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A P P E A L S

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

PRESENT:

DENNIS MIETZ,   Chairperson

MATTHEW D'AUGUSTINE                    )  
HEATHER McKay-DRURY                    )  
EDWARD F. PREMO, II                    )   BOARD MEMBERS  
KATHLEEN SCHMITT                        )  
JUDY SCHWARTZ                            )  
ANDREA TOMPKINS WRIGHT                )

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Senior Planner

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

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

CHAIRPERSON MIETZ: Welcome everyone. You are here at the November meeting of the Brighton Zoning Board of Appeals.

Rick, could you call the roll?

MR. DiSTEFANO: Mr Premo?

MR. PREMO: Here.

MR. DiSTEFANO: Ms. Schwartz?

MS. SCHWARTZ: Here.

MR. DiSTEFANO: Ms. Tompkins Wright?

MS. TOMPKINS WRIGHT: Here.

MR. DiSTEFANO: Mr. D'Augustine?

MR. D'AUGUSTINE: Here.

MR. DiSTEFANO: Mr. Mietz?

CHAIRPERSON MIETZ: Here.

MR. DiSTEFANO: Ms. McKay-Drury?

MS. MCKAY-DRURY: Here.

MR. DiSTEFANO: Ms. Schmitt?

MS. SCHMITT: Here.

MR. DiSTEFANO: Please let the record show all members are present.

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

MR. DiSTEFANO: Yes, it was properly

BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

advertised in the Daily Record of October 27, 2022.

CHAIRPERSON MIETZ: Okay. Our next thing to do is talk about the minutes.

MR. DiSTEFANO: Want to do a quick agenda review?

CHAIRPERSON MIETZ: Yes.

MR. DiSTEFANO: The only thing I have is there are a couple communications that came in very late that are not on the agenda but they are in your folders near the end of the packet in the communication that you received.

I don't know if any of the Board members have any questions regarding the applications?

CHAIRPERSON MIETZ: Questions? Everybody okay?

Okay. So how about the minutes? We have September minutes, correct? Any thoughts? Judy?

MS. SCHWARTZ: Page 13, Line 15, please insert the word issue after an.

Page 55, Line 24, the second word is percent.

Page 64, Line 11, the third to last word is this.

Page 68, Line 5, after ten the word is that, Line 6, insert the word out -- I'm sorry, put. Just before

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

the last word, put, sorry.

Page 73, Line 9, the last word is one word, week.

Page 86, Line 18, please insert the word with after come.

Page 89, Line 11, it's Boyd, B-O-Y-D.

Page 97, Line 7, the name should be Carl Arena.

Page 11, the third to the last word is prohibitive.

Page 109, Line 25, the first word is offer.

Page 137, the number of feet should be 40.

Page 146, Line 23, the second to last word is along.

Page 149, Line 13, the second to last word is also along.

Page 159, Line 15, the second to last word is dove.

Page 161, Line 11, the word is products.

Page 169, Line 11, the third word is correct.  
That's all I have.

CHAIRPERSON MIETZ: Does anyone have anything else on the September minutes?

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

Motion please?

MR. PREMO: I move that we approve the minutes as corrected.

(Second by Mr. D'Augustine.)

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

(Upon roll call, motion to approve with corrections carries.)

CHAIRPERSON MIETZ: Okay, Rick, when you are ready 10A-01.

MR. DiSTEFANO: Just for the record, anybody here for the Application 11A-03-22 that application has been withdrawn by the applicant. That application will not be heard.

APPLICATION 10A-01-22

10A-01-22 Application of Sign and Lighting Services, contractor, and Daniele SPC, LLC, owner of property located at 2750 Monroe Avenue, Building 5, for Sign Variances from Section 207-32B to 1) allow for business identification signs on three (3) building sides in lieu of only one as allowed by code. All as described on application and plans on file. This application was heard at the October 6, 2022

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Meeting, the Public Hearing was held over to tonight.

KIRK WRIGHT: Good evening. Kirk Wright, Sign & Lighting Services, 530 Route 104, Ontario, New York. The previous application was tabled and we went back to the drawing board and we made significant reductions in our application.

We have gone from three to four square feet signs and reduced down to two. The new signs are now 54 square feet and we have lowered them, so they now meet the 20-foot overall height criteria by the town.

One elevation will face Monroe Avenue, obviously looking for the traffic view, and the second elevation would be over the entrance to the store so that the people have direction as they come in from the parking lot.

MS. TOMPKINS WRIGHT: Can you explain how the total square footage of 110 by 84 square feet compares to the total square footage that would be permitted on the site is?

KIRK WRIGHT: I believe, yes. And this is before -- I believe we are allowed a total of eight square feet, approximately. So I can look into --

CHAIRPERSON MIETZ: So for both elevations?

KIRK WRIGHT: Correct. So we are looking for 15, 20 and 85, and 110, is 25 square feet of relief.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

MS. SCHWARTZ: I wasn't here at the October meeting, as I was sick, so I apologize. Can you explain the nature of the business and why you feel that you need the second sign?

And could you tell us a little bit about what kind of services people will be getting when they come to that establishment?

KIRK WRIGHT: That was explained and I had a gentleman that -- I am just a simple sign guy -- but, they do certain types of, I believe plastic surgery, freezing surgeries, cosmetic surgeries, of many different kinds. They do also sell some of, they do point of purchase, so there are items for sale.

It's not just by appointment only, there is a lot of walk-in traffic. That's why they are looking for the second sign over their door. There's a lot going on in that parking lot, and when you get out, without that sign there over the door you're not going to know exactly what building you're headed for.

CHAIRPERSON MIETZ: Okay. The sizing then, you based on just your general criteria, site lines and distances?

KIRK WRIGHT: Exactly. If we get any smaller,

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they're just not going to work. The lettering will be too small and, you know, if you're going to have a sign you want it to work for you.

CHAIRPERSON MIETZ: Okay. Other questions by the Board please?

MS. TOMPKINS WRIGHT: There are multiple other -- we talked about this last month -- there are other properties along Monroe Avenue that have two sign faces?

KIRK WRIGHT: Yes.

CHAIRPERSON MIETZ: Any other questions?

Okay. Thank you very much.

KIRK WRIGHT: Thank you.

CHAIRPERSON MIETZ: Is there anyone in the audience that would like to speak regarding this application? At this point then, the Public Hearing is closed.

APPLICATION 11A-01-22

11A-01-22 Application of Howard Crane, agent, and Leslie Crane, owner of property located at 58 Whitestone Lane, for an Area Variance from Section 207-2B to allow a retaining wall and fence (on top) to be 10 ft. In height in lieu of the maximum 6.5 ft. Allowed by code. All as described on application and plans on file.

HOWARD CRANE: Good evening to everybody in



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the community. I feel very honored that all these people came to hear my application thank you very much. I know it's not important to them, but it is important to us.

CHAIRPERSON MIETZ: Before beginning, please identify yourself and your address.

HOWARD CRANE: My name is Howard Crane, the address is 58 Whitestone Lane. My wife and I have lived on this property for almost 25 years. On the property sits a swimming pool and the swimming pool is surrounded by certain retaining walls. The retaining walls have become deteriorate over time as they were made from pressure treated wood. We bought the house and we didn't realize it would turn into dirt sooner or later, and unfortunately we have to replace them.

On top of the retaining walls between our neighbor Underberg, that is described in our application is a group of shrubs which screens our home from their property, and screens their property from our home. So, that's the picture identified as A in the packet that I provided. I think there are probably enough pictures for each one of the members of the Appeals Board.

So, you can see that we are very well screened, the shrubs run about six feet high. Unfortunately,

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what's happened over the years while the wall has become derotated, you can see this in Exhibit E, picture number E, the shrubs have bent over because the trees have grown over the shrubs and blocked the light for the shrubs to see. So the shrubs have bent over onto our pool deck to seek light and consumed about three to four feet of the pool deck, pushing our chaise lounges over closer to the pool as the years have gone by.

So, it would be impractical when we rebuild the walls, the intention is that the project is going to cost about \$30,000, a little bit over that actually. We have to have the screen and if we were to install shrubs as we have now, the shrubs would just bend towards the light again as they are now and it would create a hardship for us.

I have gone into great detail about how this doesn't affect the neighboring properties. Or I should say, our application is to put a fence, where the retaining wall is four foot in height and we are asking for a fence six feet in height on top of the retaining wall.

We would ordinarily be able to put the six and a half foot fence to screen the pool, but because the retaining wall was there and was put there by the prior owners who built the improvements, we have no choice to go

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over the presently existing retaining wall and over the height of the pool deck, six feet which would put this at ten and a half feet above the Underberg at the top.

I have also provided you a picture, which is Exhibit C, which shows the Underberg lot -- or shows our lot taken from the Underberg lot towards the pool and you can see how heavily screened this area would be and how any fence there would not be noticed very much.

We have one other neighbor who is somewhat near the property, it's not an adjoining lot line situation for the fence, it is a different lot line. And that is D, and it shows also that that is very heavily screened and it's not on their lot line anyways.

The other properties, because our property is actually two building lots, so we have a number of four actual properties that are adjacent to ours that those are so far away they really can't be seen. They are about two or 250 feet away.

I have an instrument survey map which shows where this is relative to the long map here, and it is a pink line that shows where the fence is relative to the overall property. And I also have a map that identifies that was drawn recently that shows where the new improvements are

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going to go an there's a pink line -- orange, I guess that shows where that is as well.

We are not anxious to make this application because we really wish we didn't have to make these changes to our property. We are not making them for financial profit as some other applications are, which I respect, but this is not for financial profit. And it's not to extract anything more in terms of function of our property from what we have now. It is just a practical application based on mother nature's effect of these various improvements sitting where they are for many years and needing the kind of attention that requires a fence to be placed.

I did submit tonight an affidavit of our next door neighbor that's marked Underberg, as power of attorney for his mother, Joyce Underberg, who is quite elderly. And in this affidavit he agrees he thinks it would be beneficial for his property and beneficial for the neighborhood. He also feels that the height of the fence requested, specifically six feet, is most beneficial for their property and most beneficial for us as well. It would screen us from them, the pool from their property and would also screen potentially any noise that might be coming in their direction, probably more effectively than the shrubs do now.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

Mark fully understands what's written in the affidavit, he is actually a retired Wall Street attorney and a teacher, I think a part-time teacher at Cornell University law school, so what he is writing is with a full understanding of the words that are contained in his affidavit.

So, I think that is basically it. We feel there's essentially no affect on the neighborhood as a result of this and it would only improve the neighborhood and improve the next door neighbor's property, as well as ours.

CHAIRPERSON MIETZ: Okay.

Questions by the Board? Anything?

MS. TOMPKINS WRIGHT: Is the -- I'm sorry.

MS. SCHMITT: Just one question, you talked about the fence being a natural wooden fence?

HOWARD CRANE: Yes, it's going to be a wood cedar fence.

MS. SCHMITT: Okay, thank you.

HOWARD CRANE: Did you have one?

MS. TOMPKINS WRIGHT: That was mine.

HOWARD CRANE: Okay. It will be relatively solid.

CHAIRPERSON MIETZ: Like a shadow fence where

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

it's got little gaps between it or fairly solid?

HOWARD CRANE: It's not going to be one board, it will be boards placed together, but the intent would be to screen as much as possible as a fence can screen.

CHAIRPERSON MIETZ: Very good. And what is your time line for this project?

HOWARD CRANE: Well, my time line is that they're going to get started if and when the Board approves the project, so we are ready to go right now.

CHAIRPERSON MIETZ: Okay.

Any other questions?

Thank you.

Is there anyone in the audience that would like to speak regarding this application? There being none, then the Public Hearing is closed.

APPLICATION 11A-02-22

11A-02-22 Application of Adam Randall, agent, and Shannon Evans, owner of property located at 154 Greenaway Road, for an Area Variance from Sections 203-2B(3) and 203-9A(4) to allow a detached garage to be 995 +/- sf in size, after construction of a 280 +/- sf open roofed area in lieu of the maximum 600 sf in size allowed by code. All as described on application and plans on file.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

ADAM RANDALL: Hi. Adam Randall, 154 Greenaway Road. Again, I kind of said I had a garage that was an L-shape and we're looking to make it a little more functional for our family and have a little more shade. So, to extend the roof line and to add an open space which we cover that. The picnic table we'll be able to eat under there with the rain, and have shade during the summer. That's about it quick.

CHAIRPERSON MIETZ: Okay, that's all right. How about, did you look at any other alternatives of how do this? Can you discuss maybe things you thought about or considered or how you got to here?

ADAM RANDALL: This was the extension off of the house that we want to do, as we've seen them fall and those situations, things like that. We have two young kids, three and one, and, you know, besides that, where it is, located by the pool, it kind of works out.

CHAIRPERSON MIETZ: That was the best alternative?

ADAM RANDALL: Yes.

MS. TOMPKINS WRIGHT: So, this is just open air, an open air awning essentially?

ADAM RANDALL: Yeah. I have a rendering, two

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renderings. Unfortunately, I didn't bring --

CHAIRPERSON MIETZ: We can pass it around.

ADAM RANDALL: The pergola was the original plan, and that's switched to a covered roof to protect us so we could use it in other weather, with rain, whatever.

MR. DiSTEFANO: So with that that's going around, it shows the pergola roof, but the --

ADAM RANDALL: The area where the pergola is the area in the discussion.

MR. DiSTEFANO: And it's going to be a pergola roof.

ADAM RANDALL: It's not --

MR. DiSTEFANO: This is a new design.

ADAM RANDALL: It would be the same, where it is, we just have a cover over it.

MS. TOMPKINS WRIGHT: It will remain open air, it's not closed?

ADAM RANDALL: Yes.

CHAIRPERSON MIETZ: Okay, good.

MS. McKAY-DRURY: You're not making any changes to the garage itself?

ADAM RANDALL: No.

CHAIRPERSON MIETZ: We can take a look at this



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quick.

When would you be planning to do this project?

ADAM RANDALL: We're ready to go. There's another permit we have open and working on for a cabana, for the bathroom and an extra room on the garage. That person would roll into this job when done.

CHAIRPERSON MIETZ: You're looking at this building season if possible?

ADAM RANDALL: Yes.

CHAIRPERSON MIETZ: Other questions by the Board?

MS. TOMPKINS WRIGHT: The size of the garage is already not within code requirement size, is that pre-existing nonconforming?

ADAM RANDALL: Yes.

CHAIRPERSON MIETZ: Okay. Anyone else?

Okay, sir, thank you.

Is there anyone in the audience that would like to speak regarding this application? There being none, then the Public Hearing is closed.

MR. DiSTEFANO: Do you want me to handle all three at the same time or do you want to handle the east and then the one area variance?

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MR. GORDON: I suggest, because I think that the public is interested in this and probably is not going to be able to parse out their comments to each separate application. So I think at best, we take the Public Hearing on all three applications combined then no one has to worry about if they're making comments on the right application.

CHAIRPERSON MIETZ: That sounds reasonable. So, we'll sort them out later.

## APPLICATION 8A-04-22

8A-04-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info 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 SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

## APPLICATION 8A-05-22

8A-05-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info 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

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yard as required by code. All as described on application and plans on file. TABLED AT THE SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

APPLICATION 8A-06-22

8A-06-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info 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 SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

MR. PREMO: Mr. Chairman, I will note that I'm recused in this matter.

CHAIRPERSON MIETZ: Okay, very good.

So, who do we have speaking for these applications?

BETSY BRUGG: Okay, thank you very much. Nice to be here tonight. My name is Betsy Brugg, B-R-U-G-G, and I'm with Woods, Oviatt, Gilman. We're here on a continuation of Public Hearings on several variance applications for 3108 East Avenue.

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The last time we had a meeting there were a number of questions from the Board, there's some questions from the public. We did the initial presentation, we took the feedback we received from the Board and the public. We went through it and made some modifications and improvements to the project to try to minimize the relief and make the project as good as we can.

We also looked into any information and questions that came up. It took a little while to do and we were not back until tonight. There were many questions about, in particular pedestrian activity, pedestrian traffic, activity in the intersections. School started in September, so we decided the smart thing to do was to let school get started, let it get into a routine and that would be a better time to go collect notes.

So, Nick Merrifield from SRF transportation engineers is here tonight to talk about the updated traffic study. I should step back and say we have our whole team here tonight. Lou Tarrinoli is here from Pem. They're the developers of the property to operate as Quicklee's.

At this location Frank Romeo, the property owner is here tonight. John Shiragula is here tonight, he is our project engineer from Landtec.

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Our real estate expert, our consultant wasn't able to make the meeting tonight. Terry Bradley has volunteered to jump in. He is also a real estate broker in the Rochester area and has been for many, many years. And he was kind enough to step in to answer any questions related to the real estate market.

So, we went through kind of the whole application last time. I have quite a bit of material to go through, but I think what I will do is, I don't know if everyone in the public has had a chance to review what has been submitted. I will just kind of summarize what we have given the Board.

So, we have submitted a variety of information. We submitted an updated traffic impact study. Again, we had initially done a study on the vehicular traffic. We went back to the pedestrian traffic. I should step back and say, we did have a neighborhood meeting. Unfortunately there were some issues regarding the date and many people couldn't make it. So, we did have a smaller group that did attend. We had a pretty lengthy and kind of in depth conversation with them, but I think if there are any other folks who have appeared on this application that didn't have the opportunity to hear some of the information, I could

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go through more of it in more detail than I normally would.

We gave a traffic impact study, again waited until school was back in session. We gave you some information regarding truck deliveries. We were asked specifically about the number of trucks, when the deliveries would be made, and I believe we were requested to provide a truck template to show how the movement would work through the site. We did do the truck template, I will just summarize. We had 12 delivery trucks, plus two fuel trucks, weekly, that's the typical number, plus trash. The typical delivery trucks are 12 feet, cube trucks, cube vans, there are one or two, 53 foot delivery trucks that would come on site and the typical gas truck with a tractor trailer is 63 to 70 feet.

We did provide a template. Many of the trucks can be scheduled, but I think we have already explained to the Board that the fuel deliveries are out of the control of the operator.

There was a question about it being a noisy process that came up. I tried to send a video, Lou actually went to another location and took his phone out and took a little video. We would be happy to play it, but you cannot hear it's not clearly, noisy activity.

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Let's see, gas deliveries, we just talked about that. The canopy, so, my sense is that the probably the one of the most significant issues that were raised is concern about the canopy, what that looks like, what that does in terms of commercialization of the neighborhood. The lighting related to the canopy also has issues, but we do have an updated site plan. Lou has gone back, we have reduced the size, and the height of the canopy to the absolute minimum we need in order to operate the facility.

It is actually just impossible for me to give you a -- there isn't another gas canopy like this, like what we're proposing. So I can't show you one that's exactly live, what we're proposing.

So, for example, as I drove here tonight I drove by, you know, one of the gas stations up the street. It's nothing like any of the existing gas stations.

What we are proposing is that, Quicklee's is a local company, it's locally owned and operated. We have tremendous flexibility to do something different than you would see some of the national companies, something a typical gas stations that you are seeing.

So, they have much less lighting than you would find at a normal gas station. I know that's kind of

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3 hard to believe. We tried to give it to you, we've given you  
4 some updated renderings to give you an idea what the location  
5 looks like, the building, the canopy. But, it is hard to  
6 represent lighting. It's just hard to represent.

7 We gave you some cut sheets for the pole  
8 lighting, but I think John can talk about the photometrics  
9 and the lighting and how we're approaching it. The idea here  
10 is to only have the lighting we need for customers to safely,  
11 you know, maneuver underneath the canopy.

12 I looked up at the Speedway up the street and  
13 there's all kinds of lighting on the canopy, on the signs,  
14 they have tons of lighting on the building. We are not  
15 proposing any of that kind of, like, light-up-the-sky type of  
16 lighting.

17 They're voluntarily, they want to make this  
18 the best possible site for the neighborhood. They want to be  
19 in this location. They understand the neighborhood and they,  
20 you know, the use is what it is, but we are trying to do  
21 everything we can to make this the best fit and the least  
22 impactful on the neighborhood.

23 So, minimal amount of lighting. Down  
24 lighting, as much as possible, so it is directed at the gas  
25 pumps themselves. The lighting is set so that the



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illumination of the pumps will reduce at dark, so when it gets dark, so the pumps will also get darker and dim.

So, that's been our approach. As far as the size of the canopy, our original application was 22 by 44, we reduced it to 20 by 36, and the height has been reduced from 19 feet to 17 feet in height. And that's just basically the minimum based on necessary clearance for a possible trucks to go underneath the canopy.

So, we have reduced the size. I know that there was a reference in some material that was submitted in opposition to the project referencing a denial of variances for two canopies back in 1994, and 95. And some early review, I was surprised to find, and I had requested, some records from the town. That in fact, there was an approval for a single canopy granted in 1988. I do not know if it was ever built or what happened with that.

There was also in the history of the site some photographs that showed there was, I don't know what you call the structure, a canopy-like lighting apparatus structure that had been there even before then. I submitted one of the photos, I don't have any other information on that.

As far as the lighting, we put in pole lights, we put in fixtures to be as similar as possible for the fire

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3 house. Again, everything is shielded, they contain a  
4 photometric panel so that everything is contained on the  
5 site. Our goal is to minimize the lighting as much as is  
6 possible to do.

7 Questions about the lighting and when they'll  
8 be turned off. So, the applicant is willing to turn off the  
9 lights when the store closes. So, when they close up at  
10 night at 10:00, then immediately thereafter they will proceed  
11 to shut off all of the lights, except anything that might be  
12 mandatory for safety reasons. I don't know if the Town  
13 requires anything.

14 We did take a look at what the lighting would  
15 look like, the headlights, what that impact might look like  
16 coming in and out of the driveways of the site. We did  
17 provide a couple photographs from both the north and south  
18 driveways looking across the street. We know that a neighbor  
19 who is very interested in impact on their property, they  
20 happen to have a fantastic vegetative screening on their own  
21 property that would, I think, provide a substantial amount of  
22 buffering from any light.

23 I assume those trees there might have been put  
24 there when the dentist office was there, because there was a  
25 large, basically, a very large parking lot on that property,

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3 a commercial parking lot. So I'm assuming that perhaps they  
4 were required to screen that.

5 The site also includes, you can see it here on  
6 the site plan, this line here, this here, we are proposing a  
7 decorative wall, it serves a couple different purposes. That  
8 carries, I believe the material is carried from the wall up  
9 the street. So, we're carrying the same stone material from  
10 the wall, it's just up the street.

11 And then, that wall will serve to both soften  
12 and screen the appearance of the pavement which is already  
13 there, it was already -- the site is mostly paved right now.  
14 But, the screen is softening the appearance of the pavement,  
15 but also it will serve to screen and block some of the  
16 headlight traffic that you might have from cars circulating  
17 on the site.

18 So, that is part of the plan.

19 There was a question raised again, not by the  
20 Board but in a submission on behalf of the neighbor regarding  
21 whether we provided a genuine third party contract. The  
22 contractor wrote a letter himself, he is an independent third  
23 party contractor, will stand by those numbers. And, there's  
24 a letter from the contractor.

25 There's a question about sales regulated

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items. We did give you a copy of Quicklee's rules and regulations for the sale of beer, wine, and tobacco. Obviously, they abide to all the laws, they run very strict policies for their own employees, to ensure they don't have any sales to minors. We don't have a high school next door, we have an elementary school nearby. They are hardly kids that try to pass off a fake ID.

I'm a parent, so.

The concerns. I don't think this has been a concern the town has asked. There are the sale of regulated materials at other locations in the town in proximity to McQuaid, which is right over here. In proximity to 12 Corners Middle School and High School. I have a daughter that goes to school, I know where kids walk. That whole area is walkable and there are many retail establishments that sell regulated products. I don't know if there has been a problem in the town.

Contamination of the site came up. We did provide you a clearance letter that the contamination has been cleaned up and we submitted a letter with DEC indicating that no further action is required in terms of if there's any issues at the site.

Impact on the creek. I didn't give you any

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3 real specific information, because I think that's addressed  
4 by our civil engineer in the engineering. The site is  
5 professionally engineered, consistent with professional  
6 engineering standards to ensure that we do not have any  
7 impact on the creek that is regulation in place. The tanks  
8 are to be new, modern tanks consistent with the new, most  
9 recent standards.

10 Property values. We actually have a letter  
11 addressing property values that there's no evidence  
12 whatsoever that this type of repurposing of an old, vacant,  
13 abandon building or any gas station should impact property  
14 values.

15 As far as, let's see. I did address the  
16 canopy a little bit further. Mostly, I don't know if it's an  
17 issue for the Board, but this is a very new and different  
18 application from anything that has been reviewed in the past.  
19 There has been significant changes in the neighborhood since  
20 the 90s, certainly since before then. So if this Board would  
21 like me to get into it, I believe the Board has the authority  
22 to review sizing with the variance application. And again, I  
23 will point out that there was a variance application for a  
24 canopy approved back in 1988.

25 So, that is the bulk of what I put in here, in

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3 the submission. We have given you a fair amount of  
4 information. I'm happy to let everybody come up and kind of  
5 do their summary. We have our traffic consultant here, he  
6 would be happy to talk about the vehicle traffic and the  
7 pedestrian traffic. We are not going to have any significant  
8 impact on traffic. We likely will have everybody come up and  
9 do their, or is that too much?

10 CHAIRPERSON MIETZ: No, I don't think it's too  
11 much, but I think there will be a lot of questions that might  
12 be able to be answered, because everyone doesn't have access  
13 to those.

14 But, I will just ask for a summary. I don't  
15 think we need to go through the whole traffic report, but if  
16 there is a summary and someone includes it, and then if he  
17 could for example, speak to that, that would make sense,  
18 okay?

19 BETSY BRUGG: Before I do that, I want to go  
20 over the site plan because I don't know if we went through  
21 this the first time we went through the plan. But, I think  
22 some of the important factors the Board and the public may or  
23 may not be aware of, just things to point out.

24 What we're working with is an existing  
25 building. It is 1178 square feet inside. It's a very small

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3 building. We have a nonconforming rear setback, we can't  
4 move the building, it's a landmark. It is what it is. There  
5 have been other proposals that have come in, I think more  
6 informally to the town to the Historic Preservation  
7 Commission. I think that they rejected a proposal to have a  
8 professional office that wanted to include an expansion, for  
9 example, ABBI Goodwill looked recently at the site and walked  
10 away from it. So, there have been some other proposals.  
11 It's a small building.

12 Code requires a 40,000 square foot lot to  
13 conform to code for this zoning district, for the BE1 zoning  
14 district. This lot side is 15,614 feet. We are less than  
15 half of what code requires for an office parcel. Currently  
16 the lot coverage is about 75 percent of impervious area so  
17 this is a largely impervious site. There's no storm water  
18 management on this site right now, so we are introducing new  
19 storm water management where there hasn't been any, we are  
20 adding green space and we are substantially reducing the  
21 overall lot coverage to 63.3 percent. So, that is less than  
22 what code provides for a maximum.

23 We are showing two pumps, I believe the  
24 original plan, and I don't know that this Board saw the  
25 original plan. Originally they wanted to try and get three

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3 in here. They have reduced that to two, that was partially  
4 in response to the Historic Preservation Commission's  
5 comments. So they are willing to do a minimum size here.

6 The canopy requires a variance because it is  
7 in the front yard. Our variance for the parking is up here  
8 next to the fire department. I believe we show ten spaces.  
9 Just for reference, in 1988 when the Zoning Board graduated a  
10 variance to allow the canopy, there was a condition that  
11 there be not more than 12 vehicles parked on the site, so we  
12 are showing ten spaces which I think is less parking than  
13 they proposed at that time.

14 They did, I think -- it's not really clear  
15 from the minutes, but I think they might still have had auto  
16 service operating and I think that 12 was a way to reduce the  
17 size of that auto service part of the operation.

18 We are adding green space in the front, we're  
19 using these curb cuts that are existing, adding some  
20 landscaping, so there's a lot of kind of overall improvement  
21 and obviously the restoration of the building.

22 The plan that you saw originally, I think the  
23 only difference -- correct me if I'm wrong, John -- is just  
24 the reduction of the size of the canopy.

25 So again, we just tried to make that canopy as



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small as possible. The purpose of the canopy is to protect primarily protect customers from the elements. Nobody wants to stand in the blizzarding snow and the pouring rain to pump their gas.

And that is kind of a summary kind of of the condition of the site. Again, traffic has been one of the bigger issues, lighting. So I am going to turn it over to Nick to talk about the traffic and then hopefully John can talk about the lighting.

MS. TOMPKINS WRIGHT: Before we get to the traffic, you did include a photo, I'm not sure if it's from the town, you located of the former canopy. Any idea of the size of that canopy?

BETSY BRUGG: I don't know, I got it from the town.

MS. TOMPKINS WRIGHT: Do you know what the size of it was?

MR. DiSTEFANO: The one that was approved? Which one are you referring to?

MS. TOMPKINS WRIGHT: I'm referencing the one in the photo.

MR. DiSTEFANO: Oh, I don't know what that it was, to be honest with you. I think it was just a steel I

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girder type of structure above the pumps that maybe a sign was on, maybe the pricing of the gas was on. That wasn't the canopy that was approved under the 88.

BETSY BRUGG: It looked like that's an old photo. I believe I saw in the minutes I saw a reference to a lighting apparatus.

MR. DiSTEFANO: It might have had light on it, might have had suppression on it too, I don't know.

MS. TOMPKINS WRIGHT: What was approved in 88?

MR. DiSTEFANO: I could not find any rendering of that in our files, and it was never built.

MS. TOMPKINS WRIGHT: Okay.

BETSY BRUGG: So the site has changed ownership a few times. Essentially it's been a gas station since 1929, I believe. I think in 94 they confirmed it was the use of it had been continuous.

MS. SCHWARTZ: In the information given, they said two houses nearby or the adjacent house are no longer residences. Is that true, Rick?

MR. DiSTEFANO: I don't know that for a fact. I know one isn't, I'm not sure on the second one.

BETSY BRUGG: My understanding is the house behind the site is used by the fire department, and there is

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3 a second house next to the site. My understanding and the  
4 information I gathered is, it's vacant and nobody is living  
5 there.

6 MS. MCKAY-DRURY: I have one question. You  
7 made a statement and I wasn't sure exactly what you meant. I  
8 believe you said, there have been changes that have occurred  
9 in the neighborhood since 1990. And I wasn't sure what  
10 changes that you are talking about that were relevant to the  
11 site.

12 BETSY BRUGG: So, the reason I addressed that  
13 is because, talking about the Board authority to review.  
14 Essentially, arguing once you have a variance, you can never  
15 revisit the variance again. I think that there's been enough  
16 change over, and it's kind of hard to tell from the minutes  
17 from all the different meetings what exactly happened when,  
18 and I grew up in Brighton but I can't remember what year  
19 something happened or didn't happen, whatever.

20 But there have been changes and a lot of work  
21 on the road system, changes on the transportation, on the  
22 traffic pattern in the town. There's work on the expressway  
23 and exits, there's been a lot of differences in the way gas  
24 stations operate, differences in technology, differences in  
25 lighting. We now see LED lights used or we see high pressure

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sodium yellow lighting used.

So many different issues that, I don't think we can say this application is -- in fact, we're not looking at the same canopies that were looked at in 94, so I am really trying to distinguish the fact that I don't think we can say that 1994 was yesterday, it was a long time ago.

MS. SCHMITT: Okay, thank you.

CHAIRPERSON MIETZ: Could we also go to this question and let's let them finish their prosecution.

MS. SCHWARTZ: Okay. You say this is going to be a small scale gas sales. Can you please describe what small scale means?

BETSY BRUGG: So, when I looked at this and I wrote that, I was trying to figure out how to describe what they are doing. We all know what a typical gas station is, right? Usually we're looking at a commercial location where they want a four/five thousand square foot retail store and often they will not find a gas station that has two gas pumps. You find gas stations with many, many gas pumps.

So, the goal here is to put this site to viable use, with a gas station that is not intended to dominate the site, or dominate the neighborhood. They're really trying to restore what had been there in the past.

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3 They know that that works in this neighborhood, there is  
4 enough traffic on the road. They're not looking to bring  
5 customers, they're not a BJ's or a Cosco, or they're not  
6 trying to attract people from out of the area to come here  
7 and get gas. They just know this is a great place where  
8 they're near a neighborhood, near the expressways, they know  
9 there's enough traffic here to support a gas station with two  
10 pumps.

11 So, it's not intended to bring new traffic,  
12 it's just intended to service the traffic already on the road  
13 in the area.

14 MS. SCHWARTZ: And you say this is going to be  
15 viable?

16 BETSY BRUGG: Yes. I will let Lou talk to  
17 that.

18 CHAIRPERSON MIETZ: Okay. We will go on to  
19 the traffic please.

20 NICK MERRIFIELD: Hello, everyone. My name is  
21 Nick Merrifield, I'm the traffic engineer with Passero  
22 Associates. So, we have prepared a comprehensive traffic  
23 study for the proposed Quicklee's at 3108 East Avenue and as  
24 part of that we studied intersections of East Ave and Elmwood  
25 Ave, along with East Ave and Allens Creek.

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We collected data at these intersections on Thursday, January 27, 2022, from 7:00 to 9:00 a.m. and from 2:30 to 6:00 p.m. in order to capture the morning commuter, school dismissal and the afternoon commuters. On this day school was in session and there was no adverse weather conditions that affected traffic volume.

The traffic data was then compared to historical traffic data from the study area to determine if counts needed to be adjusted due to traffic being lower due to COVID, and based on that comparison we found that no adjustments were necessary and the current traffic counts were representative of this prior to COVID-19.

In addition to traffic counts, peak hour cueing was observed to determine how often the drivers will be blocked and southbound cueing was looked at at Allens Creek and East Ave intersection, and it was determined that the southerly driveway will be blocked during most signals. However, the northern drive will seldom be blocked and it should be noted that as patrons become more accustomed with the site they will use that northern drive to make a left out. Northbound traffic at the Elmwood Ave and East Ave intersection are seldom blocked at the driveway.

In response to resident concerns about crashes

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at East Ave and Allens Creek Road, three years of crash data was reviewed. In that intersection it was determined that there were no crash patterns that warranted any mitigation. The nominal crash type was rear end crashes which took up about 47 percent of the crashes at this intersection. And these were mostly caused by driver attention of following too closely to the car ahead them.

And there were no other crash patterns besides that and as well it should be noted that at signal light intersections rear ends are often an issue. In addition, slow to response to resident concerns of pedestrian safety, at East Ave and Allens Creek Road was observed and we looked at the three peak hours and observed how the pedestrians moved, and all that. And, it was observed that a crossing guard was present during the school arrival and at dismissal periods, to aid the students crossing the intersection. And there were no pedestrian safety issues that were observed.

To ensure that the future conditions can be appropriately be modeled, we contacted the Town of Brighton for any background projects that are approved or currently under construction, and we were informed there were no projects to do.

Traffic generated by the proposed project was

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determined by using data provided from the institute of transportation engineers. This is a national database based on hundreds of sites. And using the status that is standard and accepted methodology by New York State DOT, Monroe County DOT, and across the area.

Based on 1178 square convenience store and four fueling positions, the site will generate 24 entering and exiting the morning peak hour, 30 entering and exiting during the school dismissal peak hours, and 29 entering and exiting trips during afternoon peak hours.

However, a portion of these sites will be considered pass by trips and will come from the existing traffic on the roadways. And data shows an approximate 60 to 65 percent of site traffic will come from the existing roadway. However, 50 percent was used to be a little bit conservative. Once this was completed, a capacity analysis was performed at the existing background of full build conditions using a synced software. And based on that analysis it was determined that the proposed project will not any significant adverse effect on the surrounding area and does not warrant any mitigation.

And in addition to the capacity analysis, a GAP analysis was performed on February 16, 2022, to determine



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3 if there was enough gaps in the existing traffic where  
4 vehicles that enter and exit the site, and it was determined  
5 that there will be more than enough gaps to allow the traffic  
6 to go in and out of the site.

7 Give the findings of the traffic study, the  
8 surrounding roadways can accommodate the proposed Quicklee's  
9 without mitigation and no traffic concerns.

10 Thank you for your time.

11 CHAIRPERSON MIETZ: Thank you.

12 JOHN SCIARABBA: Good evening. My name is  
13 John Sciarabba, with LandTech who are the project engineers  
14 on this site, and they did a really job on overview of the  
15 site. I just have a couple points. We are enclosing three  
16 LED lights, ones we located on our south property line, that  
17 will be projected in towards the site. We have another one  
18 in toward the island, and then again that will be projecting  
19 towards the site, and then we have another one along the  
20 property line and the firehouse projected light towards the  
21 site.

22 The only other lighting proposed is the under  
23 mounted canopy lighting and there's one small light in the  
24 back door for emergency purposes similar to a residential  
25 light for a rear door.

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These are LED, they are controllable so they can be dimmed, turned on, and adjusted. Also, the heads of the lights are very consistent with what the fire department has, so we can work on mitigating any light issues that might go off the site.

If we're fortunate enough to go to the Planning Board on this, the Planning Board takes a very hard look at lighting, and that will be one of our requirements, make sure we are going to meet the requirements, keep lights well within our sites. I did have an opportunity to swing over to the site this evening and look around. The fire hall has a lot of light coming off it. The glass doors, all of the trucks are well lit, there's a light coming from their light which is along the property line that does spill onto our site. So, we realize it's pretty well lit corner already, not really trying to have a negative impact on the neighbors.

The other item that we always look at is storm water management. As Betsy said, we are reducing the impervious area by around 11 percent. This site is located in the Irondequoit Creek watershed, which is a higher level and to protect Allens Creek.

The site doesn't meet the requirements for a DEC permit, because it is less than an acre. But, the Town

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of Brighton does have standards that require us to reduce the amount of runoff associated with this project. So we have a bio-retention area proposed and working with the engineer department on that as this project progresses.

Those are the few points I want to hit. If Betsy wants to speak again, I can answer any questions in the future.

CHAIRPERSON MIETZ: Thank you.

LOU TARRINOLI: Good evening, everyone. I'm Lou Tarrinoli, director of real estate for Quicklee's and I just have a couple points that haven't been brought up, that the Board should be aware of.

There was a brief discussion about the meeting with the Historic Preservation Commission. I was the person who attended those meetings, one was in July, August, and September of 2021. I wanted to ensure that's how we got to what the building looks like today down to every detail. Where the windows are being placed, how they're being placed, how stone is being placed. Everything that was detailed over really, 90 days of, you know, meeting that Commission's expectations so we got to there.

Regarding the site, we're very optimistic about the site, about the viability, going back to the

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3 Preservation Commission, you know, having the two dispensers,  
4 where we originally had three, now we have two, even the  
5 canopy looked, everything was run by that Board.

6 And the site will give us a good footprint for  
7 the future. I don't know if you saw the recent press release  
8 that came out in the last few days, of Quicklee's being a  
9 pioneer in electrical vehicle charging stations. We have  
10 them at our Avon, Belmont, Batavia locations And as that  
11 generation of energy goes forward and we all have a plan at  
12 this site on day one to wire it for that infrastructure, so  
13 as that transition happens, we will be ready for the future.  
14 So, that's another reason we feel the site has some  
15 viability. So, thank you very much.

16 CHAIRPERSON MIETZ: Thank you.

17 BETSY BRUGG: I will remind the Board that in  
18 addition -- should we be successful with this Board, we still  
19 need to go to the Planning Board for site plan approval. And  
20 they would also normally drill down on everything from  
21 lighting, to traffic, to all the different things we've  
22 talked about.

23 I'm just going to go back and talk about the  
24 financial hardship a little bit, because that is probably  
25 what really, you know, we need a use variance. We know we

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3 have a hybrid approved. We understand that this is a  
4 challenging situation. Essentially, a challenge piece of  
5 property, that if you were not here with Mr. Romeo, the  
6 hardship is not going away.

7 This is a really tough piece of property  
8 that's been sitting there and it is too small for most uses  
9 and it's a challenging location for most uses. It is between  
10 the firehouse and a friendly home. It's very small, we have  
11 a limited building size, it doesn't meet the needs of a lot  
12 of users. The historic condition of the building needing to  
13 restore, preserve, and maintain it. The limitations and  
14 restrictions on what you can do with a historic building.  
15 You can't go to the left, you can't go over to the right  
16 because the site is what it is.

17 It's challenging regardless of who owns it.  
18 But we do need to demonstrate with dollars and sense, prove  
19 what the financial hardship is. So, just going to touch on  
20 it a bit. I know we went through it at the last meeting,  
21 it's in your packet.

22 So, obviously the town includes an income and  
23 expense statement in the applicant, so that was submitted.  
24 There has been no income since the property was acquired.  
25 So, there are losses, there's definitely a financial

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3 hardship. Mr. Romeo has been in the real estate development  
4 business for 40-something years, over 40 years. For a long  
5 time and he has developed all types of uses all over the  
6 place. Many in the Rochester area, outside of Rochester, and  
7 has not been able to make a go of this.

8 Construction costs, just I'm sure you've heard  
9 from everywhere that cost of materials, cost of construction,  
10 everything just continues to climb in this market, but I took  
11 a look back at what we had submitted in terms of what it  
12 would take. We don't just look at what it would cost to  
13 renovate the building. We look at whether that investment in  
14 the property would generate a reasonable return.

15 In this case, I am not even going to bother  
16 getting into what is or isn't a reasonable return. We are  
17 demonstrating that he is not able to generate any return for  
18 office uses.

19 So, in the districts office buildings with a  
20 whole list of slew of different types of office uses, is what  
21 is listed as being permitted. The conditional uses or things  
22 like the Friends Home, like the nursing home -- did I say  
23 convalesce home? Public buildings, things that either do not  
24 have much of a market, or the site was just too small to  
25 accommodate.

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3           So, we look at the amount of investment. We  
4 do have an estimate just to renovate and restore to an office  
5 use of \$220,000. So, I think in my original application I  
6 tried to give you a conservative number based on, what is the  
7 use, a value of the property much less than what Mr. Romeo  
8 paid, and less than the assessed value.

9           But, I was looking at it today and I thought,  
10 well, even if the property were attributed to zero value,  
11 even if somebody were to give the property away for zero, the  
12 cost of the renovations still exceeds the market value of  
13 that property, if you go out and sell it. You will never  
14 recoup what you put into renovating that building.

15           And we've shown that with the actual cost of  
16 the renovation, and turnaround. It's just not a desirable  
17 piece of property for it does not have a desirable location  
18 for anybody, and that is why it is vacant.

19           I think we have demonstrated a hardship,  
20 Mr. Bromley is here who wants to talk a little bit more about  
21 the market for office uses in town and what those markets are  
22 like. Trying to give the Board as much information as I can,  
23 but I don't want to give you more than you need. So, if you  
24 have any questions about the financial hardship, we are happy  
25 to answers those questions.

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CHAIRPERSON MIETZ: If Mr. Bromley wants to do a brief on his thoughts, that's fine.

Name and address, sir.

TERRANCE BROMLEY: Mr. Chairman, members of the Zoning Board, thank you. My name is Terry Bromley, I am the owner of Bromley Enterprises and FSB Realty. I have been a commercial broker in Rochester since 1973, I've probably developed, leased managed a little over 10 million square feet in the Rochester market. And, this is a very challenging property. As Betsy said, it's a property that was used in 1929 as a gas station and had been that way for a long way, a long time.

And unfortunately, the site is restricted in terms of what you can do with it. I've spoken to numerous individuals, groups, I've had insurance offices, I have had a couple small lenders, I have had a bunch of professional people, dentists, opticians and so on, and the building, because you cannot expand the building, with what you are limited with, it is very difficult to build something in there. With the costs being what they are today and escalating daily, to really make this property something for an office use, it just will not work.

I honestly feel that based on the



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neighborhood, this property has been an integral part of the neighborhood since 1929. Home values have escalated tremendously, although we are seeing right now a push back on it due to interest rates, shortages of material and labor, and so on. So, I think they're going to level off or may decline a little bit. But, in my opinion, I don't believe that this project would impact negatively on the values of any of those properties. Thank you.

CHAIRPERSON MIETZ: Thank you.

BETSY BRUGG: I think we already submitted Mr. Romeo's information regarding his marketing efforts, who he has talked to, how many -- he's had many inquiry's about the property and none has resulted in a contract.

If you have any questions about the marketing of the property, we'd be happy to answer that as well.

CHAIRPERSON MIETZ: Do you have anything else that you want to present? Because then I will ask the Board if they want to ask questions so we have it a little?

BETSY BRUGG: I think we've covered everything we have submitted. Again, I think that we have to meet the requirements, the criteria applicable to the use various application, as well as applicable to the area variance

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3 application.

4           The use variance would be to allow us to  
5 reestablish the gas station. The gas use, the gas sales use.  
6 If it is two pumps, it's really an accessory to a small  
7 retail operation that's being proposed here. There used to  
8 be auto service here, and this is, you know, the use is more  
9 consistent with the times. Times have changed.

10           Again, it is a use and I think our traffic  
11 analysis addresses that. It's really a use that I think, you  
12 know, people who review -- and you probably have knowledge  
13 having to review other applications similar -- it's kind of a  
14 commonly known, it's commonly known in the industry that  
15 these types of uses do not generate traffic, they basically  
16 serve the existing traffic on the roads. That is how they  
17 survive and they really are placed to serve the neighborhood  
18 in which they are located.

19           The use variance standard, I think we  
20 addressed those in the writing. I think we have demonstrated  
21 that we cannot generate a reasonable return for permitted  
22 uses. We have addressed the character of the neighborhood,  
23 we are doing everything possible. I think Quicklee's is  
24 willing to do anything they can do to make this the most  
25 attractive, appropriate fit for the neighborhood. They are

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3 decreasing the lighting. They needed a canopy but they are  
4 willing to decrease that to the size, minimum size necessary.

5           Landscaping, storm water management, anything  
6 they can do to improve and make this a great project, you  
7 know, their hope is that and they are willing to do that. I  
8 could address all of the criteria for the use variance. The  
9 variance, I should say the financial hardship is not  
10 self-created. It arises directly from the property. It is  
11 less than half the size allowed by code.

12           It is a preexisting building, with limiting  
13 conditions. We have the constraints of, you know, the site  
14 is enclosed, to physical limitations, the long time use of  
15 the property. It's just not a suitable location for a  
16 permitted use, for permitted uses.

17           The fact that the property owner purchased the  
18 property, had some misfortune with it, does not make this a  
19 self-created hardship. He could literally sit on this for  
20 many, many years. The hardship, the condition of the  
21 property could sit there for many year. If that were the  
22 case, anybody whose stuck with a piece of property would  
23 probably have a self-created hardship.

24           The area variances, the variances for the  
25 pavement I think are improvements to existing conditions.

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3 The parking variance is next to the firehouse, so I think it  
4 is in a place where it really doesn't have any particular  
5 impact.

6 There's no where else to put a gas canopy.  
7 The building already has a non-conforming rear setback. It's  
8 kind of the location is fixed, the driveways are fixed. We  
9 really are stuck with the physical limitations of the  
10 existing site.

11 I have addressed them in writing, so I won't  
12 go into each and every one of those standards. But, we do  
13 believe the benefit to the applicant outlays any detriment to  
14 the health, safety, and welfare of the community for the  
15 granting of the variances. Again, I addressed this in  
16 writing and we are all here to answer any questions, so.

17 CHAIRPERSON MIETZ: All right. Board members,  
18 any additional questions for the applicant.

19 MS. SCHWARTZ: Anybody on the team?

20 CHAIRPERSON MIETZ: Well, if you need to  
21 direct it to somebody, you can.

22 MS. SCHWARTZ: All right. I would like to  
23 direct it to Mr. Romeo. I am interested in why you bought  
24 the property or did you know what the restrictions were?  
25 That it had a designation and a historic structure and all of

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the different issues related to it?

FRANK ROMEO: Good evening, everyone, Frank Romeo. I am the owner of Bristol Valley Homes, who is the owner of this property.

Yes, I did buy this property and I was aware of what the zoning was. And, I did have a client, a prospective tenant that was interested in going there. And, we worked with them after we closed on the property for quite a while, trying to come up with some designs and trying to make it work for them. It was an office client, but a permitted use.

Well, that was just about, took a long time. COVID was just starting, people were getting nervous, of course, their landlord made them a deal to stay where they are.

So, at the same time Bristol Marketing Property, we entered into another letter of intent with a smaller financial services firm, which was a dental office in the area that loved the location. They thought it would be great. They were looking to downsize a little bit from their way they operate in their office, but not downsize to fit 1,180 square feet.

So, we wanted to expand the building to about

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2,500 square feet. They were going to have some remote people working from home and we took a trip over, an informal trip to the Historic Preservation Board and we were there a couple times, I think. Perhaps you were there, Mr. Gordon, and we had a very detailed discussion with them.

Surprisingly, they were not interested in expanding that building no matter what we did, no matter how it looked. They were, however, interested in keeping it looking exactly as it is, as a gas station. And they recognized that in order to do that, we would probably would need a gas station attendant, but that wasn't their problem.

We continued -- so, that deal actually fell apart. We continued to market the property for professional office use. The interesting thing is, from the beginning we were getting up to today, we got a lot of phone calls for people that want to operate a gas station, repair cars, open a restaurant, have a drive-thru for coffee, and that's predominantly what we got.

Even when we talk to other brokers when we're marketing the property, into people in a community, they all say, that would be a great location to put a coffee shop there, we really need one there. We really need a drive-thru there. I digress.

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3 So, we entered into this other contract, to in  
4 front of the Historic Preservation Commission didn't like our  
5 plans no matter what we did. Didn't want to expand it, it  
6 was very clear. After that, we entered into another letter  
7 of intent with ABBI Goodwill, for a drop-off facility.  
8 Limited hours, open normal business hours, not late at night,  
9 no retail sales, no coming in and browsing, just a drop-off  
10 location.

11 Came in, we talked to the then Town Planner,  
12 and I don't know if it was ABBI downtown at South Avenue. My  
13 office is in Irondequoit, they must have raced back down to  
14 their office, because by the time I got to my office they had  
15 already sent the e-mail kicking out of the contract. So,  
16 they were no longer interested. They had a bad taste in  
17 their mouth.

18 We continued to market the property and we  
19 got -- we didn't get in touch, it was brought to us through a  
20 broker, the folks from Quicklee's. Now, the folks from  
21 Quicklee's, I don't know if you know them, they're local.  
22 They're right here from Avon, they're a family-run company.  
23 In my opinion, there's only two companies in the Rochester  
24 market that are local owners. The only one that is locally  
25 owned is Quicklee's, there's another one out of Syracuse.

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They are the two preeminent gas and retail store operator.

And, right now, Quicklee's, if you go and look at their other stores, they do a great job. I don't know if I told you the last time we talked on the Zoom meeting, there were some questions about liquor sales. I called Albany and I talked to the ABC Board myself, and they said that there are 30 stores they have and they had no violations. That is unheard of. That is fantastic. They are coming with very high, high accolades from everyone that they love it, in the other communities they are in.

Quicklee's is a great operator. Now, that may not make any difference to you from the way that you have to approve or disapprove this, but as a resident of the community I think it's important to know that, the people you're dealing with.

We have made a very strong attempt to find someone to fit in their office. I know a lot of people in this community, I know a lot of people all over this country, nobody wants to build office space right now. They are saying go back to work, they are not really going back that much. Everybody is remote.

I was on the phone today, my HR person was on the phone with Blue Cross Blue Shield, they're home. They're



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working from home. A lot of space is going to be turned over to residential or other uses. So, I hope I didn't take too much of your time in answering.

CHAIRPERSON MIETZ: All set with that response?

MS. SCHWARTZ: Yes.

CHAIRPERSON MIETZ: Okay. Questions for any of the other professionals or for Betsy?

MS. McKAY-DRURY: I have several.

CHAIRPERSON MIETZ: Go ahead.

MS. TOMPKINS WRIGHT: For Mr. Romeo?

MS. McKAY-DRURY: No.

MS. TOMPKINS WRIGHT: Do you mind if I ask just real quick?

One question you mentioned, obviously marketing to office tenants or some other intensive retail sites, like other gas stations --

FRANK ROMEO: No, no, no, I didn't market to gas stations.

MS. TOMPKINS WRIGHT: Okay.

FRANK ROMEO: A broker brought them to me.

MS. TOMPKINS WRIGHT: That's who had interest,

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gas stations --

FRANK ROMEO: Yes. People call -- as part of our contract with Quicklee's a year ago, we had to take down the sign that was on the property. We didn't have a problem with that, because we had a deal with them. We hoped this deal would go through, but we had a deal with them.

People are still calling. We get one or two calls a week, and they are either brokers, they're users, and they are again, there are other people that want to go into the gas business or are in the gas business, they're auto repair. The big one is drive-thru coffee, both chains, franchises, and non-franchises.

MS. TOMPKINS WRIGHT: Are there any interest -- is there any interest from less intensive retail use? I understand it is not zoned for that, but is there interest from less intensive retail uses as well?

FRANK ROMEO: Well, you know, it's interesting. Those less intensive retail uses, as you call these mom and pop uses, and you hear this wherever I go. Everybody wants those.

Unfortunately, they're not existing today. And even if they did exist, we'd still be back here trying -- we would have to go through the same process, right? Because

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3 it's not a zoned use. I know you think it's less intensive.  
4 They don't exist.

5 If you look at, like, the bakeries in  
6 Rochester, we used to have a dozen places that made bread.  
7 Well, they are all out of business. There's only a couple of  
8 them left today, you know. Out of Gates, Marcicello's, they  
9 were in business forever, they are out of business. They are  
10 going out. People don't want to work like that anymore.

11 Look at the restaurants, the small restaurants  
12 are going out of business. They are not, for whatever  
13 reason, things have changed and it's more intense uses  
14 because, just because. That's the way it is. May not be  
15 what you want to hear, but it's reality.

16 CHAIRPERSON MIETZ: It is what it is.

17 Okay, hold on a second. Do you have something  
18 for Frank?

19 MS. McKAY-DRURY: I may or it's for the  
20 broker. My question is, in regards to the prospect list. I  
21 don't know who would be in that position, I don't know.

22 FRANK ROMEO: Well, let me tell you about  
23 that.

24 MS. McKAY-DRURY: Well, hang on, and I will  
25 ask the question. I am wondering, I am not seeing dates as

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3 to inquiries for this. I'm wondering how much of this was  
4 during the pandemic, to determine how much of this could have  
5 been based on how little, you know, brick and mortar space  
6 that people wanted and maybe there'd be an uptick after this?  
7 Can you speak to that?

8 FRANK ROMEO: Well, yes. When we're sending  
9 e-mails out and calling people, I'll admit, we don't keep  
10 good track of that, because I'm marketing multiple properties  
11 to multiple people. Sometimes we send out e-mails and we'll  
12 put two or three properties in there, even though we know  
13 that's not what they deal with. They may know somebody else.

14 So, I don't know if the dates are all there  
15 and we keep track of everybody that calls in. We're a small  
16 office, there's six people there, you know. And we've kept  
17 track of this.

18 I suppose I could get the dates, but there's  
19 not really a huge uptick in what's going on in this  
20 community. People aren't going, gee, let me get out of bed  
21 this morning and go into business. Let me go open up a  
22 flower shop on East Avenue. They're not even, don't exist.

23 It is not so much the pandemic, this was going  
24 on before the pandemic. The pandemic in my opinion, just put  
25 the final nail in the coffin, for lack of a better

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descriptive way to say it, for a lot of businesses. People that were just hanging on, hanging, you know, the business wasn't there on a lot of them.

But, it hasn't changed, and Terry can talk to it some more. You're not seeing people -- and now with the interest rates going up, and not so much the interest rates on the mortgages, but the interest rate that the government is now paying on treasury bills, that's affecting the real estate market. People are leaving the real estate market with their money, going to put money back into treasuries now. The rate's up to, I don't know, five and a half percent?

Why would you buy a piece of real estate if you're investing in a business to make that type of money if you're not really in that business already? It's safer to just go -- it turns.

MS. MCKAY-DRURY: Okay.

CHAIRPERSON MIETZ: Okay. Did you want Mr. Bromley to say anything else? Is that enough that you have your question answered?

MS. MCKAY-DRURY: I think it's sufficient. And I have a number of questions for others certainly, as well.

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CHAIRPERSON MIETZ: All right, go ahead.

MS. McKAY-DRURY: Most of my questions relate to the use variance aspect of this, but I'm going to be a little bit all over the place, so bear with me.

One of my first questions is in regards to lighting, and I know the Planning Board will look at this closely too. But, I just wanted to ask, in terms of the other lighting in this area, obviously the fire station and the country club, do you have any idea as to -- I would assume that the fire station, that is lit up 24/7, can you speak --

PEOPLE IN AUDIENCE: No, no.

MS. McKAY-DRURY: Can the applicant speak to the lighting in the area and the times of the lighting that's in existence and all of that?

BETSY BRUGG: The times of the lighting in existence, right?

Are you the best person?

NICHOLAS MERRIFIELD: I don't know if I am the best person, traffic.

BETSY BRUGG: We certainly can go out and gather information if you want us to, that's fine.

MR. GORDON: Before you go, Dennis, in this

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case may I make a general comment?

CHAIRPERSON MIETZ: Sure.

MR. GORDON: It would be important for our Stenographer to get a clear record to make sure that we don't have comments coming randomly from the audience. It disrupts --

CHAIRPERSON MIETZ: I agree.

MR. GORDON: -- the meeting, who is speaking, and it is also extraordinarily rude, and it is something that we just don't tolerate at our board meetings. So, please, no more outbursts from the audience. If you do continue with that, I will be asking the Chairman to have you escorted out of the room. Thank you.

CHAIRPERSON MIETZ: It's very difficult for the Court Reporter. She has a very difficult job.

Again, everyone will have an opportunity to speak. If something comes up in this discussion, write it down and when you do your presentation when you come up, please speak to what you wish, okay?

Go ahead, Frank.

FRANK ROMEO: So, tonight Betsy brought, and also I think Lou Tarrinoli from Quicklee's, stated that the lights on our site will be going off at 10:00, at the close

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of business, unless there's some other town regulation that somebody needed a little bit of light on for security purposes.

The fire department next door, I can't tell you what time it goes off. I certainly believe the neighbors would be able to tell you that. The other big operator behind us at the Friendly Home, they certainly have some sort of lighting around the property, even though they're not open at night. There are residents there that may need emergency services to come in, I presume a few times a year. So, I don't think there's a lot of lighting there. And the other lighting in the area is from the residents, from their houses.

CHAIRPERSON MIETZ: Okay, very good.

BETSY BRUGG: We didn't expect that question. John actually has a photograph on his -- he had gone by there before coming tonight and you can see it's kind of how it lights up.

JOHN SHIRAGULA: Yeah, normal practice for me is to drive by the site and I did snap a couple photos. I can pass my phone around to folks. So, I took a picture standing in the parking lot, basically the sidewalk looking northeasterly towards the fire hall. The first thing you see



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is the light pole just off the north edge of our property line. It does still light onto our existing parking lot, it does light up the fire hall parking lot quite nicely.

The bigger items that you see in the photo are the fact that overhead doors are all glass and the facility is mostly white inside, so the white from the interior of the fire hall is very evident. There are lights above each of the doors as well. That is what I really see in this photo.

To look beyond, you see the Friendly Home, because it is elevated to the east of our site. I took a picture looking north down East Avenue, you see the lights from the streetlights of East Avenue, you see the signal light. I took a picture directly west of our site, two pictures towards the residential properties. They are heavily treed and you do see some very light images of the house lights. And I did take a picture from the south and the predominate visual of that is the signal light at Allens Creek Road.

That's really what I see on the lighting.

MS. MCKAY-DRURY: Okay. And can -- are you willing to send those to us? If they get e-mailed to us so they can become part of the record?

JOHN SHIRAGULA: I can probably do that.

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MR. GORDON: If you could -- I don't know what the Board's intention is with respect to keeping the Public Hearing open or closing it tonight, but if you could e-mail those to Mr. DiStefano now before the Public Hearing is closed, it could be included in the public record.

JOHN SHIRAGULA: No problem.

MR. DiSTEFANO: And I do want to say too, is that I know this Board has every right to address any concerns that they have, but you do got to remember, it is going in front of the Planning Board. The Planning Board does look at lighting as an important issue as part of their overall review process. I'm sure that the Historic Preservation Commission will even look at some lighting aspects of this.

So, I get concerned that we start treading into an area that other Boards have more expertise in, than this Board.

MS. McKAY-DRURY: Yeah, and I understand that. I think just in the sense that because it's a use variance, because this business kind of necessarily requires a certain degree of lighting, that is I think why it is relevant to the use.

MR. DiSTEFANO: That's true, but they do

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not -- whatever business might be there, shutting lights off at 10:00 is not in any violation of town code.

MS. McKAY-DRURY: Okay, understood.

CHAIRPERSON MIETZ: Okay.

JOHN SHIRAGULA: I will forward Rick this evening.

CHAIRPERSON MIETZ: Thank you.

BETSY BRUGG: And I know that this Board sometimes puts conditions on approvals, so we didn't do on the record for the hours. The hours of operation proposed are 6:00 a.m. to 10:00 p.m. with the lights going off right after closing.

CHAIRPERSON MIETZ: Okay.

Heather, do you have more questions?

MS. McKAY-DRURY: I do. Okay. Next up, you had mentioned in your reference in the materials some video of a gas delivery. I don't believe that I have --

BETSY BRUGG: That's probably me that has a technological challenge and had trouble submitting it. We do have it and can play that. We can try to e-mail it to Rick, It's an audio, so you really can't hear anything but a little background.

MR. DiSTEFANO: I will forward that to you

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guys.

CHAIRPERSON MIETZ: Yeah, that's fine. So, okay, let's keep it rolling.

MS. MCKAY-DRURY: Okay. Then, I also am hoping to have you speak a little bit more towards environmental concerns. Previously, we've heard from some people even in the industry as to leaks, concerns about proximity to the creek. I see that you have addressed that a little bit. You primarily referred to the engineering materials, which, correct me if I'm wrong, I don't think we have any of those; is that right?

BETSY BRUGG: I don't know if you have --

MR. DiSTEFANO: No. The actual technical engineering did not come in this packet that again, would be something that would have to be submitted to the Planning Board as part of their review from a technical standpoint of storm water control.

BETSY BRUGG: We can address some of that. Lou can talk to you and explain to you the tank construction and how it meets current standards if you like.

MR. GORDON: We do have the DEC closure report that shows the tanks were removed off the site and is clean.

MS. TOMPKINS WRIGHT: But I think Heather's

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question is more on the new tanks going in. How are you regulating and will test, things like that?

MS. MCKAY-DRURY: Correct. In particular, given -- I think what is unique here is the proximity to the creek. So, is that preventing, you know, I had my other question and, you know, is that what you're talking about when we talk about storm water management?

LOU TARRINOLI: I could let John address that. As far as the tanks go, the tanks will be installed under New York State DEC direction, and inspection and the DEC, I believe they inspect them every year. They are the most updated tanks that has an interspecial, meaning if there was -- you have the tank, you have this area, and then you have another wall so if there was a problem the fuel goes into that middle and stays within that area.

And then, there's a, let's call it an alarm, that would alert that there is an issue, which rarely happens with these newer tanks. But everything is done under the watch of New York State DEC.

MS. MCKAY-DRURY: Okay, thank you.

CHAIRPERSON MIETZ: Do you want to also -- could you clarify the difference for the audience between the storm water management and this, which are two different

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things?

JOHN SHIRAGULA: Sure. This is John Shiragula again. The storm water management at any site is very critical. This site is located, as I mentioned before, the Irondequoit creek watershed and Allens Creek is approximately about 100 feet to our east. This site has existing catch basins and dry wells in it. A large portion of that does go to East Avenue storm sewer system, so we're going to continue to do that.

But the modifications we'll make to the pavement, as I've mentioned before, there's 11 percent reduction in the pavement. We're obviously going to sheet flow some of the drainage to the east, which is to Allens Creek. But, and prior to that we're going to control that with a bio retention area. The bio retention area will be designed per Town of Brighton standards, reviewed by the town engineer, designed by a professional engineer. That will handle any of the first flush contaminants from the parking lot from any oil or small spills such as that.

Then, that storm water will continue to migrate further east to Allens Creek, as it does today. So, we're not changing any of the drainage patterns, only improving the situation.

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MS. McKAY-DRURY: Okay. Thank you.

MR. DiSTEFANO: So, John, just a clarification. Right now, just basically sheets off into Allens Creek, that the rear portion of that property sheets off. So, any spills that were previously on the site just basically free flows to the creek. Now, with what you are proposing, that water is going to be captured, hopefully cleaned to some degree, before it is released to the creek?

JOHN SHIRAGULA: Yeah. It's slowed down, we will retain it on site, let the contaminants and any silts stay in that bio area. The bio area is managed, and the town has a program where we keep an eye on these things, and cleaning and maintaining from time to time.

So, I think it's going to be a better use, a better quality for the environment, post construction than it is today.

MS. McKAY-DRURY: Okay. The last thing I wanted to touch on, I think will be in regard to the traffic study.

CHAIRPERSON MIETZ: Okay.

MS. McKAY-DRURY: My questions for you are, first of all, I see that the -- you use the growth rate for the Town of Penfield. And obviously I understand it has a

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proximity to Penfield, but also there are people in the Brighton area who would be expected to go to this location too. So, I was wondering the difference was two percent for the Town of Brighton versus .5 percent for the Town of Penfield.

Did you look at anything in regards to if you had used that two percent? And can you speak to like that number, you know, of one and a half difference percentage, does that make a big difference in your field?

NICK MERRIFIELD: So, the two percent for the Town of Brighton is for the whole town, and we did look at the individual roads of East Avenue, Elmwood Avenue, Linden Avenue, and Allens Creek and we did determinate that traffic historically has been decreasing. So, because of that, and the proximity of, you know, the Town of Penfield to the project, we determined it was most appropriate to use that half a percent growth rate.

Now granted, we used a one year build out for the background growth, and I can say that between the half a percent and two percent, it's not going to make any kind of difference in the results.

MS. McKAY-DRURY: Okay. And, I believe there was a reference made to the idea that this sort of business



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3 doesn't increase traffic, it just services the people that  
4 are already there. Can you speak to -- I have seen some  
5 concerns from the community with respect to the traffic study  
6 not considering increases in the traffic caused by the  
7 business itself. So, can you speak to that? Because you're  
8 talking also about what your software does, and I am  
9 wondering if your software does incorporate, to some extent,  
10 people going in and out of there, and potentially some  
11 increased traffic.

12 NICK MERRIFIELD: Right. So, as I said in my  
13 presentation, there's 24 vehicles entering and exiting in the  
14 morning, 30 on school dismissals, and 29 in the afternoon.  
15 And data shows that 60 to 65 percent of those numbers will be  
16 from the existing roadway where the remaining 40 or  
17 35 percent will be new trips that will not be on existing  
18 road.

19 MS. McKAY-DRURY: So, the conclusions that you  
20 reached in your traffic study do account for some increase  
21 traffic flow because of this business going in?

22 NICK MERRIFIELD: Correct, yes.

23 MS. McKAY-DRURY: Okay. I think that's it.

24 MR. DiSTEFANO: Just a quick follow-up. You  
25 mentioned that you looked at for growth for Brighton and

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3 Penfield. What about Pittsford? Pittsford is literally less  
4 than a thousand feet away from the gas station.

5 NICK MERRIFIELD: Right. And, I don't know  
6 the number for the growth rate that's in that 2018 memorandum  
7 from Monroe County DOT. But, like I said, we looked at the  
8 specific roadways that we are looking at and we determined  
9 that historically traffic is decreasing. So, because of that  
10 we thought that the half a percent was accurate to use.

11 CHAIRPERSON MIETZ: Okay. Who else has  
12 questions?

13 MS. SCHWARTZ: Looking at table six, and right  
14 now if the East Avenue and Elmwood Avenue southbound  
15 intersection, and the westbound left at Linden Oaks is LOS  
16 level service D now. I believe that the firehouse corner,  
17 that's really not good at D right now, at the firehouse. And  
18 also, your overall LOS for anything is a C. I find that it's  
19 going to be C, but I don't have a specific project. But,  
20 over the years, Cs easily morph into D. And I am very  
21 concerned that it shows this many, but it won't take long  
22 before it does increase.

23 NICK MERRIFIELD: Right. And we look at  
24 existing conditions as they are today and determine there are  
25 some Cs and the other D, with that westbound left. And

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3 however, we managed to look at the impact of the proposed  
4 project on how it will be with those existing background  
5 conditions, and we determined that when we looked at the  
6 report and exactly which approach changed.

7 MS. McKAY-DRURY: Can you help me visualize  
8 which one westbound left is at Linden?

9 NICK MERRIFIELD: So, you were to basically  
10 turn left onto East Avenue going southbound.

11 MS. McKAY-DRURY: Okay. So coming from the  
12 expressway you would be turning left?

13 NICK MERRIFIELD: Yes, correct.

14 MS. McKAY-DRURY: Thank you.

15 NICK MERRIFIELD: And, yes, it is a northbound  
16 through approach at the East Avenue and Elmwood Avenue  
17 intersection. That went from a level B to a C. However,  
18 that --

19 MS. SCHWARTZ: Are you at table six?

20 NICK MERRIFIELD: Yes, there's that level of  
21 service D which is the westbound left, but we don't affect,  
22 we don't change that level of service. It stays as it is.  
23 So, that's an existing condition.

24 MS. SCHWARTZ: The full build out, it is still  
25 D, okay? So that's not good. And my question really is,

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3 that C very easily could turn into D and all of your overalls  
4 are C.

5 NICK MERRIFIELD: Correct. But, if you as  
6 well will note -- or, I guess, the threshold between lever  
7 service C and level service D is 35 seconds and all of the  
8 level service Cs are below 25 seconds, so it will take a  
9 decent amount of traffic to bring the level service C to a D.

10 CHAIRPERSON MIETZ: Okay. Do you have a  
11 question?

12 MS. TOMPKINS WRIGHT: Yes. This is in regard  
13 to the crash investigation. I know one of the community  
14 members had a concern regarding the crash rate at this  
15 intersection in comparison to statewide crash rates. Is that  
16 material given it's both under one, and how would you  
17 classify that?

18 NICK MERRIFIELD: Like I said, the majority of  
19 the crashes were rear end crashes and that's just typical for  
20 a signalized intersection. Whereas the main way to kind of  
21 reduce that would be to work with New York State DOT to maybe  
22 get them to increase the yellow time to make sure that people  
23 aren't slamming on their brakes when they see the yellow or  
24 red light. But, yes, that's kind of typically of what we're  
25 seeing at other similar intersections, that crash rate.

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MS. TOMPKINS WRIGHT: And this type of development, given the types of crashes that are happening, it isn't likely to increase that crash rate anymore?

NICK MERRIFIELD: There will be a minimal amount of traffic added as I've discussed previously, and there will not be a significant increase or nothing from the project will result in more crashes.

CHAIRPERSON MIETZ: Okay. Other questions for this gentleman or any of the other professionals that are here? Okay.

MR. GORDON: I have one question for Mr. Shiragula, I believe. There is this three and a half foot high decorative wall that is proposed along East Avenue. Is that going to be sitting on top of any kind of berm?

NICK MERRIFIELD: No, it's not. The bottom is the same elevation as the sidewalk.

MR. GORDON: Thank you.

CHAIRPERSON MIETZ: Very good. Thank you very much, everybody, all the professionals, thank you very much.

At this time, can I get a show of hands of how many people in the audience would like to speak?

Okay. So, we will just take some order here and we'll start in the front on my left, and then go that way

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and come back.

So again, feel free to bring up, but I would appreciate everybody's ability to stay focused on the issues you want and not be repetitive. Thank you.

PETER WEISHAAR: Good evening. My name is Peter Weishaar, and I'm with McConville, Considine, Cooman, and Morin. We represent Robert and Karen Bentley who live directly across the street from the project site on the corner of Elmwood and East Avenue at 3939 Elmwood.

I submitted a letter on August 2nd, and I'm not going to repeat everything that's in there. I'm going to treat this more in the nature of reply, to some of the things that have been said. And I know the Bentleys want to speak to a couple of factual points.

So, just kind of three general points. There was material in the record that the applicant submitted about the expenses of renovating the property as part of the basis for the reasonable return. A lot of these expenses for the renovation, they're going to under take those even if they do get the variance. There is evidence in the record about there is no insulation, the bathroom needs to be redone.

So, if I can't really tell what needs to be done to make it an office use versus what needs to be done

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anyways to make the property, you know, a gas station again.

One of the things that came out in the materials that were submitted by the applicant was a copy of the decision granting the variance in 1988. I don't believe there was any substance to that, other than the fact that it was approved. So, I don't know what the findings were, and there was a comment tonight from Mr. DiStefano that that was never built, the canopy.

So, I'm sure you know this, but I still want to point it out that under your code, Section 219-5F, unless there's construction begun within a year that prior variance becomes null and void. So, that really, you know, especially without having any of the findings associated with that, it's really not relevant to our consideration tonight.

Finally, the last thing I want to point out is, I disagree with the nature of the hardship being self-created. I do think this is a self-created hardship, which would be absolutely fatal to a request for a use variance.

In my papers we cited an appellant division case, but it was not from the Fourth Department. But, there are a couple of Fourth Department cases, I just want to read a little snippet of each of the cases that are actually

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involving local Zoning Boards of Appeals and what the appellant division says about this very issue of the self-created hardship and applicants who buy property knowing what the zoning is.

So, the first case is the case of Stan versus Board of Zoning Appeals for the Town of Greece. Cite is 283 87 995 and the appellant division said, the evidence establishes that the owners and investors who purchased the property on speculation fully knowing that the area was zoned residential, but expecting that zoning to change it to commercial. Quote, hardship is self-created for zoning purposes where the applicant for the variance acquired the property subject to the restrictions from which he or she seeks relief. And they also cite the Court of Appeals case of Clark versus Zoning Board of Appeals 301 NY 86. And that case was decided in 2001.

The other case from the Fourth Department is Mount Wild Enterprises, Inc. Vs. DeRoy. That's a case involving the Town of Gates Zoning Board of Appeals.

And similarly, the Court held moreover, petitioner may not claim hardship because with knowledge of the zoning restrictions and acquired the property for a use not permitted in the district. That case is actually cited



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159 EE 2nd 1015. Both Fourth Department cases what they're binding on, on the courts in Monroe County.

And so, if you are -- if it's a self-created hardship, you cannot grant a use variance. You don't -- unlike an area variance, if you fail to meet any one of the criteria, there's, you know, the variance needs to be denied for a use variance. Thank you very much.

CHAIRPERSON MIETZ: Thank you.

Okay, who's next?

KAREN BENTLEY: Good evening. I'm Karen Bentley, this is my husband Robert Bentley passing out a letter from a real estate.

CHAIRPERSON MIETZ: Ms. Bentley, can you put your address into the record?

KAREN BENTLEY: Karen and Robert Bentley, 3939 Elmwood Avenue.

CHAIRPERSON MIETZ: Thank you very much.

KAREN BENTLEY: The letters from Esther Crakower, she was the listing agent for our property that we purchased in 2019. In the letter she states, I have been a licensed real estate broker and had lived in Brighton for 40 years from 1983 to 2000, I was the broker owner of Coldwell Banker Select Properties at 1685 Monroe Avenue in Brighton.

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I sold my brokerage and am currently actively involved in residential real estate at Hunt Real Estate ERA located at 3300 Monroe Avenue in Brighton. Without exaggeration, I have been involved in thousands of transactions in Monroe and Ontario counties with the majority in Brighton and Pittsford, New York.

It is my strong professional opinion that the proposed redevelopment of a former fuel station at 3108 East Avenue will have a definite negative impact on the local quality of life, making selling a home far more challenging and therefore will decrease the values of the immediate surrounding and the Brookside neighborhood homes.

Please feel free to follow-up with any questions or concerns. Sincerely, Esther Crakower, licensed associate real estate broker, Hunt Real Estate.

The next thing I would like to address is the canopy-like sign and my husband has -- where are you?

So, here is the canopy-like sign that he is going to hold. And, if I may point -- I won't get too close to anybody -- but, if I may point out just so you can see, this area here is a rectangle immediately covering up two pumps. It is not a canopy of any kind or could be called a canopy dash like structure.

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MS. MCKAY-DRURY: I'm sorry, what is this picture from?

KAREN BENTLEY: From the 1988 application for a canopy.

MR. DiSTEFANO: That was existing prior to the request of a canopy. That's not what they got the variance from.

KAREN BENTLEY: But, it's just to clarify their point.

CHAIRPERSON MIETZ: Okay.

KAREN BENTLEY: The second picture I'm going to show you is the fact that -- this one here -- is that, in the history of the gas station there's never been a canopy. And yet, there were businesses that were there in the 80s, into the 90s, all the way up to 2018 that were able to profit.

But, on the other hand, they also went out of business because the tanks that were underneath to hold the gasoline for the two pumps that existed, were considered to be hazardous by the EPA. So, they removed the tanks and therefore it reverted to a BE1 zoning, as the building is now.

The second thing -- the third thing I want to

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address is the fact that the next picture shows what a lit gas station looks like. Now, I admit there's more than two pumps, but it is quite bright. And then, on the left side of the picture you can see my husband standing next to a pump at the Quicklee's in Henrietta. That pump is taller than my husband by more than a foot and he is just shy of six feet.

These pumps are gigantic. And they are lit up and there's two of them that will produce beyond what we would think is acceptable for light brightness.

And also, the last few things are that the house on the south side of 3108, which is the blue house, is a residential house. It is being rented at this time and people are actually living there. The building behind 3108, has been used by the fire department for training purposes and the Friendly Home uses that building that. And there are people going in and out of the driveway often.

One of the things I wanted to state is that we did go to Avon, New York to look at the Quicklee's in Avon, and my husband and I visited one of them where they had two sets of gas pumps. One of the sets of gas pumps had a canopy, the other set and there were two gas pumps together, had no canopy. Yet, all four pumps were available for pumping gas.

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So, it's kind of ironic that the Quicklee's in Avon has a gas station without a canopy and yet they're able to sell gas there.

The traffic, one thing of concern, because the fire station is at the corner of Linden Avenue and East Avenue, I would like you to posit this scenario: People coming off of Linden Avenue traveling west that will turn left to go south on East Avenue. Consider this scenario during rush hour when the traffic is lined up at the light. Traffic has gotten through the light to turn left to go south on East Avenue. And, if there was such a business at 3108, there is no left turning lane to go into that business. So, a left turn vehicle who has their signal on to turn is presently blocking traffic from flowing through on East Avenue.

A call comes in to the fire station, the fire trucks are trying to get out of the fire station and there's gridlock from Linden Avenue traveling west and on East Avenue traveling south in that particular section. And it's of great concern that the fire station might not be able to get out of that gridlock fast enough. There's no traffic lights that will fix that scenario.

So, with those few things I would like to, you

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know, complete these remarks. And, if anybody has any questions?

One last thing to Mr. DiStefano, I e-mailed you pictures of headlights that come across from the exits from 3108, images showing headlights blaring into our property and shining onto the East Avenue side of our house, actually illuminating the whole side of the house.

So, I sent you I think three pictures. I don't know if you received them. Thank you.

CHAIRPERSON MIETZ: Thank you very much.

Next, please?

LINDA STEVENSON: Hello. My name is Linda Stevenson, I live at 12 Creekdale Lane with my husband. We have been there for 35 years and most of my comments are being sourced from the October 19th meeting that the Quicklee's represented had some of our neighbors. Some of this may be repetitive, but it has to flow right.

Okay. So, Quicklee's has 30 store, we all know this. I go to the one on Lehigh Station to get to the barn for my horse. It's an incredible gas station and it's huge and that's great. So, I'm not against Quicklee's, but in our neighborhood it is a different story.

And what happens when we talk to them during

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the meetings about Quicklee's, and just as it happened tonight, everything was about the gas station. But there's also a convenience store too, so that means it's going to be even more traffic.

So, what I want to do is to go through this and see if I can make sense to you of what I'm trying to say. I'm going to touch briefly on what I submitted because I had some additional insights. So, yes, there are deliveries. Ms. Brugg said there were 12 to 24 compartments. But, if they're getting their food from Pepsi or Coke, those trucks are 50 to 53 feet long. That's huge.

During the meeting we asked Mr. Tarrinoli how is everything going to fit? And he showed us a really nice graphic where he had the entrance and the exit. He had a truck go in and it went through on this side, the street side of the property and everything fit and cars could go in and get gas.

So, we asked what happens if more than one truck is there? How are they all going to fit, because the property is small? And he said, he didn't think that was going to happen. And that is such, the fulcrum upon which this whole project is resting.

This is a brand new site by their own

1 admission. This is a boutique, this is something where all  
2 of the data series you have from all the large great gas  
3 stations that Quicklee's has and some Mobil, that all goes  
4 away. Everything is based on hypotheticals. They can't give  
5 you any data, they say, we think. So, what are we left with?  
6 Not much.

7 What we're left with is somebody who wants a  
8 deal to go through based on he thinks, and then when  
9 something falls apart they just shrug their shoulders and  
10 say, well, it was hypothetical and that's what we thought we  
11 were doing.

12 You're affecting the whole neighborhood.  
13 That's too little to base your decision on. So, if the  
14 trucks are there the only way the big trucks and the little  
15 trucks and the cars can fit, is if some of them hang out in  
16 the road, because there just isn't enough room.

17 Okay. So, security, he said there would be  
18 one person on site. And so, we asked, what happened if  
19 there's a holdup or whatever. And he said, well, okay. If a  
20 customer gets unruly, the one person can push and call 911.  
21 Not too many times is someone robbing a store will allow a  
22 person to push a button to make a phone call to call 911.

23 I didn't think that was good enough for you  
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3 guys. I did research and found out that the FBI and their  
4 2020 study said, that C stores -- that's convenience stores,  
5 and this is a convenience store and a gas station -- are the  
6 fourth most common location for violent crimes, and gas  
7 stations take seventh place.

8 So, out of all the crime that happened in  
9 2020, C stores and gas stations were four and seven  
10 respectively on having the most violent crimes. That means  
11 guns, to me, if it is violent.

12 So it's potential to bring guns into the  
13 neighborhood or near the neighborhood. I don't think I'm  
14 overexaggerating. If that's the case, then I don't how we  
15 are going to be protected.

16 There's a lack of transparency, and slicing  
17 and dicing data so tight that if you -- that so much is left  
18 out and unanswered. So, you can't come in and have an  
19 intelligent conversation because you're dealing in ether.  
20 There's very few hard facts.

21 For example, the site plan, I wanted that page  
22 of the site plan so badly I wanted it in large, never got it,  
23 that's okay. And then, I find out at this October meeting,  
24 hey, there are three other pages and we never got it. So,  
25 thinking, are we going to get it? No. So, what is in the

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three pages of the site plan that we are not able to see? I can understand not wanting to know what his salary is going to be. I understand not knowing what their profitability is going to be. We don't need to know that, that's not our business. But it would be nice to know what is going on with the site that will ultimately affect us.

Destination, destination, Mr. Tarrinoli has been saying, we're not a destination. I looked up the word destination meant, I knew it wasn't legal term of art. So, I just wanted to know. And, Merriam Webster dictionary says it is a place one is journeying or going to. You're a convenience store, you're a gas station, you're a charging station.

Yes, he said, we are not Walmart. Okay, that's fine, but in order to compare apples to apples, people have to go there and buy things, so you are a destination. And, if the shopper has a choice between going there and getting a quart of milk, or driving over to Pittsford Wegmans or Country Club, it will be faster to go there. So, it will increase traffic.

Quality of life. Somebody said on your team, hey, why are you staying open until 10:00? He said, well, usually we stay open until 12:00. But we sat around and

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discussed it and we decided 10:00 would work. Why didn't the traffic study look at what traffic was like between 9:00 and 10:00 at night? Because if they had included that time they would have found out, hopefully, that what we have lived through is that it's quiet.

Rochester, unless you are downtown, rolls up its streets very early, 9:00 or 10:00 at night, is not a lot of sales, so why not shut down earlier and reduce the impact of the lights that way? But their feeling is, nope, 10:00.

Accidents are caused by chaos and complexity. Chaos is when somebody does something that they're not supposed to be doing, like go through an intersection. Complexity means it is difficult. So, if you have trucks going in and coming out, and there are cars there, and they're trying to go in and out but there's no shoulders to move, Mr. Tarrinoli said the traffic light will fix that. No, it won't. The traffic light just stops. How many people have been on Monroe Avenue waiting for the traffic light to change and out of all the store parking lots a car comes out and they want to go and they start nosing in, want to cut ahead of you, that's going to happen. They're not going to stay there quietly while the traffic goes by, sometimes not all of the time, I grant you that.

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3           So, I talked to Nick outside about the traffic  
4 study because it really bothered me and seasonality wasn't  
5 included. And I know it's a reputable company and I know  
6 their studies are accepted, but it just doesn't make sense to  
7 me that a chart in the documents said rush hour for one hour  
8 was between 4:00 and 5:00 p.m. That's not rush hour in my  
9 book, rush hour is 6:00 to 6:30.

10           We were told that the traffic would not have a  
11 significant adverse effect on surrounding roadways. I don't  
12 know what that means. How do you measure significant adverse  
13 effect? Is it a term of art or something that goes along? I  
14 don't know.

15           Other models are built on assumptions.  
16 Assumptions are built on prior studies. There are no prior  
17 studies. Everything is just that's what they think is going  
18 to happen, so therefore it could be all wrong.

19           He said that they're not bringing traffic into  
20 the area -- oh, I already said that, sorry.

21           So, environmental, I looked it up on my phone  
22 just to be sure. This is going to sound strange, I'm bring  
23 in China. I know we don't live in China, but China is going  
24 through a bad drought, bottom line is they're burning a lot  
25 of coal. Bottom line, we're getting the affects of the

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pollution of that coal burning.

So, pollution is increasing here in New York, throughout the US, coming in from China. There's also a study on gas stations. Gas stations vent far more toxic fumes than previously thought. Gasoline vapors, invisible odors, all that stuff, so you're allowing a site to become more dangerous to the neighborhood because it's increasing pollution.

I forgot, when the cars are going in and out and waiting, there's more gas being burned by the idling, there's more gas being burned when your car, you are sitting in your car waiting for someone to move so you can get to the pump and push your foot on the gas, more pollutants.

So, we -- you are introducing more pollutants, you're introducing more violence, you're also -- I'm curious about the environmental impact as well. They are close to Allens Creek. When I asked to Mr. Tarrinoli a question how many prior installations do they need to discuss with their engineers? Because I asked him the environmental question and he had said, well, that is an engineering question. So, what's the outcome?

All right. How many current installations are close to the waterway? We do not know the answers.

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3           So, how many of their installations are over  
4     aquifers? Aquifers is water that is underground, that is  
5     encased in rock or sediment that feeds into the waterways,  
6     lakes, rivers, Allens Creek. And do any of their buildings  
7     go over aquifers? I don't know.

8           So, what we have is, we have -- we are being  
9     asked because Mr. Romeo decided to buy a site for a use that  
10    was already denied way back when, but he was going to buy it.  
11    You look in his report of the people that he called, some of  
12    those people had just one name, no dates. There was, like,  
13    two calls per month, there's no, there's no rigger. There's  
14    no thought. How can you be a good business person, go into  
15    something and not do all of the research, and say, oh boy,  
16    I'm sorry. I goofed up. Business deals do go back, I don't  
17    think it's up to the neighborhood to bail him out. I just  
18    don't.

19           It -- he made a decision, it was wrong, so  
20    walk away and take a loss. That's all. I don't want the  
21    increased crime. I don't want the increased pollution. I  
22    don't want the increased traffic. And the property values  
23    will go down. Thank you, I hope you found that interesting.

24           CHAIRPERSON MIETZ: Thank you.

25           Who is going next?

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MIRANDA HARRIS-GLOCKER: Hi. My name is Miranda Harris-Glocker and I live at 94 Allens Creek Road. I am a local physician, an OBGYN, my husband is a local physician. We practice in Brighton near Highland. We have three young children, they are 7, 9, and 12. So, two of them attend Allens Creek Elementary. Currently, one is now middle school.

I brought this up at our prior meeting but because I know this is the big one where maybe decisions will be made, I feel like the personal element should be heard.

So, we've lived there for nine years now. We run, we take the kids biking, we walk. We love our neighborhood. We moved there because it was safe and relatively quiet. It's near to the schools. The school has a playground behind it and we take the kids to it.

I can't tell you how many times I or my husband have been nearly hit by a car. As it is, as it stands right now with the traffic. Specifically, that right turn from East onto Linden right by the fire company there, and nearly been hit when we had our kids. People don't slow down, they're in a rush. They want to get where they want to go.

I think rush hour needs to include also drop

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3 off and pick up times at the Allens Creek Elementary school  
4 which is 8:00 to 8:30, and then 3:00, because that is a  
5 disaster. As it stands, the way they changed the traffic  
6 pattern people are constantly trying to zoom around you as  
7 you try to take a left into the school to pick up your  
8 children.

9 And I started walking with my kids in COVID  
10 because we were worried about transportation and the bussing  
11 situation, and we stopped walking because a car jumped the  
12 stoplight or the curb, took out the light pole that was  
13 there, the walking light, and nearly killed us, frankly.

14 Any time you are adding another entry point,  
15 and exit point on a road, I don't understand how that will  
16 not lead to more potential traffic incidents and chaos.

17 Another couple short points, you know, in the  
18 medical field if you want to approve something, you can do a  
19 study and prove it. I just argue that you can do that with  
20 anything. So, I agree that I think it is a very close  
21 margin, the C to D delineation. I don't think it would take  
22 a lot of extra traffic to make a huge difference in the area.

23 Also, we are Pittsford. I fall into the  
24 Pittsford area, we didn't include Pittsford in the traffic  
25 analysis. There's a huge condominium going up right across



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from, near Oak Hill essentially. Hundreds of condos that are going to be another traffic addition to this area.

And finally, the point I have is, planning for a business, part of that involves researching. Will you be able to make it here? Is this -- are you going to be able to use what you have it for and need it for. And, my husband has a phrase all the time, poor planning on your part does not an emergency on my part make.

So, just because this isn't an ideal situation, it's got a lot of regulations, doesn't necessarily mean this particular project needs to happen here. So, I would ask that you not approve the variance. Thank you for your time.

CHAIRPERSON MIETZ: Thank you.

Who do we have next?

LAWRENCE RAY: Hi. My name is Lawrence Ray, and I live at 3861 Elmwood Avenue. I have been a resident there for 32 years. First of all, not much has changed in that neighborhood in 32 years. There's been a new sidewalk put in, the intersection at Elmwood and East changed back in 1995. So, nothing much has changed in 32 years.

Also, property values have not zoomed like they were purported here. My property value has probably

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gone up 150 percent in 32 years, which is a pretty pathetic return on an investment. The traffic study noted did not address the additional over 150 units being introduced on East Avenue that was known. Should be noted that that study is basically irrelevant at this stage, it did not include the proper data.

I have listened to a couple of your meetings in the past and you typically put stipulations on property and variances. And I would suggest putting a couple other stipulations. I was glad to hear that things like EV chargers, that at this stage you're only talking about heavy ready. I think there need to be charging as part of the plan, ready to go on day one if they do get the variance approved.

The lighting, the hours should be reduced. It was sort of, you know, randomly picked that 10:00, why not 8:00? Now, one other idea that I had is, this is a historic building, and looking at what was designated a historic building is because gas stations in the change of the economic climate and introduction of motor vehicles was a big thing back in the 20s and 30s. So, why not make a gas station really as a historic gas station? No canopy, make it a full service gas station. People would love to have

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3 somebody come up and pump gas for them. I know a lot of  
4 little old ladies in my neighborhood would love to have  
5 somebody pump gas for them.

6 So anyway -- and pay the bills -- so, I am  
7 going. Those are my comments. Thank you for your time.

8 CHAIRPERSON MIETZ: Thank you very much.

9 JULIE JACKSON RAY: My name is Julie Jackson  
10 Ray and I also live at 3861 Elmwood Avenue. And when I  
11 listen to the comments of our neighbors, the one thing I  
12 wanted to emphasize was neighborhood. Now, when we first  
13 moved to our present residence, there was no sidewalk and it  
14 was very apparent to us that young children walking to school  
15 were walking next to a road and that we had concerns for  
16 safety.

17 And it was the goodness of Brighton to add  
18 that into the change that was made at that intersection. It  
19 was a redesign, and they included our concerns. And I just  
20 wondering, I am so happy that that was the -- now, what's  
21 happened since then, is I have been witnessed a neighborhood  
22 grow, and we have families that come there because they see  
23 it is a safe community. And, it would be such a loss not  
24 just value of home, but to the people that live there. And  
25 this is what we're really wanting you to consider.

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So, not to be too redundant, but this is what Brighton is made of is community, and we have that, it has to be a paramount issue. Thank you.

CHAIRPERSON MIETZ: Thank you.

Okay. Who else do we have that wants to speak please? Okay. Hi. My name is Chris Orbenbach, I live at 3465 East Avenue. The traffic patterns or the traffic studies do not take into account three things. First of all, the 172 apartments that are going in at Kilbourn Place less than a mile up the road. Everybody is going to feed down onto the expressway on 441.

The second thing, St. John Fisher University they have 1200 students at least on campus. Where are they going to go? They're going to go down to the corner gas station or go down there because it's shorter than going into East Rochester to all of the gas stations that are over there, and you also have Nazareth College.

The figures they used for the study don't take into account everything that is east of Allens Creek Road or south of Allens Creek Road. And the growth in that area is going to be so bad, the traffic is so bad, yesterday morning at 10:00, way past rush hours, it took me ten minutes to get out of my driveway onto East Avenue because there was an

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3 accident on 490 and everybody comes off on Penfield Road,  
4 Elmwood Avenue, 441, to go east on East Avenue and the cars  
5 are going through there at 40, 50, 60 miles an hour they're  
6 passing in the turning lanes.

7 And, if you think what is going to happen down  
8 on Elmwood and 441, is just going to be horrific. The right  
9 turn lane in front of the firehouse to get onto 441 to get on  
10 the expressway is absolutely constant with cars going through  
11 there. And they go through at Allens Creek intersection at  
12 30/40 miles an hour, they switch from the left turn lane to  
13 go into the right lane, and then switch back over to Elmwood  
14 Avenue.

15 There are three lanes in front of where the  
16 firehouse is, and for all of that traffic to then have to  
17 handle anything going in and out of that proposed gas station  
18 and convenience store is going to be deadly. The figures do  
19 not show what is going on in that area and what will go on.  
20 Thank you.

21 CHAIRPERSON MIETZ: Thank you.

22 SHARON GOODWILL SIRONE: Hello. I am Sharon  
23 Goodwill Sirone, and I live at 2960 East Avenue. I have  
24 lived on East Avenue since 1974, and I can't tell you the  
25 number of times I have driven by the structure we are talking

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about and scratched my head and said, I wonder who approved this gas station in this neighborhood.

Tonight I learned that the gas station is pretty old, it was there in 1929, since 29. I am assuming that when it was built perhaps access to gas stations were far distant and maybe there was a geographic reason why placing it there met a need.

But today, there are gas stations a hop, skip, and a jump away. My question is more broadly based. Does Brighton really need to support a gas station especially one that is located in one of its nicest residential areas.

To me, what we've talked about tonight is trying to fit a too big foot into a too small shoe. This project just does not fit the area. I know, and I thought when the new firehouse was built, the Town of Brighton attempted to approach this property. It was not successful in the purchase.

When I saw the gas station close more recently, I thought, oh, this is wonderful. Wouldn't it be a lovely pocket park or something that could be built that would further the usage of the fire department, which clearly there is a need for the fire department. We cannot argue the same for yet another gas station, whether or not it's

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

attractively arranged in a Tudor-style and has more lawn or has something to make it look attractive.

So I'm arguing in the broadest possible sense as to whether or not the town really needs another gas station, but in particular one located here. Indeed, things have changed since 1929 in such a way that it does not support this project. Not, as opposed to some of the arguments that have been made that the changes over time do support the project. I'm arguing that a change for the time means time is up for this project, in my opinion.

CHAIRPERSON MIETZ: Thank you.

CARLA FUCILLO: Hello. Thank you for your time. My name is Carla Fucillo, I'm a resident of the Brookside Drive neighborhood. I have lived there for approximately six years with my two children who are here with me, my mother and my husband. My husband is a volunteer fire fighter at the Brighton Fire Department at the squad directly adjacent to this proposed development.

I am also a local physician and I have very serious concerns regarding this proposal. One of -- in the interest of time, and to minimize redundancy, I won't repeat a lot of what was said. I wanted to point out a couple other things.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

The first of which is that, the traffic I know it has been stated multiple times, but I think deserves really strong emphasis and respectfully to the members of Quicklee's saying that, we know this neighborhood, the people that know the neighborhood the best are the residents of the neighborhood and we can speak with far more authority on whether or not the traffic is disruptive to our livelihood and to our way of life. And it absolutely is.

I think that the traffic pattern may certainly account for the crashes, but I don't know to what extent they account for near misses. There have been a number of near misses, that all of us have experienced and I think the increase in traffic will certainly contribute to that, even if in a small amount. If it were you living in that area it would absolutely bother you and it would be relevant to you and to your family with small children.

The second thing I wanted to point out is that the development would also essentially limit the ability of children from Southlanding, the other side of Linden and the other side of East Avenue, who actually attend Allens Creek school, it would limit their ability to traverse that sidewalk to get to Allens Creek.

We have close family friends that live on



## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

South Landing, they walk to Allens Creek from South Landing and that essentially would be abrogated for them because that passageway will no longer be a safe passageway for those children, and there's no crossing guard in that area.

Lastly, again, I wanted to make note of the fact that the convenience store has been discussed. Will -- with the sale of alcohol and drugs in some -- excuse me, alcohol and tobacco, in some parts of the country the sale of alcohol and tobacco within a thousand feet of a school or playground is prohibited. Does the State of New York have more lenient rules on that? But I think it needs to be underscored that several studies have demonstrated that when children are exposed to areas where alcohol and tobacco are used, they are more likely to be offered alcohol and tobacco and other drugs and they're more likely to be exposed to people selling drugs and using drugs, in this case alcohol and tobacco. I think that cannot be underscored enough. I think that's really, really important.

Lastly, to the quality of life issue, a lot of us made sizable financial investments to live here, we have chosen this lifestyle, we have chosen to live in a quiet neighborhood. And I have to attest to the fact that the fire house is actually dim at night.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

1  
2  
3 And again, going back to the issue with  
4 getting in and out of the traffic -- getting in and out of  
5 the firehouse coming from our home to attendant to calls, my  
6 husband is sometimes unable to traverse East Avenue to attend  
7 to a call, and that really needs to be taken into  
8 consideration.

9 So, I just wanted to say that the financial  
10 hardship will actually end up being on this community. And a  
11 very cursory review of real estate outlets as a non-real  
12 estate professional reveal that it's well documented that gas  
13 stations and convenience stores diminish property values and  
14 wasn't brought up earlier, but it's even a very cursory  
15 review from a non-expert, can you tell you that gas stations  
16 will lower property values.

17 And I just feel that it is not fair or just to  
18 the residents of the community to have to bear the brunt of  
19 someone else's financial decision. Thank you.

20 CHAIRPERSON MIETZ: Thank you.

21 Okay, do we have anyone else to speak?

22 Thank you, yes. Can you please raise your  
23 hands, because I'd like to get an idea of who is really  
24 trying.

25 So, please come up, come right in.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

BRIDGETT STONE: Good evening. My name is Bridgett Stone, I live at 1110 Allens Creek Road, which is directly across on the corner of East and Allens Creek Road.

So, I know there was some discussion that the lighting and some of the site plan issues aren't tasked with this Board. I think it speaks to the change of the neighborhood that would take place with some of the points I want to make.

So, in the crash data there was no data that was taken from 2020 or 2021. I will say there was a really bad crash on August 24th at 3:30 right around when school would be, traffic will be going around. There was a motorcycle and a, I think it was a truck of a landscape or something collided, and it was a super bad accident. So, I feel that the crash information is not really accurate looking at anything from 2020 on.

The past birates using 50 percent instead of 60 to 65 is not really backed up with any data. It's just kind of what they thought they should use.

The lighting plan, the photometric plan, says right here in very small letters that you probably can't read on your copy, that the photometric plan represents illumination levels that are calculated from laboratory data.

BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

It's not anything that really means anything.

The sales sheets that are included in your packet only address the three pole lights, so I went on the manufacturers website to look at the lumene count for each of the lights listed on the plan and the total is 163,000 lumines, or 102 100-watt light bulbs that will be lit.

And then Mr. Shiragula mentioned that there was going to be one light on the building in the back and the building plan shows there are five lights on the building, three in the back, and one on each side I believe. Three pole lights, then six lights under the canopy.

There's reference in the traffic study to a February date and from what they stated there was only one day, January 27th, that was an observation day of traffic. So, I don't know what that February 16th date refers to.

I also noticed in the timing section in the report, the footnote states a purposed Long Pond apartment project dated 1/26/2018 and it references Sincro eight reporting. And it was stated earlier that syncer 11 was used. So, I question that data that is pulled from a different project or why that footnote would reference a different project.

And I also want to point out and I did write a

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

letter but it might not have gotten to you for tonight, that Mr. Romeo has let his property deteriorate to the point that it is against Town Code. He should have been cited with a violation up to and including if things weren't fixed, being charged with expenses to fix the property.

So, I don't see how a decision can be made if the data that is backing up their application is flawed. This neighborhood will be changed forever if this is approved because nonconforming use is forever, unless it falls out of variance for a year. Thank you for your time.

CHAIRPERSON MIETZ: Thank you.

Who else do we have please?

MEGAN HENRY STEWART: Good evening. My name is Megan Henry Stewart, I'm a life long resident of Brighton and I have lived at 980 Allens Creek Road for the last 15 years.

I did send a letter, which I believe is in your packet. I will not make all of the points because some of them have already been made. I would just like to thank Mr. Romeo for admitting that he knew about the zoning restrictions when he purchased the property in 2018, because the financial hardship case is obviously a very important consideration here.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

But, there are two things I just would like to point out. I think a use variance is contrary to the town's comprehensive zoning plan and it is stated in the town code Chapter 201-3, under purpose and intent, the comprehensive zoning plan includes, among other considerations, the prevention and reduction of traffic congestion so as to promote efficient and safe circulation of vehicles and pedestrians. The maximum protection of residential areas and the gradual elimination of nonconforming uses.

So, the town would simply be reversing course on these three stated objectives by permitting a gas station business model back on the site after the expiration of a nonconforming use for a similar purpose. With traffic and the safety dangers that were not in existence before, but would be caused by this proposed business model.

The BE1 zoning district was imposed despite a service station being present on this site at the time and identified that as an undesirable and not conforming by specifically establishing an automatic expiration trigger.

The other point I'd like to make is, that I think this proposed application violates the purpose and intent of the BE1 zoning district. Because that stated permitted conditional uses and then office and office park

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

BE1 district as you all know, provides a long list of suitable uses for this lot, all of which share the following characteristics: Professional and quiet outside activity, low volume and entry and exit traffic, and the highest likelihood of traditional office business hours, meaning weekday 8:00 a.m. to 5:00 p.m.

The proposed gas station violates each of these characteristics and to Bridgett Stone's comment, changes the characteristics of the neighborhood.

It seems the applicant and Ms. Brugg would like to ignore the fact that there is a residential neighborhood directly adjacent to this property. And the proposed business house of 6:00 a.m. to 10:00 p.m. to include Saturdays and Sundays combined with the likelihood of deliveries of fuel at all hours and on any day, will materially detract from the neighborhood's quiet and peaceful enjoyment each and every day of the week.

So, across the entire spectrum of zoning districts and the town, from residential, which is this not adjacent district, all the way to light industrial, gas stations are not even a permitted use until you get to light industrial. And even then, it's only a conditional use. This is not a commercial district.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

So, I would respectfully ask this Zoning Board deny the use variance of this applicant. Thank you.

CHAIRPERSON MIETZ: Thank you.

Okay, do we have anyone else? Yes, sir.

MIKE STONE: My name is Mike Stone, I live at 110 Allens Creek Road and my wife Bridgett just spoke. I just wanted to make a couple comments actually, that are new. Just reading the Brighton Planning Board minutes from March 16th, and Mr. Ramsey, you asked the question of a representative from Quicklee's, and you said you guys plan to do outreach to the surrounding neighbors. And Mr. Goldberg replied, it's not, what I refer to as a coherent neighborhood that we are dealing with.

I totally disagree with that. I think we are a very coherent neighborhood. Since that time we have been able to sit down and speak with folks from Quicklee's, and I really learned a lot about the project. I learned that this is not really in their sweet spot, this is kind of almost looking at it as a nice to have. They have a 4500 square foot place and 3000 square foot places, and this is about 1100 square feet. It's really not in their sweet spot.

And I guess that's not super relevant here, but I guess it's just the way they approached the



## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

neighborhood and think about the neighborhood and that they want to come into the neighborhood, it just really concerns me a lot about what the future holds if they do move in.

On a positive side, I want to say that when the change happened on East Avenue and it went from four lanes to two lanes and those sidewalks were put in from Nazareth College all the way down to St. John Fisher, all the way down to Elmwood Avenue, that is government at work in a great way. That has totally transformed that whole neighborhood.

There are people bicycling up and down East Avenue now, running up and down East Avenue now. It's lit up the whole neighborhood around Brookside and Creekdown, fathers, you know, mothers have their kids out in strollers. It has brought a part -- I'm sorry if I'm boring you -- but, it's brought a part and brought to life the neighborhood that it wasn't like that when I first moved here in 2005. It's a much more vibrant and just a great place on East Avenue with those sidewalk there and whatnot.

I think with more, you know, with a greater level of congestion and traffic, and I live at 1110 East Avenue, so I have pulled people out of cars in my front yard over that last 15 years and seen numerous accidents there.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

It's a dangerous corner, there's no question about it. But it's going in the right direction, I would hate to see anything happen and take it in the wrong direction. Thank you very much.

CHAIRPERSON MIETZ: Thank you.

Okay. Is there anyone else who would like to speak?

Okay, thank you very much. And thank you all for keeping your comments as concise as you could to get your points across I appreciate it by everybody in the audience and everybody on the Board.

Okay. At this point I think we will close this Public Hearing and we can discuss it further.

So, we have finished the agenda for tonight and we will take a break here for seven minutes or so, and then we will come back.

BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

REPORTER CERTIFICATE

I, Rhoda Collins, do hereby certify that I did  
report in stenotype machine shorthand the proceedings held in  
the above-entitled matter;

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

Dated this 8th day of January, 2023.

At Rochester, New York

*R h o d a C o l l i n s*  
Rhoda Collins

BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

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**BRIGHTON**

**ZONING BOARD OF APPEALS MEETING**

**DELIBERATIONS**

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NOVEMBER 2nd, 2022  
at approximately 7:15 p.m.  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

**PRESENT:**

DENNIS MIETZ, Chairperson

MATTHEW D'AUGUSTINE.	)	
HEATHER McKAY-DRURY	)	
EDWARD F. PREMO, II	)	BOARD MEMBERS
KATHLEEN SCHMITT	)	
JUDY SCHWARTZ	)	
ANDREA TOMPKINS WRIGHT	)	

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Senior Planner

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

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

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

APPLICATION 11A-01-22

11A-01-22 Application of Sign and Lighting Services, contractor, and Daniele SPC, LLC, owner Additional Info of property located at 2750 Monroe Avenue, Building 5, for Sign Variances from Section 207-32B to 1) allow for business identification signs on three (3) building sides in lieu of only one as allowed by code. All as described on application and plans on file. TABLED AT THE OCTOBER 6, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

Motion made by Ms. Tompkins Wright to move that the Board having considered the information presented by the applicant and having conducted the required review pursuant to SEQRA, adopt the negative declaration with respect to Application 10A-01-22 prepared by town staff, determines that the proposed action will not likely have a significant environmental impact.

I also move to approve Application 10A-01-22 all as described in the application and plans on file based on the following findings of fact.

**FINDINGS OF FACT:**

1. The granting of the requested variance will not produce an unacceptable change in the character of the neighborhood given that the area is highly commercial in nature and

several other buildings in the area have signs on more than one building face.

2. The variance is not substantial given that the signs proposed meet all height requirements and are smaller in size than what would be permitted on the building face if only one side was constructed.

3. Given the configuration of the building within the plaza and the desire for way finding both from Monroe Avenue and from within the plaza itself, and given the need for the signs each individual need to be sized appropriately with sight lines, no other alternative can alleviate the difficulty more appropriately than what is proposed without a variance

4. There is no evidence that the health, safety, and welfare of the community will be adversely affected.

**CONDITIONS:**

1. The variance herein granted applies only to the signs described in and in the locations as depicted on the application and in testimony given, as per plans resubmitted to the Zoning Board for review at their November 2, 2022 meeting.

2. All necessary Architectural Review Board and Planning Board approvals shall be obtained.

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

(Second by Mr. D'Augustine.)

(Ms. Schmitt, yes; Mr. Mietz, yes;  
Ms. Schwartz, no; Mr. Premo, yes; Mr. D'Augustine, yes; Ms.  
Tomkins Wright, yes.)

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

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

APPLICATION 11A-01-22

11A-01-22 Application of Howard Crane, agent, and Leslie Crane, owner of property located at 58 Whitestone Lane, for an Area Variance from Section 207-2B to allow a retaining wall and fence (on top) to be 10 ft. in height in lieu of the maximum 6.5 ft. allowed by code. All as described on application and plans on file.

Motion made by Ms. Schmitt to approve Application 11A-01-22 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. The property in question is a large double lot with an in-ground pool. The pool was installed in 1978. The then homeowners built the deck and put in a retaining wall. Due to the common theme, the deck and walls were built several feet above grade. With time the retaining walls have deteriorated beyond repair and the homeowners wish to replace it with a new cement retraining wall that will be approximately three and a half more feet in height to provide privacy and allow the maximum amount of sunshine to that area rather than plant hedges, the homeowners would like to install a six-foot wooden fence on top of the raised retaining wall for accumulative height of up to ten feet in



## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

lieu of the six and a half feet allowed by code.

2. Due to the way the existing pool and decking were installed 40-plus years ago, a retaining wall of three and a half to four feet in height is required. To comply with the code, any fence placed on the raise area would need to be three feet or less in height. A fence of this height would not address the primary concern of the applicant which is privacy in and around the pool area. In addition, the homeowners considered replacing the current shrubs that had been used for privacy, but concluded that this would not be a workable solution as vegetation would shade the deck and pool area. Moreover, the neighborhoods most affected by this change have provided a letter of support saying that a six-foot fence would improve the area and provide additional privacy and deflect sound and light. As a result, the homeowners did not create this issue and have requested the minimum needed for relief.

3. The granting of this variance would not result in any substantial detriment to nearby property or otherwise adversely affect the character of the neighborhood. Its fence and retaining wall will be hidden from view due to the extensive and mature confer trees and shrubs and distance. Indeed, the only neighboring lot runs along the subject area

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

has an extensive existing mature landscape between the property. All other neighboring properties do not face a lot line and are more than 120 feet from the area.

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

**CONDITIONS:**

1. The variance applies to the fence and retaining wall as described in the application and testimony provided, and will not apply to the overall fencing height and retaining wall or to future projects.

2. All necessary building permits shall be obtain.

(Second by Ms. Schwartz.)

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

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

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

APPLICATION 11A-02-22

11A-02-22 Application of Adam Randall, agent, and Shannon Evans, owner of property located at 154 Greenaway Road, for an Area Variance from Sections 203-2B(3) and 203-9A(4) to allow a detached garage to be 995 +/- sf in size, after construction of a 280 +/- sf open roofed area in lieu of the maximum 600 sf in size allowed by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 11A-02-22 based on the following findings and facts.

**FINDINGS AND FACTS:**

1. This variance is only for the extension of the roof line on the existing garage to provide a covered, open area next to the pool in the backyard.
2. It will not be visible by the neighboring properties.
3. The previous owner put an addition on the existing garage resulting in a larger garage than allowed by code.
4. There is no other alternative for the applicant to achieve the desired result of a covered, open area in their yard.
5. The health, safety, and welfare of the neighborhood will not be adversely affected by this variance.

**CONDITIONS:**

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

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2  
3 1. This variance only applies to the extension of the garage  
4 to create an open area as described in testimony and written  
5 application.

6 2. All building permits must be obtained.

7 (Second by Ms. McKay-Drury.)

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

11 (Upon roll call, motion to approve with  
12 conditions carries.)  
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## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

Application 8A-04-22

8A-04-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info 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 SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

APPLICATION 8A-05-22

8A-05-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info 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 SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

APPLICATION 8A-06-22

8A-06-22 Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner Additional Info of property located at 3108 East Avenue, for Area Variances from Section 205-18 to 1) allow parking of vehicles to within

## BRIGHTON ZONING BOARD OF APPEALS 11/02/2022

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 SEPTEMBER 7, 2022 MEETING - PUBLIC HEARING REMAINS OPEN

MR. D'AUGUSTINE: Motion to table 8A-04-22, 04-22, and 06-22.

MS. SCHMITT: I second that motion.

(Second by Ms. Schmitt.)

(Mr. D'Augustine, yes; Ms. Schmitt, yes; Ms. Schwartz, no; Ms. McKay-Drury, yes; Mr. Mietz, yes; Mr. Premo, yes; Ms. Tomkins Wright, yes.)

(Upon roll call, motion to table carries.)

\* \* \*

## REPORTER CERTIFICATE

I, Rhoda Collins, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

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

Dated this 8th day of January, 2023.

At Rochester, New York

*Rhoda Collins*  
Rhoda Collins