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**BRIGHTON**

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**ZONING BOARD OF APPEALS**

4

**MEETING**

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

8

10 PRESENT:

9

DENNIS MIETZ  
Chairperson

11

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

12

KEN GORDON, ESQ.  
Town Attorney

13

RICK DiSTEFANO  
Secretary

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15

16 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,  
17 FORBES COURT REPORTING SERVICES, LLC  
18 21 Woodcrest Drive  
19 Batavia, NY 14020

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1 CHAIRPERSON MIETZ: Good evening, everyone.  
2 Welcome to the December meeting of the Zoning Board of  
3 appeals. Rick, I'll have you call the roll.

4 (Whereupon the roll was called.

5 MR. DiSTEFANO: Let the record show that  
6 Ms. Tompkins-Wright is not present at the moment.

7 CHAIRPERSON MIETZ: Okay. So just quickly  
8 before we go on, just to let everyone in the audience  
9 how -- if you're familiar with how we run this  
10 meeting, I will give you a quick overview.

11                   We have seven new applications and three  
12 holdover applications.

24 Once we finish, we might take a few minute  
25 break. We'll see. And if not, then we start

1       deliberating in the order of the applications.

2           You're welcome to sit and listen to the  
3        deliberations. We don't have any real cross play or  
4        discussions with anyone at that point. It's just  
5        amongst the Board members and staff.

6           And then tonight we will render our decision  
7        on each application, unless for a reason an  
8        application is tabled.

9           Now, if you don't want to stay for that part  
10       of the meeting, you can call Rick DiStefano in the  
11       Building Office tomorrow and he can let you know what  
12       the result of your application is. Okay? So that's  
13       the general format.

14           Rick, is there anything in the agenda that  
15       you would like to bring up?

16           MR. DiSTEFANO: Yeah. There are a couple of  
17       communications that are in your folder that were not  
18       on the agenda. We received them after the agenda was  
19       finalized.

20           CHAIRPERSON MIETZ: Okay.

21           MR. DiSTEFANO: One is dealing with 12  
22       Elmwood Hill Lane. And one is dealing with 339  
23       Hollywood. So please take a look at those.

24           I don't know if any board members have any  
25       questions regarding any of the applications.

1                   CHAIRPERSON MIETZ: No? Okay. All right.

2 So we have minutes to go over.

3                   Well, Rick, let's see. Was the meeting  
4 properly advertised, sir?

5                   MR. DiSTEFANO: Yes, Mr. Chairman. They  
6 were advertised in the Daily Record of December 1st,  
7 2022.

8                   CHAIRPERSON MIETZ: Okay. Wonderful. Okay.  
9 Minutes.

10                  MS. SCHWARTZ: I was not here.

11                  CHAIRPERSON MIETZ: Not here. Anybody have  
12 any issues with minutes? These are October minutes.

13                  MR. PREMO: Yeah. I have one correction.

14                  CHAIRPERSON MIETZ: SURE.

15                  MR. PREMO: So with respect to the October  
16 6th minutes, in the section on decisions, page 73,  
17 line 18, the word "review" should be "reveal." "The  
18 form applications do not reveal any impacts."

19                  CHAIRPERSON MIETZ: Okay. Does anyone have  
20 anything else? Going once. Going twice. How about a  
21 motion?

22                  MR. PREMO: I move we approve the minutes as  
23 amended.

24                  MS. MCKAY-DRURY: I'll second.

25                  CHAIRPERSON MIETZ: Thank you, Heather.

1                   MR. DiSTEFANO: The motion is to approve the  
2 minutes as amended.

3                   (Mr. Premo, yes; Ms. Schwartz, abstain;

4                   Mr. D'Augustine, yes; Mr. Meitz, yes;

5                   Ms. McKay-Drury, yes; Ms. Schmitt, yes.)

6                   (AUpon roll motion to approve as amended  
7 carries.)

8                   CHAIRPERSON MIETZ: Okay. Very good. Okay.  
9 Well, whenever you're ready, Mr. DiStefano.

10 **Application 12A-01-21**

11                   Application of Terry Smith, contractor and  
12 Denise Platek, owner of property located at 35  
13 Torrington Drive, for an area Variance from Sections  
14 203-2.1B(6) and 203-9A(4) to allow a standby emergency  
15 generator to be located in a side yard in lieu of  
16 The rear yard behind the house as required by code.  
17 All as described on application and plans on file.

18                   CHAIRPERSON MIETZ: Okay.

19                   MR. SMITH: Good evening. My name is Terry  
20 Smith. I'm with Generator Supercenter.

21                   CHAIRPERSON MIETZ: Can you just give us an  
22 address?

23                   MR. SMITH: 35 Torrington Drive.

24                   CHAIRPERSON MIETZ: Thank you. Okay.  
25 That's your client; right?

1                   MR. SMITH: Yes.

2                   CHAIRPERSON MIETZ: What's your address?

3                   Your company's address?

4                   MR. SMITH: The company address is 1100  
5 Jefferson Road.

6                   CHAIRPERSON MIETZ: Thank you.

7                   MR. SMITH: I'm here this evening to apply  
8 for a variance to set a whole home generator system on  
9 the right side of the home if you're facing it from  
10 the street.

11                  Due to the issues in the rear yard, placing  
12 it back there, the client has two air conditioning  
13 units now on the side of the home. She actually has a  
14 porch that comes out. And she has bushes.

15                  So the generator -- if you stand at the  
16 street, the generator would not be visible from the  
17 street.

18                  She also has a 6 foot high fence that goes  
19 around the entire backyard. Most of that fencing is  
20 from her neighbors because they -- the three  
21 properties that come up to her property all have sheds  
22 on the back of their property. So they were trying to  
23 shade it so that she didn't have to look at those  
24 sheds.

25                  CHAIRPERSON MIETZ: Okay. You spoke of

1 issues. Could you be more --

2 MR. SMITH: So on the back of her property  
3 she has a deck that surrounds the backside of her  
4 house that goes out about 8 feet. So this would put  
5 the generator roughly about another 5 feet off of  
6 that. So it pretty much put the generator in the  
7 back -- or middle of the back of her yard.

8 Logistics for getting the gas and electric  
9 to that would be extremely difficult. They would have  
10 to tear apart a good portion of her deck and the back  
11 part of her house to get the utilities to that.

12 CHAIRPERSON MIETZ: Okay. Matt?

13 MR. D'AUGUSTINE: What's the decibel level  
14 on the generator?

15 MR. SMITH: At half load it will produce 62  
16 decibels.

17 MR. D'AUGUSTINE: Okay.

18 MR. DiSTEFANO: And full load?

19 MR. SMITH: At full load is 67. It falls  
20 within the town's code of -- I believe it's 72  
21 decibels.

22 MR. DiSTEFANO: So just for a little  
23 clarification. So does it test at half load?

24 MR. SMITH: It actually tests in quiet mode.  
25 It tests at 57 decibels. And it only runs for five

1 minutes.

2 CHAIRPERSON MIETZ: Perfect. Okay.

3 MR. DiSTEFANO: I just have -- I just have  
4 one additional question.

5 In the packet you show a picture with a  
6 tape. I'm guessing that that's 10 feet --

7 MR. SMITH: Yes.

8 MR. DiSTEFANO: -- so that you're verifying  
9 that the generator will be less -- more than 10 feet  
10 off the lot line?

11 MR. SMITH: Yes, sir.

12 MR. DiSTEFANO: Okay.

13 CHAIRPERSON MIETZ: Questions? Anyone else?  
14 Okay. Great. Thank you, sir.

15 MR. SMITH: Thank you.

16 CHAIRPERSON MIETZ: Is there anyone in the  
17 audience that would like to speak regarding this  
18 application? Okay. There being none, the public  
19 hearing is closed.

20 CHAIRPERSON MIETZ: Now for something  
21 completely different.

22 **Application 12A-02-22**

23 Application of John Betlem Heating and  
24 Cooling, contractor, and Darryl Tinney, owner of  
25 property located at 265 Bastian Road, for an Area

1 Variance from Sections 203-2.1B(6) and 203-9A(4) to  
2 allow a standby emergency generator to be located in  
3 A side yard in lieu of the rear yard behind the house  
4 as required by code. All as described on application  
5 and plans on file.

6 CHAIRPERSON MIETZ: Good evening.

7 MR. BETLEM: Good evening. I'm Jim Betlem  
8 on behalf of my client, Darryl Tinney, who resides at  
9 265 Bastian Road.

10 CHAIRPERSON MIETZ: And your business is at?

11 MR. BETLEM: 806 Linden Ave.

12 CHAIRPERSON MIETZ: Thanks.

13 MR. BETLEM: So I'm here to apply for a  
14 variance also for a generator.

15 My client, Mr. Tinney, resides on a cul --  
16 on a dead end, if you would, Bastian Road. He's the  
17 very last house. He owns a double-wide lot with a  
18 wooded area on the right-hand side.

19 There's only one location that is applicable  
20 in the backyard, but we're a little tentative to put  
21 it in the backyard because of the septic running out  
22 the back.

23 So he's got almost 100 feet on the  
24 right-hand side. All the utilities are on the  
25 right-hand side. The air conditioner's on the

1 right-hand side. So we're hoping that we could put --  
2 just keep all the utilities together near the  
3 generator.

4 CHAIRPERSON MIETZ: What would you say is  
5 the distance from the nearest other residential  
6 structure? Approximately.

7 MR. BETLEM: 140 feet.

8 CHAIRPERSON MIETZ: All right. That's some  
9 business. Okay. And the decibel rating per unit?

10 MR. BETLEM: I don't have that with me. I  
11 attached it.

12 CHAIRPERSON MIETZ: Okay. I just wanted you  
13 to read it in for the record.

14 MR. BETLEM: Thank you, sir.

15 So we have the exercise at 57. Normal  
16 operating load, 67.

17 CHAIRPERSON MIETZ: Okay. Wonderful. Okay.

18 Questions by the Board? Anything? Okay.  
19 Great. Thanks very much.

20 MR. BETLEM: Thank you.

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

25 **Application 12A-03-22**

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

11 Application 12A-04-22

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

19 MR. CHUCK SMITH: Good evening. My name is  
20 Chuck Smith. I am an architect. I own Design Works  
21 Architecture. And thank you for being here with us  
22 tonight. Appreciate it.

23 CHAIRPERSON MIETZ: Can you just give us  
24 your business address?

25 MR. CHUCK SMITH: I can. So it's 6 North

1 Main Street in Fairport.

2 CHAIRPERSON MIETZ: Okay. Great. Please  
3 proceed.

4 MR. CHUCK SMITH: Okay. So we have an  
5 existing house that was built in the '60s that is in a  
6 prominent position on the top of the hill at the end  
7 of the Elmwood Hill Lane.

8 And the building is -- has a lot of water  
9 damage. It's been empty for a couple years. And it  
10 has 8 foot ceiling heights. It's not really  
11 appropriate for the way people want to live today.

12 So we want to open up the house, taller  
13 ceilings. Open up the views to the golf course  
14 because it does face south towards the Country Club of  
15 Rochester. It's a beautiful site.

16 So what we'd like to -- what we're proposing  
17 to do, you know, we've got -- what we've presented to  
18 the Planning Board thus far is a new home that we have  
19 designed that is -- fits nicely on this hillside.

20 Now, the building itself, we have moved the  
21 footprint of the proposed house from where it is now.  
22 So because we have a very unusual lot -- it's at the  
23 end of a cul-de-sac. So one of our first issues that  
24 we have that we're asking for relief is side yard  
25 setback.

1                   So because it's on the end of a cul-de-sac,  
2 our front yard is very, very long because it's -- it's  
3 the edge of a cul-de-sac. So it's not a rectangular  
4 lot.

5                   So if we were to have a rectangular lot and  
6 if we were to measure the lot at the 30 foot setback,  
7 which is where we have the front of the house now --  
8 so we moved the new proposed house to outside of the  
9 front yard setback, which it's not now. We would have  
10 a width from across -- straight across the house of  
11 161 feet.

12                  So if we took the percentage of that 161  
13 feet for side yard setbacks, we would have -- we would  
14 be allowed side yard setbacks of approximately 24  
15 feet. But because it's along -- it's measured along  
16 the 30 foot setback along the curve, the proposed  
17 setback has to be -- the required setback has to be 33  
18 feet.

19                  So what we did was we moved the house so  
20 that we meet the 33 foot setback on one side. But we  
21 can't do it on the east side.

22                  MR. DiSTEFANO: Chuck, can I just interrupt  
23 you for just one second? If you'll notice that this  
24 is an RAL district and a 60 foot setback is required.

25                  However, back in 1947 when they were

1 basically developing this property, variance was  
2 granted for this lot and a few other lots up along the  
3 cul-de-sac area to have a 30 foot setback. So that's  
4 where he's getting 30 feet.

5 And I'm sorry if I stepped on your  
6 presentation.

7 MR. CHUCK SMITH: No. That's helpful.  
8 Thank you.

9 So this is what I'm -- this is what I'm  
10 describing. So our front yard is measured off of this  
11 line, which you can see is much longer than a normal  
12 rectangular lot where you measure the front yard  
13 setback 30 feet off along the front of the house.

14 So if we-- so our presentation for the  
15 setback is simply if we were to take this as a normal  
16 lot, 161 feet, we're fine here. We can't meet the  
17 setback here.

18 But if it were 161 feet, we could move the  
19 house over so we wouldn't need setbacks on either  
20 side. So that's the --

21 So we're looking for relief from that side  
22 yard setback. Okay? All right.

23 Second part of the proposal is the existing  
24 house is 4600 square feet plus -- and our proposed  
25 house is approximately 4200.

1                   Now, I'll get the exact numbers because I  
2 don't have them memorized. But approximately 4200.  
3 But we also want to finish the bonus room above the  
4 garage.

5                   So if we were to add our square footages of  
6 4250 square feet for the first and second floor of the  
7 proposed house and the 800 square feet of the garage,  
8 our proposed house is 5,050 square feet.

9                   So right now the house that's sitting there  
10 is 4600. We are building a house at 4250 plus a bonus  
11 area of 800 above the garage.

12                  So we looked at what this neighborhood is  
13 comprised of. And I handed out this little cheat  
14 sheet to you just now. So we looked at -- we looked  
15 at, you know, does a 5,050 square foot nicely  
16 designed, nicely proportioned, I would like to think  
17 since I designed it, house that would fit in the  
18 neighborhood?

19                  So there's about -- there's 15 houses on  
20 Elmwood Hill Drive -- on Elmwood Hill Lane. One-third  
21 of them, counting this lot -- so 5 lots are over the  
22 allowable floor area for your zoning. And four of  
23 them are very similar to what we're looking for in  
24 square footage. And one is about double. It's  
25 actually more than double of what we're looking for in

1 square footage.

2 So we feel that the house we're proposing  
3 does fit in the neighborhood that -- they are large  
4 houses facing a very open country club golf course.  
5 And we are comfortable with how it fits on the lot.

6 The other piece of the puzzle that I showed  
7 you is just -- if you have any questions about actual  
8 setbacks to the existing houses. We actually gave you  
9 a little cheat sheet on that tonight too.

10 I'd like to entertain any questions. Larry,  
11 do you have something to add?

12 MR. HEININGER: Yes. More about geometry.

13 CHAIRPERSON MIETZ: Hold on, Larry. Just  
14 give us your name and address please.

15 MR. HEININGER: Larry Heininger, vice  
16 president of engineering for Marcus & Associates. Our  
17 offices are at 930 East Avenue, which is the mansion  
18 next to the Eastman House.

19 First, the house was built in about 1948,  
20 1949, when the subdivision was developed. But I'm  
21 going to talk a little bit about the geometry here.

22 According to Jeff Frisch we had to go 30  
23 feet down here and 30 feet here and then connect  
24 across that point via expanse. And that gave us by  
25 memory 221 feet of front yard. Times 1.5 is about a

1 33 foot setback.

2 So when we dove into this, I said, well the  
3 standard RAL zoning is 125 foot wide lot. 15 percent  
4 of that is 18.75. So 20 feet is greater than 18.75.  
5 Should make sense.

6 The existing house is only 12 and change  
7 from the right-of-way. The back of the existing house  
8 is 80 feet. So you have a 60 foot by code. We said,  
9 okay. If we can hold that code, then we can hold the  
10 30 feet that was approved by the Planning Board. And  
11 part of that approval was because of the hilly nature  
12 of the street, it was better to bring the houses  
13 forward than to have them sitting down on a hill.

14 Now, modern planning is having houses closer  
15 together is kind of cozier and nicer and slows down  
16 the traffic. And it's more neighborly. So it all  
17 worked out.

18 But that's where this huge setback came  
19 from. And then you get into, well, here's the radius  
20 and you go through there. You know, what's the side  
21 yard, the backyard? The whole thing. So that's my  
22 two cents here.

23 CHAIRPERSON MIETZ: Okay. Great. Thanks.  
24 Okay. Are you -- we're on the first of the two  
25 applications.

1 MR. PREMO: First variance first.

2 CHAIRPERSON MIETZ: Yeah. Let's -- well, he  
3 presented the first one.

4 What -- do we have questions on this first  
5 one?

6 MR. PREMO: Yeah. My name is Ed Premo. I'm  
7 a member of the ZBA, of course. I just have a few  
8 questions.

9 I take it that this home is being developed  
10 for later sale. There's not a particular family --

11 MR. CHUCK SMITH: No. That's correct.

12 MR. PREMO: And could you explain to me the  
13 justification for going to the 5,000 livable floor  
14 area versus complying with the code given the fact  
15 that there's not a particular family or whatever that  
16 you're looking for?

17 MR. HEININGER: It fits the --

18 CHAIRPERSON MIETZ: You need to come up,  
19 sir. We can't -- from back there if you'd like.  
20 That's fine.

21 MR. CHUCK SMITH: I'll take that.

22 CHAIRPERSON MIETZ: Go ahead.

23 MR. CHUCK SMITH: Thank you. Yes. So --  
24 yeah. We feel that the size of the house does fit  
25 with the lot. And we have laid out the house with a

1 specific number of bedrooms. It's a four-bedroom  
2 house. It's got a large living, dining, kitchen, open  
3 area. And when you develop that as far as a floor  
4 plan, we did come out to 4250.

5 And then -- and then with -- as I explained,  
6 we have the 900 square foot three-car garage, which is  
7 a common requirement for buyers today.

8 When we developed the space, that's what --  
9 that's where we ended up with 5,050.

10 MR. PREMO: Well, one of the issues I'm --  
11 this board has to deal with is granting the minimum  
12 variance necessary to address the difficulty. And I  
13 guess that's where I'm having some issues and I'd like  
14 more explanation.

15 Why, for example, couldn't this be developed  
16 in accordance with the standard of the current code?  
17 And so that it is a 3,000 square foot home. That's  
18 kind of my question.

19 MR. CHUCK SMITH: Yeah. So part of the  
20 reason also is if you look at the financials for the  
21 project and you're looking at the purchase of a 4600  
22 square foot house and then you're taking it down, you  
23 want to recoup that same square footage as you're  
24 building a new house.

25 So I think that there's some financial

1 reason there as well.

2 MR. PREMO: So is the idea that the 5,000  
3 square feet, in your view, is the minimum necessary to  
4 develop the home on this property?

5 MR. CHUCK SMITH: I think it's -- it's the  
6 minimum necessary to attract the type of client that  
7 they're hoping that would buy this home, this -- on  
8 this property.

9 MR. PREMO: Has this property been marketed  
10 with a proposal to build in accordance with the code  
11 through --

12 MR. CHUCK SMITH: No --

13 MR. PREMO: Have there been any discussions  
14 with any of the neighbors concerning these variances?

15 MR. CHUCK SMITH: Yes, there has been.

16 MR. PREMO: And was there anything that has  
17 been done with respect to the design to address any  
18 concerns of the neighbors?

19 MR. CHUCK SMITH: Yes. We have -- the plan  
20 that is in front of you today is --

21 CHAIRPERSON MIETZ: Excuse me. Can you  
22 just -- just to help make it clear on the question,  
23 what interactions have you had? And then you can  
24 discuss the details of like what kind of interactions  
25 have you had with neighbors.

1                   MR. CHUCK SMITH: Oh. Yes. We -- I know  
2 that we have met with both immediate neighbors on  
3 either side. And there was concern from one of the  
4 neighbors about the size of the home. And so -- and  
5 the location of the home.

6                   So we have -- so we didn't address the size  
7 of the home. We did address the location of the home.

8                   CHAIRPERSON MIETZ: So did you have more --

9                   MR. PREMO: Yeah. I'm not -- so what -- so  
10 you said you addressed the location. What was done  
11 about that?

12                  MR. CHUCK SMITH: The house was closer to  
13 the west property line originally, which -- and so we  
14 moved it to the east to remove any variances necessary  
15 on the west side.

16                  MR. PREMO: Is there anyway that this could  
17 be constructed, even if you wanted to just change the  
18 square footage, to move the part of the home that -- I  
19 think it's about 10 feet into the east setback -- to  
20 reconfigure it so you still meet that setback and  
21 still have your square footage? Has there been --  
22 looked at that option?

23                  MR. CHUCK SMITH: We have not. Knowing the  
24 plan, it is possible to meet that -- that -- to meet  
25 both side yard setbacks. Although we feel that

1 because of the geometry of the lot, that's really --  
2 it is a difficulty.

3 So it's just an unusual situation.

4 MR. GORDON: If I could just interrupt.

5 CHAIRPERSON MIETZ: Yes. Go ahead.

6 MR. GORDON: I just want the record to note  
7 Member Write has joined us.

8 CHAIRPERSON MIETZ: Okay. That's fine.

9 MR. CHUCK SMITH: Edward, do you mind if I  
10 turn the microphone over to Larry to answer your  
11 question?

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

14 MR. HEININGER: All right. So a little --  
15 from memory from back in August when we originally had  
16 the 12 feet --

17 CHAIRPERSON MIETZ: Could you speak into the  
18 mic better.

19 MR. HEININGER: Sure. When we had the  
20 existing 12 foot and change setback -- I think it's  
21 12.29 -- we were not so concerned about getting the  
22 30. So we had more rear yard setback.

23 We were -- I believe the pool was about 5  
24 feet off the west line, close to Deborah Ronnan house.

25 So after that first meeting -- and the house

1 was 5,500 square foot, 5550. It was 500 square feet  
2 bigger than what you're seeing. And the pool was 20  
3 by 40, not 18 by 36.

4 It may not seem like a big difference. But  
5 we walked out of the meeting and I said, can we  
6 move -- the pool was further north. So can we move  
7 the pool back more into the backyard? Can we make the  
8 pool itself smaller to reduce the footprint of the  
9 pool and the pool deck? And by shifting it south --  
10 and Chuck actually likes this design better how you  
11 come out of the house and how you access the pool.

12 And then we said, all right. Well, if we,  
13 you know, hold the 60 foot rear setback, which in my  
14 opinion isn't all that important because it's  
15 basically a golf green. And so are the golfers going  
16 to bother the swimmers or are the swimmers going to  
17 bother the golfers? I don't know. But holding the 30  
18 foot front setback.

19 So the feedback that we got was 30 feet's  
20 good. 60 feet's good. You got a lot of room on the  
21 west. Then you got over 20 feet on the east.

22 Now, the DPW has come back -- funny how  
23 great minds think -- and they're asking for an  
24 easement down the east side so they can walk from the  
25 cul-de-sac back to the high end of the sanitary sewer,

1 which runs through the back lots. So everybody's  
2 lateral went down hill.

3 And when I first looked at this, I said, you  
4 know, if I'd been running the ship, there would have  
5 been an easement to go from the cul-de-sac down to  
6 look at your high end manhole.

7 Well, Mike Guyon's come back, said, we'd  
8 like an easement there. So I'm saying 15 foot  
9 easement would work. That's what this is right now.  
10 That's a 15 foot easement with a pipe there. Ours  
11 would be 15 feet to walk or take your little Gator  
12 down there.

13 And we're showing on the latest plans to cut  
14 down some trees and hold that 15 foot easement 1.25  
15 feet off the property line so they can plant trees not  
16 in the easement and you can still maintain the buffer.

17 Now, outside the first meeting --

18 CHAIRPERSON MIETZ: Meeting with who?

19 MR. HEININGER: Deborah Ronnan.

20 CHAIRPERSON MIETZ: Okay.

21 MR. HEININGER: I mentioned that Sal Bello  
22 was my mentor in the area. And she commented how she  
23 worked with him on the downtown performing arts center  
24 and what a wonderful man he was.

25 So we chatted about that. She asked me to

1 come over and look at the landscape buffer on her  
2 north side. So I went over there on Tuesday the 22nd  
3 before Thanksgiving at 11:30 to meeting with her. She  
4 didn't show up until 1:30. That's fine. I had to  
5 locate drip edges. I had to locate downspouts. I had  
6 other field work to do.

7 She since has apologized, sent me an email  
8 and wants me to put some stakes in the ground where  
9 this building is going to go, which I'll be happy to  
10 do.

11 But I also inventoried her landscape buffer,  
12 which is norways, blue spruce, balsams, arborvitae,  
13 black locust. So, you know, I was paying attention --  
14 now, that may not be applicable to the type of stuff  
15 that we can plant, but I'm making every effort to  
16 communicate with her.

17 Also Kemper Miller, who is our neighbor to  
18 the east, I've met with him. He sent me his survey.  
19 We picked up -- he is only -- his setback is 9.89 feet  
20 from the right-of-way to his structure.

21 So the -- it doesn't seem like the front  
22 setbacks have been incredibly important. But we  
23 are -- where we're sitting, you know, you're taking  
24 this shape and you're holding -- you know, what's the  
25 best design?

1                   And when we got into this, I didn't do it,  
2 but trimming down the house, Chuck and his designer  
3 Terry, you know, would have taken off 6 inches there  
4 or 4 inches there and looked at the spatial  
5 relationships of the rooms and said okay, looks like  
6 5,050 will work.

7                   And, you know, sitting here is Kim Bailey's  
8 husband, Pat. You know, he said that's the type of  
9 house that Kim builds. And looking out at the CCR  
10 golf course, and the type of buyer, that's the size of  
11 the house they're going to want. That's all.

12                   CHAIRPERSON MIETZ: Thanks.

13                   MR. DiSTEFANO: Can I just ask --

14                   MR. PREMO: I have a couple if you don't  
15 mind.

16                   CHAIRPERSON MIETZ: You got a couple  
17 questions for Larry?

18                   MR. PREMO: And maybe this is also for Rick.  
19 This is subject to site plan approval from the  
20 Planning Board?

21                   MR. DiSTEFANO: Yes.

22                   MR. PREMO: And they're involved in dealing  
23 with the issues of screening and plantings along  
24 the --

25                   MR. DiSTEFANO: Yes. But -- actually when

1 it comes to the variances, this board really has more  
2 say in the screening. Because for the Planning Board  
3 there's no screening required between single-family  
4 homes. The code does not require screening between  
5 single-family homes.

6 But if they need variances, then we are the  
7 commission to help maybe soften those variances, could  
8 require some form of screening.

9 MR. PREMO: Right. So I mean -- and Larry,  
10 you had mentioned at least from the discussion about  
11 plantings and whatever, do we have more detail on  
12 that? Particularly when I went out there and looked  
13 at it, I think number 11 is the one that would appear  
14 to be the most impacted and would need the most  
15 screening.

16 MR. HEININGER: Over here?

17 MR. PREMO: Yes.

18 MR. HEININGER: Okay. Well, right now --  
19 I'm going to speak loud, but I think you're all going  
20 to hear me. Up at the north end is the existing row  
21 of hemlocks that based on their location in the  
22 property line, they would have been planted by the  
23 Hicks who were the owners of this lot. It was --  
24 George Hicks was a surgeon.

25 Kemper would like to have those hemlocks

1 taken down. He's had them hard-sheared in the past.  
2 And he'd like to have arborvitae put up.

3 There is a big white pine there that is  
4 getting to the end of its life. And it's in the wrong  
5 place.

6 And then we're showing brighter green here,  
7 which would be new plantings.

8 Kemper would also like to have and so would  
9 the -- the greenscaper at the golf course would like  
10 to have these black locust taken down.

11 So to cut to the point, that's why I'm  
12 holding this easement off the property line so some  
13 new plantings can be put in as a buffer between our  
14 house and Kemper Miller's house, which he is a very  
15 nice man. Very pleasant to talk to.

16 MR. PREMO: And that's -- and we're now  
17 talking about the east?

18 MR. HEININGER: East side.

19 And on the west side there are -- just  
20 counting them up, there are 20 trees. If you walk the  
21 site, they are significant trees.

22 And there's a lot of understory. Part of  
23 that is there's hollies. There's Rhododendron.  
24 There's Japanese maples. There's wild rose bushes and  
25 things like that.

1           We want to actually if possible -- we want  
2 to scoop those out and reuse those.

3           And there's a lot of landscaping around the  
4 back. I mean, there's a lot of landscaping existing  
5 around the back. There's all kinds of stuff there  
6 that could be reused.

7           But looking at the west side, I'm not sure  
8 how much more we could buffer it without sticking some  
9 shrub there that has very little chance of growing.

10           MR. PREMO: Well, and that kind of goes to  
11 the pool more on the west side.

12           MR. HEININGER: Well, that's going to  
13 have -- this is going to be arborvitae here along the  
14 pool.

15           MR. PREMO: Right. But going to the east  
16 side, what are the -- are the detail plans or --

17           MR. HEININGER: Part of our -- part of our  
18 final submittal to the Planning Board will have a  
19 detailed landscape plan with the schedule of  
20 plantings.

21           But I think that the short answer is this  
22 will be a row of evergreen, arborvitae that probably  
23 will have a 15 to 20 foot high maturity.

24           Pat?

25           MR. BAILEY: Hi. Pat Bailey. We're the

1       owners of 12 Elmwood Hills. My address is 335  
2       Kilbourn in Pittsford.

3               We've had numerous discussions with Kemper.  
4       He's friendly. He asked me to remove the trees  
5       initially along the side. We worked with him to get  
6       rid of some trees that were dangerous to his house.  
7       The pine is existing as well. He asked us to remove  
8       that. We told him that we'd be happy to.

9               We're working with him both to provide  
10       screening for both our properties, but also to not  
11       inhibit the views that are currently there, which is a  
12       concern of his as well as ours. He doesn't want us to  
13       completely screen and block off views he has of the  
14       third green at the Country Club of Rochester. And we  
15       wouldn't want to do that.

16               So we want to work together with him, you  
17       know, and coincide those plans.

18               MR. PREMO: Is that third green immediately  
19       behind --

20               MR. BAILEY: Third green would be right down  
21       here.

22               So, you know, the people that live there  
23       live there for a reason. It's a beautiful view of the  
24       golf course.

25               CHAIRPERSON MIETZ: Yeah. Okay. Very good.

1 All right.

2 MR. BAILEY: I'll just address your other  
3 issue about the size of the home. I think Chuck made  
4 a good point. We bought a 4600 square foot home, you  
5 know, with the intention of renovating it. It's not  
6 salvageable as it is, not financially reasonable to do  
7 that.

8 So the idea was to replace the home. We  
9 tried very much to stay within -- you know, I think  
10 we're very close to the same footprint size as what  
11 was existing there. We're not trying to increase  
12 that. The extra live space really came from putting  
13 the bonus room over the garage.

14 MR. PREMO: You --

15 MR. BAILEY: So you're really --

16 MR. PREMO: So your view is -- I mean, kind  
17 of what you're taking is the existing footprint and  
18 turned it.

19 MR. BAILEY: Well, we turned it to get a  
20 little bit better view and to utilize the hill a  
21 little better behind it so that the pool could also be  
22 moved and put in a less conspicuous place for the  
23 neighbors.

24 And it also helps these guys out. Not the  
25 engineer, but helps these guys obtain the rest of the

1 setbacks they need to obtain.

2 MR. PREMO: And maybe this is to Rick. One  
3 of the issues that one of the neighborhoods raised was  
4 snow storage in the cul-de-sac or something. DPW and  
5 snow storage area.

6 MR. BAILEY: I mean, I don't know how  
7 that -- we're actually moving the house back farther.  
8 So I don't know how we can impact it any more than it  
9 is right now.

10 CHAIRPERSON MIETZ: Well, that would kind of  
11 be the Planning Board's thing.

12 MR. HEININGER: Let me address that.  
13 Kemper -- well, one thing with cul-de-sacs is that  
14 when DPW comes down, they push all the snow right to  
15 the end of the cul-de-sac. So, you know, if you buy  
16 on a cul-de-sac, pay attention to where the snowplows  
17 put the snow before you buy that house.

18 But Kemper said they push the snow to the  
19 lot line. You're not doing anything on the lot line  
20 that's going to change the grading because right now  
21 there's a gentle swale. So the snow melt goes down to  
22 the golf course. I'm not changing anything. I mean,  
23 I'm tying in contours as quickly as I can to the  
24 existing.

25 CHAIRPERSON MIETZ: Okay. Very good. All

1 right. You have other questions?

2 MR. PREMO: No.

3 CHAIRPERSON MIETZ: Okay. Good. Any other  
4 board members have questions?

5 MS. SCHWARTZ: Just the fact that you talked  
6 about how extensive your discussions have been with  
7 Debby Ronnan.

8 MR. HEININGER: I would say that -- I would  
9 say that they've been pretty extensive based on my  
10 experience in this business of 44 years that I think  
11 she is probably up in the top 5 percent of neighbors  
12 that I've talked to.

13 I've emailed her back and forth. Came out  
14 to meet her specifically to look at these plantings.  
15 I'm going to be going out there again to some stakes  
16 in the ground just so she knows where the building's  
17 going to be.

18 And we're going to do everything we can to  
19 buffer along that side of the property. But as I  
20 indicated, when you're under a canopy of 60 foot  
21 trees, you don't want -- I mean, that's why they have  
22 hollies. They do well in the shade. That's why they  
23 have rhododendrons. They do well in the shade.

24 The other thing that we forgot to mention is  
25 originally the garage had a ridge almost as high as

1 the main house. So if you look on that rendering  
2 there, if I see one in front of Ms. Schmitt, Chuck  
3 brought the garage roof down, put dormers in so that  
4 the garage was secondary to the main house.

5 And there was this kind of bird's mouth  
6 between the two. He didn't like that look. So  
7 there's been a lot of effort.

8 Back to Deborah Ronnan. Answered every  
9 question she's had. I know that she doesn't think  
10 anyone in Upstate New York should have a swimming  
11 pool. And I guess my father and grandfather would  
12 agree with her that, you know, if you want to go for a  
13 swim, join the Y or join the CYO. But that's her  
14 opinion.

15 CHAIRPERSON MIETZ: Does that answer your  
16 question?

17 MS. SCHWARTZ: Have you seen the letter that  
18 was submitted, received here on the 7th?

19 MR. DiSTEFANO: Probably not because that  
20 came in late this afternoon. It was not was not able  
21 to be put up on the website. So, no.

22 MR. HEININGER: I have not seen the letter.  
23 I would very much like a copy of it.

24 MS. SCHWARTZ: And it's signed by both Deb  
25 and the Millers.

1 MR. HEININGER: And whom?

2 MS. SCHWARTZ: Both.

3 MR. HEININGER: The Millers. Okay.

4 MS. SCHWARTZ: With very serious concerns.

5 I just want --

6 MR. HEININGER: Well, again, I need to see  
7 the letter. I know when we talked to Kemper, on one  
8 hand he wants screening. On the other hand, don't  
9 screen the view of the golf course and, you know, take  
10 down the trees.

11 So obviously there's a discussion that needs  
12 to happen of how trees are going to come down and new  
13 screen is going to go up.

14 CHAIRPERSON MIETZ: Okay. Go ahead.

15 MS. TOMPKINS-WRIGHT: I apologize if this  
16 was already asked and I missed it, but do you have an  
17 average or typical square footage --

18 CHAIRPERSON MIETZ: Right here.

19 MS. TOMPKINS-WRIGHT: Okay. Perfect. Okay.  
20 Thank you very much.

21 MR. D'AUGUSTINE: I just have a question.  
22 Do you know the size of the homes of the -- of the  
23 neighbors? Because we don't have -- I'm just curious  
24 as to what 11 and 15 are square footage-wise.

25 MR. HEININGER: I don't know because I

1 didn't -- this was put together by Design Works.

2 The one thing I did, earlier I sent an email  
3 over when I saw these numbers. And, you know, the  
4 engineer in me goes, oh, that's great, but what does  
5 it work out to square feet per acre?

6 So we're -- you know, it's 6800 square feet  
7 per acre. The original Weller mansion, number 13, is  
8 the 9300 square feet per acre. And down at 10 --  
9 number 6 Elmwood Hill Lane, a 10,000 square foot plus  
10 is 8500 square foot per acre.

11 So I think in talking with Chuck on the  
12 phone, he said one-third of the houses on Elmwood Hill  
13 are larger in square footage than this.

14 MR. PREMO: Which I think would mean that 11  
15 and 15 are within the standard.

16 CHAIRPERSON MIETZ: Yeah. They weren't on  
17 the list. So we presume --

18 MS. SCHWARTZ: It's interesting that they  
19 weren't.

20 MR. HEININGER: Kemper's got a very nice  
21 house. It's kind of a mid-century modern. And he  
22 told me that the original developer, Greg Dickerson,  
23 somehow was working with Bud -- but they flipped a  
24 coin as to who got to build -- take the first lot.  
25 And Dickerson built Kemper's, which is brick

1 mid-century modern looking out onto the golf course.

2 CHAIRPERSON MIETZ: Yes. Okay. All right.

3 So did that give you your answer, Matt? Okay.

4 Is there other questions for these gentlemen  
5 on the first one? Then we'll --

6 MR. GORDON: I have a couple questions. And  
7 first in answer to Matt's question, Monroe County tax  
8 records show that the square footage of 11 Elmwood  
9 Hill Lane is 3400 square foot on a .8 acre lot. And  
10 15 Elmwood Hill Lane is 4,125 square feet on a 3.6  
11 acre lot.

12 Just a couple questions sort of in the same  
13 line that Mr. Premo was asking earlier. If there's no  
14 room in the rear lot for a pool, why do you need a  
15 pool at all?

16 MR. DiSTEFANO: Well, we haven't gotten to  
17 the pool yet.

18 MR. GORDON: Sort of there.

19 MR. DiSTEFANO: Well, I wanted them to give  
20 their presentation -- I want them to give their  
21 presentation on the pool.

22 MR. GORDON: All right. So then let me ask  
23 this question in furtherance of Ed's question. Do you  
24 have any financial data that you'd like to share with  
25 the Board to support the proposition that it is

1                   economically unfeasible to develop a home on this  
2                   property of less than 5,050 square feet?

3                   MR. BAILEY: What exactly -- economic  
4                   information would you like to have?

5                   MR. GORDON: Anything to back up the  
6                   unsupported statement that was already made by your  
7                   professionals that building a home less than 5,050 50  
8                   square feet is economically unviable. What do you  
9                   have to back that up?

10                  MR. BAILEY: Well, actually that statement  
11                  was made by me.

12                  MR. GORDON: Okay. What do you have to back  
13                  that up?

14                  MR. BAILEY: What do I have to back it up?  
15                  I didn't bring that data with me tonight because I  
16                  didn't know we're sharing financials at a zoning board  
17                  meeting. But the data I would say to you is the  
18                  house, due to the water leaks and whatnot, needs to be  
19                  completely gutted. In order to build it more in a  
20                  modern stature, it would need to have the ceilings  
21                  raised. It's a brick house. If you raise the  
22                  ceilings, the windows will not line up correctly with  
23                  the interior of the house. Now, when you go to the  
24                  heights of -- the windows won't line up correctly. So  
25                  they would all have to be redone.

1           Can I tell you what that is in a dollar  
2 amount? No not off the top of my head. But  
3 significant.

4           MR. GORDON: I think what Mr. Premo was  
5 asking though is because one of the standards that the  
6 Board needs to find -- one of the findings that it  
7 needs to make in determining whether variances shall  
8 be granted is that the variance is the minimum  
9 necessary variance.

10           And so the question that I think Mr. Premo  
11 was asking is why could you not develop a house that  
12 was 4600 square feet, which is the same size as the  
13 living area currently on that property? Or something  
14 which is in compliance with the code, which is  
15 slightly smaller?

16           And I thought that somebody, maybe it was  
17 you, maybe it was one of your professionals, said that  
18 can't be done because it's not economically viable to  
19 do so.

20           MR. BAILEY: I think a statement was made  
21 that we bought a 4600 square foot house. We intended  
22 to rehab a 4600 square foot house. It's not  
23 economically feasible for us to rehab that house and  
24 come out with this -- you know, with a house that we  
25 think would have been done.

1                   In other words, to move those windows you're  
2 tearing down walls. You're rebuilding the walls  
3 anyway. You know, there would be significant work  
4 that had to be done.

5                   And I'll go back to my original point that  
6 the footprint of this house at 4200 feet is actually  
7 less than the footprint of 4600 feet. The bonus room  
8 over the garage is 800 feet. I understand that it's  
9 living space, but we're not taking up any more square  
10 footage on this lot that wasn't taken up previously as  
11 a footprint.

12                  MR. GORDON: So what I'm taking from your  
13 answer -- I don't know the words that was used -- but  
14 I'm taking from your answer that it might be possible  
15 to build a smaller home on this property, you just  
16 haven't considered doing that.

17                  MR. BAILEY: The investment I made into the  
18 existing home was based on a 4600 square foot house.  
19 If I'm going to replace that house, I would want to  
20 replace the investment. So is it possible? Yes. Is  
21 it fair? No.

22                  CHAIRPERSON MIETZ: Okay. Let's --

23                  MR. GORDON: Yup.

24                  CHAIRPERSON MIETZ: So the point of this  
25 whole discussion again, you know, is to test the

1 variance. Again, and the economics is something that  
2 we really need to consider.

3 Now, if you guys haven't prepared that  
4 tonight, that's fine. No problem. Because we can  
5 deal with that. Okay? But that's one of the things  
6 that's probably going to be necessary for us to have.  
7 Because again, it's not whether we believe you or not.  
8 That's not the point.

9 The point is there is economics to this.  
10 Obviously you bought this as an investment. You're  
11 attempting to make money on your investment, which  
12 you're entitled to do. However, we need to see, well,  
13 where is that break point? Because I'm sure you can  
14 do it. And I'm sure you could provide it.

15 MR. BAILEY: Sure.

16 CHAIRPERSON MIETZ: I'm not suggesting you  
17 provide it. You just have not provided it.

18 MR. BAILEY: Correct. I'd be happy to  
19 provide it.

20 CHAIRPERSON MIETZ: Okay. Very good. All  
21 right. Other questions?

22 MS. SCHWARTZ: How long have you lived in  
23 the house?

24 MR. BAILEY: We have not lived in the house.  
25 The house has not been occupied for over two years.

1 MS. SCHWARTZ: Oh.

2 CHAIRPERSON MIETZ: He said that earlier.

3 MS. SCHWARTZ: Oh. I didn't hear that.

4 CHAIRPERSON MIETZ: It's been -- okay.

5 Other questions, guys? Please. What other questions  
6 do we have on the current application? We're done  
7 with that? Okay.

8 Can you proceed then with the second please?

9 MR. HEININGER: Well, let me point one thing  
10 out. This -- there's a walkout here. So if you move  
11 the pool in front of the walkout, you no longer have a  
12 walkout.

13 If you -- the area of the garage is 876  
14 square feet. I calculated it because I needed to know  
15 the roof area. So it's 876. My understanding, that's  
16 all bonus room.

17 If I take that and subtract that from 5,050,  
18 I'm down to 4200, 400 square feet under the existing  
19 46.

20 So, you know, maybe you don't get as big a  
21 bonus room and you have an attic -- I have an attic.  
22 But my house was built in 1931.

23 So I think we're -- on the issue of the  
24 square footage, we're going to request it to be tabled  
25 and we'll come back with the financials that you're

1 looking for.

2 CHAIRPERSON MIETZ: And that's fine. And I  
3 appreciate it. It's just a cooperation thing. And  
4 we're trying to help you understand what it is  
5 necessary for us to do our job basically.

6 MR. HEININGER: Sure. I totally understand.

7 One thing that I want to share also that one  
8 of the Planning Board members when we first came in  
9 complimented the Bailey's on biting the bullet because  
10 this house has water leaks and possible mold in the  
11 basement.

12 CHAIRPERSON MIETZ: Oh. The existing house.

13 MR. HEININGER: The existing house. And  
14 they were complimented on biting the bullet and taking  
15 this down, starting fresh --

16 CHAIRPERSON MIETZ: Okay.

17 MR. HEININGER: -- with insulated concrete  
18 forms, modern windows, modern engineering, the whole  
19 deal. So I guess we're going to move on to the pool.

20 CHAIRPERSON MIETZ: Yes. Let's do that.

21 Who's presenting the pool?

22 MR. CHUCK SMITH: Okay. My clients would  
23 like a pool on this property. It's positioned in a  
24 way to fit the house -- access the house. And I would  
25 argue that it's in the backyard of the house because

1 it's behind the house.

2 So if you look at the main house, it's  
3 behind the main house. There is a bay out there.  
4 There's a living room coming off. That goes beyond  
5 the pool.

6 So we look at, you know, what a definition  
7 would be of backyard. If I'm standing -- if I'm  
8 standing here, I feel like I'm in the backyard. But  
9 we're here today to tell us -- tell me that I'm not in  
10 the backyard there because the house is closer to the  
11 property line. So I'm not in the backyard until I get  
12 to here.

13 So anyway, if you look at the line of the  
14 main house, the pool is clearly behind the house.

15 So we looked at -- we looked at possibly  
16 turning the pool, getting it behind that piece of the  
17 house that projects out to the south. And what it  
18 does -- because that's another question we should  
19 visit here is are there alternatives to this.

20 CHAIRPERSON MIETZ: Please do.

21 MR. CHUCK SMITH: If we push it south to get  
22 beyond our family room, which is really a room that  
23 features these beautiful views, which is -- which is  
24 this bump out, which many, many houses have and  
25 design. If they don't, they're adding them, bringing

1 in lots of light into a house.

2           If we push that pool beyond that, we start  
3 to encroach on the golf course. The golf course is  
4 already concerned about the proximity of the pool  
5 house to the third hole.

6           But we specifically put the pool house to  
7 buffer the pool from the golf hole so that they  
8 would -- so it would buffer between the actual pool  
9 activity and the golf activity.

10          So this -- this is the pool house. And the  
11 other thing we looked at is, okay, so we don't want to  
12 push it back to where it's going to be right on top of  
13 the golf course. What if we turn it?

14          So we looked at turning it 90 degrees. And  
15 Larry already mentioned that we made it smaller. So  
16 we have made it smaller to lessen the impact.

17          So we looked at turning it. And when we  
18 turn it and we get it behind here, now it gets --  
19 now -- now the pool gets closer to a neighbor who's  
20 very concerned about a pool.

21          And so we're in a tough spot here because if  
22 we turn it and we actually put it behind the furthest  
23 most southern part of the house, now we're affecting  
24 the privacy of a neighbor who's very concerned about  
25 privacy. We have less room to actually plant buffer

1 between the pool and the west property, number 15.

2 So that's where we are. We have it set  
3 nicely in that it's a half-level down. So stepping  
4 down the property -- so it's not up on the first floor  
5 and it's not all the way down at the golf course  
6 level. It's at the terrace level, which is halfway  
7 between the basement level and the first-floor level  
8 of the house.

9 So it kind of tucks in nicely into the  
10 hillside and that helps us buffer it from the property  
11 to the west. And it's actually behind all the other  
12 properties in the neighborhood.

13 CHAIRPERSON MIETZ: Okay.

14 MS. TOMPKINS-WRIGHT: I have a quick  
15 question. When you talk about screening or views from  
16 the golf course, do you mean just golfers from -- or  
17 are there also concerns about privacy while people are  
18 using the pool from the golfers as well?

19 MR. CHUCK SMITH: We're looking for  
20 screening in both directions. Because I'm a golfer, I  
21 know sometimes I make a bad put and, you know, I don't  
22 want somebody to hear what I might say, so...

23 Yes. We want privacy in both directions.

24 CHAIRPERSON MIETZ: Okay.

25 MS. SCHMITT: Well, you know, I have -- I'll

1 tell you what. I think the house is beautiful. I  
2 really do. I'm also a pool owner. It's -- I think  
3 it's very important to have a pool if you have kids.  
4 I'm sorry. I disagree with Ms. Ronnan in regard to  
5 that if that's her view.

6 But I understand her concerns about  
7 loudness. Because we hear -- we hear comments because  
8 we have the same kind of thing of a black fence. We  
9 have arborvitae. When young ladies come over to our  
10 house, sometimes boys, but when young ladies come  
11 over, we get calls almost immediately for loud voices.

12 So I'm trying to understand how this is  
13 considered the backyard and how the arborvitae or  
14 somehow screen it for Ms. Ronnan who views this as her  
15 side yard.

16 MR. CHUCK SMITH: Okay. So the --  
17 Ms. Ronnan's house is 30 feet below.

18 MR. HEININGER: It's about 30 feet below.

19 MR. CHUCK SMITH: So Ms. Ronnan's house is  
20 about 30 feet below the elevation of this pool. So  
21 it's -- if we were down on her property, the pool  
22 would be above the ceiling and over with woods between  
23 us. So it's -- so there is a lot of natural screening  
24 with the elevation change between the two levels. So  
25 they're not -- they're not on level with each other

1 like you might have in a normal neighborhood where the  
2 grade is straight across from yard to yard. Okay? So  
3 that's one factor.

4 So the other factor is that if you look at  
5 the arc of all the houses around the cul-de-sac, this  
6 pool is clearly behind that arc of the houses. That's  
7 why -- that was -- that's the intent to put the pool  
8 in the back.

9 So the only technical issue we have is  
10 our -- is our -- is our family room with light on  
11 three sides, which places that -- makes the pool look  
12 like it's in the side yard.

13 MS. SCHMITT: And you're thinking you do not  
14 want to use it in the area that most people would  
15 consider to be the backyard because the way it's  
16 elevated, that's your only -- I can't tell if that's  
17 terraced.

18 MR. CHUCK SMITH: Oh, yeah. I can describe  
19 the layout of the house for you.

20 MS. SCHMITT: I'm just trying to understand  
21 why you want it there.

22 MR. CHUCK SMITH: Yes. So this part of the  
23 backyard is a full story below the first floor of the  
24 house. And the hillside is coming up.

25 So by placing the pool in this part of the

1 back of the house, we have -- that's where we have  
2 access to a half level down to get from the family  
3 room and the kitchen right to the pool area. So this  
4 is the most -- the best access.

5 And if we were to put the pool in the  
6 backyard here, now we're right on top of the golf  
7 course because we're closer to the golf course with a  
8 lot less ability to screen as opposed to tucking it  
9 into the back of the house on the west side.

10 MS. TOMPKINS-WRIGHT: Can I just follow up  
11 on the comment you made about the arc? That is the  
12 purpose of this submission here, this labeled Monroe  
13 County GIS Services Division to show that -- I just  
14 want to make sure -- I'm reading it to show that arc,  
15 if that pool were moved on to the neighbor's property  
16 would actually be the neighbor's backyard, not in  
17 the --

18 MR. CHUCK SMITH: Correct. Yeah. That's  
19 the unusual thing we have to remember that we're not  
20 straight here. We're on a cul-de-sac, which is  
21 causing a number of reasons why we're here  
22 tonight is -- if you -- if you look at the houses  
23 they're laid out on an arc around this circle. So  
24 they're going around like this.

25 We're the furthest most south part. And

1 then they come back up. So you put this house along  
2 that point anywhere along these houses, it's in the  
3 back.

4 MS. TOMPKINS-WRIGHT: I want to make sure  
5 that it's clear in the transcript.

6 And one other thing to make clear, were this  
7 fully in the backyard, it would only require to be 10  
8 feet from the property line. And this is -- I'm  
9 looking at it wrong. 26 feet from -- I think I need  
10 glasses. 26 feet from the property line; is that  
11 accurate?

12 MR. DiSTEFANO: 26, 28.

13 MS. MCKAY-DRURY: 25 or 26.

14 CHAIRPERSON MIETZ: The back of the pool  
15 house.

16 MS. TOMPKINS-WRIGHT: The side yard, it  
17 looks like 28.

18 MR. DiSTEFANO: 28.

19 MS. TOMPKINS-WRIGHT: 28 from the side lot.

20 MR. CHUCK SMITH: It's 28 feet, 2 inches.

21 MS. TOMPKINS-WRIGHT: I just want to make  
22 sure that's part of the transcript.

23 MS. MCKAY-DRURY: I just want to make sure  
24 that I'm understanding in terms of the options that  
25 you were looking at without a variance, the -- and

1 this might be more of a question more for Rick, but  
2 could -- I think what we're trying to understand is  
3 could a pool go here? That's basically for the  
4 purpose of the record south -- southeast of where it  
5 is now so that it's behind. Obviously there's grading  
6 that would need to be addressed.

7                   But in terms of -- from a zoning  
8 perspective, could that go there? And no variance  
9 would then be required?

10                  MR. DiSTEFANO: Yes. As a matter of fact,  
11 you could take this pool where it is now and shift  
12 back to here and no variance would be required. And  
13 it still would be in that same light -- sign of light  
14 for that neighbor, but it would not require a  
15 variance. Because once you're behind that 60 foot  
16 line, the line that they got going across the back of  
17 the house, as soon as that pool, I'll say, below that  
18 line, it doesn't need a variance.

19                  So they could meet code and still have the  
20 same exact same problem that the neighbor has with  
21 where it's located now.

22                  MR. HEININGER: I want to -- I'm the one  
23 that put this together --

24                  CHAIRPERSON MIETZ: Okay.

25                  MR. HEININGER: -- the County GIS mapping.

1 And I reduced our site plan and, you know, asked Chuck  
2 to hand it out.

3 The Ronnan house is approximately 10 feet  
4 below the grade of the pool elevation. But I put  
5 dimensions on here. It's 150 feet from the corner of  
6 the pool roughly by scale to the corner of the house.

7 That corner of the house is actually the  
8 garage. And then from that garage it's 160 feet from  
9 the corner of the covered porch, which is actually --  
10 we'll consider it a house or a corner of the garage.  
11 And another 141.

12 So without getting super technical, when you  
13 get into decibel levels and things like that, there's  
14 a roll off just like -- there's roll off. As you  
15 double your incidence you take the square root of the  
16 decibels and it falls away.

17 It's the same thing that if I'm putting out  
18 with an amplifier a certain decibel level at 10 watts,  
19 if I double by distance, I've got to square my power.  
20 I now have to crank that amp up to 100 watts. It  
21 works the other way.

22 So -- and I for -- once had to do an  
23 analysis of the DOT salt barn and the beep, beep,  
24 beep, in the middle of the night and how that was  
25 going to work.

1           You know, the suggestion of moving the pool  
2 to behind the house, part of this is -- I'm not the  
3 architect, but the connection to the living space and  
4 to the pool.

5           CHAIRPERSON MIETZ: Right. And you've made  
6 that clear.

7           MR. HEININGER: It's not just slapping a  
8 pool in the backyard.

9           The other thing is if you move it over  
10 there, now it's going to -- it's closer to Kemper. So  
11 you know, what's the -- the best balance of -- of --  
12 you know, I can put a scale on the pool to Kemper.  
13 What's the best balance?

14           MS. TOMPKINS-WRIGHT: And also one thought,  
15 part of the purpose of having a code that doesn't  
16 permit pools in the side yard is so that it's screened  
17 from the public right-of-way.

18           And can you just confirm that this pool will  
19 not be visible at all based on the orientation of the  
20 home from Elmwood Hill Lane or the cul-de-sac?

21           MR. HEININGER: I'll confirm you're not  
22 going to be able to see it because if your garage is  
23 here, the pavement is there --

24           MS. TOMPKINS-WRIGHT: Yup.

25           MR. HEININGER: -- you're going to have to

1 look through the house. And this is down the hill.  
2 And if I put a radius point at the center of the  
3 cul-de-sac and kind of come through here, that pool's  
4 behind everything. If I say this is my front yard and  
5 I turn it 90, it's pretty much in the backyard.

6 MS. TOMPKINS-WRIGHT: Thank you.

7 MR. HEININGER: I did that analysis a month  
8 ago. I wasn't sure whether it was valid.

9 CHAIRPERSON MIETZ: Okay.

10 MS. MCKAY-DRURY: Before -- I know we're  
11 almost down, but I think you just said when it comes  
12 to the grading, I think you just said 10 foot below  
13 now for that neighbor. But before I --

14 MR. HEININGER: Chuck says 30 and I say it's  
15 10 based on this topography. I don't want anyone.

16 MS. MCKAY-DRURY: It's 10.

17 CHAIRPERSON MIETZ: Just make sure.

18 MR. HEININGER: If it was 30 feet, she would  
19 really be down in the hole. Okay?

20 MS. MCKAY-DRURY: That's fine. I just want  
21 to make sure the record is clear.

22 MR. HEININGER: Looking at this, the 64  
23 contours wandering up around the east side of her  
24 house -- and I know I blanked out the contours here.  
25 But I'm looking 71 down at the -- down there on the

1 topo. And if you work up the line, you see 71, 72,  
2 73, 74, 75. And so 75, 76 is about the topography of  
3 the pool.

4 So, you know, maybe we're 11 and 12 feet  
5 higher. And then the question really is, is the  
6 sound, you know, on a direct line? If it's hitting  
7 dirt, it's skipping up. Does that make sense? Okay?  
8 It's not bending around the corner.

9 CHAIRPERSON MIETZ: Okay.

10 MR. HEININGER: Not that we're going to  
11 build a berm on the side yard because then we'd kill  
12 all the trees.

13 CHAIRPERSON MIETZ: All right. Any other  
14 questions at this point? Questions? Good. Okay.

15 Gentlemen, thank you very much.

16 Is there anyone in the audience that would  
17 like to speak regarding 12 Elmwood Hill Lane?

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

20 **Application 12A-05-22**

21 Application of Thomas and Lindsay Connally,  
22 owner, of property located at 128 Eastland Avenue, for  
23 an Area Variance from Section 207-10E(2) to allow  
24 front yard pavement to increase from 33 percent to 40  
25 percent of the front yard area, after construction of

1 a front addition, where a maximum 30 percent is  
2 allowed by code.

3 CHAIRPERSON MIETZ: Okay. Who do we have  
4 speaking for 128 Eastland?

5 MR. CONNELLY: Good evening. I'm Tom  
6 Connolly. My wife, Lindsey Connolly, and I are the  
7 owners of 128 Eastland.

8 We've lived in the house since 2013. We in  
9 recent years had our first child. She's two and a  
10 half. We are due with our second this spring.

11 And we designed the project to add to the  
12 front of the house, which was recently approved by the  
13 Architectural Review Board.

14 Included in that project is the addition of  
15 a two-car garage. We currently have a one-car garage.  
16 And to accompany that we're asking for a variance to  
17 have a two-lane-wide driveway that goes to the road,  
18 which is different than what we have.

19 While the overall pavement would be less  
20 than what we currently have because of the shortened  
21 yard, with the addition of the house, it increases the  
22 percentage of coverage up to 40 percent. And that's  
23 in excess of what's allowable. And that's what we're  
24 seeking the variance for.

25 So the reason we're doing this is to -- it's

1 for practical reasons, to be able to access the garage  
2 efficiently and safely without having to go around  
3 other vehicles if it were to bottleneck to a single  
4 lane in the short distance before the road. But we  
5 also feel it's going to add aesthetically  
6 significantly compared to what we have currently. The  
7 whole project will. But the driveway as well -- we're  
8 going to use concrete instead of blacktop. And it's  
9 going to look much nicer. It's not going to be an  
10 irregular shape as it is now.

11 And happy to answer any questions that you  
12 have.

13 MS. SCHMITT: I have a couple questions.  
14 Well first, congratulations on your upcoming birth.

15 MR. CONNELLY: Thank you. Thank you.

16 MS. SCHMITT: Have you spoken to any of your  
17 neighbors about the driveway and how it's going to be  
18 taking up a lot of space?

19 MR. CONNELLY: Yeah. Actually I'm going to  
20 point to the drawing up here. So the neighbor to our  
21 north right here, I've had lots of conversations. We  
22 have a very close relationship.

23 It's actually going to get rid of this odd  
24 sort of protrusion in the driveway right here because  
25 we're going to eliminate that and the driveway's going

1 to expand a little bit inward. So it's actually going  
2 to make the yard a little more regular.

3 He likes to mow that part of it. He doesn't  
4 like when I do it because then the grass is  
5 mismatched. So he prefers to do that so it makes for  
6 a cleaner line.

7 It will also avoid -- what happens right  
8 now, in order to use this spot, it's almost -- it's  
9 very challenging to not drive over the grass  
10 sometimes, especially guests that are unfamiliar with  
11 the -- you know, the layout of the driveway. So very  
12 much a proponent of the changes that we're proposing.

13 MS. SCHMITT: And other neighbors around  
14 there, they don't have any comments or anything?

15 MR. CONNELLY: No. There wasn't any.

16 MS. SCHMITT: Is it already a nonconforming  
17 variance where it's 33 percent of the -- of it is  
18 paved?

19 MR. CONNELLY: Yeah. I noticed that.  
20 That's the way it was when we purchased the house. So  
21 I don't know the history of how that came about, if it  
22 was approved or not.

23 CHAIRPERSON MIETZ: Rick?

24 MR. DiSTEFANO: Well, most likely it's  
25 pre-existing, nonconforming. That section of the code

1 was written in '92. So any driveways that were  
2 installed prior to 1992, which I'm sure there's many,  
3 many in the town, that -- that exceeds that 30 percent  
4 are pre-existing nonconforming.

5 So your situation, you're pre-existing  
6 nonconforming. Now you're increasing that  
7 nonconformance. But like you said earlier, your  
8 actual pavement amount is actually decreasing. But  
9 because of you losing so much front yard area...

10 MS. SCHMITT: How long is that actual  
11 driveway going to be now?

12 MR. DiSTEFANO: About 40 feet.

13 MR. CONNELLY: Yeah. It would -- I  
14 assume -- yeah. It'd be 40 feet to the sidewalk just  
15 going by that. That's the setback that we're looking  
16 up to meet, so...

17 MS. SCHMITT: So have you thought -- have  
18 you thought of any alternatives to doing a double-wide  
19 driveway from the road to the actual garage? And in  
20 particular, did you think about doing what I saw a lot  
21 of, which was -- appears to be a single driveway that  
22 then expands into to double at some point in the  
23 driveway?

24 MR. CONNELLY: The first part of your  
25 question, I'm not sure what an alternative would be.

1 This is actually the -- really the narrowest a  
2 two-lane driveway could be. It's less than the 20  
3 feet that would be typical. It's -- I think 18 and a  
4 half is what's listed in there. And it is straight  
5 back.

6 If we were to bottom it, so if it were to be  
7 one lane when it hits the road, it would just be a  
8 very aggressive expansion in the short distance before  
9 we got to the garage.

10 So practically I don't know if that would  
11 really allow us easy access with two cars side by  
12 side. It would involve a lot of jockeying around cars  
13 to safely get in and out of it. And it would be I  
14 think difficult to stay on the hard surface to do  
15 that.

16 MS. TOMPKINS-WRIGHT: And importantly given  
17 the new size of the front yard, even a kind of  
18 one-lane would still require a variance for the front  
19 yard.

20 CHAIRPERSON MIETZ: Okay. Could you  
21 describe for the Board the conditions around your home  
22 as far as driveways are concerned?

23 MR. CONNELLY: There are other driveways in  
24 the neighborhood, even on our street, that are  
25 two-lanes that go to the road. They're, you know --

1 CHAIRPERSON MIETZ: I mean --

2 MR. CONNELLY: We would not be the only one.

3 CHAIRPERSON MIETZ: Just for the record, I  
4 guess we're saying the houses that are immediately  
5 adjacent to you and directly across the street from  
6 you, how would you describe the driveways?

7 MR. CONNELLY: Well, the setups are  
8 different too. Immediately to our north it's actually  
9 one the few duplexes in Brighton. The driveway goes  
10 around the side of the house, so...

11 CHAIRPERSON MIETZ: I saw that.

12 MR. CONNELLY: It does widen fairly quickly  
13 to two lanes. I think it is single as it hits the  
14 road.

15 To our south, that's single but then it  
16 wraps around behind the house because the driveway --  
17 the driveway's in the rear, which is actually the case  
18 I believe for most of the houses immediately  
19 surrounding ours that the garage is different --  
20 placed there kind of set back behind the house.

21 CHAIRPERSON MIETZ: All right. Other  
22 questions, please. Questions? Okay. Very good.  
23 Thank you very much.

24 MR. CONNELLY: Thank you.

25 CHAIRPERSON MIETZ: Is there anyone in the

1 audience that would like to speak regarding this  
2 application?

3               Okay. There being none the public hearing  
4 is closed.

5               **Application 12A-06-22**

6               Application of Mary Jo Jepson, owner of  
7 property located at 339 Hollywood Avenue, for Area  
8 Variances from Sections 203-2.1B(2) and 203-9A(4) to  
9 1) construct a detached garage with attached pergola  
10 648 square feet in size in lieu of the maximum 600  
11 square feet allowed by code, and 2) allow said  
12 detached garage to be setback 3 feet from a side  
13 And the rear lot line where a minimum 5 foot setback  
14 from all lot lines is required by code. All as  
15 described on application and plans on file.

16               MR. O'DONNELL: Good evening. My name is  
17 Joe O'Donnell. I'm an architect at Greater Living  
18 Architecture with an address at 3033 Brighton  
19 Henrietta Town Line Road. We're here -- I'm here  
20 representing Mary Jo Jepson, the owner of the  
21 property, to construct the, as Rick entered into the  
22 minutes, a single bay garage and attached pergola.

23               Your package includes sketches of the  
24 proposed structure and an actual photograph of what  
25 the homeowner has envisioned this garage and pergola

1 to be.

2 We've talked to the neighbors. Mary Jo  
3 actually visited and spoke to the neighbor behind,  
4 explaining the project. Got no objections. We as of  
5 late this afternoon met with the neighbors immediately  
6 adjacent to Mary Jo. They had a little bit of concern  
7 about the setbacks. We physically went out there,  
8 marked out the proposed garage so that they can get a  
9 vision of where it was going to be situated on-site.

10 One of the comments from the neighbors would  
11 be -- was that they actually prefer the rear be  
12 setback only two feet so that the garage got pushed  
13 back even one more foot. So I would actually enter  
14 that into the Board's consideration tonight if that's  
15 at all possible.

16 I can go through the standards that the  
17 Board usually considers in evaluating each case. I  
18 don't want to waste everybody's time by reading them.  
19 But I would just jump item C, which is the requested  
20 variance substantial? We don't believe it's  
21 substantial. Where just asking for two foot relief on  
22 the side and the rear.

23 It's pretty straightforward. I think this  
24 is a presentation I like to call the 3-2-1. Applicant  
25 4 asks for three garages. Applicant 5 asks for two.

1 And we're asking for one. So helpfully we're headed  
2 in the right direction.

3 MR. DiSTEFANO: So just to clarify, you want  
4 a -- modify the request for two feet on both rear and  
5 side?

6 MR. O'DONNELL: No. Just in the rear.

7 MR. DiSTEFANO: Just the rear.

8 MR. O'DONNELL: The neighbor just said it  
9 would be great if you could push it back one more  
10 foot. They had explained to us that they have a  
11 barbecue area that they'd like to build between the  
12 driveway and their house. And just a little bit more  
13 back further would -- they would really -- but they  
14 did -- we did enter into the record -- sent Mary Jo an  
15 email after we met in support of the application.

16 CHAIRPERSON MIETZ: Can you just give some  
17 background on the pergola and in general in this  
18 particular case, what --

19 MR. O'DONNELL: Well, it was --

20 CHAIRPERSON MIETZ: -- the owner is looking  
21 to do?

22 MR. O'DONNELL: So Mary Jo is an advocate  
23 landscaper. If you visited her site, you see she  
24 takes great care of the manicuring of her garden and  
25 her lawn.

1                   She has retained professional landscape  
2 consultants and a gardener that actually came up with  
3 these sketches based on her vision. She just retained  
4 us as design professionals for this process.

5                   But if you'd like I can let Mary Jo speak,  
6 you know --

7                   CHAIRPERSON MIETZ: If she'd like to. She's  
8 got to come up though.

9                   MS. JEPSON: Yup. Mary Jo Jepson, 339  
10 Hollywood.

11                   CHAIRPERSON MIETZ: Very good.

12                   MS. JEPSON: I like my backyard, but I do  
13 need a garage. So that's the -- if I was, you know,  
14 10, 20 years younger, I might say, oh, well, I can  
15 shovel the snow. But it's getting to the point where  
16 if we want to age in place, the garage is important  
17 for us to have.

18                   But at the same time I didn't want to put a  
19 double-car, double-bay garage because that would take  
20 up too much space, too much visual, and not being able  
21 to do the kind of gardening that I like to do.

22                   So the idea of the pergola is just to --  
23 form over function, okay, to take -- it just looks  
24 nice I think. And I'd like to look at that. I think  
25 my neighbors would like to look at it also.

1 CHAIRPERSON MIETZ: Okay. Very good.  
2 Appreciate that.

3 MR. O'DONNELL: And just as a tidbit, the  
4 pergola actually is what pushed us over the sides of  
5 the garage. And it's open on two sides. So it's  
6 just -- I think it's more of a definition of the  
7 zoning code that triggered the variance.

8 CHAIRPERSON MIETZ: And the intention is to  
9 keep it open?

10 MR. O'DONNELL: Yeah. Oh, yes.

11 CHAIRPERSON MIETZ: The way we see it in the  
12 photo?

13 MR. O'DONNELL: Exactly. And our final  
14 drawings would be detailed similar to that.

15 CHAIRPERSON MIETZ: Okay.

16 MS. SCHWARTZ: It's still a 3 foot side  
17 setback but a 2 feet rear setback?

18 MR. O'DONNELL: Yeah. We would -- well, and  
19 the reason for that, recommended to Mary Jo is that,  
20 you know, that neighbor might not be there forever.  
21 The next neighbor could come and put a fence up and  
22 how do you get in there to maintain that side of your  
23 garage, clean the gutters, et cetera, et cetera.

24 And again, there's a little bit of a  
25 landscaping area between the two properties. The

1 adjacent property owner said, you know, it'd be nice  
2 to keep this. And Mary Jo said that it absolutely is  
3 going to stay.

4 MS. SCHWARTZ: I had one last question.

5 MR. O'DONNELL: No problem.

6 MS. SCHWARTZ: Did you consider -- I know  
7 the garage unit driveway goes right out. Did you ever  
8 consider coming forward towards the driveway to meet  
9 the setback, the rear setback?

10 MR. O'DONNELL: The only concern about that  
11 is, is that the mass of the garage starts to become a  
12 visual encroachment on the neighbor. You know,  
13 they've already said, boy, it'd be nice if you pushed  
14 it back.

15 MS. SCHWARTZ: Okay.

16 MR. O'DONNELL: So we were trying to, you  
17 know, be respectful because that's their kitchen  
18 window that looks right out in that area in Mary Jo's  
19 backyard.

20 MS. SCHMITT: Okay. Did you talk to the  
21 neighbor behind you?

22 MS. JEPSON: I have talked to both of them.

23 MS. SCHMITT: Okay. We received a letter.  
24 And that letter from that neighbor said they're very  
25 concerned about the 5 foot setback, that they -- they

1 would like to maintain that because they don't like  
2 the visual from their view.

3 MS. JEPSON: First I've heard of it. Which  
4 neighbor -- may I see the copy?

5 CHAIRPERSON MIETZ: Maybe you can --

6 MR. GORDON: Yup. The correspondence she is  
7 talking about is from Karen Altman. It's an email  
8 that was just received today at about 4:10 p.m.  
9 That's why it's not part of the public record.

10 But I will say that Ms. Altman is expressing  
11 hope that the garage could be moved forward and was  
12 expressing concern about the 3 foot distance.

13 And now you're saying it would be 2 foot.  
14 And her concern mostly involved encroachment of that  
15 structure on her backyard and the diminishment of  
16 light that she might experience as a result of that  
17 closeness of the structure.

18 MS. SCHMITT: Yes.

19 MR. O'DONNELL: I'd like to just address  
20 that --

21 MR. GORDON: Sure.

22 MR. O'DONNELL: The letter even though I  
23 didn't see it.

24 That neighbor's -- the encroachment of the  
25 light -- and I can only go off memory from what I saw.

1 First of all, there's a stockade fence along the back  
2 of the property about 4 foot high.

3 But any shadow lines from this garage would  
4 only probably go into her yard maybe 10 feet. I mean,  
5 I hadn't studied the sun angles. But her house is  
6 probably 50 feet, 60 feet away; right?

7 MS. JEPSON: This is the neighbor directly  
8 behind?

9 MR. O'DONNELL: From the back of our lot.

10 MS. TOMPKINS-WRIGHT: Do you mind  
11 clarifying -- and maybe it's just for me or maybe it's  
12 for the whole board. When you said that the neighbor  
13 had requested you push it back even farther, was that  
14 186 Buckland or was that the next door neighbor who  
15 was okay with it being 3 feet from their yard but  
16 wants it farther back?

17 MR. O'DONNELL: Yeah. That was for them.

18 So what is that house number? It's the  
19 neighbor directly to the north of --

20 MS. TOMPKINS-WRIGHT: So 321 Hollywood. The  
21 neighbor requested --

22 MR. O'DONNELL: Yeah. They said it would be  
23 nice if it got pushed back another foot.

24 MS. TOMPKINS-WRIGHT: Right. But that  
25 neighbor's asking to be encroached more on the other

1 neighbor.

2 MR. O'DONNELL: Right. I mean, I guess  
3 if -- I thought I heard somebody mention something  
4 about the -- what was the verbiage you used as far as  
5 the --

6 MR. GORDON: Yeah. Why don't I just read --

7 CHAIRPERSON MIETZ: Just read it.

8 MR. GORDON: Since you have not heard this,  
9 I think it's fair that you do. It says (as read):  
10 Dear Mr. DiStefano, I'm writing to comment on the  
11 Zoning Board of Appeals application 12A-06-22. The  
12 application seeks two variances related to  
13 construction of new garage storage area and pergola at  
14 339 Hollywood Avenue, which is directly behind my home  
15 at 186 Buckland Avenue.

16 One variance would permit the construction  
17 of a 648 square foot structure and in lieu of the  
18 maximum 600 square feet allowed by code.

19 The other variance is to allow the garage to  
20 be set back 3 feet from the side and rear lot line in  
21 lieu of the minimum 5 feet.

22 I can certainly understand the owners desire  
23 for garage storage and outside seating area. I am not  
24 opposed to the plan as much as I am concerned about  
25 the proposal and the impacts on my backyard. The

1 proposal will create a new wall extending 24 feet  
2 across my backyard only 3 feet from the lot line.

3 I'm uncomfortable with the potential visual  
4 impacts and loss of light from a garage and storage  
5 area with a pitched roof. The plans in the package  
6 imply that the western wall might have windows, but I  
7 wasn't sure if that was part of the plan.

8 I would appreciate attempts to compromise,  
9 especially in the setback. It looks as though the new  
10 garage/pergola could be built while still maintaining  
11 the 5 foot setback from the rear lot line allowed by  
12 code.

13 MR. O'DONNELL: Okay. I guess I would just  
14 say that the -- I mean, it's subjective. That wall --  
15 the back wall that she's referring to, I'm not sure  
16 the impact is much more significant if it's 5 or 3.  
17 It's a wall that's there, 50 to 60 feet away.

18 So that's my -- that's why I wanted to hear  
19 what that language was or what she said.

20 MR. GORDON: I'm curious. Are there trees  
21 at the rear of this property? At the rear of your  
22 property?

23 MS. JEPSON: Small decorative trees.  
24 Nothing -- not an evergreen or a arborvitae.

25 MR. GORDON: And then do you have any idea

1 what heights those trees are? They're very small.

2 MS. JEPSON: Oh, yeah. They're --

3 MR. GORDON: They're approximately 6 feet in  
4 height?

5 MS. JEPSON: Yeah. I would say there's  
6 three of them there that would be behind this proposed  
7 garage, three little ones.

8 CHAIRPERSON MIETZ: Okay. Very good. Other  
9 questions please?

10 MR. DiSTEFANO: I just want to verify the  
11 height of this structure is going to maintain the  
12 maximum 16 feet allowed by code.

13 MR. O'DONNELL: Yup. Yup.

14 MS. SCHMITT: And just one more time, again,  
15 why -- I understand the neighbors would like to have  
16 it pushed back as far as possible. But why does the  
17 applicant need to have it not meet the rear setback of  
18 5 feet?

19 MR. O'DONNELL: Again, it just starts to  
20 encroach more -- it becomes more imposing to the  
21 neighbor who's really impacted the most right next  
22 door.

23 MS. SCHMITT: To be a good neighbor --

24 MR. O'DONNELL: Yes.

25 MS. SCHMITT: -- to the person on this side,

1 but not that it needs to be for this particular  
2 structure.

3 MR. O'DONNELL: Correct.

4 MS. SCHMITT: Okay.

5 CHAIRPERSON MIETZ: Okay. Very good. All  
6 right. We all set? Okay. Very good. Thanks.

7 MR. O'DONNELL: Thank you.

8 CHAIRPERSON MIETZ: Is there anyone in the  
9 audience who would like to speak regarding this  
10 application? Okay. There being none the public  
11 hearing is closed.

12 **Application 12A-07-22**

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

19 MS. TOGAY: My name is Husniye Togay.

20 CHAIRPERSON MIETZ: Okay. So go ahead and  
21 tell us what you're trying to do, ma'am.

22 MR. TOGAY: My house backyard is situated --  
23 I need the privacy and then the highest of the fence.

24 CHAIRPERSON MIETZ: Okay. So what you're  
25 trying to do is get more privacy?

1 MS. TOGAY: Yes please.

2 CHAIRPERSON MIETZ: Okay. And what is the  
3 problem? Just that --

4 MS. TOGAY: Because, you know, like my  
5 backyard, it's on the street. Everybody walk in  
6 there, the sidewalk. If you are going to backyard,  
7 it's not very privacy.

8 MS. TOMPKINS-WRIGHT: And -- sorry.

9 CHAIRPERSON MIETZ: Go ahead.

10 MS. TOMPKINS-WRIGHT: And a couple of other  
11 homes that back up to the French Road also have fences  
12 higher than 3 and a half feet or end in hedgerows?

13 MS. TOGAY: Some have houses, you know, the  
14 4 and a half. They be the 5. So my neighbor is  
15 giving up application, gave the Town's proof because  
16 he's waiting to me making the approval.

17 CHAIRPERSON MIETZ: Okay. How long have you  
18 lived in the house, ma'am?

19 MS. TOGAY: I bought my house 2016.

20 CHAIRPERSON MIETZ: 2016.

21 MS. TOGAY: Mm-hm.

22 CHAIRPERSON MIETZ: Okay. So you have  
23 experience with what's --

24 MS. TOGAY: Yeah.

25 CHAIRPERSON MIETZ: -- going on? Okay.

1 Very good. Okay. Other questions? Questions?  
2 Questions? Okay. Great. Thanks very much.

3 MS. TOGAY: Thank you.

4 CHAIRPERSON MIETZ: Is there anyone in the  
5 audience that would like to speak regarding this  
6 application?

7 Okay. There being none then the public  
8 hearing is closed.

9 How do you want to do this, Rick? All three  
10 together? How do you want to do this?

11 MR. GORDON: One second.

12 MR. DiSTEFANO: Just before we talk, they  
13 are not open. The last three are closed. So all we  
14 have do is make our decision on it when we are read to  
15 make that -- you know, we can go through current  
16 business and then come back and do --

17 CHAIRPERSON MIETZ: Yeah. That's what I  
18 was -- I mean, how do we --

19 MR. DiSTEFANO: Yeah. I would just hold  
20 those three to the end and we'll --

21 CHAIRPERSON MIETZ: Come back to them.

22 (End of the public hearings.)

23 \* \* \*

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1 REPORTER CERTIFICATE  
2

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

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

11  
12 Dated this 7th day of December, 2022  
13 at Rochester, New York.

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*Holly E Castleman*

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HOLLY E. CASTLEMAN, CR,  
Notary Public.

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2 **BRIGHTON**

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**ZONING BOARD OF APPEALS**

4

**MEETING**

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**DELIBERATIONS**

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8 December 7, 2022  
9 At approximately 7 p.m.  
10 Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

11 PRESENT:

12 DENNIS MIETZ  
13 Chairperson

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

20  
21 KEN GORDON, ESQ.  
22 Town Attorney

23 RICK DiSTEFANO  
24 Secretary

25  
26 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,  
27 FORBES COURT REPORTING SERVICES, LLC  
28 21 Woodcrest Drive  
29 Batavia, NY 14020

1 **Application 12A-01-22**

2 Application of Terry Smith, contractor and  
3 Denise Platek, owner of property located at 35  
4 Torrington Drive, for an area Variance from Sections  
5 203-2.1B(6) and 203-9A(4) to allow a standby emergency  
6 generator to be located in a side yard in lieu of.  
7 The rear yard behind the house as required by code.  
8 All as described on application and plans on file.

9 Motion made by Mr. D'Augustine to approve  
10 application 12-01-22 based on the following findings  
11 of fact.

12 **Findings of Fact:**

13 1. The variance requested is not substantial and will  
14 not negatively affect the character of the  
15 neighborhood given that the generator will be shielded  
16 from view by the porch, some shrubbery and a 5 foot  
17 fence and will be located next to already existing  
18 central air conditioning units.

19 2. The deck and pavement in the rear of the house  
20 prevents the homeowners from placing the generator in  
21 the rear.

22 3. The harm was not self-created due to the deck  
23 being present when the homeowner purchased the home.

24 **Conditions:**

25 1. The installed unit will be as described in the

1 testimony and submitted in the plan.

2 2. All necessary permits will be obtained.

3 3. The generator will conform to the Town's decibel  
4 rating.

5 MR. DiSTEFANO: Can I just modify your first  
6 one a little bit?

7 MR. D'AUGUSTINE: Certainly.

8 MR. DiSTEFANO: The generator shall be  
9 located -- I'm sorry. The generator shall be of size,  
10 style and location as per plans submitted and  
11 testimony given.

12 MR. D'AUGUSTINE: Okay.

13 MR. DiSTEFANO: You good with that?

14 MR. D'AUGUSTINE: I'm good.

15 MS. TOMPKINS-WRIGHT: I'll second.

16 CHAIRPERSON MIETZ: Okay.

17 MR. DiSTEFANO: The motion is to --

18 MR. D'AUGUSTINE: I'm sorry. Can you repeat  
19 what you changed it to for me?

20 MR. DiSTEFANO: The generator shall be of  
21 size, style and location as per plans submitted and  
22 testimony given.

23 And that's not to say if they came in with a  
24 different manufacturer that that wouldn't carry  
25 through. It's basically size and style is more or

1 less, you know, a box style generator.

2 **Conditions as amended:**

3 1. The generator shall be of size, style and location  
4 as per plans submitted and testimony given.  
5 2. All necessary permits will be obtained.  
6 3. The generator will conform to the Town's decibel  
7 rating.

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

10 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;  
11 Mr. Mietz, yes; Mr. Premo, yes;  
12 Ms. Schwartz, yes; Ms. Tompkins-Wright, yes;  
13 Mr. D'Augustine, yes.)  
14 (Upon roll motion to approve with conditions  
15 carries.)

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1                   **Application 12A-02-22**

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

10                  Motion made by Mr. Mietz to approve  
11                  application 12-A2-22 based on the following findings  
12                  of fact.

13                  **Findings of Fact:**

- 14                  1. The rear yard contains a septic system and  
15                  utilities are located on the side of the structure  
16                  versus the rear, which makes placement in the rear  
17                  yard less feasible.
- 18                  2. The proposed location on the side of the house is  
19                  well screened and 140 feet from the nearest residence.
- 20                  3. No other location on-site can meet the needs of  
21                  the applicant.

22                  **Conditions:**

- 23                  1. The generator shall be of size and style and  
24                  location as testimony given and plans submitted.
- 25                  2. All necessary building permits shall be obtained.

1 (Second by Mr. D'Augustine.)

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

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

8 (Upon roll motion to approve with conditions  
9 carries.)

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1                   Application 12A-03-22.

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

12                   Application 12A-04-22

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

20                   MR. PREMO: I move to table application --  
21                   excuse me. With respect to applications 12A-03-22 and  
22                   12A-04-22 I move to keep the public hearing -- or  
23                   reopen the public hearing. Excuse me. And to table  
24                   the applications for further consideration and request  
25                   for information from the applicant.

1 MS. MCKAY-DRURY: I second.

2 MR. DiSTEFANO: Are you tabling the pool  
3 too?

4 CHAIRPERSON MIETZ: Yes.

5 MR. DiSTEFANO: I just want to make sure  
6 we're tabling the pool too.

7 What is the additional info regarding the  
8 pool?

9 MR. PREMO: I didn't have information for  
10 the pool.

11 CHAIRPERSON MIETZ: So we usually -- well,  
12 I'm sorry. We don't need a reason to table.

13 Okay. So the requirements that you're  
14 looking for are financial support, why it isn't  
15 practical to build with meeting current codes.

16 CHAIRPERSON MIETZ: We don't put those.

17 MR. DiSTEFANO: Well, they do -- when I send  
18 a -- when I send a letter of tabling to the applicant,  
19 I tell them what they're -- I tell them what the  
20 Board's looking for so they know what to submit to us  
21 back.

22 CHAIRPERSON MIETZ: I would bet they're  
23 pretty clear.

24 MR. GORDON: Just a point of order. We have  
25 a motion and a second to table. Motion to table is

1 non-debatable. We need to move directly to a vote on  
2 that. So we should have a roll call on that first.

3 CHAIRPERSON MIETZ: Okay. That's fine.

4 MR. DiSTEFANO: The motion is to table  
5 12A-03-22 and 12A-04-22.

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

10 (Upon roll motion to table carries.)

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1                   **Application 12A-05-22**

2                   Application of Thomas and Lindsay Connely,  
3                   owner, of property located at 128 Eastland Avenue, for  
4                   an Area Variance from Section 207-10E(2) to allow  
5                   front yard pavement to increase from 33 percent to 40  
6                   percent of the front yard area, after construction of  
7                   a front addition, where a maximum 30 percent is  
8                   allowed by code.

9                   Motion made by Ms. Schmitt to approve  
10                  application 12A-5-22 based on the following findings  
11                  of fact.

12                  **Findings of Fact:**

- 13                  1. The variance requested is to allow the front yard  
14                  pavement of the homeowners to increase from 33 percent  
15                  to 40 percent where a maximum of 30 percent is  
16                  required by code.
- 17                  2. The 7 percent increase in pavement is a result of  
18                  the homeowners completing the front of the home  
19                  addition, which will include a new two-car garage  
20                  where previously it was only one bay. With the  
21                  increase in square footage of the home and the  
22                  expansion into the front yard, the front yard is  
23                  reduced in size, thus reducing the size of permissible  
24                  pavement.
- 25                  3. To allow cars to easily back out of the garage and

1 reduce the need for moving a car that may be parked  
2 in front of the garage bay, the homeowner seeks to  
3 widen the existing driveway to a full two-car  
4 driveway. Granting the variance request will not  
5 result in a change in the character of the  
6 neighborhood or be a detriment to neighboring  
7 properties as other homes on the street have double  
8 driveways or at least appear to have double driveways  
9 as there are homes on the street where neighbors'  
10 homes have single driveways that are adjoining.

11 4. The benefit sought by the applicant cannot  
12 reasonably be achieved by any other method and the  
13 variance requested is the minimum necessary to grant  
14 relief from the situation. And, in fact, the  
15 homeowners have voluntarily reduced the width of the  
16 driveway from to 18 feet 6 inches where 20 feet is  
17 generally recommended for two-car driveways.

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

21 **Conditions:**

22 1. The variance granted applies only to the driveway  
23 described in and in the location depicted on the  
24 application and in the testimony given.  
25 2. All necessary highway permits shall be obtained.

1 (Second by Mr. D'Augustine.)

2 MR. DiSTEFANO: Motion is to approve with  
3 conditions.

4 (Mr. Premo, yes; Ms. Tompkins-Wright, yes;

5 Ms. Schwartz, yes; Ms. McKay-Drury, yes;

6 Mr. Mietz, yes; Mr. D'Augustine, yes;

7 Ms. Schmitt, yes.)

8 (Upon roll motion to approve with conditions  
9 carries.)

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1 Application 12A-06-22.

2 Application of Mary Jo Jepson, owner of  
3 property located at 339 Hollywood Avenue, for Area  
4 Variances from Sections 203-2.1B(2) and 203-9A(4) to  
5 1) construct a detached garage with attached pergola  
6 648 square feet in size in lieu of the maximum 600  
7 square feet allowed by code, and 2) allow said  
8 detached garage to be setback 3 feet from a side and  
9 the rear lot line where a minimum 5 foot setback from  
10 all lot lines is required by code. All as described  
11 on application and plans on file.

12 MS. SCHWARTZ: I move to table application  
13 12A-06-22 for more information for the required  
14 variances.

15 MR. DiSTEFANO: I don't know -- I'm not sure  
16 why we're tabling it. I guess that's my issue right  
17 here. I'm not sure what we're requiring from the  
18 applicant for the tabling of this application. You  
19 got to explain to me better what we're asking for  
20 them. To talk to the neighbor?

21 MS. MCKAY-DRURY: Sort of responding to the  
22 neighbor's letter, which came in really late. They  
23 didn't know about it.

24 MR. GORDON: Because the applicant made a  
25 substantial modification to the variance application

1 at the hearing without proper notice and therefore due  
2 process issues are implicated. And it is my  
3 recommendation that the Board absolutely table this to  
4 give the property owners the opportunity to know about  
5 the substantial modification of this application.

6 CHAIRPERSON MIETZ: Well, and there's also  
7 obviously misinformation between what they thought and  
8 what the neighbor's saying. So that can be cleared up  
9 when they read that letter.

10 MS. SCHWARTZ: So that's more OF the reason  
11 for tabling, what you just said?

12 CHAIRPERSON MIETZ: I think what YOU said is  
13 valid; okay? For additional information, Rick, again,  
14 so we don't repeat ourselves and what we talked about  
15 in the other one, as long as he's clear with what he  
16 can put into the letter. Disagreeing and making it  
17 clear are two different things.

18 MR. PREMO: Second.

19 MR. DiSTEFANO: The motion is to table. So  
20 basically you're just looking at -- for them to talk  
21 to the neighbors. That's basically what it is; right?  
22 For the applicant to provide proper notification to  
23 neighboring properties in regards to the modification  
24 of the requested variances.

25 MS. McKAY-DRURY: And to demonstrate why

1 those variance are the minimum necessary for her to  
2 accomplish her --

3 MS. TOMPKINS-WRIGHT: And not a detriment  
4 for the nearby properties.

5 MR. DiSTEFANO: And we're reopening the  
6 public hearing too; correct?

7 CHAIRPERSON MIETZ: Yes.

8 MR. DiSTEFANO: The motion is to table and  
9 leave the public hearing open.

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

14 (Upon roll motion to table and keep the  
15 public hearing open carries.)

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1                   **Application 12A-07-22**

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

8                   Motion made by Ms. Tompkins-Wright to  
9                   approve application 12A-07-22 based on the following  
10                  findings of fact.

11                  **Findings of Fact:**

12                  1. The granting of the requested variance will not  
13                  produce an undesirable change in the character of the  
14                  neighborhood or be a detriment to nearby properties.  
15                  Several homes back up to French road in the  
16                  neighborhood, many of which have hedges that exceed  
17                  3.5 feet and some of which have fences that exceed 3.5  
18                  feet as well. Thus, this fence will not appear out of  
19                  character with nearby properties or be a detriment to  
20                  the same.

21                  2. The requested variance is not substantial for the  
22                  same reason. It represents only a 1 foot increase  
23                  over the fence height permitted by code in the  
24                  neighborhood where the 1 foot increase is both  
25                  appropriate and not noticeable.

1       3. The benefit sought by the applicant cannot  
2       reasonably be achieved by any other method. The  
3       property back to French Road, meaning it is treated as  
4       its front yard by code but functions as a backyard for  
5       the applicant. Given the backyard nature of this  
6       property and the well used sidewalk abutting this  
7       property, appropriate privacy cannot be achieved  
8       without a fence higher than the 3.5 feet permitted by  
9       code.

10       4. There is no evidence that the proposed variance  
11      will have an adverse effect or impact on the physical  
12      or environmental conditions in the neighborhood or  
13      district.

## 14 Conditions:

15       1. The variance granted herein applies only to the  
16       location of the fence described in and in the location  
17       as depicted on the application and in the testimony  
18       given.

19 2. All necessary permits must be obtained.

20 (Second by Ms. Schwartz.)

23 | (Mr. Premo, yes, Ms. Schmitt, yes;

24 | Ms. McKay-Drury, yes; Mr. Mietz, yes;

25 Mr. D'Augustine, yes; Ms. Schwartz, yes;

1 Ms. Tompkins-Wright, yes.)  
2 (Upon roll motion to approve with conditions  
3 carries.)  
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1                   **Application 8A-04-22**

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

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

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

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

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

1 application and plans on file.

2 MS. MCKAY-DRURY: I move that the Zoning  
3 Board of appeals adopts the resolution approving  
4 applications 8A-04-22, 8A-05-22, and 8A-06-22, which  
5 resolution was made part of the final Zoning Board of  
6 Appeals agenda packet and posted on the Town's website  
7 regarding the property located at 3108 East Avenue.

8 MR. D'AUGUSTINE: Second.

9 MR. GORDON: You have a motion and a second.  
10 Discuss.

11 CHAIRPERSON MIETZ: Let's discuss it.  
12 Thoughts? Concerns?

13 MS. TOMPKINS-WRIGHT: I'm in full agreement  
14 with the approval as written.

15 MR. GORDON: I should have started with  
16 this. Mr. Premo is recusing himself on this matter  
17 and is now leaving the table.

18 MS. TOMPKINS-WRIGHT: Yeah. I think there's  
19 clearly an emotional part of this application. But  
20 the logical actual part of it that I believe is that  
21 all of these applications meet all of the requirements  
22 that are necessary for both a use variance and both  
23 variance that they have.

24 MS. SCHMITT: I don't disagree with you.  
25 And I think what pulls at me is I really hurt for the

1       neighbors who have come and attended these hearings  
2       and sent in letters expressing their concern. I don't  
3       want people to feel that I didn't hear that or they  
4       were somehow invalidated. I think that they were very  
5       important and their message and the participation is  
6       so important to what we do.

7               And I'll be honest with you, I'm really  
8       troubled that New York law is the way it is with  
9       regard to what is self-created. I mean, I remained  
10      surprised, but I looked it up and it is what it is.

11              You know, our attorney was correct when he  
12       said it's not considered self-created when you're not  
13       flipping the property. But instead you buy it knowing  
14       it but having another intended -- you're intending to  
15       be able to comply with it.

16              And I can't change that law. And it's out  
17       there. So I have to comply with it. So it's a very  
18       long-winded of me saying at this late hour, yes.

19              CHAIRPERSON MIETZ: Okay.

20              MS. SCHMITT: But it does trouble me.

21              CHAIRPERSON MIETZ: Okay. Well, to make you  
22       feel I hope a little better is that -- you know, our  
23       job is to consider the interest of everyone. We  
24       obviously heard all the neighbors. We read all their  
25       responses. And we've also looked at what the property

1 owner is trying to do. And that's our job to really  
2 balance that.

3 So I think agreeing or not agreeing with  
4 certain points is part of the analysis, but I hope  
5 that the neighbors understand that what we really have  
6 to balance is the whole thing. And that's what we're  
7 trying to do here. If that makes you feel any better.

8 MS. SCHMITT: I -- to me I just -- I  
9 really -- it really bothered me. And I really have  
10 been wrestling with it because I think that many of  
11 their voices were very -- they were taken into  
12 consideration.

13 CHAIRPERSON MIETZ: Yeah. Well, we have to  
14 take that all into consideration. And I think we  
15 have, is my point I guess.

16 MS. SCHMITT: Yes. Yes.

17 CHAIRPERSON MIETZ: Agreeing and taking into  
18 consideration are obvious two different things. Okay.  
19 All right. So any other discussion about this?

20 MS. SCHWARTZ: I'm opposed. I think it's  
21 going to change the character of the area  
22 tremendously. I mean, nobody really focused on the  
23 convenience store that much.

24 CHAIRPERSON MIETZ: How --

25 MS. SCHWARTZ: I don't think we talked about

1 it that much.

2 CHAIRPERSON MIETZ: What is your concern  
3 please?

4 MS. SCHWARTZ: I don't think it belongs  
5 there. There's nothing like it for miles around.  
6 There's nothing like it.

7 And so to me putting that in is going to  
8 change the character of the neighborhood tremendously.  
9 It really will.

10 And the traffic in and out is going to  
11 really be quite substantial. I really feel it's going  
12 to be detrimental in many, many ways. And you know  
13 what? The only reason we need a canopy is because we  
14 don't have full-service gas stations anymore. And if  
15 it was full service we wouldn't have a canopy. But  
16 they wouldn't do it because it's not economically  
17 feasible.

18 But I'm opposed to it. I just think it's  
19 the wrong direction to go in. I think we're letting  
20 in these -- these businesses that are changing the  
21 character of our town. They want to go to Twelve  
22 Corners. I feel that we're becoming -- we're going to  
23 look like -- and I don't know mean this in a negative  
24 way, but I feel like we're getting to look like east  
25 and west Henrietta roads with these big things coming

1 in. And we're not built like these roads. And this  
2 to me coming in is creating that feeling and taking  
3 away from the residential area.

4 We have a firehouse in every residential  
5 area. 2 and 3 are residential areas. To say that,  
6 you know, oh, the firehouse is there so we can let in  
7 a convenience store and a gas station, it's not -- it  
8 doesn't send me. I mean I think it's great to have a  
9 firehouse near where people live. But not a gas  
10 station and a huge canopy and a convenience store. It  
11 changes character.

12 CHAIRPERSON MIETZ: Okay. Other discussion?

13 MR. DiSTEFANO: My question is, is everybody  
14 satisfied with the conditions? Are there other  
15 conditions that --

16 MR. GORDON: They're at the very end.

17 MR. DiSTEFANO: At the very end. I will  
18 read them if you want me to. I don't know --

19 CHAIRPERSON MIETZ: Do you have some  
20 observations?

21 MR. DiSTEFANO: No. I just want to make  
22 sure you guys are happy with what was put down here  
23 and if there's other things that you think are  
24 necessary.

25 MR. GORDON: Staff has prepared these

1 conditions based on --

2 MR. DiSTEFANO: What we heard and --

3 MR. GORDON: What we've heard, right.

4 CHAIRPERSON MIETZ: And we've had some  
5 similar situations.

6 MR. GORDON: I think we're just --

7 MR. DiSTEFANO: Yeah. We just -- yeah. I  
8 mean, if there's --

9 MR. GORDON: Asking if there's anything  
10 more.

11 CHAIRPERSON MIETZ: Yeah. I understand the  
12 question. Did everyone review that?

13 MS. SCHMITT: I did. But I am going to look  
14 at them again.

15 MS. TOMPKINS-WRIGHT: With respect a lot of  
16 the concerns with light pollution on the neighboring  
17 properties --

18 MR. DiSTEFANO: Right. Drainage. The light  
19 pollution. Those are the things that are going to be  
20 vetted out with the Planning Board and Historical  
21 Preservation Commission.

22 MS. TOMPKINS-WRIGHT: And also they  
23 testified in their plans that the lights are  
24 significantly diminished from their original  
25 application. And all of that will be conditioned --

1 is naturally part of the conditions.

2 MR. DiSTEFANO: Yeah. It would be part of  
3 that site plan review which is condition number 1.  
4 I'm sorry. Condition number 2. Which it talks about  
5 they have to go get site plan approval. So you need  
6 to meet those requirements.

7 Because we're not really site planning this.  
8 We're not here to site plan it. We're here for the  
9 use and a couple variances.

10 CHAIRPERSON MIETZ: Right.

11 MR. DiSTEFANO: Obviously without our  
12 variances, this project is a no-go.

13 CHAIRPERSON MIETZ: Yes.

14 MR. DiSTEFANO: But there are other aspects  
15 of this project that -- could be concerning to the  
16 neighborhood that need to be addressed with the  
17 Planning Board.

18 CHAIRPERSON MIETZ: Right.

19 MS. SCHMITT: And the convenience store, we  
20 already have rules that say you can't sell vape  
21 materials, things like that.

22 MR. DiSTEFANO: The code does not permit the  
23 sale of vape products anywhere but the IG industrial  
24 districts.

25 MS. SCHMITT: We don't need it.

1                   MR. DiSTEFANO: We don't need to include it.  
2 I hope the applicants realize that, you know -- I  
3 mean, don't try to put vape products in there. And I  
4 don't think this particular --

5                   CHAIRPERSON MIETZ: I don't think so. I  
6 think Quickee's is pretty --

7                   MR. DiSTEFANO: Operated --

8                   (Simultaneous conversation.)

9                   CHAIRPERSON MIETZ: Okay I don't think we  
10 need to clarify that, no.

11                  Okay. So any other concerns?

12                  Okay, Rick.

13                  MR. DiSTEFANO: Okay so the motion is to  
14 approve applications 8A-04-22, 8A-05-22, 8A-06-22 with  
15 conditions.

16                  MR. GORDON: Hold on. And the resolution  
17 also adopts the negative declaration as a part of  
18 that.

19                  MR. DiSTEFANO: So the motion to prove those  
20 and to adopt the negative declaration.

21                  (Ms. Schmitt, yes; Ms. Schwartz, no;

22                  Ms. Tompkins-Wright, yes; Mr. D'Augustine,  
23 yes; Mr. Meitz, yes; Ms. McKay-Drury, yes.)

24                  (Upon roll motion to approve with conditions  
25 carries.)

1 REPORTER CERTIFICATE  
2

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

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

11

12 Dated this 7th day of December, 2022  
13 at Rochester, New York.

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HOLLY E. CASTLEMAN, CR,  
Notary Public.

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