

A G E N D A  
BOARD OF APPEALS - TOWN OF BRIGHTON  
MAY 3, 2023

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

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

7:00 P.M.

CHAIRPERSON: Call the meeting to order.

SECRETARY: Call the roll.

CHAIRPERSON: Agenda Review with Staff and Members

CHAIRPERSON: Approve the minutes of the March 1, 2023 meeting.  
Approve the minutes of the April 10, 2023 meeting.

CHAIRPERSON: Announce that the public hearings as advertised for the BOARD OF APPEALS in the Daily Record of April 27, 2023 will now be held.

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[4A-01-23](#) Application of Robert Piazza Palotto, owner of property located at 2500 Elmwood Avenue, for modification of an approved variance (9A-06-22) to allow construction of a second story above an attached garage addition which was granted a side setback variance of 8.2 ft. in lieu of the minimum 10.8 ft. required by code. All as described on application and plans on file. **TABLED AT THE APRIL 10, 2023 MEETING - PUBLIC HEARING REMAINS OPEN**

[5A-01-23](#) Application of Reza Hourmanesh, architect, and Guiyan Li, owner of property located at 2720 West Henrietta Road, for an Area Variance from Section 205-12 to allow for 37 parking spaces in conjunction with a grocery store in lieu of the minimum 55 parking spaces required by code. All as described on application and plans on file.

[5A-02-23](#) Application of Reza Hourmanesh, architect, and Guiyan Li, owner of property located at 2720 West Henrietta Road, for an Area Variance from Section 205-7 to allow impervious lot coverage to be 83.2% of the lot area, after site modifications, in lieu of the maximum 65% allowed by code. All as described on application and plans on file.

[5A-03-23](#) Application of John and Vanessa Geer, owners of property located at 2171 West Henrietta Road, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a 30 ft. by 30 ft. tent partially covering an outdoor dining area from May through October 2023. All as described on application and plans on file.

[5A-04-23](#) Application of Robin Wells and Jason Wells, owners of property located at 58 Torrington Drive, for an Area Variance from Section 207-10A(2) to allow an

emergency access window well to extend 6 inches into the minimum 4 ft. side setback required by code. All as described in application and plans on file.

5A-05-23 Application of Westmarsh Properties, LLC, owner of property located at 57 Eldridge Avenue, for Area Variances from Section 205-2 to allow for the construction of a single family home with 1) a 15.5 ft. front setback in lieu of the minimum 75 ft. front setback required by code, and 2) a 38.5 ft rear setback in lieu of the minimum 60 ft. rear setback required by code. All as described on application and plans on file.

5A-06-23 Application of Westmarsh Properties, LLC, owner of property located at 57 Eldridge Avenue, for an Area Variance from Section 205-2 to allow building lot coverage, after construction of a single family home to be 15.9% of the lot area in lieu of the maximum 15% allowed by code. All as described on application and plans on file.

CHAIRPERSON: Announce that public hearings are closed.

NEW BUSINESS:

NONE

OLD BUSINESS:

NONE

PRESENTATIONS:

NONE

COMMUNICATIONS:

Letter from Richard Testa, Howard Hanna Real Estate Services, supporting the site plan design of the proposed home at 57 Eldridge Avenue.

Letter from Jeffrey Scofield, ReMax Plus, supporting the site plan design of the proposed home at 57 Eldridge Avenue.

Letter from Debra Stewart, 28 Midland Avenue, dated May 1, 2023, with comments and concerns regarding applications 5A-05-23 and 5A-06-23, 57 Eldridge Avenue.

Letter, with attachments, from Jonathan R. Tantillo, Knauf Shaw LLP, dated May 2, 2023, with comments, concerns and in opposition to applications 5A-01-23 and 5A-02-23, 2720 West Henrietta Road.

PETITIONS:

NONE



Real Estate Services

**Brighton Office**

2349 Monroe Avenue

Rochester, NY 14618

585-473-1320

[office.brighton@howardhanna.com](mailto:office.brighton@howardhanna.com)

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

Re: 57 Eldridge Avenue, Town of Brighton

To Whom It May Concern,

My name is Richard Testa, I am a Licensed Associate Real Estate Broker for Howard Hanna on Monroe Avenue in Brighton, NY. I have been selling residential real estate in Brighton for over 15 years and was the listing agent that sold the property located at 57 Eldridge Avenue to its current owner, Westmarsh Properties LLC. I have many years of experience selling real estate located adjacent to parks. Most notably, having sold the historic "Mushroom House" in 2012 located adjacent to Powder Mills Park in the Town of Perinton. As such, I am very familiar with the subject property and what would be best for the development of this property to attract a future homeowner. In addition, I have studied the well-known architect Frank Lloyd Wright and his positioning of properties within nature. A great example is the Falling Water property in Pennsylvania. I have visited that property. It takes full advantage of the views of the creek and parkland views. Since 57 Eldridge Avenue is a very special property, the positioning of the property should be in concert with the surrounding parkland. Please see below from Google:

What is so special about Frank Lloyd Wright houses?

"What makes his work so great? Frank Lloyd Wright **used organic architecture to plan each and every structure.** Using the environment around where the structure would be, he would design and build accordingly, resulting in unique structures and homes that fit with their landscape, rather than a cookiecutter home."

In my professional opinion, the future new residence at 57 Eldridge Avenue should be constructed with the front and rear of the home facing the park areas owned by the Town of Brighton, as opposed to facing the existing homes and Eldridge Avenue. This configuration is most ideal for several reasons. First, it would offer stunning views of the park from both the front and back of the home, creating a desirable and unique living experience for the future homeowners. This would also add value to the property, making it an attractive investment for potential buyers in the future. And also by having the garage placement at the west end of the property, it gives more privacy to any adjacent property on Midland Ave.

Moreover, by facing the park, the future homeowners would hear less noise coming from the heavily trafficked South Clinton Avenue, which would detract from the quality of life of the future residents. Instead, they would have a peaceful and serene environment to enjoy, surrounded by the natural beauty of the park. Furthermore, I am told that this will be the only home constructed on Eldridge Avenue. As such, it would be important for future homeowners to have visibility up Eldridge Avenue.

In contrast, constructing a home facing existing homes and a noisy street would have several drawbacks. First, the inability to see traffic traveling and parking on Eldridge Avenue could be a safety concern for potential homeowners. Additionally, building a home facing existing homes could lead to potential conflicts over privacy and property boundaries.

In conclusion, I urge you to approve the proposed construction of a new house on Eldridge Avenue with the front and rear facing the park. This location offers a unique opportunity to create a desirable and valuable living experience for the future homeowners in concert with the beautiful parkland, while avoiding the potential drawbacks of a home facing a noisy street and existing homes.

Thank you for your consideration.

Sincerely,



Richard Testa  
Licensed Associate Real Estate Broker  
Howard Hanna Real Estate Services  
585 739-3521  
[richtesta@gmail.com](mailto:richtesta@gmail.com)



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Rochester, New York 14618  
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Licensed Real Estate Broker  
Each Office Independently Owned and Operated

**Town of Brighton  
Planning Board/Zoning Board of Appeals  
2300 Elmwood Avenue**

**Rochester, NY 14618**

**Re: 57 Eldridge Avenue, Town of Brighton**

**To Whom It May Concern,**

**My name is Jeff Scofield, I am a Broker Owner of ReMax Plus on Monroe Avenue Brighton, NY. I have been selling residential real estate in Brighton for over 40 years and am very familiar as to what buyers are looking for and what creates the most appeal.**

**I understand that the owner of 57 Eldridge Avenue is considering the construction of a new house on the property for resale purposes, and is currently going through the approval process to do so with the Town of Brighton. To this end, I was asked by the owner to provide my input regarding the location of the house on the property. Specifically, I was asked to give my opinion regarding whether the house should be placed horizontal or vertical to Eldridge Avenue.**

**As someone who has been involved in the local real estate market for many years, I can confidently say that the location of the property is one of the most important factors in determining its value and appeal to potential buyers. With this in mind, I strongly recommended to the owner that the home be placed vertically to Eldridge Drive such that the rear of the new house faces into Persimmon Park rather than the neighboring houses located along Midland Avenue.**

**There are several reasons why a house facing a park can be more valuable and appealing to buyers. First, it provides a beautiful and unobstructed view that can greatly enhance the property's aesthetic appeal. The peaceful and green**

**surroundings of the park can also provide a relaxing and calming atmosphere, which can be especially attractive to buyers who value a serene living environment.**

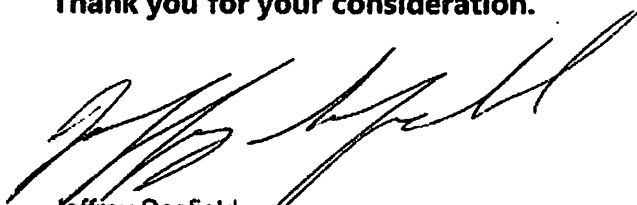
**Furthermore, a house facing a park can offer greater privacy compared to neighboring houses. With no houses obstructing the view or proximity, the house can offer a sense of seclusion and tranquility that can be very appealing to potential buyers.**

**Finally, it is important to note that properties facing parks are often in high demand, and as a result, they can command a higher resale value. Therefore, building your new house facing the park not only makes it more attractive to buyers, but it can also potentially increase its value and provide a better return on investment.**

**In conclusion, I strongly encourage you to approve the location of the new house at 57 Eldridge Avenue carefully, and to take into account the many benefits its location will offer to potential buyers.**

**If you have any questions or would like further information, please do not hesitate to contact me.**

**Thank you for your consideration.**



**Jeffrey Scofield**  
**2019 Realtor of the Year**



Wednesday, May 3, 2023 public hearing re: Application Numbers 5A-05-23 & 5A-06-23

Debra Stewart <colombapace@yahoo.com>

Mon 5/1/2023 1:11 PM

To: Rick DiStefano <rick.distefano@townofbrighton.org>

Comments:

My address is 28 Midland Avenue, Brighton, NY 14620



I am concerned about the impending removal of trees from 57 Eldridge Avenue, directly behind my house. Pooling water in my is already a problem, especially in springtime, as the wetland area of Persimmon Park is adjacent to Midland Avenue. The cottonwood trees absorb a lot of water.

The attached photos show how large and near to the park the trees to be cleared are. I'm afraid that there will be more standing water when they are gone. It would be better for the neighboring homes and parkland if a home could be built without cutting the trees.

Sincerely,

Debra L. Stewart















Sent from my iPad





2600 Innovation Square  
100 South Clinton Avenue  
Rochester, New York 14604  
nyenvlaw.com



**JONATHAN R. TANTILLO**  
ATTORNEY AT LAW

585.546.8430  
jtantillo@nyenvlaw.com

May 2, 2023

**VIA ELECTRONIC MAIL**

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

**RE: Applications for Area Variances: 5A-01-23 and 5A-02-23  
2720 West Henrietta Road, Town of Brighton  
ZBA Agenda – May 5, 2023**

Dear Board Members:

This office represents 2710 West Henrietta Road LLC and its principal, Randy Schuster, the owner of the property at 2710 West Henrietta Road. Mr. Schuster received a legal notice from the Town of Brighton (the “Town”) informing him that the above-referenced variance applications had been filed by the owner of 2720 West Henrietta Road, which is adjacent to the 2710 parcel.

As was the case in May 2022 when the neighbor previously applied for similar variances, Mr. Schuster was not notified of this application, nor did he consent to its submission. As the application involves work occurring on and alterations being made to Mr. Schuster’s 2710 parcel, the Town should not process the application, let alone hear it at the May 3, 2023 meeting of the ZBA in the absence of owner consent. 2710 West Henrietta Road LLC was notably omitted from the “Owner(s) of Record” section of the application, which constitutes a material misstatement.

Though an easement between the properties does exist, the project as currently designed is outside the scope of and would overburden that easement, and the applicant is thus without authority to use 2710 as indicated on the site plan. After the 2022 application, I had been in contact with the applicant’s attorney to work out a site plan that would be mutually agreeable to both parties. Though we attempted to schedule a meeting at the site in December 2022, we received no response until this February. That month, after another round of communication, the applicant’s attorney informed me that he would transmit a modified site plan for our review, but we heard nothing further from them until receiving this notice.

Though minor modifications were made to the site plan, they fall well short of addressing our concerns, which are more thoroughly detailed in the accompanying letter of David Kruse, AICP, PTP (**Attachment “A”**). We also attach, repeat, and reincorporate the May 3, 2022 letter of Betsy Brugg previously submitted in opposition to these applications (**Attachment “B”**). For these reasons, we respectfully request that the ZBA decline to process the Applications. In the event that the applications are processed, we request that they be denied.



Town of Brighton Zoning Board of Appeals  
May 2, 2023  
Page 2

Sincerely,

**KNAUF SHAW LLP**

A handwritten signature in black ink, appearing to read "Jonathan R. Tantillo".

**JONATHAN R. TANTILLO**

cc: Mr. Rick DiStefano



# Attachment A



March 8, 2023

Mr. Rick DiStefano  
Town of Brighton Building and Planning  
2300 Elmwood Avenue  
Rochester, NY 14618

**RE: Proposed Hua Mie Supermarket, 2720 W. Henrietta Road, Town of Brighton, NY**  
Development Review

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Dear Mr. DiStefano:

Passero Associates has completed the review of the proposed Hua Mie Supermarket project that is being considered for 2720 W. Henrietta Road. The project will consist of 10,955 square foot (SF) specialty Asian Supermarket in a pre-existing building. Access to the site will be provided through an existing shared use driveway with the adjacent Fastenal Fulfillment Center at 2710 W. Henrietta Road. There is an existing easement agreement with 2720 W. Henrietta Road that allows for both shared access and shared parking.

For discretionary reasons, SRF Associates (now a Passero Associates company), performed a parking demand assessment (June 28, 2022) of the Hua Mie Supermarket on behalf of the owner of 2710 W. Henrietta relative to concerns about parking accommodations and the shared parking easement. The letter described the proposed Hua Mie Supermarket project, projected parking demands using Town Zoning Code requirements, performed a parking demand analysis using national standards for similar projects, and offered a review of the 2720 W. Henrietta Road parking plan. This letter is attached for reference.

Passero have the following comments on the Transportation and Engineering Assessment (TA) that was completed by Fisher Associates, P.E., L.S., L.A., D.P.C. (Fisher Associates), dated August 26, 2022. The TA addressed items, such as trip generation, parking generation, an easement evaluation, and a general site plan review. The site plan included in the TA illustrating parking provided at the adjacent Fastenal building, or to be provided with the proposed Hua Mie Supermarket, is attached for reference. A total of 40 spaces is illustrated. This letter comments on the trip generation and parking generation relative to the easement with 2710 W. Henrietta Road.

#### **SITE TRIP GENERATION**

Trip generation for the proposed project was reviewed based on two sources, the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (11<sup>th</sup> Edition) and local data collected at an existing Asia Food Market located at 1885 Brighton Henrietta Town Line Road. Additionally, trip generation estimates were compared to the building's former use as a Japanese restaurant. Existing trip generation volumes were obtained during typical peak periods on a weekday (4:00 to 6:00 PM) and Saturday (11:00 AM to 1:00 PM).



*Please note we've moved and are now with Passero Associates*  
242 West Main Street, Suite 100 Rochester, NY 14614  
T 585.325.1000 F 585.325.1691 [www.srfa.net](http://www.srfa.net) [www.passero.com](http://www.passero.com)



Using local data, when available, can be more appropriate than using ITE data given lack of available land uses or unique characteristics of a proposed project. In this case, the proposed Hua Mie Supermarket is more comparable to the existing Asia Food Market and less representative of the ITE land use of "Supermarket", as provided in the *Trip Generation Manual*.

Passero concurs with the site trip generation methodology that is presented in the TA.

### SITE PARKING GENERATION

Parking generation for the proposed project was reviewed based on two sources, the ITE *Parking Generation Manual* (5<sup>th</sup> Edition) and local data collected at the same Asia Food Market. Existing parking data was collected during the same peak weekday and Saturday periods, as noted above. The number of occupied parking spaces was documented, and an average and peak parking demand rate was calculated based on the square footage of the existing Asia Food Market. Additionally, parking generation estimates were compared to the building's former use as a Japanese restaurant. The table below, reprinted from the TA, shows the parking analysis performed in the Fisher Associates.

**Parking Analysis**  
**Number of Occupied Parking Spaces**

Table 2				
Land Use	Weekday Peak		Saturday Peak	
	Avg	Peak	Avg	Peak
Japanese Restaurant (ITE LUC 932)	103	120	135	NA
Supermarket (ITE LUC 850)	32	NA	40	47
Hua Mie Supermarket (Local Rates)	11	14	15	21

As shown in the table and based on the parking rates developed from the Asia Food Market, the peak parking demand for the proposed Hua Mie Supermarket is 14 spaces during the weekday peak and 21 spaces during the Saturday peak.

The TA also projected the number of parking spaces needed based on Town of Brighton Zoning Code requirements for a supermarket. The required parking ratio is 1 space per 200 SF for a total requirement of 55 spaces.

Passero concurs with the site parking generation methodology that is presented in the TA.

### IMPLICATIONS OF PARKING GENERATION AT HUE MIE SUPERMARKET

As noted in the parking generation for the proposed Hua Mie Supermarket, the site is expected to have a peak parking demand of 14 spaces during a typical weekday and 21 spaces during a typical Saturday using representative data; a methodology with which Passero concurs.

As noted in the SRF/Passero letter, and subsequent review of the Fisher Associates letter, there are several observations and concerns with the proposed parking plan for the Hua Mie Supermarket.

- The hours of operation of Fastenal are 7:00 AM to 5:00 PM, not just 7:30 AM to 9:30 AM according to the website.

- The proposed westerly parking spaces are close to the shared entrance where vehicles are expected to be turning into and out of both properties. Safety and accessibility of existing Fastenal-related vehicles and proposed vehicles is of high concern throughout the site.
- There are safety and accessibility concerns with the proposed spaces along the northern side of the building closest to the existing Fastenal spaces.
- Of the 25 spaces planned along the northern side of the building, there are four spaces that are planned at the easterly end of the site in an area used by Fastenal service vehicles for turning maneuvers. These vehicles do consist of weekly 18-wheeler trucks which require larger spaces for their movements.
- The proposed two parking spaces at the east end of the Fastenal site between the two buildings would interfere with service deliveries.
- Of the nine shared spaces along the south side of Fastenal, approximately five to seven are consistently used by Fastenal parts trucks, leaving two to four spaces available for 2720 W. Henrietta Road at any time.
- The proposed parking plan shows three additional spaces along the northerly property line of Fastenal. In 2020, the parking lot was restriped, and this area remained unstriped in order to leave sufficient room between the curb cut and parked vehicles.
- Additional parking spaces shown on 2710 W. Henrietta Road to be considered relative to the Fisher Associates parking plan would need property owner approval.
- Given that the Fisher Associates letter surveyed actual parking demands at a similar site, it is appropriate to use local data when projecting future demands. This should be a basis for determining the adequacy of the proposed parking supply at 2720 W. Henrietta Road.

As referenced in the attached parking plan produced by Fisher Associates for the proposed project, 40 new parking spaces are provided using a combination of five spaces along the west side of the building, 25 spaces along the north side, and 10 spaces along the east side. Additionally, the plan assumes the use of the nine spaces shared with Fastenal and two new spaces that are currently unstriped. The Fisher Associates plan noted that greenspace considerations may impact the number of dedicated spaces provided, thereby reducing the number of new parking spaces to 27 spaces around the 2720 W. Henrietta Road building.

Based on the review of the Fisher Associates letter, the parking demand projections for the Hua Mie Supermarket using actual parking rates, and noted concerns by the owner of 2710 W. Henrietta, an alternative parking plan is proposed for the 2720 W. Henrietta site which seeks to accommodate all parking demands either around the building or utilizing available shared parking spaces.

The alternative parking plan proposed 24 dedicated spaces on the 2720 W. Henrietta site plus up to four additional spaces on 2710 W. Henrietta within the shared parking area for a total of 28 parking spaces. Compared to the projected parking rate using the Asia Food Market site, the parking needs are satisfied without additional parking and possible adverse impacts to the existing Fastenal business. Parking protections should be considered within the shaded area along the northern side of the building, such as pylons, to ensure safety and access concerns are addressed.

It is our professional opinion that the proposed Hua Mie Supermarket and associated parking demands can be satisfied with implementation of this alternative parking plan.



Re: *Proposed Hua Mie Supermarket, 2720 W. Henrietta Road  
Development Review*

*March 8, 2023  
Town of Brighton, NY*

Please feel free to contact me directly with any questions.

Sincerely,  
SRF Associates  
A Passero Associates Company



David Kruse, AICP, PTP  
Senior Transportation Planner

Attachments

# **ATTACHMENT**

March 8, 2023

**Letter to**  
**Mr. Rick DiStefano**  
Town of Brighton

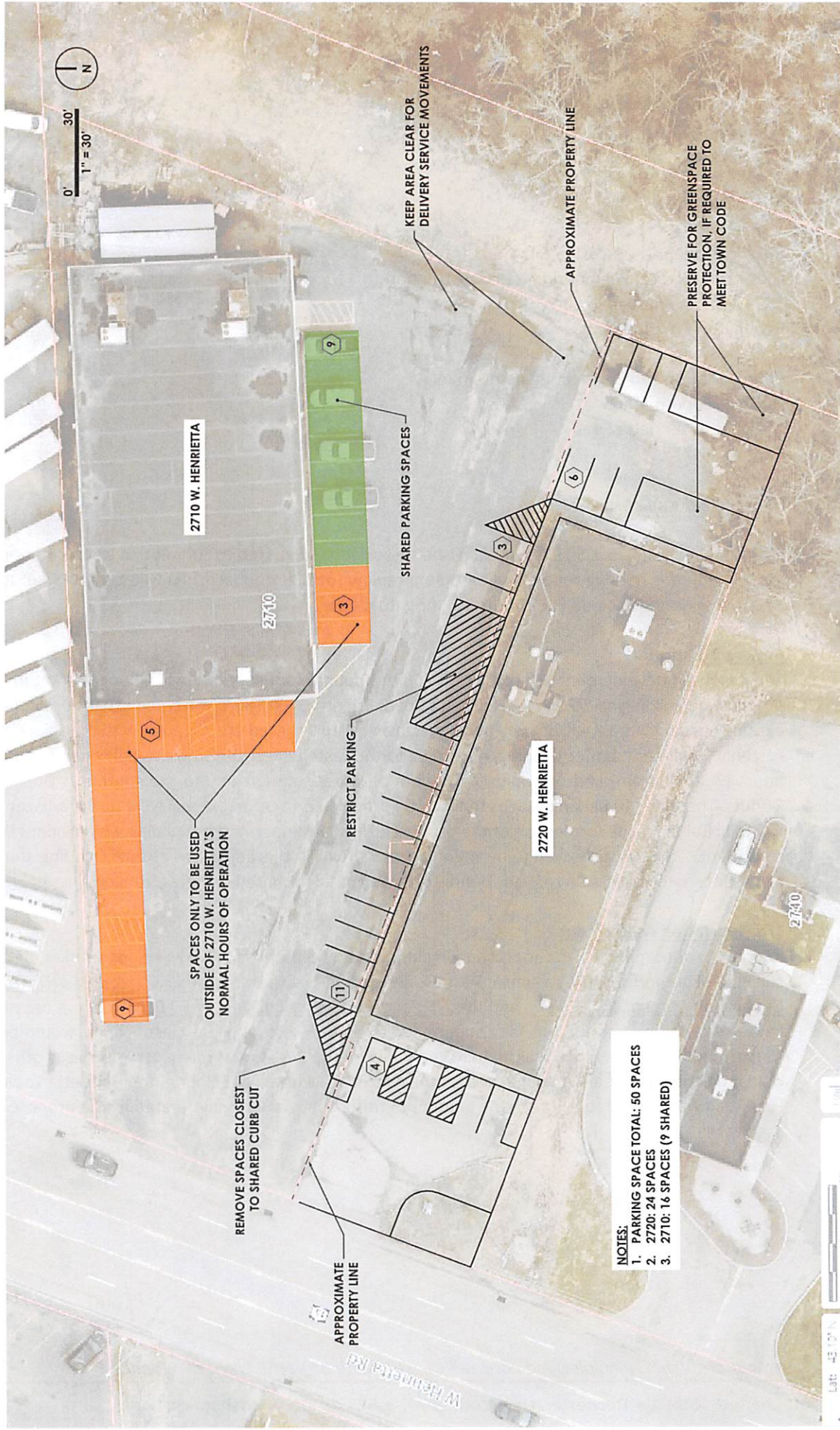
**Proposed Hua Mie Supermarket**  
**2720 W. Henrietta Road**

**Development Review**

Town of Brighton  
Monroe County, New York



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Transportation  
Land Development  
Energy

August 26, 2022

Reza Hourmanesh, RA, CE, CDT  
GRH Architecture, Engineering and Construction  
333 Glen Haven Road  
Rochester, NY 14609

Transportation and Engineering Assessment  
Hua Mie Supermarket  
2720 West Henrietta Road  
Brighton, NY

Dear Mr. Hourmanesh:

Fisher Associates, P.E., L.S., L.A., D.P.C. (Fisher Associates) is pleased to submit this transportation assessment, engineering report and easement review for the proposed Hua Mie Supermarket at 2720 West Henrietta Road (NYS Route 15), Brighton, NY.

#### **Project Description**

The proposed development will consist of a 10,955 square foot specialty Asian Supermarket in a pre-existing building at 2720 West Henrietta Road, Brighton, NY. There will be no expansion of the existing building. Access will be provided through an existing shared use driveway with the adjacent Fastenal Fulfillment Center building. According to the Fastenal website they are only open limited hours (7:30-9:30 am) and not open for walk-in business. Immediately to the south is a Dunkin Donuts. There are 40 parking spaces that will be provided on site that is shared with the adjacent Fastenal Building. The former use of the proposed Hua Mie Supermarket building was a Japanese restaurant. There is an existing easement agreement with the adjacent Fastenal building that allows for shared access on to West Henrietta Road and for a shared parking arrangement.

#### **Transportation Assessment**

In order to determine the traffic and parking impacts of the proposed Hua Mie Supermarket, data collection was performed at a similar Asian supermarket. The reason for this is that in the *ITE Trip Generation Manual, 11<sup>th</sup> Edition* and the *ITE Parking Generation Manual 5<sup>th</sup> Edition*, there are no land use classifications for specialty supermarkets. The closest land use classification would be "Supermarket" that is more typical of a Wegman's or Top's that offer many other services other than groceries. Traffic and parking data for the Asia Food Market at 1885 Brighton Henrietta Town Line Road was utilized to estimate the amount of traffic that would be generated by the proposed



Hua Mie Supermarket and how much parking would likely be utilized. Traffic and parking data was collected on a typical weekday from 4-6pm and on a typical Saturday from 11am-1pm.

#### Trip Generation

The traffic data that was collected showed that the existing Asia Food Market generates approximately 5.10 trips/1,000 GSF during the weekday pm peak hour with 54% of the traffic entering and 46% of the traffic exiting. During the Saturday peak hour the Asia Food Market generates approximately 6.47 trips/1,000 GSF with 46% of the traffic entering and 54% of the traffic exiting.

The table below compares the trip generation for the proposed Hua Mie Supermarket using the locally collected trip generation rates with the rates from the ITE Trip Generation Manual for land use code (LUC) 850 – supermarket and also the estimated trip generation for the former Japanese restaurant (ITE LUC 932).

**Trip Generation Analysis  
Proposed Hua Mie Supermarket**

Table 1						
Land Use	Weekday PM Peak Hour			Saturday Peak Hour		
	Enter	Exit	Total	Enter	Exit	Total
Japanese Restaurant (ITE LUC 932)	60	39	99	63	60	123
Supermarket (ITE LUC 850)	49	49	98	55	56	111
Hua Mie Supermarket (Local Rates)	30	26	56	33	38	71

As the above table shows, the proposed Hua Mie Supermarket is projected to generate considerably less traffic than a typical supermarket and less traffic than the former use. During the weekday PM and Saturday peak hours, the proposed Hua Mie Supermarket is project to generate approximately one entering trip every two minutes and one existing trip every two minutes.

#### Parking Analysis

The parking data that was collected showed that for the existing Asia Food Market, the average number of occupied parking spaces between 4-6pm was approximately 0.98 spaces/1,000 SF with a peak of 1.29 occupied spaces/1,000 SF. During the Saturday peak, the average number of occupied parking spaces between 11am-1pm was approximately 1.36 spaces/1,000 SF with a peak of 1.89 occupied spaces/1,000 SF.

The table below compares the trip generation for the proposed Hua Mie Supermarket using the locally collected parking rates, the rates from the ITE Parking Generation Manual for land use code



(LUC) 850 – supermarket and the estimated parking requirements for the former Japanese restaurant (ITE LUC 932).

**Parking Analysis  
Number of Occupied Parking Spaces**

Table 2				
Land Use	Weekday Peak		Saturday Peak	
	Avg	Peak	Avg	Peak
Japanese Restaurant (ITE LUC 932)	103	120	135	NA
Supermarket (ITE LUC 850)	32	NA	40	47
Hua Mie Supermarket (Local Rates)	11	14	15	21

Per the site plans dated 6/15/2022, the Hua Mie Asian Supermarket building will require 55 parking spaces, according to the Town Zoning Ordinance. Based on the layout provided, 40 parking spaces are provided on, or partially on, the Hua Mie Asian Supermarket property. The total number of parking spaces on the adjacent Fastenal property is 29 according to the provided layout, but an additional two (2) parking spaces can fit along the eastern property boundary of the Fastenal property. That brings the Fastenal parking spaces to a total of 31.

According to the 2010 Easement Amendment Agreement, 20 of the 31 Fastenal parking spots are reserved for Fastenal parking ONLY during Fastenal's business hours. That leaves only 11 additional parking spaces for the Supermarket. Outside of Fastenal's business hours, the Supermarket can use all 31 of Fastenal's parking spaces. This means the Supermarket will have 51 parking spaces during Fastenal's business hours, and 71 parking spaces outside of Fastenal's business hours. The table below summarizes the above description.

**2720 West Henrietta Road  
Parking Availability**

TABLE 3				
Parking Variable	Total Parking Spaces	On-Site Parking	Adjacent Parking at Fastenal	Zoning Compliance / Non-Compliance
Zoning Required Parking	55	---	---	---
Parking Provided During Neighbor's Business Hours	51	40	11	Non-Compliance (-4)
Parking Provided Outside of Neighbor's Business Hours	71	40	31	Compliance (+16)





As discussed previously, it appears that the Fastenal business is only open Monday-Friday from 7:30 to 9:30 am. As the parking analysis shows, the proposed Hua Mie Supermarket is projected to have ample available parking spaces available for use. The 40 on-site parking spaces should be more than enough to accommodate projected demand. Since the Fastenal building is only open for a limited time early in the morning, there will not be any conflict between users of each business and the parking supply will be adequate to service both businesses.

#### **Easement Evaluation**

There are two easements included in the deed for 2720 W. Henrietta Rd. Easement #1 includes the Hua Mie Supermarket paved areas, and Easement #2 includes the Fastenal paved areas. The deed and 2010 amendment agreement describe the rights and requirements of these two easements in an itemized format (items "a" through "h"). Below is a summary of each item included in the easement documents:

- a) These easements are in perpetuity, regardless of change in ownership of either property.
- b) The purpose of the easements is to allow ingress and egress to and from W. Henrietta Rd. Therefore, Hua Mie Supermarket can use both curb cuts from W. Henrietta Rd.
- c) Residents of both properties have the right to park in the paved areas of either property. Note, this was amended in 2010. See item "h" below.
- d) All maintenance expenses for parking areas on both properties are to be split evenly between the two properties (50/50). This includes snow removal expenses.
- e) Either property owner must obtain written permission from the other property owner prior to placing/installing/constructing any permanent structure (buildings, decks, docks, etc) within either easement (the paved areas). Dumpsters/refuse containers are allowed in the paved areas, but only at the rear of either building (between east wall of buildings and eastern property line).
- f) During the months of November and December on any given year, Hua Mie Supermarket must provide free valet parking for Supermarket customers that will need to park on the Fastenal property. This is only required between 6pm and 9pm in November and December.
- g) Indemnity Clause – Neither property owner can hold the other at fault for personal injury or property damage, unless due to negligence or discrimination.
- h) 2010 Amendment – During Fastenal's business hours, the parking along Fastenal's front building face and along Fastenal's northern property line are for Fastenal parking



ONLY. The first three parking spaces along Fastenal's south building face (starting from the front of the building) are also Fastenal parking ONLY during their business hours. Outside of Fastenal's business hours, the Supermarket can use all of these reserved spots. Note that Fastenal should have signs for these spots that say "Reserved" and clearly display the hours of operation on them.

#### **Site Plan Review**

Availability of utilities for redevelopment of 2720 W. Henrietta Rd has been summarized in the table below. Utility evaluation is based on site plans provided to Fisher by GRH dated 6/15/2022 and desktop visual observation of the site and neighboring roads.

TABLE 3: 2720 W. Henrietta Rd - Utility Availability		
Utility	Service Available from West Henrietta Rd	Service Available from Urban Rd ROW
Storm	Existing Storm Pipe/Structure system along eastern curb	N/A
Sanitary	Existing sanitary service assumed to come from W. Henrietta Rd. No visual evidence.	N/A
Water	Existing water service assumed to come from water main along west edge of W. Henrietta Rd. No visual evidence.	N/A
Gas	Existing gas service assumed to come from gas main along western property line.	N/A
Electric	Service potentially available along eastern edge of W. Henrietta Rd.	Existing service comes from electric poles within Urban Rd ROW (rear of property).

#### **Current Pavement Conditions**

Pavement condition at 2710 W. Henrietta Rd (Fastenal) appears to be in fair condition and has been repaved more recently than 2720 W. Henrietta Rd (Hua Mie Supermarket). Minimal patching was observed, and settlement or potholing were not evident. The parking area appears to slope toward the existing storm management system along W. Henrietta Rd without obstruction.

The main drive lane between the Fastenal building and the Hua Mie Supermarket building is in fair condition. This area does not look to have been repaved as recently as the Fastenal parking areas, but similarly, patching, settlement, or potholing were not observed in this area. The main drive lane appears to slope toward W. Henrietta without obstruction.

The paved areas in front and in rear of Hua Mie Supermarket are in poor condition. Significant pavement cracking and some potholing are deteriorating these paved areas. Vegetation is noted to be growing out of some of the cracking. The developer has noted that they will repave the existing parking lot and grades will not be changing. Stormwater in front of the Hua





Mie Supermarket still appears to be able to travel to the adjacent storm structure on W. Henrietta Rd.

A parking variance may be needed for compliance during Fastenal's business hours. However, if the business hours of Fastenal are only 7:30-9:30am it is likely there will be very little overlap of business operations. If compliance outside of Fastenal's business hours is acceptable to the Town and a variance is decidedly not needed, Hua Mie Asian Supermarket may have some options for reducing on-site parking (thereby increasing the amount of greenspace) while maintaining parking compliance outside of Fastenal's business hours. Refer to attachment FIGURE 1: Parking Space Reference.

The Supermarket could potentially remove the eastern-most row of parking at the rear of the building (5 spots) and the adjacent two (2) stand-alone parking spaces. This would allow for approximately 4.24% of the site to be changed to greenspace.

Parking along the rear building face (5 spots) could also be removed. This would change approximately another 3.86% of the site to greenspace.

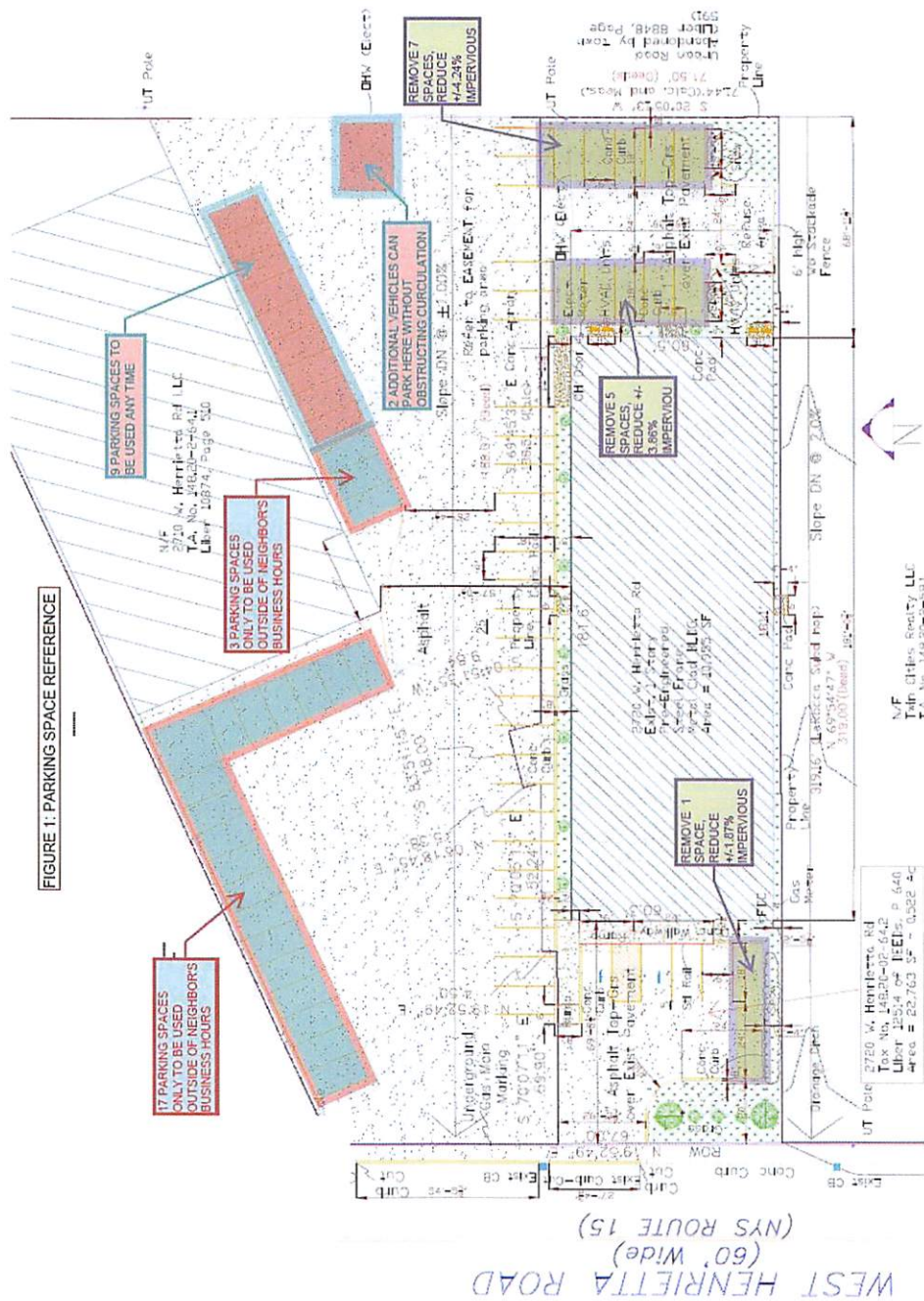
Lastly, the Supermarket could potentially remove the southern-most parking space in front of the Supermarket (1 spot). This would allow for approximately 1.87% of the site to be changed to greenspace.

Per the site plans provided, the site is approximately 83.16% impervious cover (buildings, pavement, etc.). The local zoning ordinance requires the site to have a maximum of 60% impervious cover. The above greenspace recommendations would reduce the overall impervious cover on-site to approximately 73.19% and would still provide three (3) more parking spaces than required by the Town Zoning Ordinance. Thus, the site would still require an impervious cover variance, but would show the Owner's attempt and willingness to comply with the zoning regulations.

Sincerely,  
**FISHER ASSOCIATES, P.E., L.S., L.A., D.P.C.**

Timothy Faulkner, P.E.  
Sr. Transportation Manager

ATTACHMENT: Figure 1



180 Charlotte Street • Rochester, New York 14607 • 585.334.1310 • [fisherassoc.com](http://fisherassoc.com)





Transportation Planning / Engineering / Design

3495 Winton Place  
Building E, Suite 110  
Rochester, NY 14623

(585) 272-4660  
www.srfa.net

Mr. Randy Schuster  
2710 W. Henrietta Road, LLC  
2710 W. Henrietta Road  
Henrietta, New York 14623

June 28, 2022

**RE: Proposed 2710-2720 West Henrietta Road Project, Town of Brighton, NY**  
Parking Demand Assessment Letter

Dear Mr. Schuster:

This technical letter provides a Parking Demand Assessment related to the proposed grocery project located at 2720 West Henrietta Road in the Town of Brighton, New York in connection with a parking easement with the adjacent property at 2710 West Henrietta Road (existing Fastenal).

When evaluating the parking supply needs for the proposed project, our firm projected the parking demand using nationally accepted methodology developed by the Institute of Transportation Engineers (ITE). Specifically, the assessment includes an estimation of future parking demands for the proposed project using national standards for similar developments, as documented by the ITE Parking Generation Manual (5th Edition).

This evaluation also provides a comparison to Town requirements, as set forth within Section 205-12 of the Town of Brighton's Zoning Code.

All supporting materials are included as an attachment to this letter.

### **PROJECT DESCRIPTION**

The existing site at 2710 West Henrietta Road is currently occupied by Fastenal Fulfillment Center ( $\pm 11,500$  square feet). There are currently 26 parking spaces (14 spaces on the west side of the building and 12 spaces on the south side of the building). There is a proposed Asian supermarket ( $\pm 10,955$  SF) planned for the adjacent 2720 West Henrietta Road parcel.

The two sites share access and have a recorded shared parking deed. Of the 12 available parking spaces on the south side of the building, nine spaces can be used by a tenant of 2720 West Henrietta Road. However, the existing Fastenal tenant at 2710 West Henrietta typically utilizes eight of the 12 spaces for company trucks. Therefore, 2720 West Henrietta Road has access to the remaining four spaces.

The proposed project at 2720 West Henrietta Road plans on installing 41 parking spaces—five spaces on the west side of the building, 22 spaces on the north side of the building, and 14 spaces on the east side of the building. However, the parking spaces (22 spaces) planned along the northerly side of the supermarket overlap the property line for 2710 West Henrietta Road. A total of 45 spaces could be available to the proposed project under this scenario.

However, it is noted that the proposed 22 parking spaces on the north side of the building have not been agreed to by the property owner of 2710 West Henrietta Road. Therefore, a total of 23 parking spaces are available to the proposed project.

### **PARKING REQUIREMENTS IN THE TOWN OF BRIGHTON ZONING CODE**

Section 205-12 of the Zoning Code sets forth the off-street parking requirements for different categories of land uses. Strict application of the parking requirements per Section 205-12 of the Zoning Code is depicted in **Table 1**.

**TABLE 1: TOWN CODE PARKING REQUIREMENTS**

USE TYPE	REQUIRED PARKING RATIO	SIZE	TOTAL REQUIRED PARKING SPACES
Proposed Supermarket	1 per 200 SF	±10,955 SF	55

Strict application of the off-street parking standards in the Zoning Code results in a parking requirement of 55 spaces, as depicted in **Table 1**. The total number of parking spaces to be provided by the proposed project is 41 spaces, including the 22 spaces that require an agreement from the owner at 2710 West Henrietta Road. When considering these 41 spaces plus the four spaces at 2710 West Henrietta Road, there is a deficit of 10 parking spaces per strict application of Section 205-12 of the Zoning Code.

When removing the 22 spaces that are planned to be constructed on the property of 2710 West Henrietta Road (for a total of 23 spaces), there is a deficit of 32 parking spaces.

For informational purposes, a parking occupancy survey of the existing Fastenal site was performed on Wednesday, May 18, 2022. The maximum number of vehicles parked on-site was 13 vehicles. Based upon information from the property owner at 2710 West Henrietta Road, this is a typical condition throughout a typical year.

### **PARKING DEMAND ANALYSIS**

Parking generation rates published by the ITE were consulted to project the parking demand for the proposed project.

The ITE Parking Generation Manual states that the 85<sup>th</sup> percentile parking demand for a supermarket/grocery store (Land Use #850) is 4.07 spaces per 1,000 SF. This statistic is based on the point at which 85 percent of the values fall at or below and 15 percent of the values are above. The rate was developed for sites in general urban/suburban settings throughout the United States.

Using the ITE parking rate, the projected parking demand for the proposed project is 45 spaces. Given that the property owner of 2710 West Henrietta Road has not agreed to allowing the 22 parking spaces to be developed on the north side of building at 2720 West Henrietta Road, there is a deficit in available parking spaces to accommodate the proposed use at 2720 West Henrietta Road by 22 spaces.



## REVIEW OF 2720 WEST HENRIETTA ROAD PARKING PLAN

Our firm reviewed the proposed parking layout for 2720 West Henrietta Road (see **Figure 1**). There are several design characteristics we noted.

- The curb cut servicing both properties is  $\pm 82$  feet wide.
- There are four accessible parking spaces.
  - Two are located at the westerly end of the parking aisle on the north side of the building.
  - The westerly accessible parking spaces are  $\pm 40$  feet from the shared driveway.
- There is  $\pm 22$  feet between the existing parking at 2710 West Henrietta Road and the proposed spaces at its closest point.



View from West Henrietta Road at existing Fastenal (on left) and proposed site (on right)

Based upon discussions with the owner at 2710 West Henrietta Road, there are three noted concerns.

- The westerly accessible parking spaces are close to the shared entrance where vehicles are expected to be turning into and out of both properties.
- Four spaces, planned at the easterly end of the site, are in an area used by Fastenal service vehicles for turning maneuvers.
- The proposed spaces at the closest point between the existing parking at 2710 West Henrietta Road are less than the typical width for a drive aisle (24 feet).

## **FINDINGS**

This detailed analysis assessed the projected parking demands associated with the proposed project at 2720 West Henrietta Road and its potential impacts to the existing 2710 West Henrietta Road business. Based upon this analysis, there is an insufficient number of parking spaces to accommodate the projected demands associated with the proposed project at 2720 West Henrietta Road.

If you have any questions or require additional information, please do not hesitate to contact our office.

Sincerely,  
SRF Associates, D.P.C.



David Kruse, AICP, PTP  
Senior Transportation Planner

Attachments





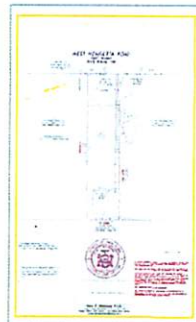
Location Map

NTS



Land Use Map

NTS



Survey Map

NTS

# SITE DATA

## A. 2720 W. Henrietta Road - Asian Grocery/Market

1. Tax Id No: 148.200-02-064.002
2. Owner: Gulyon LI
3. Landuse: Grocery/Supermarket - Retail (Asian Grocery Store)
4. Zone: BF-2
5. Year Built: 1950's
6. Parcel: 319'x87' = 22,303 SF (0.512AC)
7. Frontage: 67' (W. Henrietta Rd)
8. Total Parcel Area = 22,303 SF (0.512 AC)
9. Building Area (60.4'x181.4') = 10,955 SF
10. Refuse Area (12'x24') = 288 SF
11. Green Area = 3,370 SF Existing 3754' NC
12. Concrete Area = 868 SF
13. Asphalt Pavement Area = 7,488 SF
14. Total Building Coverage:  $\frac{10955}{22303} = 49.1\%$
15. Lot Coverage:  $\frac{10955}{22303} = 80.5\%$
16. Green Coverage:  $\frac{3370}{22303} = 13.5\%$

## B. GENERAL REQUIREMENTS (Zone BF-2)

1. PARCEL
 

	Required	Existing	NC
a. Width	150'	87'	
b. Front yard	60'	69.2'	
c. Rear Yard	20'	69'	
d. Depth	-	319'	
e. Area	10,000 SF	23,303 SF	
2. SETBACKS
 

	Required	Existing	NC
a. Front	60'	69.2'	
b. Rear	20'	69'	
c. Side (S)	10'	2'	
d. Side (N)	10'	0.6'	
e. Front Parking	20'	20'	
3. Building Height
 

	Required	Proposed	NC
a. Height	40'	24'	
4. Parcel Coverage
 

	Required	Existing/Proposed	NC
a. BLDG Impervious%	85%	86.1%	

## C. PARKING

- Required Parking: 1 Parking/200SF
  - 55' x 1' = 54.7' = 55 Parking Required
  - Total Parking: 41 Proposed
  - Accessible Parking: 4 Proposed
  - Total Parking: 45
  - Parking Stalls: 9'x18'
- NC: Non-Conforming - Variance Required  
AC: Acre  
SF: Square Foot

## Trees & Shrubs Schedule

Common Name	Latin Name	Family	HT	Spread	Flower	Soil	Light	Notes
1. TREES								
Cleveland	Ficus	Rubiaceae	30 ft	10 ft	New	High	Tolerant	
Shrub	Calceola	Agave						
2. SHRUBS								
Flax	Artemisia	Ranunculaceae	6 ft	10 ft	New	High	Tolerant	
Shrub	Artemisia	Ranunculaceae	6 ft	10 ft	New	High	Tolerant	

NOTES:  
1. All trees shall be Min 2" O.C.  
2. All shrubs shall be Min 3" Ht.

## Site Plan

Scale: 1" = 20'

## GENERAL NOTES

1. Contractor shall comply with all Federal, State, and Local Laws, Regulations, and Building & Zoning Codes.
2. Contractor shall comply with Town of Brighton Zoning Code Requirements.
3. Install all materials incorporated in this project in accordance with the MTC's Requirements & directions.
4. Notify the Architect immediately if the existing condition (e.g. utility) is shown on the drawings. DO NOT Proceed with Work until Direction is given by Architect.
5. Contractor shall provide Submittals to the Architect for review and approval for all materials and construction for the project.
6. Field Verify all Dimensions and Conditions.
7. All Private and/or Governmental Fees and Permits related to this Project is by the Contractor.
8. Contractor (e) shall notify the Building Inspector at proper intervals as required for Utility Inspections. Do not cover Work that has not been inspected by AUI.
9. Provide Security Lighting for the Parking Area as per Owner & Town of Brighton requirements.
10. Contractor shall obtain the Certificate of Occupancy and forward it to the Owner.

Project:

## Building Renovation

2720 W. Henrietta Road  
Rochester, NY 14623

Owner:

## Hua Mie Asian Supermarket

2720 W. Henrietta Road  
Rochester, NY 14623

Architect:

**GRH**  
Architect, Engineering & Construction

333 Glen Haven Road  
Rochester, New York 14609  
Mobile: (585) 739-6000  
Email: GRH@rochester.rr.com

Consultant:

## Revisions:

No.	Description	By	Date

Warning: Unauthorized Use, Alterations, Additions, Deletions, Changes and/or Reproduction of this drawing is a violation of the New York State Education Law, Article 145, Section 7209.

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Sheet Title:

## Proposed Site Plan

Project Manager: RH	Seal:
Project Architect: RH	
Drawn by: RH	
Checked by: RH	
Project No: 61421	
Date issued: 4-20-22	
Scale: 1" = 20'	
Drawing Number:	

S-1

1 of 2

# Attachment B

1900 Bausch & Lomb Place  
Rochester, New York 14604  
P 585.987.2800 F 585.454.3968  
Writer's Direct Dial Number: 585.987.2905  
Writer's Direct Fax Number: 585.362.4623  
Email: [bbrugg@woodsoviatt.com](mailto:bbrugg@woodsoviatt.com)



ATTORNEYS  
[woodsoviatt.com](http://woodsoviatt.com)

1900 Main Place Tower  
Buffalo, New York 14202  
P 716.248.3200 F 716.854.5100

May 3, 2022

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

Re: Applications for Area Variances: 5A-01-22 and 5A-01-22  
2720 West Henrietta Road, Town of Brighton  
ZBA Agenda- May 4, 2022

Dear Board Members:

This office represents 2710 West Henrietta Road LLC ("2710") and its principal, Randy Schuster, the owner of the property at 2710 West Henrietta Road. My client received a legal notice from the Town of Brighton informing them of the filing of the above-referenced variance applications by the current owner of 2720 West Henrietta Road (sometimes called "2720" or "Schuster"), the neighboring property adjacent and to the south of 2710.

The owner of 2720 has applied for certain area variances in connection with a proposal for conversion of the vacant building (last used as a sit-down Japanese restaurant) at 2720 West Henrietta Road into a grocery store with take-out food/restaurant and bakery.

Mr. Schuster is opposed to the applications and asks that the Board reject these applications for lack of proper authorization. Alternatively, should the Board entertain the applications, we request that they be denied for failure to meet the applicable burden of proof for the granting of area variances.

**OWNER AUTHORIZATION NOT REQUESTED FROM OR GRANTED BY  
SCHUSTER**

The applications should not have been processed or hearings scheduled for the project, as it proposes to make physical modifications and to construct new parking on my client's property at 2710 West Henrietta Road without the property owner's consent, as illustrated on the site plan submitted with the application.



While the applicant may have certain shared parking with 2710 pursuant to an easement, that easement does not give the owner of 2720 a right to alter the Schuster property, without consent or modification of the easement.

The applicant has not contacted the owners of 2710 to discuss the project or request their consent to the applications or for the proposed work on my client's property. The applications must be rejected for this reason alone.

My client only learned of the applications and the project from the Zoning Board of Appeals notice of public hearing just received from the Town of Brighton. My client had attempted to contact the owner of 2720 in the past regarding their obligations regarding snow removal but they never responded.

#### **VARIANCES GREATER THAN STATED IN NOTICE OR APPLICATION**

The variances are also greater than stated in the legal notice. The Board cannot lawfully grant variances in excess of that stated in the legal notice. According to the legal notice, the applicant is requesting an area variance to allow a proposed grocery store use to have 45 spaces where Code requires 55, and to allow an increase in the impervious surface area from 83.2 to 84.9% where Code allows a maximum of 65%.

#### **Parking**

With respect to the amount of parking, the site plan states that 45 spaces are provided where 55 are required per Code. There appear to be only 41 spaces on the applicant's site plan. Of the 41 parking spaces shown, only 17 spaces are on the applicant's very narrow 67 foot wide property-- 5 spaces in the front and 12 spaces in the rear. 17 spaces are proposed on site where 55 spaces are required, not 45 as stated in the application and legal notice. The applicant proposes to construct 22 parking spaces along the north side of their building, which spaces cross the property line and are more largely on my client's property. Code also requires parking to be on the same lot as the use served.

#### **Impervious Area**

In respect to the variance required for the proposed impervious area, the Code allows a maximum of 65%. The legal notice indicates the request is for an increase in impervious area from 83.2% to 84.9%. The site plan lists lot coverage as 86.1% and proposed impervious area at 86.5%, more than that stated in the legal notice and more than the existing lot coverage.

#### **EASEMENT DOES NOT PERMIT PROPOSED MODIFICATIONS TO PROPERTY AT 2710**

The applicant has submitted with its application a copy of a deed that contains certain easements and an amendment to easement related to certain shared parking. However, the

easement does not authorize the construction of additional parking or the obstruction of the ingress and egress on client's property at 2710 West Henrietta Road.

### **APPLICATION FAILS TO SATISFY LEGAL STANDARDS FOR THE VARIANCES**

The applicant does not meet criteria set forth in the Town Law for the granting area variances. The primary consideration is whether the benefit to the applicant outweighs the detriment to the health, safety or welfare of the neighborhood.

The benefit to the applicant would be to allow them to operate a grocery store with take-out food/restaurant and bakery, an intense use, without making improvement to the condition of the property or addressing significant non-conforming conditions on this narrow lot.

The detriment to the neighborhood will outweigh any benefits to the applicant. The variances will allow the applicant to open this intense commercial use, without sufficient parking and amenities on its own property (or even arguably on neighboring property), allowing these impacts to fall to the adjacent property at 2710. The property at 2710 is leased by Fastenal, which operates a retail business serving contractors and open weekdays from 7:30am-5:30pm. Fastenal traffic consists of contractors driving various sizes of trucks. Given the size of the building at 2720 and the amount of proposed impervious area, as well as the impact on parking and traffic circulation, the intense grocery store with take-out food/restaurant and bakery will interfere with the Fastenal's business use and dominate the use of 2710 with the various impacts of the operation, as discussed further below. The applicant has also not demonstrated that there is sufficient parking available for the proposed operation, given the existing limitations of its property and the existing use of the neighboring 2710.

In considering whether to grant the variance, the Board shall consider the following factors:

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.** The variances will be detrimental to and adversely impact the neighborhood, and specifically my client's adjacent property at 2710 West Henrietta Road. The applicant's property is already substantially non-conforming in width (only 67 ft. where Code requires 150 ft.), side setbacks (having no useful area) and impervious coverage (being over 83%), such that it is not able to accommodate the activity of a busy grocery store with take-out food/restaurant and bakery on site without having traffic, parking, and other impacts of the use flow over to the adjacent property at 2710 West Henrietta Road. The variances will increase the non-conformity to the detriment of my client's property. In addition, the applicant has no authority to construct the parking it proposes on 2710 West Henrietta Road or to disrupt the ingress and egress as proposed on the site plan.

Furthermore, the granting of the variances requested will impact Fastenal, the current business tenant that operates at 2710 West Henrietta Road. Fastenal is a Fortune 500 company and retailer serving contractors. Fastenal operates during weekday business hours of 7:30am -5:30pm.

Prior use of the property was open until 9pm. Fastenal uses on site parking during weekday business hours for employees and customers (note- Fastenal or a successor tenant could operate on Saturdays, which typically is a peak traffic period for the proposed use at 2720), with ingress and egress important to accommodate its truck traffic on the site and to access the rear loading area and dumpsters. The granting of the variances will increase the intensity of use on my client's parcel in addition to the applicant's parcel, imposing all the impacts of a high intensity use onto my client's property and interfering with Fastenal's operation and use of the property. The variances will allow an intense use that can be expected to generate a variety of impacts on my client's property in addition to general traffic and parking impacts, such as aesthetics, safety and liability concerns related to trucks, pedestrian activity, shopping carts, trash, food waste, etc.,....

It is notable that the applicant's property was a warehouse and then a restaurant with evening peak times. The applicant's property has never generated the amount of continuous traffic throughout the day typical of a grocery store. As the two parcels are connected, the variances will allow applicant's use to dominate the current and future use of my client's property. The applicant's proposal is simply too intense and large for its property.

2. **Whether the benefit to be sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.** Given the unique conditions of the property, which includes substantial non-conforming lot width, setbacks and impervious area, as well as the placement of the existing building, it would be appropriate and feasible for the applicant to pursue a less intense use that requires less parking or a use with different hours of operation to offset the hours of the business operating at 2710. Another alternative would be for the applicant to upgrade and improve the condition of its property by reducing the building size and impervious area, making the site more suitable for the proposed use. The applicant can increase compliance with Code, produce a better site plan, and reduce its impact on the neighboring property at 2710.

3. **Whether the area variance is substantial.** The variances are substantial in amount, nature and impact. The applicant proposes an 11,000 +/- square ft. grocery store with take-out restaurant and bakery, but only has 17 parking spaces on its property, far less than half of the required 55 spaces with no evidence of parking demand or that the available parking is sufficient. The applicant has no authority to construct 22 new parking spaces on my client's property.

The proposed lot coverage variance of is also substantial in amount, nature and impact. The existing lot coverage is already substantially more than the 65% maximum in the Code at 83.2% and limits the site from providing its own parking, traffic circulation, greenspace, and other design elements typically required of a quality site plan. The proposed variance is to increase the lot coverage to 86.1%, and would allow the applicant to burden and impose its adverse impacts on the neighboring parcel at 2710. If granted, the variances will impact the current business operation and the potential future use of the property at 2710, risking the potential future viable use of the property. (Typically, impervious surface variances in Brighton are granted where impervious surface is reduced by new uses, but still above the 65% threshold.)



4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The granting of the variances will be detrimental to the physical and environmental conditions of both 2710 and 2720 West Henrietta Road. The variances will allow the use of 2720 as a grocery store, with take-out food/restaurant and bakery, a use that is too intense for the property, given already existing physical limitations and non-conforming conditions, and which will generate impacts related to traffic circulation and pedestrian safety, parking, trash, water quality, and more. Instead of proposing to improve the existing conditions and reduce non-conformities, and proposal seeks to exploit and expand the non-conformities to make conditions worse and generate significant impacts that will burden my client's property now and in the future.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance. The hardship is self-created. The applicant bought the property with knowledge of its physical conditions and limitations. The applicant has chosen to pursue an intense commercial use which is too intense for the property and requires variances. The applicant is also proposing modifications to my client's property for their project and imposing impact on my client's property without contacting my client or securing their consent.

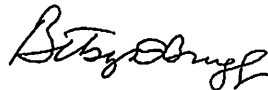
We respectfully request that the Board reject and deny the applications for area variances for 2720 West Henrietta Road for the reasons provided above. The application does not meet the burden of proof for the granting of the requested variances.

Thank you for considering my client's concerns. We look forward to appearing at your Zoning Board of Appeals meeting. In the interim, should you have any questions or require any additional information, please do not hesitate to contact me at any time.

Thank you very much for your consideration.

Very Truly Yours,

WOODS OVIATT GILMAN LLP



Betsy D. Brugg

c: Randy Schuster  
Town Attorney- Ken Gordon, Esq.

State Environmental Quality Review

**NEGATIVE DECLARATION**

Notice of Determination of Non-Significance

**Project Number:** 5A-01-23 / 5A-02-24

**Date:** May 3, 2023

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

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

**Name of Action:** 2720 West Henrietta Road Grocery Store

**SEQR Status:** Unlisted

**Conditioned Negative Declaration:** No

**Description of Action:** Application of Reza Hourmanesh, architect, and Guiyan Li, owner of property located at 2720 West Henrietta Road, for an Area Variance from Section 205-12 to allow for 37 parking spaces in conjunction with a grocery store in lieu of the minimum 55 parking spaces required by code. And, for an Area Variance from Section 205-7 to allow impervious lot coverage to be 83.2% of the lot area, after site modifications, in lieu of the maximum 65% allowed by code.

**Location:** 2720 West Henrietta Road (Tax ID #148.20-2-64.2), Brighton N.Y., Monroe County

**Reasons Supporting This Determination:**

Based on information submitted to the lead agency and after considering the action contemplated and reviewing the Environmental Assessment Form prepared by the applicant, the Criteria for determining significance in the SEQR regulations and other supplemental information, documentation, testimony and correspondence, the Town Zoning Board Appeals finds that the proposed action will not have a significant impact on the environment based on the following findings:

1. The proposed action will have, no alteration of the earth surrounding, and there will no impact on any of water quality, watercourse flood-carrying capacities. The proposed action will not create any significant adverse impact in the existing air quality or water quality, nor in solid waste production, nor potential for erosion, nor promote flooding or drainage problems.
2. The proposed action will not impact the neighborhood character of the surrounding area nor will it create any adverse noise or visual impacts. There are no additions or increase in building density proposed as part of this Project.

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

3. The proposed action will not adversely impact agricultural, archeological, historical, natural, or cultural resources. There are no known archaeological resources within project site.
4. The proposed action will not have a significant adverse impact on plant or animal life. The property does not host any threatened or endangered species, and therefore the proposed action will have no impact on any threatened or endangered species. There are no State or Federal wetlands on the property, and the project is not within any designated floodway or floodplain. Therefore, the proposed action will have no significant adverse impact on any wetlands or floodplains.
5. The Town's Comprehensive Plan does not specifically address the property. The proposed action will have no adverse impacts on the natural resources found on the site.
6. The Project will not result in any significant adverse traffic impacts.
7. The proposed action will not have a significant adverse impact on public health or safety. The proposed action is subject to all applicable Federal, State, and Local laws, regulations, and code requirements including all requirements.

**For Further Information:**

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