

**A G E N D A**  
**BOARD OF APPEALS - TOWN OF BRIGHTON**  
**DECEMBER 7, 2022**

Written comments may be submitted to Rick DiStefano, Secretary, Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY 14618 via standard mail and/or via e-mail to [rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org).

Applications subject to public hearings and the documents to be considered by the Board will be available for review on the town's website no later than twenty-four hours prior to the meeting to the extent practicable.

7:00 P.M.

**CHAIRPERSON:** Call the meeting to order.

**SECRETARY:** Call the roll.

**CHAIRPERSON:** Agenda Review with Staff and Members

**CHAIRPERSON:** Approve the minutes of the October 6, 2022 meeting.  
Approve the minutes of the November 2, 2022 meeting. **To be done at the January 4, 2023 meeting.**

**CHAIRPERSON:** Announce that the public hearings as advertised for the BOARD OF APPEALS in the Daily Record of December 1, 2022 will now be held.

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12A-01-22 Application of Terry Smith, contractor and Denise Platek, owner of property located at 35 Torrington Drive, for an area Variance from Sections 203-2.1B(6) and 203-9A(4) to allow a standby emergency generator to be located in a side yard in lieu of the rear yard behind the house as required by code. All as described on application and plans on file.

12A-02-22 Application of John Betlem Heating and Cooling, contractor, and Darryl Tinney, owner of property located at 265 Bastian Road, for an Area Variance from Sections 203-2.1B(6) and 203-9A(4) to allow a standby emergency generator to be located in a side yard in lieu of the rear yard behind the house as required by code. All as described on application and plans on file.

12A-03-22 Application of Chuck Smith, architect, and Stahl Property Associates LLC, owner of property located at 12 Elmwood Hill Lane, for Area Variances from Section 205-2 to allow 1) a new home to be constructed with a 20.65 ft. side setback (east lot line) in lieu of the minimum 33.22 ft. required by code, and 2) allow liveable floor area to be 5,050 sf in lieu of the maximum 3,748 sf allowed by code. All as described on application and plans on file.

12A-04-22 Application of Chuck Smith, architect, and Stahl Property Associates LLC, owner of property located at 12 Elmwood Hill Lane, for an Area Variance from Section 207-11 to allow an inground swimming pool to be located partially in a side yard where only the rear yard is allowed by code. All as described on application and plans on file.

12A-05-22 Application of Thomas and Lindsay Connelly, owner, of property located at 128 Eastland Avenue, for an Area Variance from Section 207-10E(2) to allow front yard pavement to increase from 33% to 40% of the front yard area, after construction of a front addition, where a maximum 30% is allowed by code.

12A-06-22 Application of Mary Jo Jepson, owner of property located at 339 Hollywood Avenue, for Area Variances from Sections 203-2.1B(2) and 203-9A(4) to 1) construct a detached garage with attached pergola 648 sf in size in lieu of the maximum 600sf allowed by code, and 2) allow said detached garage to be setback 3 feet from a side and the rear lot line where a minimum 5 ft setback from all lot lines is required by code. All as described on application and plans on file.

12A-07-22 Application of Husniye Togay, owner of property located at 71 Branchwood Lane, for an Area Variance from Section 207-2A to allow a front yard (French Road) fence to be 4.5 ft. in height in lieu of the maximum 3.5 ft. allowed by code. All as described on application and plans on file.

CHAIRPERSON: Announce that public hearings are closed.

NEW BUSINESS:

NONE

OLD BUSINESS:

8A-04-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for a Use Variance from Section 203-44 to allow a gas station with convenience store to be located in a BE-1 Office and Office Park District where not allowed by code. All as described on application and plans on file. **TABLED AT THE NOVEMBER 2, 2022 MEETING - PUBLIC HEARING CLOSED**

8A-05-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for an Area Variance from Section 207-6B to allow an accessory structure (gas canopy) to be located in a front yard in lieu of the rear yard as required by code. All as described on application and plans on file. **TABLED AT THE NOVEMBER 2, 2022 MEETING - PUBLIC HEARING CLOSED**

8A-06-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for Area Variances from Section 205-18 to 1) allow parking of vehicles to within 2 ft. for a side lot line (north) where a 10 ft. setback is required by code, and 2) allow paved areas / aisles up to the front lot line where a 20 ft. setback is required by code. All as described on application and plans on file. **TABLED AT THE NOVEMBER 2, 2022 MEETING - PUBLIC HEARING CLOSED**

PRESENTATIONS:

NONE

**COMMUNICATIONS:**

Letter from Bridget and Michael Stone, 1110 Allens Creek Road, with continued opposition to applications 8A-04-22, 8A-05-22 & 8A-06-22, 3108 East Avenue.

Letter from Nancy Williams, 999 Allens Creek Road, dated November 15, 2022, with comments and concerns regarding applications 8A-04-22, 8A-05-22 & 8A-06-22, 3108 East Avenue.

Letter from Aron Reina, 62 poplar Way and Judy Massare, 126 Idlewood Road, dated November 15, 2022, questioning the right to have school dormitories in an RLB zoning district.

**PETITIONS:**

NONE



To: The Brighton Zoning Board of Appeals

Re: APPLICATIONS BY PEMM, LLC CONTRACT VENDEE, AND BRISTOL VALLEY HOMES, LLC FOR USE VARIANCE 8A-04-22 AND AREA VARIANCES 8A-06-22, AND 8A-06-22

This letter serves as continued opposition to applications 8A-04-22, 8A-06-22, AND 8A-06-22.

Previous letters and attachments were sent to the ZBA on July 31st and August 3<sup>rd</sup>, 2022.

Here are 5 reasons to deny the use variance:

**1. FRANK ROMEO IS ALREADY IN VIOLATION OF BRIGHTON TOWN CODE**

CHAPTER § 129-9 PROPERTY MAINTENANCE OFFICE, COMMERCIAL AND INDUSTRIAL USES AND BRIGHTON TOWN CODE CHAPTER § 224-12 HISTORIC PRESERVATION MAINTENANCE AND REPAIR REQUIRED.

Frank Romeo of Bristol Valley Homes has neglected the Landmark property he owns at 3108 East Avenue since its purchase on October 12<sup>th</sup>, 2018. For four years Mr. Romeo has been in violation of the town codes shown below. There should have been violation notices served and the property could have been maintained and attractive to prospective businesses. He has not done the town, neighborhood or prospective buyers/renters any favors letting the property fall into disrepair. This isn't a hardship situation; it is just neglect.

§ 129-9 Office, commercial and industrial uses.

The following shall apply to office, commercial and industrial uses:

A. For all properties, the owner, tenant or occupant shall be held responsible for the maintenance of the grounds and building for the purposes of enforcement of this chapter.

§ 224-12 Maintenance and repair required.

B. No owner or person with an interest in real property designated as a Landmark shall permit the property to fall into a serious state of disrepair so as to result in the material deterioration of any exterior architectural feature which would, in the judgment of the Commission, produce a detrimental effect upon the Landmark.

**2. THE REQUESTED USE VARIANCE WILL ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD**

3108 East Avenue is situated in a residential neighborhood with no commerce for miles in all directions.

To the east, the closest store is Papa John's on 31F, 3 miles away

To the west, the closest store is the Speedway on East Avenue, 2.5 miles away.

To the north, the closest store is the site of another Quickees at 12 corners, 2 miles away.

To the south, the closest store is Penfield Trophies on 441, 2.7 miles away.

The proposed non-conforming use variance would completely change the character of the neighborhood.

Per Frank Romeo: "We got somebody that'll use it the way it's been used for the last 100 years".

Nothing about the Quickees proposal is the same use as past businesses at 3108 East Avenue. The scale of the

- No business operated for 16 hours a day from 6am until 10pm 7 days a week.

- No business ever had an oversized canopy that is 17 feet high running the length of the building and blocking the view of the historic building.
- No business had 14 super bright LED lights – totaling 163,803 lumens  
*or the equivalent of 102 x 100-watt bulbs*
  - 6 “standard symmetric” distribution/lens lights on the canopy (at 15,410 lumens each)
  - 3 “forward throw” distribution/lens lights on 17ft poles (at 18,781 lumens each)
  - 5 “forward throw” distribution/lens lights (at 3,000 lumens each) on the building.

The lighting specs were obtained from the manufacturer's website because the documentation from PEMM only included the pole type sales sheets. Their photometric plan “illumination levels calculated from laboratory data” and “should not be used as a construction document”.

## PHOTOMETRIC EVALUATION NOT FOR CONSTRUCTION

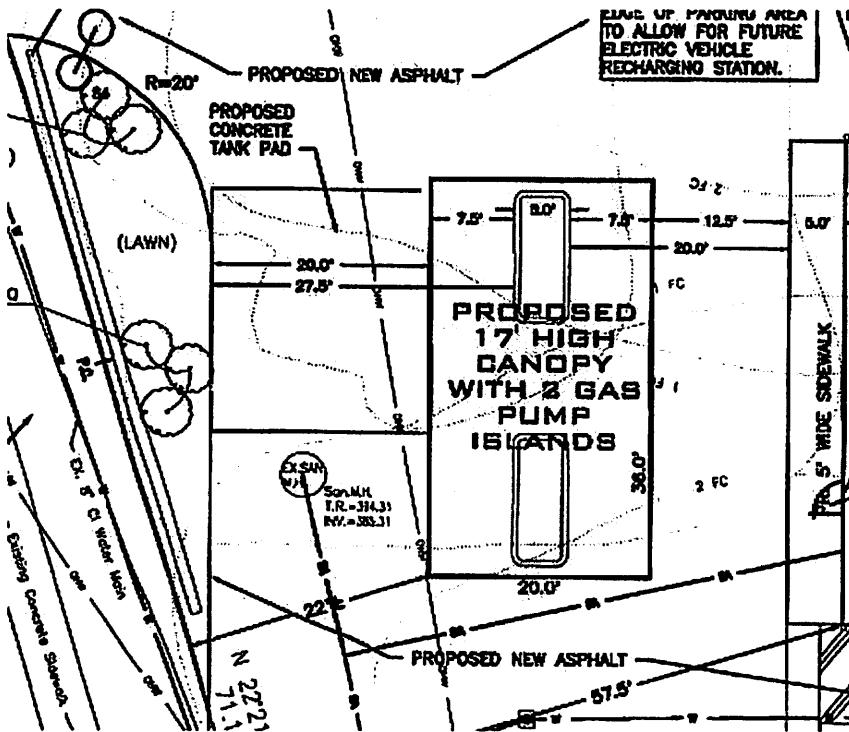
**Based on the information provided, all dimensions and luminaire locations shown represent recommended positions. The engineer and/or architect must determine the applicability of the layout to existing or future field conditions**

**This lighting plan represents illumination levels calculated from laboratory data taken under controlled conditions in accordance with The Illuminating Engineering Society (IES) approved methods. Actual performance of any manufacturer's luminaires may vary due to changes in electrical voltage, tolerance in lamps/LED's and other variable field conditions. Calculations do not include obstructions such as buildings, curbs, landscaping, or any other architectural elements unless noted. Fixture nomenclature noted does not include mounting hardware or poles. This drawing is for photometric evaluation purposes only and should not be used as a construction document or as a final document for ordering product.**

### 3. ENVIRONMENTAL ISSUES ARE NOT BEING ADDRESSED

The applicant(s) are not talking about the environment, or the tanks and pumps that will have the potential for leaking and spillage. The remediation in 2017 performed by the former owner was the result of leaking gas pumps. The underground storage tanks were not fully removed in 2017. They were crushed in place due to the fact that a gas line and a water line ran atop the corners of the tanks. The ends of the tank were left to support those lines and they remain in the ground today. **See the attached remediation report from Sun Environmental Corp from 2017.** Adding two more new tanks just invites more trouble to the property and the adjacent Allens Creek, not to mention the vent pipe emissions and short-term exposure to benzene (see the attached article **Vent Pipe Emissions from Storage Tanks at Gas Stations: Implications for Setback Distances**). The former auto repair side of the building has a strong potential for petroleum discovery when the lift is removed, or the floor is replaced.

Why have the applicants left out any detail about the former tanks/gas pumps/remediation or the new proposed tanks? The DEC incident information is public knowledge, and there have been at least 3 spill incidents at this site. **See the attached articles: Ban New Gas Stations and Require Cleanups to Tackle the Big Polluter on the Corner and Small Spills at Gas Stations Could Cause Significant Public Health Risks Over Time.** Disclosure of any of this information has been intentionally omitted. The newest site plan dated 10/18/22 *still* does not have any information about underground fuel storage tank placement or an excavation plan for the underground storage tanks.



The applicants want the board to forget that there will be petroleum products stored underground.

#### 4. FRANK ROMEO'S ALLEGED HARDSHIP IS SELF CREATED.

Frank Romeo purchased 3108 East Avenue on October 12<sup>th</sup>, 2018, knowing that the building had Historic Landmark status and the non-conforming use had expired. He also knew the size of the parcel. Gordy's ceased to operate May 1<sup>st</sup> of 2017. The gas pumps were removed, and tanks crushed in place May 18<sup>th</sup>, 2017. The purchase date was well after the non-conforming use expired. Mr. Romeo, a self-proclaimed real estate expert, purchased this property with the pre-existing conditions that he is currently asking for relief from. The Town of Brighton Zoning Board is not responsible for the applicant's business decisions especially at the expense of its residents.

Excerpt from the New York State Zoning Board of Appeals Local Government Technical Series page 16:  
*It is well settled that a use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of.*

*In Carriage Works Enterprises, Ltd. v. Siegel, in addressing self-created hardship, the court stated, "The courts should not be placed in the position of having to guarantee the investments of careless land buyers." The same advice should apply to zoning boards of appeals.*

*In the case of Clark v. Board of Zoning Appeals, the Court of Appeals, before proceeding to discuss the grounds necessary for the granting of a use variance, noted that the property in question was purchased to be used as a funeral home in a district where such use was not permitted under the zoning ordinance. The court observed that: "Nevertheless . . . [the owner] . . . purchased the lot, then applied for a variance.*

*We could end this opinion at this point by saying that one who thus knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of 'special hardship' . . ." Since the*

*contract vendee has yet to purchase the property, he/she cannot be said to present self-created hardship but must rely on the circumstances of the owner with whom he/she has a contract.*

## **5. APPROVAL OF NON-CONFORMING USE IS A STEP BACKWARD FROM BRIGHTON'S COMPREHENSIVE ZONING PLAN**

### **§ 201-3. Purpose and intent.**

There is hereby established a new Comprehensive Zoning Plan for the Town of Brighton, which plan is set forth in the text and map that constitute these regulations. Said plan is adopted for the purposes set forth in Article 16, §§ 261 and 263 of the Town Law, which, *in the interest of the protection and promotion of the public health, safety and welfare*,

*shall be deemed to specifically include the following, among others:*

- A. The facilitation of the efficient and adequate provision of public facilities and services.
- B. The assurance of adequate sites for residence, industry and commerce.
- C. The provision of privacy for families.
- D. The prevention and reduction of traffic congestion so as to promote efficient and safe circulation of vehicles and pedestrians.
- E. The maximum protection of residential areas.
- F. The gradual elimination of nonconforming uses.
- G. The enhancement of the appearance of the Town of Brighton as a whole.
- H. The encouragement of flexibility in the design and development of land in such a way as to promote the most appropriate use of lands, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic qualities of open lands and to protect the environment.

Respectfully submitted,  
Bridget and Michael Stone  
1110 Allens Creek Road

Nancy J Williams  
999 Allens Creek Road  
Rochester, New York 14618



15 November 2022  
Rick DiStefano, Secretary  
Zoning Board of Appeals (Re 8A-04-22, 8A-05-22, 8A-06-22)  
Town of Brighton  
2300 Elmwood Avenue  
Rochester, New York 14618

Dear Mr. DiStefano and members of the Board:

I have recently 'come home' to Rochester after calling Georgetown in Washington, DC home for many decades. My husband and I are delighted to call Brighton home, where we own a home at 999 Allens Creek Road.

This letter is written to express my concerns about an application currently before the Brighton Zoning Board of Appeals. I refer to the application of Bristol Valley Homes LLC and PEMM, LLC regarding 3108 East Avenue (Application Nos.: 8A-04-22, 8A-05-22, 8A-06-22).

I do not think that I need to expand on the variances requested, but I do question the ability of the current owner/variance applicant (Bristol Valley Homes) to express 'hardship' as a reason why the Zoning Board of Appeals should grant variances. Experienced businesspeople investing in land for commercial purposes MUST do their own due diligence before settling. These are not inexperienced home buyers... these are businessmen seeking to make money. This is great, but the zoning remains exactly what it was when the new owners purchased the site. It is difficult to imagine that the lack of due diligence by these businessmen, must be 'fixed' by the Brighton Board granting variances totally opposed by most of the adjacent and surrounding residential residents.

I ask that the Brighton Board of appeals not ignore the concerns of the surrounding neighbors. There is consensus that the variances requested will have a negative effect on the neighborhood, (Several communications have already been directed to the Board) without providing any scarce or unavailable commodity. We know of no local shortage of gas stations or convenience stores...in this era when global warming begs that we all shift to non-fossil fuel vehicles. In fact, the prediction is that by 2030, twenty-five percent of automobiles on the road will not use fossil fuel. A claim by the variance applicants that they will include battery charging is a totally new use, and if that were the use intended, the process of installing and the use of high-powered charging stations, which put demand on the grid, would require a very different application. (See today's WSJ Alternate Energy section.)

As I mentioned, we called Georgetown home in Washington for many decades. We saw first-hand what the adherence to zoning codes did to preserve the historic nature of Georgetown and halt the constant threat of creeping commercialization that was not critical to anyone's wellbeing and was not an asset to anyone living in the village.

Please do not grant the variances requested by Bristol Valley Homes LLC or PEMM, LLC. There is no reason to go against the valid objections of the neighborhood and potentially degrade the value of our residential neighborhood and properties...simply to enrich one investor who failed to do proper due diligence before purchasing the site.

Kind regards,  
Nancy Williams

November 15, 2022



Town of Brighton, Zoning Board of Appeals  
2300 Elmwood Avenue  
Rochester, NY 14618

Zoning Board of Appeals:

Reviewing the special meeting on Nov 1, 2022, we are requesting a Zoning Board of Appeals review of the Talmudical Institute of Upstate New York's application 10P-01-22 as listed in the Planning Board Agenda of the same day.

The applicant's attorney attested during the Planning Board meeting that the property in question is currently designated as RLB (Residential - Low Density District). As conveyed verbally, and in writing during the open hearings on this topic, we believe the application requests are instead consistent with (RHD - 1) Residential - High Density District. We request that an Interpretation be provided through the Zoning Board of Appeals, as outlined in Town Code, Chapter 219-2, Section A.

We further request an open hearing on the topic as we do not believe that a dormitory meets the criteria of RLB zoning.

On behalf of the adjacent and immediate neighbors of the 1666 Winton Road property.

Aron Reina, 62 Poplar Way  
Judy Massare, 126 Idlewood Road

CC Brighton Town Supervisor, Brighton Town Board Members, Town Clerk, Planning Board, New York State Senator Cooney, New York State Assemblywoman Clark

At a meeting of the Zoning Board of Appeals of the Town of Brighton, held at the Brighton Town Hall, 2300 Elmwood Avenue, Brighton, N.Y. on the 7th day of December, 2022, at approximately 7:00 p.m.

**PRESENT:**

**ZONING BOARD OF APPEALS MEMBERS**

Dennis Mietz, Chairperson

Andrea Tompkins Wright

Judy Schwartz

Kathleen Schmitt

Edward Premo

Heather McKay-Drury

Matthew D'Augustine

Rick DiStefano, Secretary

Kenneth W. Gordon, Town Attorney

WHEREAS, on or about July 12, 2022, PEMM, LLC, as contract vendee and Bristol Valley Homes, LLC (the "Owner"), owner of the property located at 3180 East Avenue in the Town of Brighton filed with the Town of Brighton Zoning Board of Appeals (the "ZBA") Application 8A-04-22 (the "Use Variance") for a use variance from Section 203-44 of the Brighton Town Code to allow a gas station with a convenience store to be located in a BE-1 Office and Office Park District, Application 8A-05-22 (the "Canopy Variance") for an area variance from Section 207-6B of the Town Code to allow an accessory structure in the form of a canopy to be located in a front yard in lieu of the rear yard, and Application 8A-06-22 (the "Setback Variances") for area variances from Section 205-18 of the Town Code to allow parking of vehicles within two feet of the side (north) lot line and to allow paved areas/driving aisles up to the front lot line; and

WHEREAS, Town Code Section 203-44 does not allow a gas station or convenience store as either a permitted or conditional use in a BE-1 Office and Office Park District; and

WHEREAS, Town Code Section 207-6(B)(1) requires that accessory structures in non-residential districts be placed in the rear yard; and

WHEREAS, Town Code Section 205-18(B) prohibits parking areas within 10 feet of any lot line and further prohibits parking areas and driving aisles within 20 feet of the front lot line; and

WHEREAS, the ZBA held public hearings on each of the above applications each of which was duly noticed and held on August 3, 2022 and September 7, 2022, and November 2, 2022.

WHEREAS, thereafter the ZBA closed the public hearings on the above applications and tabled the consideration of the above applications to give it time to duly consider the applications presented, documents provided and testimony given by the Owner and PEMM, LLC, their professionals and the public, and

WHEREAS, the ZBA hereby brings each of the applications off the table to consider each of the same which are determined and decided as set forth below based on the testimony given, applications and documents provided and comments received from the public.

NOW, THEREFORE, on Motion of \_\_\_\_\_, Seconded by \_\_\_\_\_, it is hereby

RESOLVED, each of the Whereas Clauses in this Resolution are incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and be it further

RESOLVED, that after taking a hard look at each potential impact of the proposed action, the Zoning Board of Appeals hereby determines that the proposed action will not likely have a significant negative environmental impact and thus adopts the Negative Declaration annexed hereto pursuant to the State Environmental Quality Review Act for the reasons and based upon the findings set forth therein which findings and determinations are made a part hereof, and be it further

RESOLVED, that after duly considering all the evidence before it, the ZBA in all respects accepts, approves, adopts, and confirms the following Use Variance Findings with respect to the Use Variance Application:

The Owner has submitted credible evidence that applicable zoning regulations and restrictions have caused unnecessary hardship by demonstrating through testimony and documentation submitted that:

1. The Owner has spent years attempting to market the property and/or find a tenant for a permitted or conditionally permitted use including office uses expressly permitted under the Town Code for a property in a BE-1 District. None of the Owner's efforts has led to a successful sale or lease. Financial records supplied show that the Owner has had no income from the subject property since he purchased the property in 2018. The owner credibly explained as did his supporting professionals that the small size of the building and its designation as a historic landmark impede both the practical use of the property for a permitted use and prohibit the expansion or substantial alteration of the building exterior. The existing building is only 1,188 square feet and has no interior bathroom. In order to convert the interior space to a permitted office use, the cost would be approximately \$220,000.00. To generate sufficient rent to recapture this investment in the property, the Owner would need to charge approximately between \$25.00 to \$40.00 per square foot for rent to simply break even. Such a high price is well over the current market rate of \$12.00 to \$18.00 per square foot in the Brighton area. Accordingly, under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation has been established by competent financial evidence;
2. The subject building was designated as a historic landmark under the Brighton Historic Preservation Law many years ago. Under the Historic Preservation Law, the building cannot be demolished and any exterior alterations or improvements cannot proceed without approval from the Town's Historic Preservation Board after it considers whether such changes will be compatible with the historic character of the landmarked building. The historic designation prohibits the Owner from demolishing and rebuilding the structure into something more suitable for a permitted or conditionally permitted use. In fact, the Historic Preservation Board previously rejected a proposal by the Owner to renovate the exterior of the structure to be used as a professional office for a potential tenant that the Owner had identified as interested in

placing offices in the building but only if an exterior addition was allowed. There is no other designated building like the subject premises in the Town. Even with the approval of the applied for Use Variance, the Applicants will need to seek and obtain approval from the Town Historic Preservation Board for a Certificate of Appropriateness for the installation of the canopy and any other exterior changes to the property that are proposed. Accordingly, the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;

3. The subject parcel and building was used as a gas station and service center since about 1930. It existed in harmony with the surrounding neighborhood for nearly 90 years. The prior gas station/service center was a prior non-conforming use which ultimately was discontinued in approximately 2017. By the time the Owner purchased the property, the prior non-conforming use had been discontinued for more than a year. The use proposed by the Applicants, namely that of a gas station and convenience store, is also in harmony with the neighborhood. The property is located on a major state road. It is already a heavily trafficked area and is suitable for the location of the proposed use. The design of lighting, hours of operation and overall appearance of the proposed use is intended to and will have a nominal impact on the residences that are across the highway from the proposed use. There are no trees to be removed, and installation of underground storage tanks for fuel storage will be installed and operated in accordance with state and federal guidelines to prevent environmental impacts from the same. Accordingly, the requested use variance, if granted, will not alter the essential character of the neighborhood and will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, including natural features such as trees;
4. The Owner purchased the property at a point in time that the prior non-conforming use as a gas station had expired. The Owner testified that he did not acquire the building and the property for the speculative intent of re-instituting the traditional use as a gas station. In fact, the Owner provided documentary proof and oral testimony about the efforts expended by him as an experienced real estate developer in attempting to attract a conforming and permitted use to the property. Only after numerous efforts proved unsuccessful did the Owner resort to proposing the present Use Variance Application. Based on all of the above, the alleged hardship has not been self-created.

The Zoning Board of Appeals, hereby grants Application 8A-04-22 for the reasons set forth herein and in the granting the Applicants' use variance, recognizes that Pemm, LLC as the contract vendee testified that its business model included the operation of a gas station in combination with a convenience store. There appears to be no proposals from any potential user to operate one without the other at this location. Accordingly, the Zoning Board of Appeals determines that the granting of the use variance for both the gas station and the convenience store is the minimum variance that is necessary and adequate to address the unnecessary hardship proven by the applicants. Moreover, the Zoning Board of Appeals finds and determines that the historic use of the property has been that of a gas station and service center, not substantially different in the view of the Board from the present proposal for a gas station and convenience store. The Board notes the plans to minimize light spillage and other impacts on the residential properties across the state highway and the Board believes that the proposed use will have no impact on the Brighton Fire Station and Headquarters that is immediately adjacent to the subject property. It is understood that the Brighton Fire Station is lighted, active and staffed 24 hours a day and 7 days a week. The Board also reviewed the traffic data and reports prepared by SRF Associates and dated October 2022 which were submitted and hereby finds and determines that the proposed use will not have any appreciable impact on traffic in the corridor. Finally, the Board is aware that the subject

property has been vacant for many years and maintenance has been deferred as a result of the lack of income and occupancy. Approving a use for the property in all of the circumstances given will be the best hope for preservation of this landmarked building and will help avoid having the property fall into further disrepair and neglect. Accordingly, granting the use variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community, and it is further hereby

RESOLVED that after duly considering all the evidence before it, the ZBA in all respects accepts, approves, adopts, and confirms the following Canopy Variance Findings with respect to the Canopy Variance Application:

The Owner has submitted credible evidence that taking into consideration the benefit to the applicant if the Canopy Variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board has considered the following and made the findings set forth below:

1. The contract vendee, Pemm, LLC, testified that the canopy was needed for weather protection for customers while pumping gas in inclement weather. Approval of the canopy will be subject to the approval of the Historic Preservation Commission which will determine whether the addition of the canopy is consistent with the historic character of the designated landmarked building and property. The addition of this accessory structure is not intruding upon or impinging upon any other nearby properties and is consistent with the proposed use of a gas station. Accordingly, the Board finds that the Canopy Variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties;
2. According to the documents and testimony presented, the original proposed canopy was larger and the contract vendee has scaled down the size of the canopy to dimensions that will still accomplish the goal of providing shelter to customers filling their cars up at the gas island. Suggestions from the public that the contract vendee adopt a practice of providing full service (ie employees to pump gas for customers) is not feasible for the contract vendee to pursue and is inconsistent with their business model. Moreover, there is no room on the property for the canopy and fuel island to be placed in the rear yard and the building cannot be relocated because it is a designated landmark. Accordingly, the Board determines that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than the Canopy Variance;
3. As noted above, the proposed canopy has been scaled down and is proportionate to the dimensions of the pump island and the existing building. The requested Canopy Variance is not substantial;
4. The Canopy Variance is consistent with the use of the property as a gas station. A gas station operated on the property for decades before it was abandoned. No adverse effect or impact on the neighborhood or district was noted during the many years that the gas station previously operated on the property. The addition of an accessory structure such as a canopy in the front yard of the property is not expected to have any adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

5. The alleged difficulty is not self-created as the gas island must be located in the front yard as the building cannot be moved or demolished because it is a designated landmark. Accordingly, the canopy needed to protect customers from inclement weather while pumping gas must also be placed in the front yard rather than the rear yard as required by Town Code;
6. The Board has determined based on all of the above including the reduction in the dimensions of the canopy and the necessity of locating it in the front yard to cover the gas island that the requested Canopy Variance is the minimum variance that is necessary and adequate that granting the Canopy Variance will at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Zoning Board of Appeals hereby grants Application 8A-05-22 based on the testimony given, documents presented and the findings set forth above, and it is hereby further

RESOLVED that after duly considering all the evidence before it, the ZBA in all respects accepts, approves, adopts, and confirms the following Setback Variances Findings with respect to the Setback Variances Application:

The Owner has submitted credible evidence that taking into consideration the benefit to the applicant if the Setback Variances are granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board has considered the following and made the findings set forth below:

1. The contract vendee, Pemmm, LLC, and its professionals testified that the need for the setback variances to allow parking of vehicles within two feet of the side (north) lot line and to allow paved areas/driving aisles up to the front lot line is a function of the location of the building on the lot. Because the building is landmarked, it cannot be demolished or relocated and there is simply no room for parking, paving and drive lanes anywhere else on the property. In order for there to be adequate parking and clearances, the setback variances are required. Parking, pavement and driving aisles proposed will not intrude upon or impinge upon any other nearby properties other than the Brighton Fire Station which itself has pavement up to the property line. Moreover, the setback of the pavement at zero feet is an existing condition which will remain unchanged while the overall pavement area will be brought below what the Code allows. Accordingly, the Board finds that the Setback Variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties;
2. The need for the Setback Variances results from the size and existing layout of the property including the location of the landmarked building. Accordingly, the Board determines that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than the Setback Variances;
3. As noted above, the proposed pavement area on the property will be reduced. The requested Setback Variances are not substantial;
4. The proposed parking and pavement areas are properly placed to minimize impacts and allow for easy and safe interior traffic while meeting parking requirements of the Town Code. Approving the Setback Variances will actually allow for more green space and better pedestrian access to the property all to the benefit of the neighborhood. The proposed Setback Variances

are not expected to have any adverse effect or impact on the physical or environmental conditions in the neighborhood or district nor on the residential properties across the state highway;

5. The alleged difficulty is not self-created but rather results from the exiting physical conditions of the property, the size of the property, the location of the landmarked building and the lack of any usable rear yard;
6. The Board has determined based on all of the above including the reduction of paved area on the site and the necessity of locating parking in the front yard and the physical limitations of the overall site that the requested Setback Variances are the minimum variances necessary and adequate, and that granting the Setback Variances will at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Zoning Board of Appeals hereby grants Application 8A-06-22 based on the testimony given, documents presented and the findings set forth above, and it is hereby further

RESOLVED, that pursuant to Town Code Section 219-2(B)(2)(d), the Zoning Board of Appeals hereby imposes the following conditions and restrictions with respect to each of the above referenced variance applications which have herein been granted:

1. Approval of each variance is based on and shall be limited to the plans and specifications submitted by the Applicants to the Board;
2. Approval of each variance is subject to site plan approval by the Planning Board and any conditions it may impose, architectural approval by the Historic Preservation Commission and the issuance of all building permits by the Building and Planning Department;
3. Approval of the Canopy Variance is subject to the Applicant applying for and receiving a Certificate of Appropriateness from the Town Historical Preservation Board.
4. Hours of operation shall be limited from 6:00 am to 10:00 pm.
5. Every effort shall be made to limit deliveries to during hours of operation.

UPON ROLL CALL VOTE, the vote was as follows:

Dennis Mietz, Chairperson	Voting _____
Andrea Tompkins Wright, Board Member	Voting _____
Judy Schwartz, Board Member	Voting _____
Kathleen Schmitt, Board Member	Voting _____
Edward Premo, Board Member	Voting <u>RECUSED</u>
Heather McKay-Drury, Board Member	Voting _____
Matthew D'Augustine, Board Member	Voting _____

This Resolution was thereupon declared adopted.

Dated: December 7, 2022



Town of  
**Brighton**

# Zoning Board of Appeals

Secretary – Rick DiStefano

## State Environmental Quality Review

### NEGATIVE DECLARATION

#### Notice of Determination of Non-Significance

Project Number: 8A-04-22, 8A-05-22 & 8A-06-22

Date: December 2, 2022

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Brighton Zoning Board of Appeals, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action: 3108 East Avenue – Use and Area Variance

SEQR Status: Unlisted

Conditioned Negative Declaration: No

Description of Action: Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for a Use Variance from Section 203-44 to allow a gas station with convenience store to be located in a BE-1 Office and Office Park District where not allowed by code; for an Area Variance from Section 207-6B to allow an accessory structure (gas canopy) to be located in a front yard in lieu of the rear yard as required by code; and for Area Variances from Section 205-18 to 1) allow parking of vehicles to within 2 ft. for a side lot line (north) where a 10 ft. setback is required by code, and 2) allow paved areas / aisles up to the front lot line where a 20 ft. setback is required by code. All as described on applications and plans on file.

Location: 3108 East Avenue, Town of Brighton, NY

Reasons Supporting This Determination:

After considering the action contemplated and reviewing the Environmental Assessment Form prepared by the applicant (Part I) and Town Staff (Parts II & III) and the Criteria for determining significance in the SEQR regulations (6 N.Y.C.R.R. Section 617.11), the Town of impact on the environment based on the following finding:

1. Air, Water, Waste, Erosion, Drainage, and Site Disturbance.

The proposed Project is taking place on a previously disturbed site with most areas of disturbance taking place in previously disturbed areas. The site is relatively flat and the proposal does not significantly alter grade or drainage on the site. The proposed use is a gas station and convenience store, and in itself will not disturb the site beyond the work done during the site improvement. Soil erosion control measures will be implemented during and after construction based upon a detailed grading and erosion control plan. The storm water drainage system will be designed and will be constructed in accordance with all applicable Town requirements. The proposed use as a gas station with convenience store will not create a substantial increase in solid waste production.

The proposed Project will not create any significant adverse impact in the existing air quality or water quality, nor in solid waste production, nor potential for erosion, nor promote drainage problems.

2. Noise, Visual, and Neighborhood Character.

The Project will not impact the neighborhood character of the surrounding area nor will it create any adverse noise or visual impacts. The Project is reestablishing a gas station and adding a convenience store to a site that had been used for a gas station and auto repair facility for many years. The project will use and maintain the current historically designated vacant building which is located in an BE-1 Office and Office Park District. The project will improve the overall look of the property by adding landscaping, reducing impervious surface, improving the building while maintaining its historic significance, and constructing an accessory structure which will complement the architectural style of the historic building. Noise generated will be from vehicle traffic and minimal truck deliveries.

The Project will not be detrimental to the health, safety or general welfare of persons residing or working in the area of the proposed use and will not be detrimental or injurious to property and improvements in the area or to the general welfare of the Town.

3. Agriculture, Archeology, Historic, Natural, or Cultural Resources.

The Project will not adversely impact agricultural, archeological, historical, natural, or cultural resources. The EAF Mapper Summary Report indicates that the project area is located near archaeologically sensitive areas. Proposed improvements are taking place on a previously disturbed site. There are no known archaeological resources within project site.

The project is reusing and maintaining a Town of Brighton historically designated structure and will meet all requirements of the Town of Brighton Historic Preservation Commission.

4. Vegetation, Fish, Wildlife, Significant Habitats, Threatened or Endangered Species, Wetlands, Flood Plains.

The Project will not have a significant adverse impact on plant or animal life. The property does not host any threatened or endangered species, and therefore the Project will have no impact on any threatened or endangered species. The Project is not located within a flood plain and there are no wetlands on the project site.

5. Community Plans, Use of Land, and Natural Resources.

The Project is located in a BE-1 Office and Office Park District and is applying for an area variances for pavement setbacks and for construction of an accessory structure (gas pump canopy) in a front yard. They also seek a use variance to allow for a gas station with convenience store where one is not allowed by code. The Town's Comprehensive Plan does not specifically address the property. The Project changes will be installed on already disturbed areas and will have no adverse impacts on the natural resources found on the site.

6. Critical Environmental Area.

The Project will not have an impact on any designated Critical Environmental Area as set forth in 6 N.Y.C.R.R. Section 617.14(g).

7. Traffic.

The proposed Project will generate more vehicle trips to or from the project site but is located on a significant road and will not significantly increase traffic on the road. The Project will not have a significant adverse impact on vehicular, bicycle, or pedestrian traffic. Thus, the Project will not result in any significant adverse traffic impacts.

8. Public Health and Safety.

The Project will not have a significant adverse impact on public health or safety. The Project is subject to all applicable Federal, State, and Local laws, regulations, and code requirements.

For further information:

Contact Person: Rick DiStefano, Environmental Review Liaison Officer

Address: Town of Brighton  
2300 Elmwood Avenue  
Rochester, N.Y. 14618