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**BRIGHTON**

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**ZONING BOARD OF APPEALS**

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**MEETING**

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January 4, 2023  
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 MEITZ: So welcome. This is the  
2 Zoning Board of Appeals January 23rd meeting. So I'd  
3 like to call the meeting to order.

4 Can you call the roll please, Mr. DiStefano?

5 (Whereupon the roll was called.

6 MR. DISTEFANO: Please let the record show  
7 all members are present.

8 CHAIRPERSON MEITZ: Okay. How about our  
9 advertisements?

10 MR. DiSTEFANO: The meeting was advertised  
11 in the Daily Record of December 29th, 2022.

12 CHAIRPERSON MEITZ: Okay and the minutes,  
13 would you like to speak about?

14 MR. DiSTEFANO: Minutes, we not received  
15 November or December's at this time. So we'll take  
16 care of those in February.

17 CHAIRPERSON MEITZ: Happy reading. Okay.  
18 Sounds good. Okay.

19 Before we announce the specifics of the  
20 agenda, do you have anything to tell the Board  
21 members?

22 MR. DiSTEFANO: No. Nothing's changed from  
23 what I sent over to you last night. And it's all  
24 copied in your packets.

25 | Do any members have any questions?

1                   MS. TOMPKINS-WRIGHT: Application 1A-01, did  
2 that get pulled before the agenda went out? Because  
3 we skip from 1 to 3.

4                   MR. DiSTEFANO: Number 2 was pulled  
5 before --

6                   MS. TOMPKINS-WRIGHT: Got it. Okay.

7                   MR. DiSTEFANO: Before advertising went out.

8                   CHAIRPERSON MEITZ: Okay. And just so  
9 general in the audience understands the 12A-03 and  
10 12A-04, which were holdovers, have been postponed at  
11 the applicant's request. So we will just deal -- I  
12 think 12A-06 we're still good with?

13                  MR. DiSTEFANO: Yup.

14                  CHAIRPERSON MEITZ: Okay. We have that and  
15 then we have three or two new applications.

16                  So for any of you who haven't been here  
17 before, just quickly, the way we handle the meeting is  
18 that when your application is called, please come up  
19 to the podium. Please do your God-awful best to  
20 convince us why we should approve your application.

21                  Then we will hit you with a barrage of  
22 questions. And then after that if anyone in the --  
23 we'll close and ask anyone in the audience if they'd  
24 like to speak. After that we close the public hearing  
25 and move to the next one. It will go quickly. You're

1 welcome to sit and listen to the deliberations. If  
2 you decide not to, then call Rick in the building  
3 office tomorrow. But you're certainly welcome to  
4 listen to our discussion.

5 Okay. Board members, any questions? All  
6 right whenever you're ready, Rick.

7 **Application 12A-06-22**

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

18 MR. O'DONNELL: Good evening. My name is  
19 Joe O'Donnell. I'm the architect director at Greater  
20 Living Architecture with offices at 3033 Brighton  
21 Henrietta Town Line Road. Happy new year to  
22 everybody.

23 So we were here last month to request relief  
24 from the setback requirements in the rear and side of  
25 the property at -- I'm sorry -- 339 Hollywood Avenue.

1 I think maybe we created a little confusion last month  
2 when we had a meeting earlier prior to the meeting  
3 last month where we met with the one neighbor. And  
4 the one neighbor followed up with an email indicating  
5 that they didn't have any objections to the 3 feet  
6 setback on their side. And they had just asked us to,  
7 hey, is there any way you can push it even back one  
8 more foot, that would be nice.

9 So we came in last month and said, you know,  
10 to the Board if you could, we would like to have 2  
11 feet on the back of the garage. But I guess that --  
12 we were willing to live with the 3 feet if that was  
13 the case.

14 So in response to the Board's decision to  
15 table it, we wrote staff a letter indicating that we  
16 were okay with the 3 foot on both sides and that we  
17 would come back and just go for that variance and not  
18 try to push the limits.

19 Now, I just want to also address just one  
20 comment that came from the neighbor to the west of  
21 Mary Jo's property. Mary Jo had actually went over  
22 and visited with that neighbor. The husband had no  
23 problem with it. Late that afternoon of the hearing  
24 we got an email from the wife indicating that she was  
25 concerned about the garage blocking daylight to the

1                   backyard.

2                   So I don't know if any of the Board had an  
3                   opportunity to go out there, but I brought some  
4                   photographs. I only brought one copy, but you're more  
5                   than welcome to pass them around. I mean, there's a  
6                   substantial amount of trees along the back of Mary  
7                   Jo's neighbor's property that I think pose more of a  
8                   challenge to daylight getting to her backyard than  
9                   Mary Jo's garage, which is, you know, just a  
10                   single-story garage.

11                  MR. DiSTEFANO: Joe, if I could just  
12                  interrupt you real quickly. That neighbor is the  
13                  neighbor to the rear of her property.

14                  MR. O'DONNELL: Rear. Yes. I think I got  
15                  my orientation right.

16                  MR. DiSTEFANO: I just wanted to clarify  
17                  that.

18                  MR. O'DONNELL: Yeah. To the rear. And if  
19                  you -- again, if you visit or if you'd like to take a  
20                  look at the photographs, they got 60, 70 feet away  
21                  from the property line anyway.

22                  So that being said, I think it's a pretty  
23                  straightforward request that we're just going to go  
24                  back to the 3 feet. As you know the 3 feet is kind of  
25                  a good number in that it doesn't trigger too many code

1 issues relative to the -- adjacent to the property  
2 line. With that all, I'll open it up to the Board.

3 CHAIRPERSON MEITZ: Questions?

4 MS. SCHWARTZ: So just to be clear, we're  
5 going with what's in the agenda?

6 MR. DiSTEFANO: The original application,  
7 yes.

8 MR. O'DONNELL: 3 and 3.

9 MS. MCKAY-DRURY: Would you pass the  
10 photographs please?

11 MR. O'DONNELL: Yeah.

12 MS. SCHMITT: There was some confusion -- at  
13 least my notes reflect there was some confusion again  
14 about why you needed the 3 foot push back. What  
15 was -- can you or the applicant articulate what -- the  
16 reason of why you couldn't have put the garage where  
17 it was? Besides the neighbor -- one neighbor doesn't  
18 like it that.

19 MR. O'DONNELL: Yeah. Well, I mean, I guess  
20 there's a couple reasons. One, obviously we're trying  
21 to maximize the amount of greenspace on Mary Jo's  
22 property.

23 So you know, pushing it back 2 feet towards  
24 the year and 2 feet over to the -- if you're looking  
25 at the house from the street, the right. So that

1 would be the west and the north. We just felt that  
2 was, you know, a reasonable request of relief that  
3 would allow Mary Jo the ability to maintain the garage  
4 should a neighbor put up a fence right on the property  
5 line.

6 If we, you know, wanted to go any further  
7 than that, like when Mary Jo had retained us she asked  
8 like, can I go right up to the property line? We  
9 recommended that might not be a good idea just from  
10 getting access to the garage in the event you need to  
11 maintain it or maintain the grass area around it.

12 So we thought that the 3 feet created the  
13 least amount of impact on neighbors to the north and  
14 to the west and also just allowed the driveway, the  
15 existing driveway, to more align with the garage  
16 itself.

17 If you go in the 5 feet in on the right  
18 side, the driveway right now is really right on the  
19 property line. Then all of a sudden you have this 5  
20 foot jog right as you get to the garage itself. So,  
21 you know, it's -- that's kind of what's the reasoning  
22 for if.

23 MS. SCHMITT: And again, I'm still a little  
24 stuck. Was it to get -- when you say "greenspace,"  
25 was it to get 3 extra feet of grass in the front? Or

1 is there gardening that you were planning on doing?  
2 Just what was it that --

3 MR. O'DONNELL: Well, you know, it was like  
4 -- 5 feet to us was just kind of a waste of grass area  
5 that could be enjoyed by Mary Jo and her partner at  
6 the house.

7 So it was -- you know, 5 feet I understand  
8 that that's pretty much the set in the zoning code.  
9 But I think if you look at the character of the  
10 neighborhood and other garages that were built prior  
11 to, you know, the zoning code being written, a lot of  
12 them probably aren't even 5 feet. They're probably  
13 closer to the lot line than that. So it was just  
14 really to maximize the greenspace for the residents.

15 MS. TOMPKINS-WRIGHT: To hit that point  
16 again there, in this neighborhood there are multiple  
17 garages and storage facilities that are within that 5  
18 foot setback in the backyard?

19 MR. O'DONNELL: Yeah, I believe there is. I  
20 would defer that question to Mary Jo, who probably has  
21 walked that neighbor a lot more than I have.

22 I've done -- I've done projects in other  
23 areas of the town above the streets there. The  
24 Lipkowski residence was one where the existing garage  
25 was 2 feet from the property line. And he wanted to

1 extend it. I think, Rick, you were involved in that.  
2 But that -- I think -- yeah. In fact, I think the  
3 overhang actually was right on the property line.

4 So there are examples. I think there's  
5 quite a bit of examples of garages. And I think  
6 that's probably why the town amended to the 5 foot  
7 just to get those houses off of the property line.

8 MR. D'AUGUSTINE: I can just say mine is  
9 actually about 3 feet in from the side and 2 feet from  
10 the back. And I'm just down the street and across  
11 from them.

12 MS. TOMPKINS-WRIGHT: It's prior existing.  
13 It's prior existing.

14 MR. D'AUGUSTINE: No. I did not build this.

15 MS. TOMPKINS-WRIGHT: And just to clarify,  
16 we received an email in support of the application.  
17 And that was from the next door neighbor.

18 The rear neighbor sent a letter in objection  
19 that has not been revoked or taken back.

20 CHAIRPERSON MEITZ: But you did meet with  
21 her?

22 MR. O'DONNELL: Yeah. I mean -- so let me  
23 just clarify. So the one that we got a letter of  
24 support is directly next door. The one who is  
25 impacted the most is in support of it.

1                   The letter that we got like an hour before  
2 last month's hearing really just objected to the  
3 blocking of the sunlight in the backyard that  
4 really -- I was like, you know -- so that -- and then  
5 of course we had requested outside of the application  
6 to push it back one more foot, which I think kind of  
7 shot ourselves in the foot on that one.

8                   MS. TOMPKINS-WRIGHT: And so in the interim  
9 though you did not meet with the rear neighbor again?

10                  MS. JEPSON: No.

11                  MR. O'DONNELL: No. No, because we went  
12 back to the original application. And under the  
13 original application, Mary Jo had met with them.

14                  So we didn't feel it was necessary to go  
15 back to them. And I articulated that in my letter to  
16 staff.

17                  MS. MCKAY-DRURY: And then the trees that  
18 you mentioned are the trees that located -- they're  
19 like the tall pine trees that are back there? In what  
20 we saw in the photographs?

21                  MR. O'DONNELL: Yeah. They're all on her  
22 property too, the neighbor to the rear.

23                  CHAIRPERSON MEITZ: Yeah.

24                  MR. O'DONNELL: So if they were on Mary Jo's  
25 property, I would say, okay, maybe there's a little

1 bit of objection that has some teeth to it. But, you  
2 know, if you look at the direction of the sun, those  
3 trees are facing east. And then the sun travels south  
4 and west. There's more big pine trees all the way.  
5 I'd be surprised if she'd get very much daylight in  
6 her backyard at all.

7 CHAIRPERSON MEITZ: And you're pretty  
8 confident that you can maintain the area that you will  
9 have to maintain at the 3 feet?

10 MR. O'DONNELL: Oh, yeah. I think so. I  
11 mean, if somebody came up and put a 6 foot high fence,  
12 then cleaning gutters may be a little tricky. You  
13 might have to get on the roof to clean the gutters  
14 instead of coming from the side. But it's not a very  
15 tall structure. The roof slopes are not really, you  
16 know, steep. So I think the maintenance of the 3 feet  
17 is fine.

18 CHAIRPERSON MEITZ: Did you want to say  
19 something? You just got to come up and give us your  
20 name and address please. We know, but...

21 MS. JEPSON: I'm Mary Jo Jepson. I live at  
22 339 Hollywood.

23 You mentioned fence. You do see a fence in  
24 the picture there. That is my neighbor's fence.

25 CHAIRPERSON MEITZ: Right.

1 MS. JEPSON: I just want to make sure.  
2 And I think it's probably right on the  
3 property line. But when theirs fell down, they very  
4 nicely put a new one up. So I had no questions to  
5 where they put that fence at that time. Looked good  
6 before. Looked good to me. So just want to make sure  
7 that you understood that was their fence and not mine.

8 CHAIRPERSON MEITZ: Okay. All right. Any  
9 other questions by the Board members?

10 Do you have anything else?

11 MR. O'DONNELL: No. I'm all set.

12 CHAIRPERSON MEITZ: Okay. Thank you.

13 MR. O'DONNELL: Thank you so much for your  
14 help.

15 MS. JEPSON: Thank you.

16 CHAIRPERSON MEITZ: Anyone in the audience  
17 that would like to speak regarding this application?  
18 Okay there being none then the public hearing is  
19 closed.

20 **Application 1A-01-23**

21 Application of Daniele Family Companies,  
22 owner of property located at 2735 Monroe Avenue, for  
23 1) an Area Variance from Section 207-14.3D(3) to allow  
24 a restaurant drive-thru lane to be 3.47 feet from a  
25 side (southeast) lot line in lieu of the minimum

1 10 feet required by code; 2) an Area Variance from  
2 Section 205-18B to allow pavement and parking to be  
3 3.6 feet from a side (northwest) lot line in lieu of  
4 the minimum 10 feet required by code; and 3) an Area  
5 Variance from Section 205-7 to allow impervious  
6 Lot coverage, after site redevelopment to be 72.6  
7 percent in lieu of the maximum 65 percent allowed by  
8 code. All as described on application and plans on  
9 file.

10 MR. McMAHON: Good evening. My name is Greg  
11 McMahon. I'm with McMahon LaRue Associates at 822  
12 Holt Road, Webster. And also is Anthony Daniele, the  
13 owner of the property.

14 We're here tonight requesting two variances  
15 for a new Chipotle restaurant to be located at 2375  
16 Monroe Avenue. We were before this board I think  
17 approximately two years ago with the same property.  
18 And at that time it was going to be a Mamasan's  
19 restaurant. She was going to relocate across the  
20 street.

21 It was slightly larger than what we're  
22 proposing. This is a -- as I said, a Chipotle. It  
23 will have a drive-through window. This is different  
24 from what you would see at McDonalds or Burger King.  
25 You can't order as you drive up to this window. It's

1 strictly for pickup if you order on the app. So  
2 that's a little bit of a difference.

3 We're here requesting two variances of side  
4 setback, pavement closer than 10 feet to the side lot  
5 lines, and a coverage variance from 65 percent. The  
6 current -- we're increasing coverage on this site by  
7 1.1 percent from what exists out there right now. So  
8 we do achieve the 65 percent in its present condition.  
9 And we're asking for just a slight increase in that.

10 MR. DiSTEFANO: Can I just give a little  
11 clarification on that. I think the application had it  
12 at 72.6 percent coverage. Was that not correct?

13 MR. McMAHON: Yes. That's what we're --

14 MR. DiSTEFANO: You're saying from what  
15 exists today, not what the code requires?

16 MR. McMAHON: No. From what exists today.

17 MR. DiSTEFANO: Okay. So 73 --

18 MR. McMAHON: Right.

19 MR. DiSTEFANO: I'm sorry. Thank you.

20 MR. McMAHON: Yes. We're asking for a  
21 increase in coverage with a very slight increase over  
22 what's there today, but about a little over -- about 6  
23 percent more than code permits. And again, side  
24 setbacks for the parking on the one side and the  
25 drive-through lane on the other.

1           This is a very narrow lot or a relatively  
2 narrow lot. It's substandard by the current code, as  
3 are several of the lots on that side of Monroe Avenue.  
4 And many of those businesses there, we've been  
5 involved in a few of them and had to request similar  
6 variances both for coverage and for side setbacks  
7 because of the narrow lots.

8           So I guess with that, we'll answer any  
9 questions.

10           MS. SCHWARTZ: I want to go back to the  
11 ordering. Are you saying there's going to be no menu?

12           MR. McMAHON: No. There will be only --

13           MS. SCHWARTZ: You only pick up?

14           MR. McMAHON: You can only pick up. There  
15 will be --

16           MR. DANIELE: Anthony Daniele, one of the  
17 owners.

18           So you won't be able to order at like a  
19 window -- or at like a drive-up microphone, speaker  
20 situation. But for those of us who don't want to  
21 order food on our phone, you can still walk into the  
22 building and order at the counter. And you can still  
23 eat inside. But you won't be able to do like a  
24 typical drive-through thing where you come up to a  
25 microphone and order and then wait a few minutes and

1 pick up your food.

2 MS. SCHWARTZ: I understand that. But how  
3 are you going to get those who aren't familiar who are  
4 coming for the first time to know that they can't  
5 drive up? And they see a drive-through and they order  
6 and then, oh, I got to go inside. Now I got to go and  
7 park. And how are people going to know?

8 MR. DANIELE: So there is one of these  
9 already in existence in Penfield on Empire Boulevard.  
10 It's been operating I think for about a year and a  
11 half --

12 MR. McMAHON: Yes.

13 MR. DANIELE: -- as strictly a pickup  
14 window. And there are other franchises that are  
15 starting to do this model.

16 I understand what you're saying. I asked  
17 the exact same question. I believe the way the site  
18 plan has been designed, it's also designed so that  
19 when you pull in, if you're in that situation, there's  
20 a -- there's a kind of a bailout. I think they  
21 actually call it a bailout lane. Because there is --  
22 yeah. Why don't you show it. You're the engineer.

23 MR. McMAHON: If you come down and pull into  
24 the drive-through and you realize that it's not what  
25 you're used to at McDonalds, there's a -- what they

1 call a bailout lane that lets you get out there rather  
2 than have to sit there and go all the way through the  
3 process.

4 And as Anthony said, these are -- this is --  
5 the new Chipotle model, all the new Chipotle  
6 restaurants, Pizza Huts, a lot of the newer builds are  
7 going with this as more and more people order off the  
8 apps on their phone.

9 MS. SCHWARTZ: I have one last question.  
10 Could you describe the situation down in Penfield?  
11 What does that area look like? I mean --

12 MR. DANIELE: If you're familiar with Empire  
13 Boulevard in -- it kind of seems like Webster if  
14 you're sitting there, but it's near the corner of Bay  
15 Road, Bay Town plaza. There's a big Delta Sonic over  
16 there. Charlie's I think is over there. And that's  
17 where this is. So it's honestly a very similar  
18 situation.

19 CHAIRPERSON MEITZ: Four-lane highway.

20 MS. SCHWARTZ: Okay.

21 MR. DANIELE: And there'll be signage when  
22 you pull in saying, hey, you know, this isn't a  
23 drive-through. This is a pickup window. If you  
24 haven't ordered already, bail in this lane. And then  
25 you can park and either order on your app and then you

1 loop around. Or order normally. And now that I'm  
2 like 51, so I feel old-fashioned, you can park and  
3 walk inside.

4 MS. SCHWARTZ: So if they find out they  
5 can't order and then you say they turn around?

6 MR. DANIELE: They would take the bailout  
7 lane and they could either leave or park in one of the  
8 spots and do the thing on the phone or get out of the  
9 car and go inside and order.

10 CHAIRPERSON MEITZ: They're only going to do  
11 it once. They do it once, then they're not going to  
12 do it again.

13 MR. DANIELE: Yeah. Not to get into the  
14 minutia of the design, but it takes them a little  
15 longer to prepare the food as opposed to the old  
16 McDonalds model where they have burgers sitting ready  
17 to pick up. So rather than having a longer line of  
18 cars because people are -- you know, less and less  
19 towns want long drive-through lines, this is a more  
20 efficient process so that by the time you show up,  
21 your food's ready and you just pick up and go.

22 MS. TOMPKINS-WRIGHT: I have a quick  
23 question. Because we approved variances similar to  
24 these. These are a little bit expanded when the  
25 Mamasan's was coming in with the drive-through menu

1 boards as well. What are the major -- I don't have  
2 that site plan in front of me, but what are the major  
3 changes between that original plan? Is it more  
4 parking? Is it larger parking? Is it parking in  
5 different locations?

6 MR. McMAHON: Actually -- well, it's a  
7 little less parking. But just minor.

8 The building's smaller. It's about 400 --  
9 roughly 400 to 500 square feet smaller.

10 There is indoor dining. Not as many seats.

11 There is a small outdoor dining patio, which  
12 will be seasonal.

13 There is -- Mamasan's had the same pickup  
14 window. Mamasan's was similar in that it doesn't  
15 operate like Burger King. One of the big differences  
16 now is when we were in here with Mamasan's, the access  
17 management plan had not been constructed.

18 Now we have -- the right-in only entrance to  
19 the site has been constructed. And to exit this site  
20 you basically go to the rear of the site, make a left,  
21 come around and go out at the traffic light.

22 So, again, that was all considered with  
23 Mamasan's, but hadn't been constructed at the time.

24 MS. TOMPKINS-WRIGHT: So it's a smaller  
25 building and less parking. Where is that extra

1 impervious coverage? Where is that extra --

2 MR. McMAHON: The access management plan  
3 added -- where we just went to the back and had  
4 parking and more greenspace, the access management  
5 plan now put that lane through there. So that --  
6 that's one of the major reasons for the --

7 MR. DiSTEFANO: Greg, just point to that so  
8 that they're aware exactly where you had greenspace  
9 before and where you don't have greenspace anymore.

10 MS. TOMPKINS-WRIGHT: Okay. Thank you. I  
11 appreciate that.

12 CHAIRPERSON MEITZ: Also that actual lane  
13 was not part of Mamasan's lane.

14 MR. DiSTEFANO: Yeah. The escape lane  
15 wasn't there.

16 MR. McMAHON: So that added some impervious.

17 MR. DANIELE: And also the connection to the  
18 hotel didn't exist at that time. So it wasn't a lot.  
19 But it did remove a strip of lane.

20 MR. McMAHON: Yeah. We had grass all the  
21 way up to what's a rain guard on Monroe Avenue. So  
22 there is now a cut-through to the hotel.

23 MR. DiSTEFANO: And just for the record, the  
24 need for those access points, the management plan,  
25 access management plan was all done under the Whole

1 Foods SEQRA documents and mitigation and part of the  
2 incentive zoning for across the street; correct?

3 MR. McMAHON: Yes. Correct. And I'll just  
4 mention traffic that as part of the Mamasan's, the  
5 Town required that we do a traffic analysis based on a  
6 fast food restaurant. We did the traffic analysis for  
7 this project and it came -- it's less traffic than  
8 what the state approved as part of the access  
9 management plan.

10 So there is no increase above what was  
11 approved by New York State for this project.

12 MS. SCHMITT: I just have a quick question,  
13 less about the build and more about the Chipotle. Is  
14 the one in Pittsford going to close and then this will  
15 be the main one? Because it seems like two, half a  
16 mile apart.

17 MR. DANIELE: Understand. And while I can't  
18 necessarily speak for them because I'm not Chipotle,  
19 but my understanding is they are closing the one in  
20 Pittsford Plaza and relocating to here.

21 MS. SCHMITT: Gotcha.

22 CHAIRPERSON MEITZ: The other thing, do you  
23 have a sense, you know -- with this Penfield  
24 restaurant would you have any sense of what percentage  
25 of the business is going to be people coming and

1 eating in versus this window?

2 MR. DANIELE: So Amy Dake with Passero who  
3 did an updated traffic analysis for this plan -- she  
4 updated the one she did with Mamasan's. And at the  
5 Planning Board's request they actually went and  
6 surveyed what's going on in Penfield right now. And I  
7 believe it was around 65, 67 percent was coming  
8 through the pickup. And you know 30, 35 percent was  
9 actually coming inside.

10 CHAIRPERSON MEITZ: Okay.

11 MS. TOMPKINS-WRIGHT: I'm never going inside  
12 this Chipotle, but I will pick up through that window.

13 CHAIRPERSON MEITZ: We go to other ones.  
14 Most people are grabbing stuff to go.

15 MS. MCKAY-DRURY: Given the food that  
16 Chipotle sells and all the different toppings, you'd  
17 think it would be a little absurd ordering in a line.

18 MS. TOMPKINS-WRIGHT: Absolutely.

19 CHAIRPERSON MEITZ: Any other questions by  
20 the Board?

21 MR. PREMO: Yeah. Greg, just one thing, the  
22 negative declaration for SEQRA with increase in the  
23 impervious area, stormwater management, how's that  
24 being handled? Any real impact from that?

25 MR. McMAHON: We have prepared a stormwater

1 management plan. We submitted a revised plan to the  
2 Town on Tuesday. I'm working with Everet on that.

3 But it's being handled -- number one, all of  
4 the pavement that was put in this part of the access  
5 management plan is porous pavement. That has quite a  
6 large capacity for infiltrating stormwater.

7 We're also adding a rain garden up in the  
8 front corner. And we're adding a rain garden in this  
9 area that separates the drive-through lane from the  
10 parking lane.

11 This particular rain garden will collect the  
12 roof runoff from the building. All of this -- 85  
13 percent of the runoff all flows to the back to an  
14 existing gutter that takes it down to a stream, creek  
15 that's on the state property.

16 MR. PREMO: So this system should be able to  
17 handle any increase in impervious area?

18 MR. McMAHON: Our calculations show a  
19 decrease for the one year -- for every storm from one  
20 through a hundred year, we're showing a decrease in  
21 runoff from the site in its current condition.

22 MR. PREMO: Okay. Thank you.

23 MR. McMAHON: Yes.

24 CHAIRPERSON MEITZ: Okay. Good. Other  
25 questions, board members? Good? Good? Yes.

1                   MR. GORDON: I just have a question about  
2 layout of the site overall. The building that you've  
3 placed -- and I understand that that's approximately  
4 where Pizza Hut is now. And I understand that's where  
5 the Mamasan's was thinking of going. That's sort of  
6 the -- we'll call it the northeastern corner of the  
7 lot.

8                   Was there any consideration given to  
9 possibly placing the structure in the southwestern  
10 corner of that lot? Above the access management plan  
11 so that the drive-through traffic would come in from  
12 Monroe and go straight on into that pickup area along  
13 what I'll call the western boundary of the property  
14 and then exit the access management plan rather than  
15 doing this loop around? Was any consideration given  
16 to that, putting it in the southwestern corner?

17                  MR. McMAHON: Well, our -- you're talking  
18 about picking up this building and putting it down  
19 here in this corner?

20                  MR. GORDON: Yes.

21                  MR. McMAHON: Well, the issue with that as  
22 we saw it is that you're coming into the drive-through  
23 window going in the opposite direction. So instead of  
24 the --

25                  MR. DiSTEFANO: No, you wouldn't. No, you

1 wouldn't. You'd come in like that.

2 MR. DANIELE: This would go for the  
3 drive-through. And concerns with that are if there is  
4 a queuing issue, which we argue there won't be  
5 obviously, but if we're wrong in that and there's a  
6 queuing issue, we start blocking this access to the  
7 hotel and getting dangerously close to Monroe Avenue,  
8 which the DOT doesn't have a sense of humor about.

9 So with this, if there's an issue, the issue  
10 is happening way back here. Then it doesn't affect  
11 the 40,000 cars a day on Monroe Ave.

12 MR. GORDON: What's the depth of the lot?  
13 I'm trying to pick it up off of your plan.

14 MR. McMAHON: About 283 feet. Yeah. It  
15 ranges. One side's 277. The other 283. So 280 feet  
16 deep.

17 MR. GORDON: And this is just a  
18 hypothetical. The reason I'm -- I know this is more  
19 Planning Board issue, but here's why it's a Zoning  
20 Board issue. If -- and I know you're still in your  
21 Planning Board process and you're still going through  
22 that process. If the Planning Board in reviewing the  
23 site plan urged you to move the building, would the  
24 variances that you're asking for here accommodate a  
25 relocation of the building? Or would you need

1 different side setback variances that what you're  
2 asking for on this application?

3 MR. DANIELE: I would say we would need -- I  
4 don't want to say at least because that may be a  
5 mistake. But we would need a variance nonetheless.  
6 It may be a hair more or a hair less, but we would  
7 need that. Because just when you start doing parking  
8 stall space, drive-through lane, that's not going to  
9 change. You're just twisting it around. So you're  
10 still going to have side setback issues. It would  
11 just be in a different place.

12 MR. DiSTEFANO: Right. So basically the  
13 variances are the same regardless of the building  
14 there or moved. But I think what Ken's asking, you  
15 don't foresee any additional or any -- you know, 3  
16 foot setback moving down to a 1 foot setback to make  
17 it work or anything like that.

18 MR. McMAHON: No. Maybe a --

19 MR. DiSTEFANO: A bigger request. A bigger  
20 variance.

21 MR. McMAHON: I wouldn't see that with, you  
22 know -- coverage is going to stay.

23 MR. GORDON: Coverage is going to be  
24 coverage.

25 MR. McMAHON: Yeah.

1 CHAIRPERSON MEITZ: Same size building. So  
2 none of that will change.

3 MR. DiSTEFANO: So it's just a mirror of  
4 that.

5 MR. McMAHON: Right. And the lot is  
6 uniform -- uniform in width. It's -- you know, if we  
7 were necking it down and we moved the building to the  
8 rear, we'd have issues. But it is uniform in width.  
9 So I would not see any issue with the variances we've  
10 requested would hold up.

11 MR. GORDON: Okay. Thanks.

12 MR. DANIELE: And I would say that the  
13 tenant may have concern with the fact that the hotel  
14 building is pretty much right at the front setback  
15 line. And so is the Sakura home.

16 So now all of sudden you have this other  
17 building -- their building, which would be setback an  
18 extra 40, 60 feet.

19 MR. DiSTEFANO: And you probably wouldn't  
20 even see that building until you were right on top of  
21 it.

22 MR. DANIELE: Then I have to do a lollipop  
23 sign in the front.

24 MR. DiSTEFANO: Yeah. Then you have to ask  
25 for a free standing sign; right? That's not going to

1 fly.

2 CHAIRPERSON MEITZ: We'll leave that to the  
3 Planning Board. Thanks. Okay. All right. Other  
4 questions? Any other questions? Questions? Okay.

5 Great. Gentlemen, thank you. Okay.

6 Is there anyone in the audience who would  
7 like to speak about the Chipotle? There being none,  
8 the public hearing is closed.

9 **Application 1A-03-22**

10 Application of David Waldarek, architect,  
11 and David and Holly Kluge, owners of property located  
12 at 619 North Landing Road, for an Area Variance from  
13 Section 205-2 to allow a building addition to extend 1  
14 feet into the existing 6.4 foot side (north) setback  
15 Where a 9.14 foot side setback is required by code.  
16 All as described on application and plans on file.

17 MR. WALDAREK: Hello, everybody. My name is  
18 David Waldarek. I'm the architect and applicant for  
19 this application. I'm representing Holly and David  
20 Kluge.

21 The reason for this application is to ask  
22 the Board to consider a 1 foot variance to the north  
23 setback. The reason for this project is to provide a  
24 bedroom and bathroom for their son, who is disabled  
25 and therefore requires wheelchair accessibility. So a

1 bedroom on the first floor is required. Their son is  
2 8 years old and he needs assistance as well.

3 There's really no other place to put this  
4 addition. And the 1 foot would help to make the  
5 bedroom -- the clearance is for a wheelchair inside  
6 the bedroom.

7 And so, you know, in addition to that we've  
8 taken a little bit of room out of the kitchen. And so  
9 we add that little bit of space off the kitchen, out  
10 to the back, and then there's a deck in back of that.  
11 So at this time we hope that this application can be  
12 approved.

13 CHAIRPERSON MEITZ: So Dave, just couple  
14 questions then. What about the architecture part of  
15 this? Can you talk about the neighborhood and that  
16 sort of thing?

17 MR. WALDAREK: Well, this house is a  
18 two-story home. And the lot is only 60 feet wide.  
19 There's not a whole lot of width there to play with.

20 There's some room on the south side of the  
21 garage. But that doesn't help us with respect to  
22 functionality to the house.

23 So this addition is completely hidden from  
24 the street or virtually hidden from the street.  
25 And -- but, you know, it will -- if you look at the

1 elevations, we tried to keep the scale and nature of  
2 the architecture the same as the house.

3 CHAIRPERSON MEITZ: Can you talk about the  
4 neighborhood though or what's -- we know because we've  
5 been there, but just for the record.

6 MR. WALDAREK: Well, this is a residential  
7 neighborhood. And the homes there for the most part  
8 are two-story homes similar in nature to this house.

9 CHAIRPERSON MEITZ: Some additions look like  
10 this and --

11 MR. WALDAREK: Yeah. It looks like there  
12 are a number of additions in that area.

13 CHAIRPERSON MEITZ: There's not --

14 MR. WALDAREK: And the -- I think the size  
15 and massing scale of all of the residences are pretty  
16 equal along that street. So I think that the house  
17 itself is -- it's a nice looking house with a nice  
18 porch on the front. And its scale is appropriately  
19 applicable to the neighborhood.

20 CHAIRPERSON MEITZ: Okay. Good. Okay.  
21 Questions? Anyone else questions? Questions? Okay.  
22 Great. Thank you very much.

23 MR. WALDAREK: Thank you very much.

24 CHAIRPERSON MEITZ: Is there anyone in the  
25 audience who would like to speak about this

1 application? Okay.

2 There being none, then the public hearing is  
3 closed.

4 (End of the public hearings.)

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## REPORTER CERTIFICATE

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

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

11

12 Dated this 4th day of January, 2023  
13 at Rochester, New York.

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*Holly E. Castleman*  
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HOLLY E. CASTLEMAN, CR,  
Notary Public.

**BRIGHTON  
ZONING BOARD OF APPEALS  
MEETING  
DELIBERATIONS**

January 4, 2023  
At approximately 7 p.m.  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

DENNIS MIETZ  
Chairperson

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

KEN GORDON, ESQ.  
Town Attorney

RICK DISTEFANO  
Secretary

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

1                   **Application 1A-01-23**

2                   Application of Daniele Family Companies,  
3                   owner of property located at 2735 Monroe Avenue, for  
4                   1) an Area Variance from Section 207-14.3D(3) to allow  
5                   a restaurant drive-thru lane to be 3.47 feet from a  
6                   side (southeast) lot line in lieu of the minimum.  
7                   10 feet required by code; 2) an Area Variance from  
8                   Section 205-18B to allow pavement and parking to be 3.6  
9                   feet from a side (northwest) lot line in lieu of the  
10                  minimum 10 feet required by code; and 3) an Area  
11                  Variance from Section 205-7 to allow impervious  
12                  Lot coverage, after site redevelopment to be 72.6  
13                  percent in lieu of the maximum 65 percent allowed by  
14                  code. All as described on application and plans on  
15                  file.

16                  Motion made by Mr. D'Augustine to approve  
17                  application 1A-01-23 and adopts the negative  
18                  declaration and finding statements prepared by the  
19                  Town of Brighton Zoning Board for the purposes of  
20                  SEQRA based on the following findings of fact.

21                  **Findings of Fact:**

22                  1. The granting of the requested variance will not  
23                  produce an undesirable change in the character of the  
24                  neighborhood or be a detriment to nearby properties.  
25                  Other lots in the area presently exceed the maximum

1 lot coverage limit and are nonconforming in their  
2 distance to the lot lines and have drive-through lanes  
3 on similarly narrow lots.

4 2. The requested variance is not substantial given  
5 the coverage will only increase by 1.1 percent over  
6 its current surface area and the drive-through lane  
7 will be in a location that is already paved.

8 3. The benefit sought by the applicant cannot  
9 reasonably be achieved by any other method due to the  
10 dimensions of the lot.

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

15 **Conditions:**

16 1. The variance granted herein applies only to the  
17 lot and drive-through lane as depicted and described  
18 in the application and in the testimony given.

19 2. All necessary Planning Board approvals must be  
20 obtained.

21 (Second by Ms. McKay-Drury.)

22 MR. DiSTEFANO: Motion is to approve with  
23 conditions.

24 (Ms. Schmitt, yes; Mr. Mietz, yes;  
25 Mr. Premo, yes; Ms. Schwartz, no;

1 Ms. Tompkins-Wright, yes; Ms. McKay-Drury,  
2 yes; Mr. D'Augustine, yes.)  
3 (Upon roll motion to approve with conditions  
4 carries.)  
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1                   **Application 1A-03-23**

2                   Application of David Waldarek, architect,  
3                   and David and Holly Kluge, owners of property located  
4                   at 619 North Landing Road, for an Area Variance from  
5                   Section 205-2 to allow a building addition to extend 1  
6                   feet into the existing 6.4 foot side (north) setback.  
7                   Where a 9.14 foot side setback is required by code.  
8                   All as described on application and plans on file.

9                   Motion made by Mr. Mietz to approve  
10                   application 1A-03-23 based on the following findings  
11                   of fact.

12                   **Findings of Fact:**

- 13                   1. The proposed addition encroachment of 1 foot into  
14                   a 6.4 foot side setback is the only option to create  
15                   the required accommodation space required by the  
16                   applicant.
- 17                   2. The proposed addition will be minimally visible  
18                   from the street and in character of other homes in the  
19                   neighborhood
- 20                   3. No negative effects on the character of the  
21                   neighborhood is likely from the approval of this  
22                   variance since similar additions of size and character  
23                   are present in the subject neighborhood.

24                   **Conditions:**

- 25                   1. This is based on plans submitted and testimony

1 given.

2 2. And all necessary building permits shall be  
3 obtained.

4 (Second by Ms. Tompkins-Wright.)

5 MR. GORDON: Just one suggestive amendment I  
6 was listening for. If we could just add the word  
7 existing prior to 6.4 foot --

8 CHAIRPERSON MEITZ: That's in number 1.

9 It's the second sentence. 1 foot into the existing  
10 6.4 foot side setback. Yeah that's fine.

11 MS. TOMPKINS WRIGHT: Agreed.

12 **Findings of Fact as Amended:**

13 1. The proposed addition encroachment of 1 foot into  
14 the existing 6.4 foot side setback is the only option  
15 to create the required accommodation space required by  
16 the applicant.

17 2. The proposed addition will be minimally visible  
18 from the street and in character of other homes in the  
19 neighborhood

20 3. No negative effects on the character of the  
21 neighborhood is likely from the approval of this  
22 variance since similar additions of size and character  
23 are present in the subject neighborhood.

24 MR. DiSTEFANO: Motion is to approve with  
25 conditions.

1 (Mr. Premo, yes, Ms. Schwartz, yes;  
2 Mr. D'Augustine, yes; Ms. McKay-Drury, yes;  
3 Ms. Schmitt, yes; Ms. Tompkins-Wright, yes;  
4 Mr. Mietz, yes.)  
5 (Upon roll motion to approve with conditions  
6 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.  
9                   And the rear lot line where a minimum 5 feet setback  
10                  from all lot lines is required by code. All as  
11                  described on application and plans on file.

12                  Motion made by Ms. Schwartz to approve  
13                  application 12A-06-22 based on the following findings  
14                  of fact.

15                  **Findings of Fact:**

- 16                  1. The requested variance for a 648 square foot  
17                  detached garage and pergola is only 48 square feet  
18                  beyond code requirement.
- 19                  2. The proposed garage is 432 square feet well below  
20                  the 600 square feet allowed by code.
- 21                  3. The placement of the detached garage at the end of  
22                  the existing driveway minimizes the extent of the  
23                  variance on the 3 foot side setback and rear setback  
24                  to 2 feet in lieu of the required 5 feet.
- 25                  4. The placement of the garage also creates a more

1       usable backyard space and is in keeping with the  
2       character of the neighborhood.

3       Conditions:

4       1. This variance is only for a 648 square foot  
5       detached garage and pergola as presented in the  
6       written application and testimony presented.  
7       2. All building and planning permits must be  
8       obtained.

9                   MS. TOMPKINS-WRIGHT: I will second, but I  
10       want to make sure -- I thought you said reduce it to 2  
11       feet instead of 3 feet. And I want to be clear on  
12       the -- I want to make sure that's 3 feet not 2 foot.

13                  MS. SCHWARTZ: I said variance of 3 foot  
14       side and 2 foot rear.

15                  MS. TOMPKINS-WRIGHT: It's three feet both.

16                  MR. DiSTEFANO: 3 foot, 3 foot.

17                  MR. GORDON: I thought she said 2 feet into  
18       the setback.

19                  CHAIRPERSON MEITZ: Well, let's make --

20                  MR. DiSTEFANO: Just restate that whole  
21       finding so she can get it.

22       Findings of Fact as Amended:

23       Findings of Fact:

24       1. The requested variance for a 648 square foot  
25       detached garage and pergola is only 48 square feet

1 beyond code requirement.

2 2. The proposed garage is 432 square feet well below  
3 the 600 square feet allowed by code.

4 3. The placement of the detached garage at the end of  
5 the existing driveway minimizes the extent of the  
6 variance on the 3 foot side setback and rear side  
7 setback to 3 feet in lieu of the required 5 feet.

8 4. The placement of the garage also creates a more  
9 usable backyard space and is in keeping with the  
10 character of the neighborhood.

11 MS. TOMPKINS-WRIGHT: I agree with that  
12 amendment.

13 MR. DiSTEFANO: The motion is to approve  
14 with conditions.

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

19 (Upon roll motion to approve with conditions  
20 carries.)

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

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

11  
12 Dated this 4th day of January, 2023  
13 at Rochester, New York.

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HOLLY E. CASTLEMAN, CR,  
Notary Public.