire
20 Department. They'd be happy to take it as a donation.

21 MS. MCKAY-DRURY: Okay.

22 MR. ROMEO: They weren't interested in
23 paying anything, not even a fair market value.

24 MS. MCKAY-DRURY: Okay. I'm also curious
25 just to understand historically when you -- the

1 materials in the application indicate that you
2 acquired this in 2018 and that the station was closed
3 in late 2017.

4 I'm trying to understand what -- what
5 intention there was when it was purchased, were their
6 pumps still located there? Because I --

7 MR. ROMEO: No.

8 MS. MCKAY-DRURY: Can you describe that
9 you've removed or were they previously removed?

10 MR. ROMEO: They were previously removed.

11 MS. MCKAY-DRURY: Okay. And was there
12 consideration of maintaining the nonconforming use
13 before it had expired?

14 MR. ROMEO: There was consideration. And
15 when I talked to the Town planner, he was adamant that
16 I would have to come to the Zoning Board of Appeals
17 and reapply.

18 MS. MCKAY-DRURY: Okay. Because you had it
19 before a year had passed; correct?

20 MR. ROMEO: That's correct. He took the
21 position that this -- that his dates were different
22 than mine. It was over with and I had to come in
23 apply for it. So we marketed it to an office user,
24 not to a -- you know, a gas user.

25 MS. MCKAY-DRURY: Okay. On the topic -- on

1 the topic of the convenience store, the application
2 materials indicated that it would be operated from
3 5 a.m. to 10 p.m. daily. I would interpret that as
4 every day of the week then, seven days a week?

5 MS. BRUGG: Yes.

6 MR. ROMEO: Yes.

7 MS. MCKAY-DRURY: And what about gas
8 deliveries? When would those occur?

9 MR. ROMEO: They typically happen during
10 normal business hours, during the day.

11 CHAIRPERSON MIETZ: Frank, do you have any
12 sense of how or the gentleman from Quickee's?

13 MR. ROMEO: I hope -- I hope they come every
14 single day. I hope they sell a lot of gas over there.
15 But let's unmute Lou from Quickee's and let him
16 address it please.

17 CHAIRPERSON MIETZ: Okay.

18 MR. ROMEO: Lou, you're muted.

19 MR. TERRAGNOLI: I think I just became
20 unmuted. Thank you.

21 CHAIRPERSON MIETZ: Okay.

22 MR. TERRAGNOLI: To answer the question --

23 CHAIRPERSON MIETZ: Lou, Lou, can you just
24 identify yourself again for the record please?

25 MR. TERRAGNOLI: Yes. Lou Terragnoli. I'm

1 direct of real estate and development for Quickee's.
2 Our headquarters is in Avon, New York.

3 CHAIRPERSON MIETZ: Okay. Go ahead, sir.

4 MR. TERRAGNOLI: Yeah. With the deliveries,
5 we make every effort for them to be during the normal
6 business hours. And that would our goal for the site
7 for the deliveries. To be there you're looking at for
8 a site like this maybe two to three deliveries per
9 peek.

10 CHAIRPERSON MIETZ: Okay. Very good.

11 MS. MCKAY-DRURY: When you indicate that you
12 would want that to ideally be the case, is that -- I
13 mean, in -- you know, in the convenience store and gas
14 station business, isn't it kind of reality that it
15 could be beyond those 5 a.m. to 10 p.m. hours?

16 MR. TERRAGNOLI: For the fuel deliveries,
17 yes. Now, that is a third-party company. It's not --
18 it doesn't come from Quickee's if you will. It's our
19 supplier.

20 They will typically load a truck and have
21 many deliveries in the area both to our locations and
22 tentative locations. We cannot dictate to them when
23 they have to be there.

24 MS. MCKAY-DRURY: And relating, again, to
25 the 5 a.m. to 10 p.m. operation, how long will the

1 lights be on? How long, you know, will this be lit up
2 and -- you know, and kind of -- there's obviously
3 concerns with respect to the lights pouring into
4 peoples' homes in the evening in what is essentially
5 more of a residential area. So can you speak to that?

6 MR. TERRAGNOLI: Yeah. Typically the lights
7 are dimmed pretty low if not all the way off about two
8 hours after closing. We are having a photometric plan
9 put together that will show just how much of the light
10 from the site will spill off the site. And actually
11 what we're showing is how much it won't be spilling
12 off the site.

13 We reduced the canopy as Betsy alluded to.
14 Right now we're looking at about a 25 percent
15 reduction. There will be no illumination on the top
16 of the canopy. The sign that's proposed for the front
17 of the building will also be non-illuminated. A
18 variance will be needed if a sign were to go on the
19 canopy. I will assure you if that's proceeded with,
20 it'll be also a non-illuminated sign.

21 There's going to be a couple of -- excuse me
22 -- three pole lights that would be decorative on the
23 site. So as far as the photometric plan, I will also
24 be getting cut sheets if you will to show the lighting
25 and show the shielding and how we're going to make

1 every effort to keep that -- not make every effort.
2 We're going to have that site lighting remain on-site.

3 MS. MCKAY-DRURY: All right. So as
4 contrasted with fuel deliveries, it sounds like the
5 lighting is something that you will have control over?

6 MR. TERRAGNOLI: Absolutely.

7 MS. MCKAY-DRURY: Okay.

8 CHAIRPERSON MIETZ: Okay.

9 MS. MCKAY-DRURY: And I don't believe that
10 Ms. Brugg indicated the height of the proposed canopy
11 at this point. Do you know it or do we need to -- you
12 indicated that we'll be getting additional materials.
13 Should we just wait or is there any --

14 CHAIRPERSON MIETZ: Yeah.

15 MR. TERRAGNOLI: Yeah. I would recommend we
16 wait. We are reducing the length, width and height of
17 this canopy. And we are taking it to be very
18 fine-tuned and detailed to make it as small as
19 possible. As I said, the width and the length has
20 been -- you know, we feel confident that's going to be
21 about a 25 percent reduction. And we're working on
22 the overall height right now.

23 MS. MCKAY-DRURY: And then --

24 MR. TERRAGNOLI: That's definitely coming
25 down.

1 MS. MCKAY-DRURY: And when it comes to the
2 pumps, you're seeking to have two total pumps, which
3 would be -- is it four cars for the fueling at the
4 same time?

5 MR. TERRAGNOLI: Yeah. That is correct.
6 The pumps themselves will be a state-of-the-art
7 dispenser.

8 And one of the items I'd like to bring up,
9 they have a dark screen component. So at night the
10 dispensers can be easily switched over to a dark
11 screen so the white light from the site that you
12 typically would have is not emitted. And then we're
13 together again, we'll have the renderings and the
14 actual cut sheets for those dispensers.

15 And something that I'll also be sharing with
16 the neighbors as Betsy alluded to, we will be setting
17 up a time to meet with the neighbors when we have our
18 complete package of information together. It's my
19 goal to do it in person this time and not through Zoom
20 call. As Betsy said, it's been a little bit of a
21 struggle because of COVID finding a room.

22 I know when I contacted the firehouse, they
23 were not allowing things and not allowing meetings.
24 And I'll try them again. Hopefully things are
25 loosening up a little. I will assure you we will have

1 that meeting with the neighbors before we're all
2 together again.

3 MS. MCKAY-DRURY: All right. So with
4 respect to the illumination, it sounds like you
5 specifically mentioned the signs and then the screens
6 located on the pumps.

7 When I think about the gas station, probably
8 the most intense lighting is kind of that
9 under-lighting on the canopy that makes it so that all
10 the customers can see. You know, I'm sure it's
11 probably safety-related as well.

12 So when you said that two hours after
13 closing lights would be dimmed, is -- is that the
14 lighting that you're talking about? When would the
15 lighting, that -- that illumination that makes the
16 service station pretty bright, when would that be?

17 MR. TERRAGNOLI: That's what I was referring
18 to, to the underneath of the canopy. As I said, we'll
19 have cut sheets for the fixtures themselves and the
20 shielding that will show where it needs to be, which
21 is for customer convenience and safety.

22 MS. MCKAY-DRURY: Okay. And is there a
23 reason -- I'm just trying to understand in terms
24 of because obviously conditions of any kind of
25 acceptance can be something that the Board would look

1 into. So I'm curious about with respect to the two
2 hours after closing, are there specific reasons why
3 that's your normal business is to still leave them on
4 rather than dimming them immediately upon closing?

5 MR. TERRAGNOLI: It's typically a safety
6 feature. I mean, we could look into that. And that's
7 something one of our internal controls -- can review
8 that internally and have a -- and revisit with you and
9 neighbors the next time we're all together.

10 MS. MCKAY-DRURY: And then my final question
11 for you -- I know I've taken up a lot of time here.
12 But are there -- there's been concerns with respect to
13 alcohol sales. So would there be an intention of
14 seeking an alcohol license on this property?

15 MR. TERRAGNOLI: There would. We have a
16 very detailed and strict policy for all age-restricted
17 products. Every person that would want to be
18 purchasing any of those products will have to show the
19 proper ID.

20 MS. MCKAY-DRURY: Okay. And in addition to
21 tobacco products --

22 MR. TERRAGNOLI: Correct. That's also
23 age-restricted. You'd need ID for that also.

24 And again, everyone gets ID'd when they're
25 purchasing those age-restricted items.

1 MS. MCKAY-DRURY: Okay. I think that's all
2 of my questions for now. Thank you.

3 MR. DiSTEFANO: Can I just add real quick,
4 Lou, regarding the age restricted products, you
5 said --

6 MR. TERRAGNOLI: I'm sorry.

7 MR. DiSTEFANO: Do you sell vaping products?

8 MR. TERRAGNOLI: I don't believe we will at
9 this location, but let me verify that and have that
10 answer the next time we're all together.

11 MR. DiSTEFANO: Yeah. Let me just state
12 that we do not permit the sale of vaping products
13 anywhere other than an IG industrial district. So
14 that --

15 MR. TERRAGNOLI: Okay. Thank you.

16 MR. DiSTEFANO: -- would require another
17 variance, possibly another use variance besides the
18 sale of the gasoline and the convenience. So I would
19 strongly suggest that you don't sell vaping
20 products --

21 MR. TERRAGNOLI: Understood. Understood.
22 Thank you for that.

23 MR. DiSTEFANO: Yup. Dennis, I just got a
24 couple clarification questions if you don't mind.

25 CHAIRPERSON MIETZ: Nope.

1 MR. DiSTEFANO: Betsy, you mentioned that
2 the Historic Preservation Commission has reviewed this
3 a number of times. You have not received a
4 certificate of appropriateness at this point; correct?

5 MS. BRUGG: Correct. I believe they're
6 waiting for this use variance process to be completed.

7 MR. TERRAGNOLI: That is correct. I was
8 present at those meetings and that is correct.

9 MR. DiSTEFANO: Okay. And you also
10 mentioned, Betsy, a couple times that you can't demo
11 the building. I just want to be clear that demolition
12 is an avenue that can be taken. However, it's
13 certainly is not a avenue that the Board wants to
14 take.

15 But there is the ability called a demolition
16 hardship. So in cases you can show the hardship,
17 there is that ability to demo historic property. So
18 just so everybody's clear that demolition is not
19 prohibited. It's strongly suggested you don't do
20 that, but it can be applied for.

21 Just one other question regarding the fire
22 station. Do you know guys whether or not that they --
23 their lighting situation? Do they have 24-hour
24 lighting in the parking lot out in front? You don't
25 know?

1 MS. BRUGG: I don't have an answer to that.

2 MR. DiSTEFANO: Okay. You might want to
3 take a look at that to see if there's, you know, a
4 difference between what you would be proposing and
5 what the fire station does.

6 MR. TERRAGNOLI: I can address that. I've
7 spoken with them a couple of times and I'm going to
8 revisit with them to see if they would allow us to
9 have our neighborhood meeting there.

10 MR. DiSTEFANO: Okay.

11 CHAIRPERSON MIETZ: All right. Very good.

12 MS. MCKAY-DRURY: This is Member McKay-Drury
13 again. I'm sorry. I have one quick follow-up
14 question.

15 With respect to the screens on the pumps, do
16 you -- would this location also have the TV and audio
17 screens?

18 MR. TERRAGNOLI: Yes. They could both be --
19 the most updated screens, which would -- so your
20 screen would be more of a touch screen if you will
21 rather than your traditional where you're pushing the
22 buttons to select your gas. So it's really all a
23 screen right now.

24 But to answer your question, yes, but sound,
25 visual can all be controlled by the location.

1 MS. MCKAY-DRURY: Okay. Thank you.

2 CHAIRPERSON MIETZ: Okay. Board members,
3 other questions?

4 MR. DiSTEFANO: Dennis, I'm sorry. Quick,
5 Lou, do you have any other properties in your
6 portfolio that are similar to this project?

7 MR. TERRAGNOLI: Let me say the one that's
8 most similar would be Fairport. But even that's --
9 it's in a neighborhood if you will, but has that feel
10 of the building. But it's almost twice the size.

11 So anything that's under 1200 square feet,
12 no. And where we're taking the building and restoring
13 it to its historic appearance, we do not.

14 MR. DiSTEFANO: Okay. Thank you.

15 CHAIRPERSON MIETZ: Okay.

16 MS. TOMPKINS-WRIGHT: This is Member Wright.
17 This is kind of related to this. In your portfolio,
18 would you say that having a modestly sized canopy and
19 some sort of a convenience is a necessity in order to
20 run a profitable business? There's no -- you can't
21 operate a historical gas station as the way that it
22 was operated in the '60 and '70s.

23 MR. TERRAGNOLI: Yeah. I think for our
24 business model we need to have a convenience store and
25 a fuel presence. Yes.

1 MS. TOMPKINS-WRIGHT: And what about a
2 canopy? Do you have properties that don't have a
3 canopy or is that --

4 MR. TERRAGNOLI: We -- that is a necessity.
5 We don't have any properties without a canopy.

6 MR. DiSTEFANO: And again, you're saying
7 that because it's really for the protection of the
8 customer from weather-related issues --

9 MR. TERRAGNOLI: Yes.

10 CHAIRPERSON MIETZ: Yes.

11 MR. DiSTEFANO: -- more than fire
12 suppression or anything else?

13 MR. TERRAGNOLI: Correct.

14 MR. DiSTEFANO: Okay. Thank you.

15 MS. BRUGG: We do have a little weather in
16 our region. So it's kind of important.

17 CHAIRPERSON MIETZ: Okay. Board members,
18 questions, please so we can keep moving.

19 MS. SCHWARTZ: Member Schwartz. I have a
20 couple of questions.

21 CHAIRPERSON MIETZ: Go ahead, Judy.

22 MS. SCHWARTZ: Yes. If you had a full
23 service you wouldn't need a canopy. And I remember
24 that canopies sprouted up like mushrooms when went to
25 self-served. So that's just a sign of the times.

1 But I'm very interested in the rational for
2 going to something -- I look at this as an elephant
3 trying to fit into like a birdcage. Because I went
4 online and I looked at all the other Quickele's
5 stations. And they're enormous. And they're out, you
6 know, on -- almost like on a through-way or -- I mean,
7 they're really big with huge commercial projects
8 around it.

9 Why this particular site? What -- I mean,
10 it's hard to work with it. So why?

11 MR. TERRAGNOLI: Well, I would say it's not
12 hard to work with it. I want to be respectful of that
13 comment and all the Board's concerns. But from just
14 purely working with it, when you look at remodeling
15 the building into a C-store, adding just the two
16 dispensers, and as Betsy mentioned earlier, we started
17 with three dispensers. But at the request of the
18 Historic Commission, we reduced it to two. Part of
19 our presentation next time we're going to be showing
20 an exhibit that shows the cars at the dispensers, cars
21 able to go around the cars that are fueling. There's
22 going to be room for delivery trucks. I mean, given
23 an odd case where'd you have both going on at the same
24 time.

25 So I would not agree with the assumption

1 that there's a lot going on here. I think we are
2 tailoring our business to the size of the property and
3 the building. We looked at the sites. Obviously the
4 demographics around the site are very good. The
5 traffic counts are very good. We feel it would be a
6 nice niche play for us in the market.

7 We are from Avon, New York. It's --
8 Quickee's it owned by the Bruckel family. I'm very
9 proud to be a member of their team. So they're a
10 Rochester-area-based family. This is a family
11 business. And we can be creative. We can be
12 different. You're right; some of our locations are
13 very big. But we can also do a niche location like
14 this.

15 MS. SCHWARTZ: And Rick, I have a question
16 for you and/or Ken. Yes, this is a use variance and
17 correct me if I'm wrong, but it seems to me that when
18 a use has been discontinued and especially in this
19 case when the pumps were taken out and hasn't been
20 used as a gas station for all these years, how can it
21 come back or why should it come back?

22 MR. DiSTEFANO: Well, the nonconforming use
23 went away. So basically, you know, a nonconforming
24 use can continue forever provided that it does not
25 lapse for more than a year.

1 This gas station lapsed more than a year.
2 They lost the right to nonconforming. It doesn't
3 release them from having a right to apply for any use
4 variance for the same use. But it makes them have to
5 go get a use variance for that use. Instead of using
6 "Well, it's been vacant for eight months. We still
7 have the right under nonconforming. So we can just
8 open up." They lost that right.

9 MS. SCHWARTZ: Okay.

10 CHAIRPERSON MIETZ: Yep.

11 MS. TOMPKINS-WRIGHT: I think one thing --
12 they could also come with a variance for a McDonald's
13 or a Wendy's. You know, they're coming and saying
14 we -- what I'm hearing is that we think a gas station
15 is probably more in character for this property
16 considering the historical use. Because otherwise the
17 other potential uses would be even more different.
18 But they could come a variance for any use if they
19 wanted to apply for it.

20 CHAIRPERSON MIETZ: Okay. All right. More
21 questions from Board members or are we set on
22 questions? Okay, Rick.

23 MS. MCKAY-DRURY: This is Member
24 McKay-Drury. I have one quick question. With respect
25 to the Quickee's kind of mission and where they're

1 headed, obviously there's also been some discussions
2 about when you considered nonconforming uses that will
3 essentially be a new nonconforming use but that it did
4 elapse. Is Quickle's, you know, looking towards any
5 kind of alternative energy sources? What about
6 electric vehicle charging stations? Is there any
7 aspect of the business that is looking into that that
8 could be potentially using this space for that sort of
9 a purpose?

10 MR. TERRAGNOLI: Yeah. Absolutely. We're
11 going to wire for two electric vehicle charging
12 stations day one. We're going to watch the demand and
13 needs. And when we feel the need will be there, the
14 infrastructure will be in place for those two charging
15 stations. In addition, when you look at the entire
16 row of parking along the north side, someday those are
17 all going to be charging stations.

18 So we are evaluating that at every site.
19 We're also making the site as pedestrian friendly as
20 we can. We're adding a bike rack. We're also adding
21 a bike repair station.

22 So to answer your question, yes, we're not
23 only just looking into, we're making plans for it.

24 MS. MCKAY-DRURY: Okay. Thank you.

25 CHAIRPERSON MIETZ: Okay. Are we set with

1 the Board then? Okay. Very good. Okay.

2 So at this point thank you everybody for
3 their questions and the presentation. So the public
4 hearing on these three applications is open. So at
5 this time I would just like to ask if there's anyone
6 on the Zoom call who would like to speak.

7 If you identify yourself, we'll try to give
8 everybody the opportunity. I always, in situations
9 like this, ask your deference to your neighbors and
10 all of us I guess in that when you're making your
11 comments that hopefully you will be bringing up issues
12 that are concerning you personally or affecting your
13 property and whatnot. And hopefully as we go through
14 them they won't be, you know, similar, exactly in
15 nature. So we appreciate that if you can.

16 So who do we have as far as interested
17 parties please?

18 MR. HAREMZA: The first person --

19 MS. TOMPKINS-WRIGHT: Dennis --

20 MR. HAREMZA: I'm sorry?

21 MS. TOMPKINS-WRIGHT: I just want to point
22 out something that's helped in the past that there is
23 the raise your hand --

24 CHAIRPERSON MIETZ: Function. Yeah.

25 MS. TOMPKINS-WRIGHT: On Zoom. But that's a

1 helpful way for I think the Brighton team to unmute
2 people.

3 MR. HAREMZA: Yeah. I was just going to
4 mention that. The first person I think that was
5 interested in speaking, she posted a message in the
6 chat room, is Mary Coblenz Boyd.

7 CHAIRPERSON MIETZ: Okay. Please proceed.

8 MS. BOYD: Yes. I'm here.

9 CHAIRPERSON MIETZ: All right, Mary. Just
10 give us your name and address please.

11 MS. BOYD: Yes. Mary Body. I live at 1
12 Meadow Lane in Brighton. We've lived -- my husband
13 Donald and I have lived here for 33 years. And we are
14 members of the Brookside neighborhood that has been
15 speaking out against the proposed renovation of the
16 building of the gas station.

17 Last Friday I submitted a petition to the
18 Board for your consideration with signatures of 50
19 members of the neighborhood. And I was -- I was
20 feeling that it was pretty remarkable I was able to
21 get 50 because so many people were still on summer
22 holidays and out of town over the Labor Day weekend.

23 But in summary I would say our basic
24 concerns in the petition deal with the change of the
25 zoning, the usage variances. One variance in

1 particular that I don't think has been mentioned this
2 evening is that Brighton Codes General Provision
3 Chapter 201-5 states that a convenience having a gross
4 floor area of less than 500 -- excuse me -- less than
5 5,000 square feet may not sell gasoline. And the
6 existing building is less than 3 -- 1300 square feet.
7 So that's another variance that would have to be dealt
8 with.

9 Also in terms of variances, the State of New
10 York requires that there be external brand and price
11 signage that I have not heard directly addressed.
12 Typically that can be -- you know, that can be done a
13 number of ways. But the branding and price signs have
14 to be visual from the street. And then as other
15 people have mentioned, the parking and setback
16 requests violate the existing codes.

17 This is sort of a summary of what was in the
18 petition. And I'm assuming the Board will have a
19 chance to read it.

20 CHAIRPERSON MIETZ: Yes.

21 MS. BOYD: I have two other issues I want to
22 touch on briefly. One is the historic designation of
23 the building. These types of gas stations were built
24 specifically in the late '20s, early '30s to blend
25 into a residential neighborhood. And there's one

1 existing example of that. If you look at the Brighton
2 Fire Station Number 3 in the Brighton -- or the
3 Browncroft extension, that's still a building that was
4 built specifically to blend into the neighborhood.

5 And what we have on 3108 East Avenue is a
6 Tudor revival gem with a slate roof. And it would be
7 a shame to modify it or destroy that in any way.

8 The other things that come up in terms of
9 historic designation, rehabilitation considerations
10 should be designed so that they preserve the important
11 characteristics of the original building. And you
12 want to avoid damage or unnecessary removal of the
13 historic features or materials. Exteriors need to be
14 repaired or retained, not renovated, but repaired or
15 retained.

16 New uses are prevalent all over the country
17 for these kinds of historic gas station buildings.
18 And for further reference I would point you to the
19 National Park Service as the historic preservation
20 brief on historic gas stations. And they also have
21 one on restorations of Phillips 66 gas stations, which
22 show multiple uses other than gas stations for these
23 historic buildings.

24 Along with that keep in mind that there are
25 preservation fund and grants that can be applied

1 toward different kinds of uses of these buildings
2 rather than gas stations.

3 My last point is as an IT professional, I
4 taught formal project management for over ten years.
5 And it's a cardinal rule that when a proposed project
6 is controversial, and I think this is, stakeholder
7 objections must be addressed. There must be early,
8 frequent, consistent and accurate communication with
9 the stakeholders. The stakeholders are these people,
10 us neighborhood people, whose interest may be
11 positively or negatively affected as a result of the
12 project execution.

13 From my view point, and I think many of my
14 neighbors, effort to involve stakeholders has been
15 minimal. And under any good project the -- the owner
16 and developers would have met with the neighborhood
17 early on and tried to resolve and iron out a lot of
18 the objections that are being raised now. Thank you
19 for your time.

20 CHAIRPERSON MIETZ: Okay. Thank you for
21 your remarks. Okay. Guys, I'm going to let you field
22 the --

23 MR. HAREMZA: Okay. Next is Karen Bentley.
24 You're still muted, Karen.

25 MS. BENTLEY: Hi. I'm Karen Bentley. My

1 husband Robert Bentley and I live at 3108 East
2 Avenue -- I'm sorry. We live across from 3108 East
3 Avenue at 3939 Elmwood.

4 The property is 100 percent residential.
5 The dental office is now all private use. We have a
6 bedroom back there. We have a TV lounge back there.
7 And so there is no commercial entity at all at this
8 point. Once the dental office closed, we converted it
9 to private use.

10 | And one of the --

11 CHAIRPERSON MIETZ: Ma'am. Ma'am. Excuse
12 me. I didn't want to interrupt you, but just a quick
13 question. How long ago was that change made?

14 MS. BENTLEY: Two and a half -- it will be
15 three years in December.

16 CHAIRPERSON MIETZ: Thank you very much. Go
17 ahead. I'm sorry.

18 MS. BENTLEY: One of the major concerns we
19 have is, because we have windows directly facing 3108,
20 is that cars exiting the proposal for the
21 gas/convenience store would have headlights directly
22 glaring into our windows.

23 And that is also a -- very much of a concern
24 because the traffic will increase. There's no thought
25 as to how you would mitigate car lights or headlights

1 from being dimmed. I mean, that would be a ridiculous
2 thing for anybody to ask.

3 But one separate concern is the fact that
4 Quickee's wants to convert the two garage bays, which
5 were used for an auto repair store, into complete
6 glass walls. The entire interior of a convenience
7 store is typically lit and very brightly lit. And
8 having a wall of glass, which we could see and have
9 light eminent across the street from that, in addition
10 to the canopy lights, is a big concern of ours.

11 And the other thing is that the -- the
12 proposed traffic pattern. We recently had a car
13 accident where a motorcycle was hit by a van exactly
14 in front of 3108 East Avenue. And I think people need
15 to realize it's -- that area between Allens Creek and
16 Elmwood and Linden is a very active traffic --
17 activity going on. And people are actually speeding
18 through to get to the Linden Avenue exit so that they
19 can get -- make a right-hand turn onto the expressway
20 access roads.

21 So overall, it's -- it's dangerous I think
22 to think about the fact that the traffic would
23 increase significantly. And that also as a private
24 property owner who lives in the neighborhood, we go to
25 bed around -- between 9 and 10 o'clock at night. We

1 don't want lights glaring into our bedroom windows.

2 And if, as Lou has stated, once the gas
3 station would close at 10 o'clock at night, then the
4 lights are on for an additional two hours in the
5 convenience store. So I don't know how that is
6 acceptable in a bedroom community like ours. Okay.
7 Thank you.

8 CHAIRPERSON MIETZ: Thank you so much.

9 MR. HAREMZA: I'm just going to go in the
10 order they came in. And Michael Stone had a message
11 in the chat box. So Michael Stone, you are up next.

12 MR. STONE: Yeah, hi. Thank you. Yeah. So
13 Mike Stone, 1011 Allens Creek Road.

14 So I live almost right across the street
15 from the proposed chain, to the gas station. And
16 there's just a couple points I want to make. So
17 I'm -- I'm sitting in my bed right now. I'm looking
18 out my window at the fire hall. And I've been online
19 for a couple hours and the fire hall's dark and
20 there's no activity there. And there typically isn't
21 activity there. And it is typically pretty dark.

22 So if I were to take my phone right now and
23 walk everyone here around the neighborhood, you would
24 feel like you're in a completely residential
25 neighborhood. There's not a lot of traffic on East

1 Avenue. There's a few cars now and then right now.
2 But it's dark. It's quiet. And it's lovely.

3 And, you know, let's think about this
4 Quickle's going in. I probably didn't say it right.
5 My wife was correcting me. So I apologize for that.

6 But when Gordy's service station was there,
7 it was truly a neighborhood service station. He
8 didn't sell a lot of gas. He sold chocolate bars. He
9 sold a few cokes. But if you went into his store to
10 buy a coke -- but if you went into the store to buy a
11 Coca-Cola -- sounds like somebody's rustling some
12 papers.

13 If you went into his store to buy a
14 Coca-Cola, sometimes you would have to actually go in
15 and get him out from underneath a car so he could come
16 out and check you out. And that was the kind the
17 place it was. And it was that way up until -- up
18 until he sold it. Or he left when Dick Seemer owned
19 the place. So it was a real neighborhood place.

20 He would go home at 6 o'clock unless he was
21 working on your car late at night. Maybe he'd be open
22 a little later. But it was dark. It was quiet. And
23 it was like a little bit of a candy shop, you know,
24 for some of the kids. But it was not a convenience
25 store. It was barely a gas station.

1 I think he sold gas, as he once told me, as
2 a service to customers. But he wasn't making money at
3 it. And if he was, he would have kept it up I think.

4 And I listened to the proposal tonight and I
5 hear about the hardships. I hear about, you know,
6 this poor little piece of property that nobody wants.
7 You know, I talked to Carol Zerina not too long ago
8 and he was real interested in being there.

9 But I think the cost of getting traffic --
10 the traffic study that was required at the time, which
11 I think has actually changed, was prohibited for him.
12 But he was -- he was really interested in making a
13 flower shop there.

14 So, you know, I think that it could be
15 marketed. And I think we should be patient. I think
16 we should wait for something better. I think when I
17 listen to the plan and hear about the hardships and
18 how small it is, how hard it's going to be and then I
19 hear about we're going change the lighting, we're
20 going change, you know, canopy from the exact same,
21 you know, footprint of the building to something
22 smaller, I hear some our -- you know, some of the
23 interests of the neighborhood being met.

24 But let's face it. I mean, 5 to 10 o'clock,
25 trucks coming in and out delivering gas, the

1 pressure's going to be on, you know, the -- the
2 company proposing this, if this is approved, to profit
3 as much as possible and expand hours and do more. And
4 once this is -- you know, if ever agreed upon, the
5 cats out of the bag. There's no changing anything.
6 There's going to be, you know, no regulation or no
7 policing what they do. And then our property values
8 in the immediate area and close by are going to go
9 down. It's just a fact.

10 And it breaks my heart that this is where
11 our neighborhood's going. I love the idea that in
12 '95, you know, or years ago, there was a sentiment on
13 behalf of the Town that once these properties were
14 approved for -- for variance that we would try to go
15 backward a little bit and we would try to make, you
16 know, an improvement in the use of these properties.
17 You know, it breaks my heart to think that there's
18 going to be a gas station 50 feet from the creek.

19 You know, and -- you know, the fact of the
20 matter is, there's going to be plow -- you know,
21 there's going to be plowing there in the wintertime
22 early in the morning, which makes a lot of noise. And
23 there's -- it's going to become a very, very busy lit
24 up area.

25 And so I just thank you for listening to my

1 concerns and I appreciate being a part of the process.

2 CHAIRPERSON MIETZ: Thank you, Mr. Stone.

3 MR. HAREMZA: Okay. Next up we have Miranda
4 Harris Glocker.

5 MR. GLOCKER: Hi. Roan Glocker and Miranda
6 Harris Glocker. We live at 944 Allens Creek Road. We
7 both had a few comments we'd like to make.

8 I'm not a lawyer, but it seems like the
9 applicants -- one of the ideas is that there's not a
10 self-imposed financial hardship. Unless they were
11 forced to buy the property or were unaware of the
12 restrictions in buying the property, I don't see how
13 it's anything other than a self-imposed financial
14 hardship.

15 The idea that they can't make a go of it as
16 a office building is a complete straw man argument.
17 That's not what's debated here. It's a discussion
18 about whether or not we want a gas station in our
19 community.

20 Their points about there not being changes
21 or that there would be positive changes to our
22 community with the placement of a large gas station
23 here -- I don't know where the applicants live, but I
24 don't think they live here. I don't think their kids
25 go to school at Allens Creek Elementary like ours do.

1 The idea that a convenience station with lights that
2 are on, cars that are pulling in and out 17 hours a
3 day, the light being on for probably 19 hours a day,
4 that extra two hours, the idea that that's not going
5 to have an impact on our neighborhood is a farce.

6 And you know, the idea that selling alcohol
7 and tobacco within a couple hundred yards of a school
8 wouldn't have a negative impact on our community is
9 also I think completely nonsensical. I mean, you made
10 the case of why we don't want vaping products in our
11 area because we don't want our kids having access to
12 them. I don't see why alcohol and tobacco is any
13 different, other than they were probably grandfathered
14 in at a different time.

15 Those are my thoughts. And my wife has a
16 few comments.

17 MS. GLOCKER: Okay. So we have three
18 children, two of whom currently attend Allens Creek
19 Elementary. And as I said in a prior meeting, my
20 husband and I both run. We're on the bikes with our
21 kids. Are kids have friends within the immediate
22 neighborhood that they often have to cross East Avenue
23 or on Elmwood to get to their friends' houses and are
24 getting more independent as they get older. And I
25 have myself been nearly struck several times by cars

1 racing down East Avenue trying to get onto Linden,
2 trying to get onto 490.

3 Today was the first day of school for our
4 kids and it was a mess. I watched as the buses were
5 trying to exit on Creek. It's already really
6 difficult because people don't let them through.
7 They're trying to race down there to get onto
8 different highways, Elmwood, et cetera, get up to
9 Penfield or out to Fairport. And there's a lot of
10 frustration that you can feel. You know, like cars
11 are trying to zoom around other cars.

12 We started, and I mentioned this at the last
13 meeting, everyone tried walking for the last two years
14 because of COVID and not having enough bus drivers and
15 not having enough space on the buses with the
16 distancing guidelines. And I quickly stopped walking
17 because we nearly were hit by a car. It knocked over
18 the light pole to the walking light there on the
19 corner of Allens Creek and East.

20 So adding something that would be a constant
21 entry and exit point in this particular junction is a
22 disaster waiting to happen. I see multiple people
23 nearly hit. We've had this accident that Karen
24 mentioned recently. And, you know, the bottom line is
25 we as a neighborhood are a neighborhood -- we're not

1 wanting this business here. And I don't think it's
2 safe for us, for our children. So I thank you for
3 your time.

4 CHAIRPERSON MIETZ: Thank you very much,
5 both of you. Thank you. Okay.

6 MR. HAREMZA: Okay. Next up is Wanda Eaton.

7 CHAIRPERSON MIETZ: Is Wanda Eaton on the --

8 MS. EATON: Yeah. I'm sorry. I was trying
9 to unmute.

10 My name is Wanda Eaton. I live at 3881
11 Elmwood. So just around the corner, a few houses down
12 from East Avenue.

13 CHAIRPERSON MIETZ: Okay.

14 MS. EATON: I am a -- I'm a retired
15 petroleum engineer. I have a degree in math and a
16 master's degree in chemical engineering. I worked for
17 a major oil company for 35 years on small and large
18 hydrocarbon projects around the world.

19 The applicants for these variances have
20 presented their case based on the surface aesthetics
21 and on the economic hardship. And first I'd like to
22 address the surface issues, which is all fine and
23 good. However, I don't agree with what they are
24 proposing.

25 But I think the bigger risk of having this

1 as a gas station is related to storage tanks for the
2 gasoline that is just feet from Allens Creek. The --
3 anyone that's going to be putting in a gas station on
4 this property is going to own the liability for any
5 leakage from those tanks.

6 And you can put brand new tanks in. You can
7 do whatever you want. They will leak. I have seen a
8 lot of things in my career. That is a significant
9 risk not only to our neighborhood but down the road
10 wherever Allens -- I don't even know where Allens
11 Creek ends.

12 But I think this is a high environmental
13 risk that has not been addressed at all. And I think
14 that should be taken into consideration for what's
15 being proposed to put here.

16 And secondly, with respect to the economic
17 hardship, I don't believe it is the Town of Brighton
18 or the residents in this neighborhood that are
19 responsible for a poor economic decision by Mr. Romeo.
20 He wrote the check to buy the property. And if it
21 didn't pan out as he wished, I don't think we should
22 bear the responsibility of trying to fix that.

23 And I agree with the Glocker's that there
24 could be in other -- there may be other opportunities
25 to do something else with this property rather than

1 just let it sit there. But I think that the issues
2 related to both the surface and the lighting, the
3 traffic, even being just down the street from Allens
4 Creek and having children walk across that street with
5 busy cars and increasing that traffic is just a
6 significant risk to the kids. It just doesn't make
7 sense whatsoever.

8 So with those two comments I would like to
9 say thank you for listening to me. And I appreciate
10 your taking these under consideration.

11 CHAIRPERSON MIETZ: Thank you very much.

12 MR. HAREMZA: Okay. Next, we have Peter
13 Weishaar.

14 MR. WEISHAAR: Good evening. So I spoke
15 last time. My name is Peter Weishaar and I am an
16 attorney with the McConville Considine Cooman & Morin.
17 We represent Robert and Karen Bentley who live across
18 the street. Karen Bentley spoke earlier this evening.
19 And I know I made a lot of points in my written
20 submission. So I'm not going -- I'm not going to, you
21 know, make them again tonight.

22 But there were a couple points that were
23 raised tonight that I want to highlight.

24 CHAIRPERSON MIETZ: Sure.

25 MR. WEISHAAR: And the first one is during

1 the applicants' presentation there was a -- kind of a
2 statement made that they -- such that if the property
3 had not ceased operations suggestion that a use
4 variance would not be required. But I do think that a
5 use variance would still be required for this
6 application because they were proposing a convenience
7 store, which I don't believe was ever something that
8 was pre-existing nonconforming use.

9 Something that's been raised a couple of
10 times tonight is about the self-created hardship.
11 And, you know, I know zoning boards typically deal
12 with area variances more commonly. And area
13 variances, you're kind of looking at all of the
14 factors. And if you don't meet one factor in the
15 required analysis, it's not going to be fatal to
16 your -- to the applicant's claim.

17 But, you know, that's not true obviously
18 with a use variance. And here I think that the -- you
19 know, what kills the application for the use variance
20 here is that this is a self-created hardship. The
21 property had already ceased operating as a
22 pre-existing nonconforming use. And it was purchased.

23 And we've sighted a case in our materials
24 about that, you know, where hardship in the context of
25 zoning, is self-imposed for the applicant for the

1 variance acquired the property subject to the
2 restrictions from which he or she now seeks relief,
3 where that should be the end of the story here.

4 And, you know, the use variance should be
5 denied based on that alone. Because as I said, a use
6 variance, you're required to meet all of the elements.

7 There was a comment earlier about, you know,
8 this being next to the fire station and so therefore
9 it's not compatible with office uses. And even though
10 it's the next town over, if you head down 441 to the
11 Four Corners in the Town of Penfield, Penfield Fire
12 District Station Number 1, it's right in the Four
13 Corners, and I believe it's surrounded both on its
14 entrances on Penfield Road by smaller office
15 buildings. And also I believe there's dentist offices
16 and other office uses on the Five Mile Line Road
17 entrance to the back parking lot to Penfield Fire
18 Station Number 1.

19 And I think that's a comparable station to
20 Brighton Station Number 1. They're both kind of
21 headquarter stations and, you know, have those office
22 uses, you know, they're there in Penfield. So, you
23 know, it's a similar type of neighborhood.

24 And then just two more points. The canopy,
25 we talked a lot about the canopy. And, you know,

1 there's -- you know, I believe in our last submission
2 we submitted the minutes from the prior meeting. And
3 I believe it was the '90s when the area variance for
4 the canopy was denied.

5 And I just want to reiterate that even
6 though if kind of the concept of res judicata doesn't
7 apply here, which would be something that basically an
8 applicant can't relitigate and can't keep asking for
9 the same request after it's already been decided
10 against them. I know that that doesn't necessarily
11 apply here because it's not the same applicant, but I
12 do think there is a notion here that the Zoning Board,
13 if it's going to grant the variance, it needs to have
14 a good reason for departing from its prior denials.

15 And I believe that there's some discussion
16 of a -- of maybe two prior denials. I only have the
17 minutes from 1995. But, you know, it looks like there
18 might have been two denials.

19 And finally, the last thing I just want to
20 mention is there is some talk about kind of next time
21 when we're here. And if the applicant is going to be
22 submitting additional material, I guess on behalf of
23 my clients and perhaps on their neighbors that if
24 there is a next time, that the neighbors also be
25 offered an opportunity to address any of those new

1 plans or comments that were made. And perhaps the
2 hearing ought to be kept open or at least reopened if
3 they're going to receive additional information.

4 So that's all I have this evening. Thank
5 you for your time. I know this is a challenging
6 application and I know it's late. So thank you.

7 CHAIRPERSON MIETZ: Thank you for keeping it
8 centered please. Thank you. Okay.

9 MR. HAREMZA: Okay. It looks like we have
10 one more. Linda, you can go ahead and unmute.

11 MS. STEVENSON: Got it. I got it. Hi.
12 This is Linda Stevenson. I live at 12 Creekdale Lane.
13 My husband and I have lived here for 25 years. And I
14 have several comments to make, but I will speak
15 quickly.

16 Ms. Brugg, you spoke about -- gosh. I can't
17 even think. Comps. In real estate comps are
18 properties that are similar to each other so that you
19 can get a fair assessment, market value, of what your
20 building is worth. The office that they are
21 recommending is in no way comparable to the list of
22 offices that was in the report.

23 The list of the offices were on West
24 Henrietta Road. There were multi-story buildings.
25 There were multiple buildings. That's hardly what the

1 station is here.

2 Two, we were tasked to say only talk about
3 what really affects you. Well, air quality affects
4 me. The amount of traffic that's going to be coming
5 down that isn't coming down now is going to be
6 significantly increased, especially with the apartment
7 building with 186 units that are coming in 2023.

8 Today I had an opportunity to interview a
9 Coca-Cola truck driver. And their dimensions for a
10 truck -- and they said that they use that truck
11 whether they go into small places or in the city or
12 out in Scottsville where I was. And the truck is 53
13 feet long by 8 feet wide by 14 feet.

14 And I'm sitting here looking at a large
15 version of the engineering plan. And it's just really
16 difficult to see how that truck can be making
17 deliveries during the day, which Lou said he would be,
18 and having cars there and then trying to get out. And
19 then that narrow space between the side of their
20 property and then the driveway and then where the
21 firehouse is, how does the fire engine turn around if
22 all four lanes of traffic is clogged up? That really
23 is somewhat concerning to me.

24 I heard that the firehouse did make an
25 officer, but Lou or someone turned it down. So there

1 was interest there. The number of sales calls that
2 were made, I have a MBA in marketing and I worked for
3 fortune 50 companies. And I increased their sales.
4 But I didn't do it with a few phone calls a month. It
5 took a lot of hard work. So I question that.

6 The other part is the beer. I know
7 everybody is going to be asked to say "Can I see your
8 license please, and find out what your age is?" But
9 what if the person says, "No"? What happens then?
10 What if the person has been drinking before they get
11 there and they want more beer? What's going to happen
12 then?

13 This is becoming a very unsafe environment
14 within which we're being asked to live because
15 somebody took a flyer out on a project without doing
16 significant due diligence. And we are being expected
17 to bail him out. I really respectfully submit that
18 this is a very poor precedent to set, that people can
19 come in, make a mistake and then turn to the Town and
20 say, let's -- please change everything so that I can
21 make a profit selling this to a company that's going
22 to come in. Thank you for your time.

23 CHAIRPERSON MIETZ: Thank you very much.
24 Okay. What have we got, gentlemen?

25 MR. HAREMZA: That appears to be everyone.

1 I'm not seeing any more hands raised.

2 MS. STEVENSON: Wait, wait, wait, wait.

3 CHAIRPERSON MIETZ: Sorry. Who's speaking
4 please? Do you see anything else, Jason?

5 MR. HAREMZA: No, I do not.

6 CHAIRPERSON MIETZ: Okay. Very good. Well,
7 I thank everyone for keeping their comments, you know,
8 directed and very clear. We appreciate that as
9 everyone on the Zoom call --

10 MR. HAREMZA: Oh, I'm sorry. It looks like
11 Linda, you have another comment? One more?

12 MS. STEVENSON: I just want to -- I want to
13 ask one question. Can you hear me?

14 MR. HAREMZA: Yeah.

15 MS. STEVENSON: Okay. Thank you. I've
16 never participated in any -- any town meeting before.
17 So perhaps my question is wrong and I shouldn't be
18 asking it. But really does keep me up at night. And
19 so if I offend anybody, I apologize in advance. But
20 I'm asking it in good faith.

21 Is -- if the neighborhood has come together
22 sighting things that can really go wrong and are
23 serious and then the planning Board or whatever says,
24 "Oh, that's okay. We're going to go ahead anyway."
25 If any one of us suffers harm because of the decision

1 that is made, do we have any recourse? And can we sue
2 the Town Board? I mean, are we protected at all or is
3 it like the old west where it's every person for
4 themselves?

5 CHAIRPERSON MIETZ: Mr. Gordon, would you be
6 able to possibly address that? Ken? You're muted,
7 Ken. There we go.

8 MR. GORDON: There we go. I wasn't able to
9 unmeet myself there for a second.

10 So no, I don't think that's appropriate for
11 us to address. The Board is here to listen to
12 comments from the public. And at this time I'm not
13 going to be providing you an opinion on that issue.

14 CHAIRPERSON MIETZ: Okay. Very good. All
15 right. Is there any other questions then or are we
16 set? Okay. Again, there will be more opportunity for
17 comments.

18 All right. So at this point then I think
19 we'll -- what do you think on this public hearing,
20 Rick?

21 MR. DiSTEFANO: Dennis, I think at this
22 point we don't close it. We could certainly close it
23 if we want when we get into our discussion phase. But
24 it seems like both the applicant and possibly the
25 neighbors will be submitting additional information

1 that we would probably want to review in a public
2 hearing situation.

3 CHAIRPERSON MIETZ: I agree.

4 MR. DiSTEFANO: I would not close the public
5 hearing.

6 CHAIRPERSON MIETZ: Okay. Very good. All
7 right. So our next two pieces of business are the old
8 business, which is locations on 2720 West Henrietta
9 Road. I know, Rick, you had some -- I think some
10 discussions with the applicants?

11 MR. DiSTEFANO: Yeah. You guys did receive
12 a letter from the applicant in regards to them still
13 working with the neighboring property to secure and
14 clarify the easement for access and parking.

15 I did receive additional information from
16 the consultant, which I did not forward to you because
17 it just came over about a day or two ago. And I told
18 the consultant that that information should be
19 packaged to us and submitted for next month and
20 possibly to reopen the public hearing.

21 I know last month we basically told the
22 applicant, you know, you need give us an update or we
23 will be forced to possibly deny the application
24 without prejudice. I think they have given us that
25 updated. So in my opinion I don't have a problem with

1 tabling it 'til the October meeting and see if they
2 follow through with what they need.

3 CHAIRPERSON MIETZ: Rick, it would be fair
4 to say without getting into all of the details, that
5 some effort is not just conversation with the
6 attorneys and whatever, but some other tangible effort
7 has been made?

8 MR. DiSTEFANO: Yes. Yes, the -- the
9 information I saw had a revised floor plan, revised
10 parking layout.

11 CHAIRPERSON MIETZ: Okay.

12 MR. DiSTEFANO: There has been additional
13 efforts made in regards to the application.

14 CHAIRPERSON MIETZ: Okay. Yeah. So we're
15 just trying to establish that this is a continuing
16 effort and it's not just falling on deaf ears. Okay.
17 Thank you. Okay. All right.

18 So at this point then we've discussed these.
19 And I think, you know, just for those who are back on
20 again, let's go back through. Do we need a break?

21 MR. DiSTEFANO: Probably should take a
22 five-minute break.

23 (End of the public hearings.)

24

25

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 Further, that the foregoing transcript is a
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 7th day of September, 2022
13 at Rochester, New York.

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Holly E Castlesman

HOLLY E. CASTLEMAN, CR,
Notary Public.

**BRIGHTON
ZONING BOARD OF APPEALS
MEETING
DELIBERATIONS**

September 7, 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 CHAIRPERSON MIETZ: Ken, would you unmute
2 yourself for a minute?

3 MR. GORDON: Apparently I can.

4 CHAIRPERSON MIETZ: Okay. At our discussion
5 last month I think we agreed that with these
6 applications that a motion would be made and then
7 discussion; correct?

8 MR. GORDON: Yup.

9 CHAIRPERSON MIETZ: Okay. Very good.

10 MR. PREMO: I just have one question for
11 this one real fast. Ken, we're going to have to do a
12 neg dec on this since it's for a larger development?

13 MR. GORDON: Hold on. I'm playing catch up
14 here.

15 MR. DiSTEFANO: Which project are we --

16 MR. GORDON: Wrong application.

17 CHAIRPERSON MIETZ: Yeah. We're talking
18 about the dog park is the first one, Ed.

19 MR. GORDON: Yeah. Right. So it's a not
20 single-family residence. So, yes. We need a neg dec
21 on this.

22 CHAIRPERSON MIETZ: Okay. All right. Are
23 we ready? Okay. So 9A-01 is the application of Oak
24 Hill Terrace for the dog pork. So I have a motion to
25 make.

1 Rick, I don't have the neg dec right in
2 front of me. Do you want to just read it and I'll
3 accept it?

4 MR. DiSTEFANO: Give me a second.

5 CHAIRPERSON MIETZ: Please. Thank you. Lot
6 of paper management here.

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1 **Application 9A-01-22**

2 Application of OAK Hill Terrace Apartments/
3 K of P LLC, owner of property located at 2470 East
4 Avenue, for an Area Variance from Section 207-2A to
5 allow a front yard fence to be 4 feet in height in
6 lieu of the maximum 3.5 feet allowed by code. All as
7 described on application and plans on file.

8 Motion made by Mr. Mietz that the Board
9 having considered the information presented by the
10 applicant and having conducted the required review
11 pursuant to SEQRA adopt the negative declaration
12 prepared by Town staff that the proposed action will
13 not likely have a significant environmental impact.

14 I also move we approve application 9A-01-22
15 based on the following findings of fact.

16 **Findings of Fact:**

- 17 1. The existing chain link fence is 8 inch over the
18 code and the height is minimally noticeable.
- 19 2. The fence creates a dog run area for the use of
20 the building residents and is a helpful amenity for
21 those tenants.
- 22 3. No negative effect on the character of the
23 neighborhood in this commercial area will likely
24 result from the approval of this variance.
- 25 4. Based on information from the Town Animal Control

1 officer, a 4 foot height privacy fence is appropriate
2 for controlling average size or larger dogs.

Conditions:

- 4 1. This is based only on the fence as described in
- 5 testimony as to style and location.
- 6 2. Any relevant permits shall be obtained.

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1 MS. SCHWARTZ: Before you have a second, can
2 I just say, you said commercial area?

3 CHAIRPERSON MIETZ: Yes.

4 MS. SCHWARTZ: Is this commercial?

5 CHAIRPERSON MIETZ: Well, referring to that,
6 Judy, as it relates to all of the apartment buildings
7 there. I mean, we can say multi-story residential if
8 you prefer. I could switch that.

9 MS. SCHWARTZ: I think so. I don't want --
10 personally I don't want commercial to go in --

11 CHAIRPERSON MIETZ: Okay. Okay.

12 MS. SCHWARTZ: Okay. Thank you.

13 CHAIRPERSON MIETZ: I'm happy to switch it
14 to that. So we have a second then?

15 MS. SCHMITT: I second.

16 CHAIRPERSON MIETZ: Okay. Thank you.

17 MR. DiSTEFANO: I have a friendly
18 suggestion.

19 CHAIRPERSON MIETZ: Yes.

20 MR. DiSTEFANO: In regards to your condition
21 number 1, can we incorporate specifically to enclose
22 an area of approximately 300 square feet?

23 CHAIRPERSON MIETZ: Okay. So --

24 MR. DiSTEFANO: Something like that, Dennis.
25 Because I want to kind of control this --

1 CHAIRPERSON MIETZ: Okay. No. I understand
2 what you mean. Yeah. So let me just -- Okay. Let
3 me -- Ken, let me just reread number 1 then. Say the
4 existing chain link fence is 8 inches over the code
5 and the height is minimally noticeable to enclose a
6 300 square foot area for use as a dog park.

7 MR. DiSTEFANO: Yeah. That's your finding.
8 I want you to put that into the condition.

9 CHAIRPERSON MIETZ: Oh. In the condition.
10 Oh, I'm so sorry. Okay.

11 MR. DiSTEFANO: So your finding was fine.
12 So don't change your finding. Just add that
13 specifically for area approximately 300 square foot in
14 the condition.

15 CHAIRPERSON MIETZ: You don't want it to
16 exceed 300 feet. So just saying is not really a
17 condition; right?

18 MR. DiSTEFANO: Right.

19 CHAIRPERSON MIETZ: Okay. All right. So it
20 would be number 3 condition then that the proposed dog
21 run will not exceed 300 square feet.

22 And that's why I referenced in number 1
23 saying the same as drawing and everything. So I think
24 that was close.

25 MR. DiSTEFANO: Yeah. The drawing isn't

1 real accurate.

2 CHAIRPERSON MIETZ: Okay. That's fine we
3 got it now. All right.

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1 **(AS AMENDED)**

2 **Findings of Fact:**

3 1. The existing chain link fence is 8 inch over the
4 code and the height is minimally noticeable.

5 2. The fence creates a dog run area for the use of
6 the building residents and is a helpful amenity for
7 those tenants.

8 3. No negative effect on the character of the
9 neighborhood in this area will likely result from the
10 approval of this variance.

11 4. Based on information from the Town Animal Control
12 officer, a 4 foot height privacy fence is appropriate
13 for controlling average size or larger dogs.

14 **Conditions:**

15 1. This is based only on the fence as described in
16 testimony as to style and location.

17 2. Any relevant permits shall be obtained.

18 3. The proposed dog run will not exceed 300 square
19 feet.

20 (Second by Ms. Schmitt.)

21 CHAIRPERSON MIETZ: So who had the second?
22 Would you accept those? You're all set, Kathy?

23 MS. SCHMITT: Yes.

24 CHAIRPERSON MIETZ: Okay. So now, we have
25 discussions. So we're just getting used to a

1 different format here. So is there any thoughts,
2 comments, other than the ones that have been made?

3 MS. SCHMITT: No.

4 CHAIRPERSON MIETZ: Concerns.

5 MS. SCHWARTZ: It's fine.

6 CHAIRPERSON MIETZ: Okay. Great.

7 MS. SCHWARTZ: I think black really makes it
8 look better rather than if it was just --

9 MR. DiSTEFANO: The motion is to approve
10 with conditions.

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

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

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1 CHAIRPERSON MIETZ: All right. Very good.

2 So that was one. Okay. So now we'll go to 9A-02,
3 which is the 148 Dale Road. Ed?

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1 **Application 9A-02-22**

2 Application of Jeff Zimmer, Bear Creek
3 Landscapes, contractor, and Matthew and Min Hee
4 DeRosa, owners of property located at 148 Dale Road,
5 for an Area Variance from Section 207-2A to allow a
6 front yard fence to be 4 feet in height in lieu of the
7 maximum 3.5 feet allowed by code. All as described on
8 application and plans on file.

9 Motion made to approve Application 9A-02-22
10 based on the following findings of fact.

11 **Findings of Fact:**

12 1. The requested area variance for a single-family
13 home in a Type II action pursuant to 6 NYCRR §
14 617.5(c)(17) and no review is required pursuant to
15 that State Environmental Quality Review Act.

16 2. The requested area variance is the minimum
17 variance necessary to address the benefit sought by
18 the applicant. The 6 inch increase over the code
19 requirement is to better enclose the yard and better
20 protect children and a dog using the yard. 148 Dale
21 Road is a corner lot leading to the 3.5 foot standard.
22 The requested variance is due to this condition.

23 3. No other alternatives can alleviate the difficulty
24 and produce the desired request. The request is due
25 to the fact that it is a corner lot and that the

1 backyard is open to East Dale Road.

2 4. There will be no unacceptable change in the
3 neighborhood and no substantial impact to nearby
4 properties is expected. The fence is similar to other
5 fences in the area including other corner lots. The
6 fence will be aluminum estate fencing, which will help
7 minimize visual impacts. The height increase is not
8 substantial in this situation.

9 5. The hardship was not self-created by the
10 applicant.

11 6. The health safety and welfare of the community
12 will not be adversely affected by the approval of the
13 variance.

14 | Conditions:

15 1. The variance is based on the application materials
16 submitted and the testimony provided and only
17 authorizes the fencing described therein.

18 2. The applicant is to obtain all necessary permits.

19 (Second by Ms. Tompkins-Wright.)

20 CHAIRPERSON MIETZ: Okay. Discussion? Does
21 anyone have any concerns or any suggestions for the
22 motion?

23 MS. SCHMITT: No.

24 CHAIRPERSON MIETZ: Everybody good?

25 MS. SCHMITT: Yes.

1 CHAIRPERSON MIETZ: Okay, Ed -- or -- excuse
2 me. Rick.

3 MR. DiSTEFANO: The motion is to approve
4 with conditions.

5 (Ms. Schwartz, yes; Mr. D'Augustine, yes;
6 Mr. Mietz, yes; Ms. McKay-Drury, yes;
7 Ms. Schmitt, yes; Ms. Tompkins-Wright, yes;
8 Mr. Premo, yes.)

9 (AUpon roll motion to approve with conditions
10 carries.)

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1 CHAIRPERSON MIETZ: Okay. Very good. So
2 we're going to 159 David Avenue. Kathleen.

3 MS. SCHMITT: Okay.

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1 **APPLICATION 9A-03-22**

2 Application of Patrick Langsworthy, owner of
3 property located at 159 David Avenue, for an Area
4 Variance from Section 205-2 to allow a front porch to
5 extend 5.75 feet into the 40 foot front setback
6 required by code. All as described on application and
7 plans on file.

8 Motion made by Ms. Schmitt to approve
9 Application 9A-03-22 based on the following findings
10 of fact.

11 **Findings of Fact:**

- 12 1. The variance request is to allow a front porch 5.7
13 feet wider than permitted by code.
- 14 2. The applicant seeks to create a front porch to
15 allow for seating and a cover for inclement weather.
- 16 3. The applicant chose the plans submitted after
17 having explored alternative sizes and styles and
18 submitting them to the Architectural Review Board, who
19 ultimately selected the plan provided to this Board.
- 20 4. The granting of this variance will not produce an
21 undesirable change in the character of the
22 neighborhood as there are multiple homes on the street
23 with similarly sized front porches. Nor would it be a
24 detriment to nearby properties as the porch is in
25 proportion to the home, consistent with the aesthetics

1 of the house, and as noted previously, has been
2 approved by the Architectural Review Board.

3 5. There's no evidence that there will be a negative
4 impact on the health, safety and welfare of the
5 neighborhood.

6 **Conditions:**

7 1. The variance applies only to the front porch as
8 described in the application and the testimony
9 provided and will not apply to future projects.
10 2. All necessary buildings permit shall be obtained.

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1 CHAIRPERSON MIETZ: Okay. And a second
2 please.

3 MS. MCKAY-DRURY: Before we do that, I
4 believe that the first finding of fact, Kathy said
5 it's 5.7 feet. And I believe we want to make sure the
6 record says it the 5.75 feet.

7 CHAIRPERSON MIETZ: Okay. Is that okay with
8 you Kath, to correct?

9 MS. SCHMITT: That is fine.

10 MS. MCKAY-DRURY: And I'll second.

11 CHAIRPERSON MIETZ: Okay. Thanks, Heather.

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1 **(AS AMENDED)**

2 **Findings of Fact:**

3 1. The variance request is to allow a front porch
4 5.75 feet wider than permitted by code.

5 2. The applicant seeks to create a front porch to
6 allow for seating and a cover for inclement weather.

7 3. The applicant chose the plans submitted after
8 having explored alternative sizes and styles and
9 submitting them to the Architectural Review Board, who
10 ultimately selected the plan provided to this Board.

11 4. The granting of this variance will not produce an
12 undesirable change in the character of the
13 neighborhood as there are multiple homes on the street
14 with similarly sized front porches. Nor would it be a
15 detriment to nearby properties as the porch is in
16 proportion to the home, consistent with the aesthetics
17 of the house, and as noted previously, has been
18 approved by the Architectural Review Board.

19 5. There's no evidence that there will be a negative
20 impact on the health, safety and welfare of the
21 neighborhood.

22 **Conditions:**

23 1. The variance applies only to the front porch as
24 described in the application and the testimony
25 provided and will not apply to future projects.

1 2. All necessary buildings permit shall be obtained.

2 (Second by Ms. McKay-Drury.)

3 CHAIRPERSON MIETZ: Okay. So discussion.

4 Any issues or concerns here? It's pretty
5 straightforward. Okay., Rick.

6 MR. DiSTEFANO: Motion is to approve with
7 conditions.

8 (Mr. Mietz, yes; Mr. D'Augustine, yes;

9 Ms. Tompkins-Wright, yes; Ms. Schwartz,
10 yes; Mr. Premo, yes; Ms. McKay-Drury.

11 | Ms. Schmitt, yes.)

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

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1 CHAIRPERSON MIETZ: Okay. Very good. Okay.
2 So the next application is 54 Brooklawn for the small
3 extension. Judy.

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1 **Application 9A-04-22**

2 Application of Sarah Colvin Van Heusen,
3 owner of property located at 54 Brooklawn Drive, for
4 an Area Variance from Section 205-2 to allow a rear
5 addition (three season room) to extend 1.25 feet into
6 the 35.5 foot rear setback where a 40 foot rear
7 setback is required by code. All as described on
8 application and plans on file.

9 Motion made by Ms. Schwartz to approve
10 application 9A-04-22 based on the following findings
11 of fact.

12 **Findings of Fact:**

- 13 1. The requested variance of 1.5 feet into the 35
14 foot rear setback in lieu of the 35.5 feet required by
15 code is minuscule.
- 16 2. The variance is necessitated because the rear
17 setback is not straight across the property line.
- 18 3. Also this variance will allow the addition of the
19 three season room to line up with the existing house
20 to create a unified look.
- 21 4. There is no other alternative to allow the
22 applicant to achieve the desired result.
- 23 5. The neighboring house closest to this proposed
24 variance also has the addition of a three season room.
- 25 6. The footprint of the house will not increase as a

1 result of this variance because it will be built in
2 place of the existing patio.

3 7. There will be no change in the character of the
4 neighborhood.

5 **Conditions:**

6 1. This variance only applies to the addition of a
7 three season room in the area of the existing patio as
8 present in testimony and written application.

9 2. All building and Planning Board approvals must be
10 obtained.

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1 CHAIRPERSON MIETZ: Okay. Go ahead.

2 MR. DiSTEFANO: Well, do you want to second
3 it and I'll make the --

4 CHAIRPERSON MIETZ: Yes, yes.

5 MR. D'AUGUSTINE: Second.

6 CHAIRPERSON MIETZ: Thank you, Matt. Go
7 ahead.

8 MR. DiSTEFANO: You said Planning Board in
9 there?

10 MS. SCHWARTZ: Yes, I did.

11 MR. DiSTEFANO: Take the Planning Board out.
12 There's no planning --

13 MS. SCHWARTZ: They don't need it. Right.

14 MR. DiSTEFANO: So please take Planning
15 Board out of it.

16 MS. SCHWARTZ: Building --

17 MR. DiSTEFANO: Build permit.

18 MS. SCHWARTZ: Build permit. Okay. All
19 building permits must be obtained. Thanks, Rick.

20 CHAIRPERSON MIETZ: So are you okay, Judy
21 and Matt with that?

22 MS. SCHWARTZ: Oh, sure.

23 CHAIRPERSON MIETZ: Okay.

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1 (AS AMENDED)

Findings of Fact:

1. The requested variance of 1.5 feet into the 35 foot rear setback in lieu of the 35.5 feet required by code is minuscule.
2. The variance is necessitated because the rear setback is not straight across the property line.
3. Also this variance will allow the addition of the three season room to line up with the existing house to create a unified look.
4. There is no other alternative to allow the applicant to achieve the desired result.
5. The neighboring house closest to this proposed variance also has the addition of a three season room.
6. The footprint of the house will not increase as a result of this variance because it will be built in place of the existing patio.
7. There will be no change in the character of the neighborhood.

Conditions:

21 1. This variance only applies to the addition of a
22 three season room in the area of the existing patio as
23 present in testimony and written application.
24 2. All building permits must be obtained.

(Second by Mr. D'Augustine.)

1 CHAIRPERSON MIETZ: Is there any discussion
2 on this? Does anyone have any concerns about it?
3 Okay.

4 MR. DiSTEFANO: I'm sorry. I missed the
5 second on that.

6 CHAIRPERSON MIETZ: Matt.

7 MR. DiSTEFANO: Matt had second. Okay.
8 Thank you.

9 CHAIRPERSON MIETZ: Go ahead.

10 MR. DiSTEFANO: The motion is to approve
11 with conditions.

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

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

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1 CHAIRPERSON MIETZ: Okay. The next
2 application is 133 Summit. This is where we're
3 extending the existing, no changes, variances that
4 were previously approved due to the construction
5 issue. So Andrea.

6 MS. TOMPKINS-WRIGHT: I have one question,
7 which is that our extensions in the past have been for
8 12 months. That's what our original variance is.
9 They indicated -- the applicant indicated it might be
10 into October. So can we do a 13 and a half month
11 extension or --

12 MR. DiSTEFANO: Well, basically that 12
13 months runs on them pulling a permit and starting --

14 MS. TOMPKINS-WRIGHT: That's right. Got it.
15 Okay.

16 CHAIRPERSON MIETZ: Should be tight enough.
17 Okay.

18 MS. TOMPKINS-WRIGHT: Okay.

1 **Application 9A-05-22**

2 Application of Todd Ennis and Amanda
3 Mcintosh, owners of property located at 133 Summit
4 Drive for extension of an approved variance (9A-11-20,
5 9A-05-21 - previous extension) pursuant to section
6 219-5F allowing for a reduced front setback and
7 greater lot coverage. All as described on application
8 and plans on file.

9 Motion made by Ms. Tompkins-Wright to
10 approve application 9A-05-22 based on the following
11 findings of fact.

12 **Findings of Fact:**

- 13 1. There are no changes to the original application,
14 9A-11-20 and all findings of fact remain.
- 15 2. The extension request is the result of an
16 inability of the original contractor to perform as
17 originally intended.
- 18 3. The extension is granted for 12 months from today.

19 **Conditions:**

- 20 1. All previous conditions shall remain.

21 (Second by Mr. Premo.)

22 CHAIRPERSON MIETZ: Thank you. Discussion
23 on this? Any issues related to this? Wonderful.
24 Rick.

25 MR. DiSTEFANO: Motion is to approve with

1 conditions.

2 (Ms. Schwartz, no; Mr. D'Augustine, yes;

3 Mr. Mietz, yes; Ms. McKay-Drury, yes;

4 Ms. Schmitt, yes; Mr. Premo, yes;

5 Ms. Tompkins-Wright, yes.)

6 (Upon roll motion to approve with conditions

7 carries.)

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1 CHAIRPERSON MIETZ: Okay. And our next area
2 is 2500 Elmwood. This is the rebuilding or replacing,
3 rebuilding the garage. You have that, Matt.

4 MR. D'AUGUSTINE: Yes, I do. All right.

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1 **Application 9A-06-22**

2 Application of Robert Piazza Palotto, owner
3 of property located at 2500 Elmwood Avenue, for an
4 Area Variance from Section 205-2 to allow a garage
5 addition to extend 3 feet into the existing 8.2 foot
6 side setback where a 10.8 foot side setback is
7 required by code. All as described on application and
8 plans on file.

9 Motion made Mr. D'Augustine to approve
10 application 9A-06-22 based on the following findings
11 of fact.

12 **Findings of Fact:**

- 13 1. The garage is currently structurally unsound and
14 is also not wide or long enough to accommodate any
15 current vehicles.
- 16 2. The garage would be in keeping with other garages
17 in the area and thus would not alter the character of
18 the neighborhood.
- 19 3. The variance is not substantial due to the fact
20 that the garage originally constructed was already
21 closer than the allowable 10.8 foot side setback.

22 **Conditions:**

- 23 1. The applicant will install landscaping along the
24 side of the garage in order to improve the aesthetics.
- 25 2. The variance only applies to the garage and the

1 style and materials and dimensions as per plans
2 submitted and testimony given.

3 3. The applicant shall obtain all necessary building
4 permits.

5 (Second made by Ms. Schwartz.)

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1 MR. DiSTEFANO: Hold on. Can I add, Matt,
2 to your conditions for three that all necessary
3 building permits and Architectural Review Board
4 approvals shall be obtained?

5 MR. D'AUGUSTINE: Oh. And Architectural
6 Review Board? Okay.

7 CHAIRPERSON MIETZ: Judy, you okay with
8 that?

9 MS. SCHWARTZ: Sure.

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1 (AS AMENDED)

Findings of Fact:

- 3 1. The garage is currently structurally unsound and
- 4 is also not wide or long enough to accommodate any
- 5 current vehicles.
- 6 2. The garage would be in keeping with other garages
- 7 in the area and thus would not alter the character of
- 8 the neighborhood.
- 9 3. The variance is not substantial due to the fact
- 10 that the garage originally constructed was already
- 11 closer than the allowable 10.8 foot side setback.

12 Conditions:

13 1. The applicant will install landscaping along the
14 side of the garage in order to improve the aesthetics.
15 2. The variance only applies to the garage and the
16 style and materials and dimensions as per plans
17 submitted and testimony given.
18 3. The applicant shall obtain all necessary building
19 permits and Architectural Review Board approvals shall
20 be obtained.

21 (Second made by Ms. Schwartz.)

22 CHAIRPERSON MIETZ: Okay. Good. Okay.

23 | Discussion? Any issues here? Okay, Rick.

1 (Mr. Premo, yes; Ms. Schmitt, yes;
2 Ms. McKay-Drury, yes; Mr. Mietz, yes;
3 Ms. Tompkins-wright, yes; Ms. Schwartz, yes;
4 Mr. D'Augustine, yes.)
5 (Upon roll motion to approve with conditions
6 carries.)

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1 CHAIRPERSON MIETZ: Okay. Thank you very
2 much. Okay. We're going to slide over in the same
3 order and go over to 3108 East Avenue. Mr. Premo,
4 you --

5 MR. DiSTEFANO: Dennis, before we do that
6 can we just have a continue tabling motion for 5A-01
7 and 5A-02?

8 CHAIRPERSON MIETZ: Okay. I was just trying
9 to stay in the same order. That's fine.

10 MR. DiSTEFANO: I think we might go into a
11 little more discussion with the next one.

12 CHAIRPERSON MIETZ: Okay. That's fine.
13 Okay. All right. So I have the first one there I
14 think.

15 MR. DiSTEFANO: I think you can do them
16 both.

17 CHAIRPERSON MIETZ: Yeah. Okay. You're
18 okay with that if I take care of both of them?

19 MR. DiSTEFANO: Yeah. Just make a motion --

20 CHAIRPERSON MIETZ: Yeah. I got it. I got
21 it. Okay.

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1 Application 5A-01-22

2 Application of Reza Hourmanesh, architect,
3 and Guiyan Li, owner of property located at 2720 West
4 Henrietta Road, for an Area Variance from Section
5 205-12 to allow for 45 parking spaces in conjunction
6 with a new grocery store in lieu of the minimum 55
7 parking spaces required by code. All as described on
8 application and plans on file.

9 Application 5A-02-22

10 Application of Reza Hourmanesh, architect,
11 and Guiyan Li, owner of property located at 2720 West
12 Henrietta Road, for an Area Variance from Section
13 205-7 to allow for impervious surface area to
14 increase, after site modifications, from 83.2% to
15 84.9% in lieu of the maximum 65% allowed by code. All
16 as described on application and plans on file.

17 Motion made by Mr. Mietz to table
18 applications 5A-01 and 5A-02 for additional
19 information being offered by the applicant at the
20 October meeting.

21 (Second by Ms. Schwartz.)

22 MR. DiSTEFANO: The motion is to table
23 applications 5A-01-22 and 5A-02-22.

24 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;

25 Mr. D'Augustine, yes; Ms. Tompkins-Wright,

1 yes; Mr. Premo, yes; Ms. Schwartz, yes;
2 Mr. Mietz, yes.)

3 (Motion to continue tabling carries.)

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1 CHAIRPERSON MIETZ: Okay. All right. So
2 let's go now to 3108. Just, you know, again, we --
3 the public hearing is open at this point. And we
4 certainly heard from the applicant that they have
5 additional information, maybe some modifications and
6 whatnot. Obviously the neighbors were certainly
7 interested in hearing more about that.

10 MS. MCKAY-DRURY: I -- so my initial
11 inclination is that we should wait to discuss it until
12 we have the materials. It sounds like we don't really
13 know exactly what the height is of the canopy.

14 So that's kind of how I'm inclined to look
15 at it is I just want to get all of the information
16 before --

17 CHAIRPERSON MIETZ: So you would table --
18 you would table for additional information?

19 MS. MCKAY-DRURY: Correct.

20 CHAIRPERSON MIETZ: And keep the public
21 hearing open?

22 MS. MCKAY-DRURY: Right.

23 CHAIRPERSON MIETZ: Okay. Well, please do
24 so.

25 MR. GORDON: Before we do that, Dennis --

1 CHAIRPERSON MIETZ: Yes. Go ahead, Ken.

2 MR. GORDON: Because a motion to table is
3 not debatable, before anyone makes that motion to
4 table, if you as chair want to have a discussion
5 because you're not taking action tonight, it would --

6 CHAIRPERSON MIETZ: Oh, goodie. So we can
7 go back to the old way.

8 MR. GORDON: Well, sort of. But you're
9 not --

10 CHAIRPERSON MIETZ: I'm just messing.

11 MR. GORDON: But if you -- it's just once
12 that motion to table is made and seconded --

13 CHAIRPERSON MIETZ: Yes. I understand.

14 MR. GORDON: I don't know -- as Heather just
15 said, I don't know that the Board is ready to discuss
16 this because clearly the applicant is going to be
17 submitting a number of pieces of additional
18 information --

19 CHAIRPERSON MIETZ: Right. Right.

20 MR. GORDON: -- on lighting on the canopy,
21 on the cut sheets, et cetera. So I leave it to the
22 discretion of the Chair as to whether he wishes to
23 have a discussion to get a sense of the Board.

24 I will tell you from staff's perspective
25 this is a significant project that we're going to want

1 some time to work on findings for whoever is going to
2 make that motion and have proposed findings. And it
3 would be helpful to staff to know the Board's
4 inclinations before we're tasked with drafting those.

5 CHAIRPERSON MIETZ: Yeah. Yeah. I think,
6 you know, given the gravity that it's reasonable to
7 have some general comments before we would make the
8 action on these -- of these three tonight. That's
9 fine.

10 I think, you know, it's a little remiss
11 given just not only what Heather said and when she was
12 asking her questions that it's quite obvious that
13 there are changes that are going to be inclined to be
14 made here. So it would be kind of pointless to then
15 debate over some of the specifics that could change.

16 But I think getting a general overview, you
17 know, from the -- from the Board would be good. So
18 why don't we just go around quickly and do that?

19 MR. DiSTEFANO: Just before we do that,
20 usually with tabling and keeping public hearings open,
21 we're tabling because we're requesting something in
22 addition to. I know we don't have to with a tabling.
23 I just want to make sure that we can just -- the Board
24 can just say we tabled it, leave the public hearing
25 open, period; correct? We don't have to give

1 specifics?

2 MR. GORDON: That's absolutely correct,
3 Rick.

4 MR. DiSTEFANO: Okay.

5 CHAIRPERSON MIETZ: Okay.

6 MS. SCHMITT: Can I -- I will just throw up
7 that -- this is Member Schmitt. I don't have enough
8 information to make a decision --

9 CHAIRPERSON MIETZ: Right.

10 MS. SCHMITT: -- with regard to the bigger
11 questions that need to be answered. Because I really
12 want to find out what happens with the information
13 provided to the -- to the neighborhood people. I want
14 to find out more information about the canopy. I need
15 to find out what limits if it was approved we can
16 place on it. I just don't have that information.

17 CHAIRPERSON MIETZ: Right. Right. Let me
18 just circle back then so we can get on with this
19 because it is pretty late here. Why don't we -- if
20 there's anyone who has anything who they think they
21 need more information so the applicants can understand
22 some of the things that we may be concerned about,
23 what don't offer for that. And then we'll hold the
24 general discussion, you know, once we get the
25 additional information. That's reasonable.

1 So does anyone have anything other than what
2 was mentioned either by Betsy in her presentation or
3 by questions of the Board members already that they
4 have, you know, again our wisdom I guess of what
5 concerns the Board members would have? Is there
6 anyone on the Board that would like to offer anything
7 else?

8 MS. SCHWARTZ: Yeah. Judy. We have no
9 guarantees whatsoever of the operation of this place.
10 There's no guarantee about when the trucks are going
11 to come and bring more gas. It could be 3 o'clock in
12 the morning to be ready for 5 o'clock. We have no
13 idea.

14 And we have no idea really of the operation
15 of what? I don't think it's a property, but of a
16 convenience store. We really don't -- it's all very
17 vague. It's very vague.

18 CHAIRPERSON MIETZ: Okay. Well, I think,
19 you know, obviously the applicants are understanding
20 that these are concerns. So that's more than
21 reasonably. Okay.

22 Does anyone have anything else?

23 MS. MCKAY-DRURY: I think there's a lot of
24 discussion and speculation about increased traffic.
25 And so to the extent that there could be information

1 presented with respect to increased traffic as an
2 impact on this neighborhood, I think that that would
3 be helpful one way or the other, you know, suggesting
4 that it would truly increase. Because obviously the
5 applicant is indicating that with so many other
6 options in other areas, you're not going to get a lot
7 of residents coming from different places than the
8 traffic that's already there, versus obviously the
9 residents certainly believe that it will increase
10 traffic. So some kind of information --

11 CHAIRPERSON MIETZ: Traffic study. Yeah.
12 Sure.

13 MS. MCKAY-DRURY: Right. Would be helpful.

14 CHAIRPERSON MIETZ: Great. Anyone else?

15 MS. SCHWARTZ: Yeah. I'd like to duck tail.
16 The business itself is going to create much more
17 traffic because you're going to have deliveries if the
18 convenience should go through.

19 CHAIRPERSON MIETZ: Okay. But Judy,
20 that's -- that would be the point of the traffic
21 psychiatry to look at --

22 MS. SCHWARTZ: Well, but --

23 CHAIRPERSON MIETZ: -- the proposed use.
24 Okay? And that that's what the traffic study would
25 be --

1 MS. SCHWARTZ: Right. And will it go all
2 the way down to the new housing down East Avenue?

3 CHAIRPERSON MIETZ: That property is
4 obviously not in the Town of Brighton. So I'm not
5 sure how far -- I'm not a traffic engineer. But, you
6 know. Everyone again is hearing --

7 MS. SCHWARTZ: They can go beyond sometimes.

8 MR. GORDON: Just to address Judy's concern.
9 I don't think it would be helpful -- and I imagine
10 that the developer is still listening. Honestly, I do
11 think it would be helpful, as both Judy and Heather
12 have articulated, to have some better traffic
13 information, not just on the vehicular traffic
14 visiting the site, but also what delivery schedule
15 there would be for the convenience store, what
16 delivery schedule would there be for gasoline. We
17 heard a little bit about that. Whether the applicant
18 is willing or able to accept a condition to limit the
19 hours of those deliveries either for the convenience
20 store or for the gasoline. Because it's certainly
21 within the Board's power to specify those limits as
22 conditions.

23 I think those things would be very helpful
24 for the developer to address to give some better
25 understanding to the Board of what those traffic

1 impacts are.

2 CHAIRPERSON MIETZ: Okay. Very good. Thank
3 you. Okay. So --

4 MS. SCHMITT: Dennis, before we go, what I
5 would really love at the next hearing is for the
6 applicant to address as best they can the numerous
7 concerns that were raised tonight by people in the
8 neighborhood. If they can answer what they would do
9 about -- to help mitigate headlights, noise, you know,
10 whether they would consider not selling certain
11 protects --

12 CHAIRPERSON MIETZ: Sure.

13 MS. SCHMITT: -- anything that they could do
14 to specifically address those concerns would be very
15 helpful to me.

16 CHAIRPERSON MIETZ: Okay. That sounds good.
17 Because generally, you know, with the public, as you
18 know, that's why we don't have interrogatories that --
19 you know, the issues get out there. And then they can
20 be addressed by the applicant or to do that not so
21 much to refute them, but just address them in some
22 fashion. That's more than reasonable. I think the
23 applicant is able to respond that way. Okay.

24 Is there anyone else then? Otherwise we can
25 go back to 8A-04 and Heather could --

1 MR. DiSTEFANO: Dennis, for comment --

2 MS. MCKAY-DRURY: I didn't hear you, Rick.

3 CHAIRPERSON MIETZ: Go ahead, Rick.

4 MR. DiSTEFANO: Real quick. I just want --
5 going on what Ken had said and Judy's concern. I
6 really think that the deliveries are really important
7 because I don't know if you've been at a gas station
8 when one of those trucks pulled in, but them pulling
9 off the cap, dropping those hoses, it makes all kinds
10 of noise. And if they're doing that in 3 in the
11 morning, I don't think there's any way that's
12 something that --

13 CHAIRPERSON MIETZ: All right.

14 MR. DiSTEFANO: -- we should allow.

15 CHAIRPERSON MIETZ: Yeah. So I think
16 they -- the applicant understands that there's
17 concerns about what kind of a schedule is really
18 there. Because again, it was rather nebulous the way
19 it was discussed. So I don't think any of us could
20 glean out of it what their proposed schedule would be.
21 I'm sure they understand.

22 MR. DiSTEFANO: It sounds to me like they
23 have no control over the deliveries.

24 MS. SCHWARTZ: That's right. No control.

25 CHAIRPERSON MIETZ: Let's not start debating

1 it though Okay? The bottom line is if they don't
2 offer us something, then we don't have something to
3 work with; correct? They've been asked to offer
4 something. So let's see what's offered.

5 MR. GORDON: And if there's a condition
6 imposed that they violate, that's going to be code a
7 violation. They'll be cited for it.

8 CHAIRPERSON MIETZ: Right.

9 MR. GORDON: And just maybe to try wrap up
10 in this generic way, there was several representations
11 made by the developer verbally that I would like to
12 see committed to writing. For example, Rick raised
13 the issue of selling vaping products. I would like to
14 see commitment in writing from the applicant that they
15 will not be selling vaping products.

16 There was a discussion about potentially
17 getting those lights off earlier than midnight. So
18 I'd like to see the developer address that in writing
19 so that we're not just having to go back and hunt
20 through a --

21 CHAIRPERSON MIETZ: Yes.

22 MR. GORDON: -- transcript to try to find
23 answers so that when we go do our resolution, whether
24 it's for approval or disapproval, we have all the
25 facts clearly laid out and we know what we're dealing

1 with.

2 MS. MCKAY-DRURY: Yeah. I think on the
3 subject of that, in particular with respect to the
4 time that light would need to be shut off, if this was
5 something that we were to consider, you know, could
6 they be shut off in a half hour after they close?
7 Maybe shut off in an hour. Like why -- why couldn't
8 they be shut off within the half hour?

9 CHAIRPERSON MIETZ: Yeah. And again, you
10 know, as it's pointed out by either Rick or Ken, you
11 know the conditions that if we were to move on this in
12 some fashion we would be stating those conditions.
13 And then the applicant would have to -- you know, this
14 is a common thing with all kinds of retail locations,
15 banks, all kinds of places, of how late the lights can
16 be on. And if it's an issue, we can circle around.
17 But they can certainly offer their best case as to
18 why. And I think that was a direct question about the
19 two hours. So I think they understand.

20 MS. SCHWARTZ: If I may just to go to the
21 other end, when they go on at 5 o'clock when the place
22 opens on weekends, that's going to affect neighbors as
23 well.

24 CHAIRPERSON MIETZ: Part of the analysis
25 then, Judy; right?

1 Okay. So Heather, how about it?

2 MS. MCKAY-DRURY: Okay. So I move to
3 table -- should I just do 04, 05 and 06 together?

4 CHAIRPERSON MIETZ: Is that okay with Kathy
5 and Judy?

6 MR. DiSTEFANO: Yeah.

7 CHAIRPERSON MIETZ: Okay. Great. Go right
8 for it.

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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 20
25 foot setback is required by code. All as described on

1 application and plans on file.

2 Motion made by Ms. McKay-Drury to table
3 applications 8A-04-22, 8A-05022, and 8A-06-22 for the
4 October meeting and to hold open the public hearing.

5 (Second by Ms. Tompkins-Wright.)

6 MR. DiSTEFANO: Motion is to table and leave
7 the public hearing open.

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

12 (Upon roll motion to table carries.)

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1 CHAIRPERSON MIETZ: All right. Rick has an
2 editorial about this October meeting date; right? Did
3 you want to reiterate that, Rick?

4 MR. DiSTEFANO: Yeah. Just to reiterate,
5 again, Thursday, October 6th and most likely here at
6 town hall.

7 CHAIRPERSON MIETZ: All right. Very good.

8 MR. GORDON: I'll just say it a little
9 stronger than Rick. In person at Town Hall.

10 CHAIRPERSON MIETZ: Good. Okay. And then,
11 you know, obviously as soon as Rick gets these
12 materials related to these three cases, he will send
13 them out.

14 MR. DiSTEFANO: Yeah. Dennis, I just want
15 to say that we require the materials be into us two
16 weeks prior to the meeting date so that we can
17 distribute them and you guys can get them and look at
18 them.

19 I have a feeling that they're not going to
20 be getting that stuff into us within two weeks prior
21 to the next meeting. So you could be seeing a request
22 to continue tabling.

23 CHAIRPERSON MIETZ: Okay.

24 MR. DiSTEFANO: Okay.

25 CHAIRPERSON MIETZ: Well let's --

1 MR. DiSTEFANO: I also --

2 CHAIRPERSON MIETZ: Let the applicant, you
3 know, who has had time from the last meeting to the
4 last meeting --

5 MR. DiSTEFANO: But I'm going to guess that
6 there's a good chance we might not be seeing this one.

7 CHAIRPERSON MIETZ: That's fine. That's
8 fine.

9 MR. DiSTEFANO: Also in the past we have
10 started our meetings at 7:15 when we're in person. I
11 think, Ken, connect me if I'm wrong, we want to make
12 that a 7 o'clock start time; correct?

13 MR. GORDON: Yes. Meeting will start at 7.

14 And let me just make this one additional
15 comment particularly for the public and the applicants
16 who are still listening, we are also working on a
17 virtual component to our in person meetings so that
18 they could be participated in by either a virtual
19 platform like Zoom or in person so that they would be
20 hybrid meetings.

21 We don't have that in place yet. We're
22 hoping to get that in place as early as next week. So
23 I'm expecting that by October 6th we'll have that
24 hybrid meeting format. But Board members, you're all
25 required to be at Town Hall in person.

1 CHAIRPERSON MIETZ: Wonderful. Okay.
2 Somebody bring the cookies then. Okay. How about --
3 I think we're set then. And again, you know, I
4 appreciate everybody's patience. And also, Ken, your
5 guidance as it relates to some of this protocol. You
6 know, this is a difficult, you know, issue. There's a
7 lot of factors. There's a lot of opinions. So I
8 think we heard people, kept the public hearings open.
9 So let's just move it forward.

10 Thank you very much. Have a good evening.
11 And we'll see you on October 6th.

12 | (Meeting concluded at 10:11 p.m.)

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1 | **REPORTER CERTIFICATE**

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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 Further, that the foregoing transcript is a
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 7th day of September, 2022

13 at Rochester, New York.

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Holly E. Castlesman

HOLLY E. CASTLEMAN, CR,
Notary Public.