

**BRIGHTON  
ZONING BOARD OF APPEALS  
MEETING**

May 3, 2023  
At approximately 7 p.m.  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

## 10 | PRESENT:

DENNIS MIETZ  
Chairperson

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

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

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

1 CHAIRPERSON MIETZ: Okay, folks. We'll get  
2 started here. Welcome. This is the May meeting of  
3 the Town of Brighton Zoning Board of Appeals. For  
4 those of you who may have not been at our meetings,  
5 I'll just go over how we handle this meeting.

1 the result of your application was.

2               Okay. So at this point then, Mr. DiStefano,  
3 would you call the roll?

4               (Whereupon the roll was called.)

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

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

9               MR. DiSTEFANO: Yes, Mr. Chairman. It was  
10 advertised in the Daily Record of April 27th, 2023.

11              THE COURT: Okay. And is there anything you  
12 wanted to address the Board with?

13              MR. DiSTEFANO: You will find in your  
14 packets a letter in regards to 4A-01-23, which did not  
15 make the final agenda. That letter is requesting  
16 postponement of that application. The applicant is  
17 still working with the Architectural Review Board for  
18 the design of that addition and the needed variance.

19              CHAIRPERSON MIETZ: Very good. All right  
20 then. So we have minutes to go over.

21              MR. DiSTEFANO: We have the March minutes I  
22 do believe.

23              CHAIRPERSON MIETZ: Yes. Judy.

24              MS. SCHWARTZ: On page 17, line 9 and line  
25 20 -- I'm sorry. I'm sorry. On line 20, it should be

1 the word Ellyn, E-L-L-Y-N. And on page 18, the same  
2 at the end of line 8.

3 On page 19, line 11, toward the end, the  
4 word should be "paver." On page 22, folks, I'm going  
5 to need some help. It's really weird. Line 18, that  
6 first word.

7 MR. D'Augustine: Intimate.

8 MS. SCHWARTZ: Intimate. Intimate, first  
9 word on line 18.

10 On page 24, line 22, it should be amateur.

11 Page 31, line 12 and line 15, it should be  
12 "Antlers." That's all I have.

13 CHAIRPERSON MIETZ: Okay. Does anyone have  
14 anything else? Motion please.

15 MR. D'AUGUSTINE: Motion.

16 CHAIRPERSON MIETZ: Second.

17 MS. SCHWARTZ: Can I second it?

18 CHAIRPERSON MIETZ: Yes.

19 MS. SCHWARTZ: Second.

20 MR. DiSTEFANO: Motion is to approve the  
21 March minutes with corrections.

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

23 Ms. Tompkins-Wright, abstain;

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

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

3 CHAIRPERSON MIETZ: Okay. Very good. Thank  
4 you. Okay. So whenever you're ready, Rick.

5 MR. DiSTEFANO: Just before we get into it,  
6 are there any questions of the Board members in  
7 regards to any of the applications that you might have  
8 before we start the public hearings? Nope? All good?  
9 Okay.

10 Again, application 4A-01-23 had been  
11 requested to be postponed.

12 So we're onto application -- I'll read the  
13 next two applications together.

14 Application 5A-01-23

15 Application of Reza Hourmanesh, architect,  
16 and Guiyan Li, owner of property located at 2720 West  
17 Henrietta Road, for an Area Variance from Section  
18 205-12 to allow for 37 parking spaces in conjunction  
19 with a grocery store in lieu of the minimum 55  
20 Parking spaces required by code. All as described on  
21 application and plans on file.

22 Application 5A-02-23

23 Application of Reza Hourmanesh, architect,  
24 and Guiyan Li, owner of property located at 2720 West  
25 Henrietta Road, for an Area Variance from Section

1 205-7 to allow impervious lot coverage to be 83.2% of  
2 the lot area, after site modifications, in lieu  
3 of the maximum 65% allowed by code. All as described  
4 on application and plans on file.

5 CHAIRPERSON MIETZ: Okay.

6 MR. HOURMANESH: Good evening. We came  
7 before the Board during the pandemic --

8 MR. DiSTEFANO: Could you introduce  
9 yourself?

10 MR. HOURMANESH: Oh, I'm sorry. My name is  
11 Reza Hourmanesh. I live at 333 Glen Haven Road,  
12 Rochester, New York 14609.

13 CHAIRPERSON MIETZ: Okay.

14 MR. HOURMANESH: I'm the architect for this  
15 project. I've been working with the traffic engineers  
16 and other engineers on this project.

17 Basically, this project is at 2720 West  
18 Henrietta Road, which is located about a mile north of  
19 the Brighton Henrietta Townline Road on the east side  
20 of the road as you're going north. The building  
21 itself -- the lot -- the zoning is BF-2 for this area.  
22 The parcel is approximately 2,303 square feet, 0.512  
23 acres. The frontage of this property is 67 foot. And  
24 it goes 319 foot deep.

25 The building that is situated on this

1 property is an existing building with a 60 foot  
2 frontage and then 181 foot deep going eastward. The  
3 building itself is 10,955 square foot and  
4 approximately 16 foot high.

5 The setback from the building from the front  
6 face of the building to West Henrietta Road is 69.2  
7 feet.

8 The building itself, the structure is pretty  
9 solid. It's in good shape. Of course, the siding and  
10 roof is in bad shape, rusted, full of holes and things  
11 like that. We have proposed to renovate that with the  
12 Architectural Review Board.

13 The main reason we're here is that based on  
14 there -- there's two issues. One is the green area,  
15 impervious area, which is required 35 percent of the  
16 property to be that. Right now, the existing is 17  
17 percent. Last time we came, it was a little bit -- we  
18 are taking two parking spots and updated the parking.  
19 We removed that. So we still kept the green area the  
20 same as what it existed.

21 The green area for this property, what we  
22 propose, is 3,754 square foot. That's what it was and  
23 that's what it is right now. That's one issue that we  
24 are requesting that the Board consider giving us --  
25 since it's an existing situation, giving us a variance

1 for that issue.

2                   The second issue is the parking. What we  
3 did, we obtained the official engineer associate to do  
4 a parking analysis, which we submitted. Based on  
5 their analysis, the busiest time of the week is on  
6 Saturday between 11 to 1. And then they based on the  
7 days at an Asian food market on Brighton Henrietta  
8 Townline Road, which is not too far from here, maybe  
9 about a mile or maybe less. And they based it on  
10 that. And also I gave them another one, which is kind  
11 of a supermarket, but that's in Henrietta, which I  
12 worked on that project as well. But they decided  
13 since this is closer to the one that we are proposing,  
14 the grocery store, it would be more appropriate. So  
15 they did that.

16                   Based on the report that they provided, the  
17 busiest time is on Saturday between 11 to 12. And the  
18 maximum number of spaces that they were stating was  
19 21. An average on Saturday is -- average is 15.  
20 During the week the maximum is 14 parking spaces at  
21 any point and 11 average for this Asian supermarket.

22                   Please note that this place used to be a  
23 restaurant and was much more intense use. As you see  
24 the report also -- and the engineering report and the  
25 traffic report indicates -- that the Japanese

1 restaurant trip generation analysis, if you look at  
2 that chart, Japanese restaurant the enter was 60, exit  
3 was 39. So total trip generation was 99, which is  
4 much higher than the present proposed Asian market if  
5 it's enter 30, exit 26, the total is 56.

6 So you see on Saturday, of course, the  
7 number goes up, but still, you know, the Japanese  
8 restaurant that used to occupy this space. Also a  
9 supermarket like Wegmans or Tops. And we believe that  
10 since this is much lower capacity, much smaller, even  
11 smaller than the one they did this study based on, 21  
12 would be more than enough.

13 But we are providing -- we had 40 parking  
14 spaces. We have to remove three spaces because the  
15 property to the north requested it. And basically  
16 we've been going through this motion with them for  
17 eight months. And finally, I told Guiyan, let's just  
18 do what they want, reduce it to 37 and go to the Board  
19 and hopefully the Board will see our situation and  
20 then they will grant us the variance.

21 Please note that even when I had 40 between  
22 their building and this building, where the parking  
23 is, edge to edge I had 26 and four-eighths of an inch.  
24 So easily two-way traffic can occur. But we didn't  
25 want to get into a discussion and argument with them.

1 So we reproved -- we said, okay, fine.

2           But if you look at the report that Fisher's  
3 Associates provided, they still indicated 40 parking  
4 spaces. But we reduced that in order to eliminate any  
5 issue with the neighboring property owner.

6           So that's pretty much in a nutshell. If you  
7 have any comments, questions, please feel free to ask.  
8 Also I have the drawing. If you wish, I can put it on  
9 the board.

10           CHAIRPERSON MIETZ: We all have it I think.

11           MR. D'AUGUSTINE: Yeah. I mean, we received  
12 a letter from the neighbor's attorney --

13           MR. HOURMANESH: Yes.

14           MR. D'AUGUSTINE: Objecting and discussing  
15 the easement.

16           MR. HOURMANESH: Yes.

17           MR. D'AUGUSTINE: So I'm just wondering,  
18 there's some indication, I remember from last year,  
19 that the client's attorney and the neighbor's attorney  
20 were going to have discussions to try to settle this  
21 easement. And it doesn't seem that the attorneys have  
22 connected with each other. I'm wondering what's going  
23 on.

24           MR. HOURMANESH: Yeah. They did. They had  
25 several meetings, several over the course -- it took

1 like almost eight months for their attorney to  
2 respond. But they were in communication.

3 Easement doesn't change. Easement is part  
4 of the deed, which the latest deed was in 2010. They  
5 were forcing us to do certain -- less than what the  
6 easements required. And I talked to the building  
7 owner, present building owner, Mr. Lie or Lee. I'm  
8 not sure how to pronounce it. But the easements  
9 cannot change unless the deed changes. Even if they  
10 change it, people who own the building, the deed and  
11 the easements stay. That's based on the attorney that  
12 they procured to discuss the issue with them.

13 Now, the last issue -- we did everything  
14 they wanted. The last issue was that on the north  
15 side of the 2720, we had 25 parking. They said, if  
16 you don't reduce -- move these three parkings, we'll  
17 come and oppose. So we removed it.

18 So pretty much we are -- if you look at the  
19 engineer's report, you see it's very clear how the  
20 easement works. When the Fastenal is closed, probably  
21 around nine parking that is indicated on the Fisher  
22 Associates. You'll see that only note at the last  
23 page of the Fisher Associate's, they have a map --  
24 they have a map showing what can -- where can we park,  
25 where they can park.

1                   It's really clear where they can park. To  
2 the south of 2710, they can park nine parking at any  
3 time. They cannot park -- in 2720, they cannot park  
4 there at all. The first street parking on the south  
5 of their building, 2710, there's two parking that when  
6 they're closed, 2710 can park. This is according to  
7 the easement.

8                   When you look at the drawing again that they  
9 provided, on the north and front of the building at  
10 the Fastenal, 2710 Fastenal, other than the time that  
11 Fastenal is open, which is from 7 to 9 a.m., those are  
12 the two hours that people can come and go, they can  
13 park there if the other business is closed. They  
14 already utilize all that space.

15                   So if we utilize that, based on the Fisher  
16 Associates, we've got 71 parking available. But we  
17 were just trying to make peace and make both sides  
18 happy. So what happened is that we reduced the three  
19 parking on the north side of 2720 in order to satisfy  
20 their requirements. So right now we have 37.

21                   MR. GORDON: Can I just step in here?  
22 Mr. Hourmanesh, here's two simple questions. Number  
23 one, have you seen and read the May 2nd, 2023, letter  
24 from Jonathan Tantillo?

25                   MR. HOURMANESH: I read the letter that --

1 basically, I got an email from our attorney indicating  
2 that, okay, these are some of the requirements that  
3 they have.

4 MR. GORDON: Have you seen and read the  
5 letter dated May 2nd, 2023, from Jonathan Tantillo?

6 MR. HOURMANESH: I don't recall that. If I  
7 did, I don't recall. I'm sure I did, but I don't  
8 recall the content.

9 MR. GORDON: There is a parking plan  
10 attached as the last page to that correspondence. Is  
11 your client in agreement with it? It is different  
12 than what you are showing in your plan. Is your  
13 client in agreement with that?

14 MR. HOURMANESH: No. We are in agreement  
15 with what we proposed.

16 MR. GORDON: Understood.

17 MR. HOURMANESH: What we proposed is  
18 basically an easement based on the deed. Now, if they  
19 want something more than the easement, I think that's  
20 illegal. They have to change the deed and easements.  
21 And that's not my place. I am not a legal attorney.  
22 So I'm not aware of those issues.

23 MR. GORDON: Right. And this Board is not  
24 going to determine the easement issue for you either.  
25 We just want to know whether there was or was not an

1 agreement, which sounds like the answer is there is  
2 not an agreement.

3 CHAIRPERSON MIETZ: Kind of what it sounds  
4 like.

5 MR. HOURMANESH: On one note, if I may, they  
6 requested that we move the accessible parking to the  
7 north of the building. They request that we move the  
8 three parking to the north of 27. We moved it. They  
9 requested that when the Fastenal is open from let's  
10 say 7 a.m. to 7 p.m., they cannot park where the  
11 easement indicates.

12 So basically, based on what our attorney  
13 says, if you stay in the easement, you're good. But  
14 we want to make peace. So let's work so that they're  
15 happy and you get what you want and hopefully the  
16 Board will consider your request for the 18 parking  
17 spaces based on the 55 parking spaces based on 200.

18 Please note also, 3,010 square foot of this  
19 building under 10,955 is storage. So it's not going  
20 to have much intensity of use.

21 CHAIRPERSON MIETZ: That's not changed from  
22 the original application. We get that.

23 MS. TOMPKINS-WRIGHT: So here's my question.  
24 This application that you submitted does require  
25 physical changes to the neighboring property where you

1 have an easement; correct? It requires striping new  
2 parking spaces that aren't there currently.

3 MR. HOURMANESH: Yes. They requested that  
4 we stripe the whole parking.

5 MS. TOMPKINS-WRIGHT: But -- so it requires  
6 changes to the neighboring property. Does your  
7 easement -- I just read it now. I'm not seeing that  
8 the easement allows the creation of new parking. It's  
9 just ingress and egress and existing parking. Is that  
10 your understanding as well?

11 MR. HOURMANESH: Correct. What the -- their  
12 attorney requested that we stripe the whole parking,  
13 even if it's theirs. We said fine. The only thing  
14 that they need to provide, couple of signs so that  
15 Fastenal can park and nobody else can park at any  
16 time, that they have to provide that.

17 But if they ask us to do it, the owner of  
18 the property at 2710 said okay, I will do -- I'll just  
19 get a sign made so that's only for Fastenal at any  
20 time the parking at all -- at any time.

21 MS. TOMPKINS-WRIGHT: And the owner of the  
22 neighboring property that -- if we approve this  
23 application, you have to make modifications to their  
24 property. Even through the easement, you have to make  
25 modification. If their property is being revised --

1 but they're not on the application, they didn't sign  
2 on with the property owners as well?

3 MR. HOURMANESH: We are not touching  
4 anything physical. The only thing they asked us to do  
5 is to stripe it.

6 MS. TOMPKINS-WRIGHT: That's physical.  
7 You're making a modification to the neighbor's  
8 property.

9 MR. HOURMANESH: Yes. They asked us to do  
10 that. We said, no problem. We'll stripe the whole  
11 thing, the whole parking lot.

12 CHAIRPERSON MIETZ: Okay. Go ahead. You  
13 have another question?

14 MS. TOMPKINS-WRIGHT: I don't have anything  
15 else.

16 CHAIRPERSON MIETZ: Sir, I think what  
17 Mr. Gordon was asking the question about earlier, the  
18 letter is dated May 2nd. Okay? So that was this  
19 week.

20 MR. HOURMANESH: Yes, sir.

21 CHAIRPERSON MIETZ: So has there been some  
22 recent discussion? Because I appreciate everything  
23 you've said. However, you know, if yesterday there's  
24 a letter that basically says there isn't an agreement  
25 between the parties and now tonight you're saying

1 there is and we've done all these things. So  
2 that's where some of the confusion lies, why we're  
3 asking these questions. There's an inconsistency here  
4 between what you're saying and what we're reading.  
5 Okay?

6 MR. HOURMANESH: I never got that letter.  
7 CHAIRPERSON MIETZ: That's fine. It was  
8 addressed to the Board.

9 MR. HOURMANESH: Which is fine, but based on  
10 the emails that I've been receiving from our  
11 attorneys, they said, okay, do this, do that and then  
12 we said fine. But I'm going based on the emails. And  
13 this letter, I'm not aware of it.

14 CHAIRPERSON MIETZ: That's fine. So do you  
15 have anything else to offer us yourself?

16 MR. HOURMANESH: No, sir. Basically, those  
17 are the issues that I just -- for the green space and  
18 then --

19 CHAIRPERSON MIETZ: Just another thing for  
20 the record. I remember when we talked about this the  
21 last time I believe the interior plan had some  
22 seating. It looks like that's all done.

23 MR. HOURMANESH: We had -- basically, we got  
24 rid of it. Take-out food, we got rid of it. So  
25 basically it's just grocery. That's it.

1                   CHAIRPERSON MIETZ: Because I remember from  
2 the last time and I didn't see it. I just wanted to  
3 make sure that's correct.

4                   MR. HOURMANESH: Yes, sir, that's correct.

5                   CHAIRPERSON MIETZ: So no seating, no  
6 take-out, just --

7                   MR. HOURMANESH: No.

8                   CHAIRPERSON MIETZ: Just a basic grocery  
9 store --

10                  MR. HOURMANESH: Correct.

11                  CHAIRPERSON MIETZ -- as we would think of  
12 one.

13                  MR. HOURMANESH: Yes, sir.

14                  CHAIRPERSON MIETZ: Any other questions?

15                  MR. DiSTEFANO: I got a couple things.

16                  According to the site plan you submitted, it appears  
17 that there are some areas that are actually -- some  
18 paved areas that are actually moving close to the lot  
19 lines like in the rear portion of the plaza -- excuse  
20 me. Rear portion of the property. And also up front,  
21 next door to the Dunkin Donuts facility.

22                  So there might be a couple more variances  
23 that need to be applied for in terms of pavement  
24 encroachment towards those lot lines. There should be  
25 a minimum ten foot setback off of that.

1                   MR. HOURMANESH: Yes.

2                   MR. DiSTEFANO: And I think we're closer  
3 than that. So those are a couple of variances that we  
4 might have to add to your application if that's the  
5 plan that you're going to propose.

6                   MR. HOURMANESH: Basically, we kept as much  
7 as we can. Actually, I increased the green area at  
8 the front from what it was.

9                   The side setbacks as you mentioned -- I have  
10 the data here -- on one side we have eight foot six at  
11 the front, nine foot six at the back on the north  
12 side.

13                  On the south side it's only two foot -- two  
14 and a half foot.

15                  MR. DiSTEFANO: Right. The south side and  
16 east side.

17                  MR. HOURMANESH: East side, I'm good.

18                  MR. DiSTEFANO: South side and the --

19                  MR. HOURMANESH: North side --

20                  MR. DiSTEFANO: No. It's the back of the  
21 property.

22                  MR. D'AUGUSTINE: That's the east side. So  
23 like north side is Fastenal.

24                  MR. DiSTEFANO: East side next to basically  
25 Irving Road, which is just a paper street. It looks

1 like you're getting very close to that lot line.  
2 Where now it looks like there's more setbacks in  
3 existing pavement.

4 MR. HOURMANESH: Right. Basically, my data  
5 shows the front requirements 66 foot. We have 69.2  
6 foot. The rear is --

7 MR. DiSTEFANO: I'm not talking about the  
8 building setback. I'm talking about the pavement  
9 setback.

10 MR. HOURMANESH: Pavement setback, right.

11 MR. DiSTEFANO: Pavement setback has to be a  
12 minimum of 10 feet from the lot line.

13 MR. HOURMANESH: Yeah. We don't have that  
14 on the east side.

15 MR. DiSTEFANO: The east and south sides.  
16 So that's something that will probably need to be  
17 addressed in another application to the Board in  
18 regards to that setback requirement of ten feet. It's  
19 not being met.

20 MR. HOURMANESH: I understand.

21 MR. DiSTEFANO: So call me and we can  
22 discuss that.

23 MR. HOURMANESH: Yes, sir.

24 CHAIRPERSON MIETZ: Is there something else,  
25 Rick?

1                   MR. DiSTEFANO: Just the two setbacks.

2                   CHAIRPERSON MIETZ: Okay. Go ahead.

3                   MS. MCKAY-DRURY: I just want to understand.

4 Picking up on Ms. Tompkins-Wright's question, you've  
5 indicated that the striping is the only physical  
6 change that would have to happen to the neighbor's  
7 property and that that was at their request. What  
8 were you proposing before that?

9                   MR. HOURMANESH: Well, on property -- on  
10 2720, the pavement at the front on the west side is  
11 kind of dilapidated. It's damaged. It's not in good  
12 shape. So we were going to fix that. But that's only  
13 within 2720 property.

14                  On the north side of the property, basically  
15 the asphalt comes almost five foot to the building,  
16 which is right now -- we've weeds growing buzz because  
17 there's not much maintenance. There's some gravel.  
18 There's -- so that's going to be renovated. And we're  
19 just going to put some topsoil and do that.

20                  Other than that, we are not touching  
21 anything on their property.

22                  MS. MCKAY-DRURY: In order to have this  
23 business there, you need that parking --

24                  MR. HOURMANESH: Correct. On the north  
25 side, which is granted by the easement.

1                   MS. MCKAY-DRURY: Okay. So your position is  
2 that the easement permits you to have parking there --

3                   MR. HOURMANESH: Yes.

4                   MS. MCKAY-DRURY: -- and then you would have  
5 just proposed parking without stripes?

6                   MR. HOURMANESH: No, no. We always showed  
7 the striping on the site plan that we provided.

8                   MS. MCKAY-DRURY: I guess I just was --  
9 because it was my understanding that you were saying  
10 that that was suggested by 2710.

11                  CHAIRPERSON MIETZ: I think they want him,  
12 Heather, to stripe their parking lot also, throwing it  
13 into the deal is the way I'm understanding it. In  
14 other words, could you re-stripe our lot too when you  
15 stripe the side of 2710.

16                  MR. HOURMANESH: Keep in mind that the  
17 parking on the north side of 2720, there's not that  
18 much. So some of it extends into 2710 parking space.  
19 So not all the parking -- like if I park, half of my  
20 car is in 2720, let's say half is in 2710.

21                  So that easement permits to doing that. And  
22 this is basically -- if you look at the report that  
23 Fisher provided, they went through the easement  
24 evaluation sheet. So they have it all written down  
25 based on the deed and the easement.

1                   CHAIRPERSON MIETZ: Okay. I think we've  
2 covered -- I think we're okay with that.

3                   MS. MCKAY-DRURY: Historically, I just --  
4 I'm wondering if you know. If you don't know, just  
5 indicate you don't know. But historically, this was a  
6 Japanese restaurant in 2720; is that correct?

7                   MR. HOURMANESH: It was before. I think it  
8 was -- maybe about that much. But the building --  
9 it's been almost three-plus years.

10                  MS. MCKAY-DRURY: So as far as that  
11 business, was there parking along that north side  
12 there?

13                  MR. HOURMANESH: Yes. The easement -- one  
14 of the easements in 2010 from my understanding was  
15 when the restaurant moved there, in order to get --  
16 because they even required more parking for a  
17 restaurant than a grocery store. Quite a bit more,  
18 hundred --

19                  MS. MCKAY-DRURY: Okay. So you're  
20 understanding, the easement was used to gain parking  
21 for 2720 as well in the past?

22                  MR. HOURMANESH: Yes, ma'am.

23                  MS. MCKAY-DRURY: Okay. Thank you.

24                  MR. GORDON: I just want the record to  
25 reflect that Mr. Hourmanesh has been given a copy of

1 the May 2nd, 2023, letter from Jonathan Tantillo along  
2 with all the attachments to it.

3 CHAIRPERSON MIETZ: Okay. Great. Any other  
4 questions for this gentleman?

5 MR. DiSTEFANO: One quick question. I'm  
6 sorry. To your knowledge was -- those parking spaces  
7 used along the north side of 2720, were they painted  
8 at any point in time?

9 MR. HOURMANESH: Some places you can see  
10 barely something there.

11 MR. DiSTEFANO: I know right now you can  
12 barely see anything, but --

13 MR. HOURMANESH: Right. Now, it's all worn  
14 out. There's practically nothing.

15 MR. DiSTEFANO: But you believe they would  
16 have been painted at some point in time?

17 MR. HOURMANESH: Yes.

18 MR. DiSTEFANO: Okay.

19 MR. HOURMANESH: We spoke with the gentleman  
20 who sold the property and he has another place in the  
21 city that he opened. We went and discussed the issue  
22 with him. And he said they parked along that area on  
23 the north side. But he didn't mention anything that  
24 they parked on the north side of 2710 and the other  
25 thing. But he just brought it to our attention that

1 there was a deed that originally when they moved, in  
2 order to satisfy the requirement for a restaurant,  
3 that they had to amend the easement. And that's  
4 what -- to my knowledge, that's what they did.

5 CHAIRPERSON MIETZ: Okay. One more  
6 question.

7 MR. GORDON: Your easement or your client's  
8 easement requires valet parking during the months,  
9 November and December. What is your client doing  
10 about that provision in the easement agreement? Is he  
11 providing valet parking for its customers? And where  
12 will that valet parking be? Or have you agreed to  
13 revise that portion of the easement with the owner of  
14 2710?

15 MR. HOURMANESH: I'm sure the client will  
16 approve -- agree to that, to get valet parking.

17 MR. GORDON: Where will they do the valet  
18 parking?

19 MR. HOURMANESH: Pardon?

20 MR. GORDON: Where will they provide the  
21 parking for valet?

22 MR. HOURMANESH: When they pull into the  
23 property from the West Henrietta Road then they have  
24 to stop, somebody has to take the car and park it on  
25 the north side.

1                   Now, valet parking based on my understanding  
2 is that to the north -- to the front of the building.  
3 If they're going to park that, that's where they got  
4 to put the valet parking.

5                   But I'm sure the two months that they  
6 indicated on the deed that they need to provide valet  
7 parking in those two months, I'm sure that -- that was  
8 not an issue. They will provide somebody to park the  
9 valet parking, to provide that service.

10                  MR. GORDON: So I think what I hear you  
11 saying is that your client plans to provide valet  
12 parking for its customers during the months of  
13 November and December and cars that will be valet  
14 parked will be parked along the north edge of the  
15 building.

16                  MR. HOURMANESH: No. Along the north side  
17 and front of 2710 according to the Fisher Associates  
18 report.

19                  MR. D'AUGUSTINE: It says in front of  
20 Fastenal. Basically, your valet is like six feet in  
21 front when I was reading through that.

22                  CHAIRPERSON MIETZ: Okay. All right. How  
23 about this, so you're stating that you're willing to  
24 comply with that requirement?

25                  MR. HOURMANESH: Yes, sir.

1                   CHAIRPERSON MIETZ: Let's forget the  
2 exact -- how we're going to do it for this moment.  
3 Okay. But that's what you're testifying to. Okay.

4                   Is there other questions? No. Okay. Good.  
5 Thank you, sir.

6                   MR. HOURMANESH: Yes, sir.

7                   CHAIRPERSON MIETZ: Okay. Is there anyone  
8 in the audience who would like to speak? Yes. Come  
9 right up, sir. Name and address please.

10                  MR. TANTILLO: Good evening, everybody. My  
11 name is Jonathan Tantillo. I'm here on behalf of the  
12 owner. We just moved actually. 100 South Clinton  
13 Avenue.

14                  CHAIRPERSON MIETZ: Go ahead, sir, and pull  
15 the mic up.

16                  MR. TANTILLO: I am here on behalf of the  
17 owner of the neighboring property at 2710 West  
18 Henrietta, LLC, the principal Randy Schuster.  
19 Mr. Schuster is out of town at this moment, but Ron is  
20 here representing him as well.

21                  As I wrote in the letter, I think maybe  
22 there is a potential game of telephone between  
23 Mr. Hourmanesh and the developer's attorney. Maybe he  
24 was not updated on all of the communications, but we  
25 did not reach an agreement on this site plan.

1                   I talked with their attorney several times  
2 over the course of -- we had a lot of conversations on  
3 it in September. I sent Pete our proposed alternative  
4 parking plan. It has three main changes, not just the  
5 one that's indicated on the modified plan.

6                   The initial position was he didn't want to  
7 work with us. Eventually we worked out a plan to have  
8 a site visit in December, but we stopped getting  
9 responses in November of 2022.

10                  In February of this year we started getting  
11 responses again. The dialog seemed productive. I  
12 thought we were getting it where it needed to go. I  
13 was informed I would receive a modified site plan.  
14 And that's the last I heard before Mr. Schuster got  
15 the ZBA notice for tonight.

16                  So we took a look at the proposed plan and  
17 it's not at all what we requested.

18                  CHAIRPERSON MIETZ: Could you just explain  
19 for us just what are the objections of 2710?

20                  MR. TANTILLO: Yep. So in the area --  
21 starting where they did the modifications, the three  
22 things that they removed, initially we asked for five  
23 spaces there. That was because the two lanes of  
24 parking made it very narrow there. There's a lot of  
25 large vehicles that come in and out of Fastenal and it

1       would have been tricky to get those vehicles through  
2       that narrow opening. So we asked for five spaces to  
3       be moved there.

4                 The very back corner to the east most four  
5        spaces along the property line -- so two of them are  
6        in line with the parking spaces and then two more are  
7        kind of rotated 90 degrees. They're kind of floating  
8        off in the lot. Those would prevent the trucks that  
9        are making deliveries to Fastenal from turning around.  
10       And they're just kind of floating out in a random area  
11       of the lot. So we asked for those to be removed as  
12       well.

13               And then the egress, we asked for the corner  
14        space at the very front of the property to be removed.  
15        There's a modified site plan or a modified parking  
16        plan in the second attachment to my letter that kind  
17        of goes through the three main things.

18               CHAIRPERSON MIETZ: All right.

19               MR. TANTILLO: I do just want to take a  
20        little exception to what was suggested that we weren't  
21        responding to their communications. I was waiting  
22        months on end for responses, not receiving one before  
23        this meeting.

24               And as you picked up on, striping was not at  
25        our request. It's -- you need to stripe the parking

1       lot if you're going to have a project developed. And  
2       to go one step further, we actually suggested that we  
3       would do the striping. And we in no way requested  
4       them to stripe other parts. That was not a request  
5       that was made.

6                   So just initially, I think without owner  
7       consent, we don't believe this application can  
8       proceed. I know that the developer has a different  
9       interpretation of the easements than we do. That's  
10      something that needs to be addressed in court. That's  
11      not something that the Zoning Board can decide.

12                You know, as you're picking up, there's  
13       references to valet parking. It's clear this is for a  
14       restaurant. This isn't the kind of use that was  
15       contemplated when the easement was originally  
16       designed. It would absolutely overburden the  
17       easement, which we think the court would agree.  
18       Obviously it's not something we can go back and forth  
19       on here.

20                But to the extent that the Town does  
21       consider the application, we don't think it meets the  
22       variance factors for the reason outlined by my  
23       client's previous attorney in the December -- or the  
24       May 2022 letter that I attached.

25                CHAIRPERSON MIETZ: Can you tell us quickly

1 what was the last discussion with their attorney?  
2 When was it? And just summarize it quickly.

3 MR. TANTILLO: It was February 28th I think  
4 or the very end of February. We had a telephone call.  
5 I went through the broad strokes of our requests and  
6 the response was they would give us a modified site  
7 plan.

8 CHAIRPERSON MIETZ: And then you received  
9 the same one that we received.

10 MR. TANTILLO: Yeah. We received the ZBA  
11 notice and found it online.

12 CHAIRPERSON MIETZ: Okay, sir. Thank you  
13 very much.

14 MR. TANTILLO: Thank you.

15 CHAIRPERSON MIETZ: Is there anyone else in  
16 the audience that would like to speak regarding this  
17 application? All set? Okay. Anyone else? Okay.  
18 Thank you very much then. At this point the public  
19 hearing is closed.

20 **Application 5A-03-23**

21 Application of John and Vanessa Geer, owners  
22 of property located at 2171 West Henrietta Road, for a  
23 Temporary and Revocable Use Permit pursuant to Section  
24 219-4 to erect a 30 foot by 30 foot tent partially  
25 covering an outdoor dining area from May through

1       October 2023. All as described on application and  
2       plans on file.

3                    MR. DiSTEFANO: And just for the record, I  
4       think the applicant was asking for 2023 and 2024,  
5       which I think we can amend the application to include  
6       those two years if that's what really was requested.

7                    MR. GEER: John Geer, 2171 West Henrietta  
8       road.

9                    CHAIRPERSON MIETZ: Okay. Very good.  
10      Please proceed.

11                  MR. GEER: So we'd like to put our 30 by 30  
12      canopy tent back up. We had it up last year with  
13      great success. And we'd like to do it again. And  
14      yes, the two year would be appreciated.

15                  CHAIRPERSON MIETZ: How did it go?

16                  MR. GEER: It was great. Yeah. We had  
17      shelter from the sun, from the rain. People enjoyed  
18      it. So we just want to do it again.

19                  CHAIRPERSON MIETZ: And were you -- when did  
20      it come down?

21                  MR. GEER: The end of October.

22                  CHAIRPERSON MIETZ: Okay. So what was  
23      agreed upon the last time was by November 1st. So you  
24      can still handle that?

25                  MR. GEER: Yeah.

1 CHAIRPERSON MIETZ: In the two year.

2 MR. GEER: Yes.

3 CHAIRPERSON MIETZ: Anything else? Anything  
4 different that you requested?

5 MR. GEER: Nope. Nothing different.

6 CHAIRPERSON MIETZ: It's wide open on all  
7 four sides? No other issues?

8 MR. GEER: Yup. No heating, no nothing.

9 Just shelter from the sun and rain.

10 CHAIRPERSON MIETZ: Okay. Good. Anybody  
11 have any questions related to this?

12 MS. TOMPKINS-WRIGHT: Rick, were there any  
13 complaints?

14 MR. DiSTEFANO: We did not receive any  
15 complaints in regards to that.

16 I just have one quick question.

17 Approximately how much of that outdoor dining area  
18 does it cover?

19 MR. GEER: How much of it?

20 MR. DiSTEFANO: Yeah.

21 MR. GEER: Well, if we're just going on the  
22 concrete from where the tables are, it's about 80  
23 percent.

24 MR. DiSTEFANO: Okay. So you got a couple  
25 tables that are not under cover, but the majority of

1 the tables are under the tent.

2 MR. GEER: Yes.

3 CHAIRPERSON MIETZ: Okay. Any other  
4 questions?

5 MR. GORDON: Just for the sake of clarity,  
6 when you say two years, what we're really looking for  
7 is permission to put up that tent from April of  
8 2023 -- and I know it's now May of 2023 -- so May of  
9 2023 through the end of October of 2024; is that  
10 correct?

11 MR. GEER: Yes.

12 MR. DiSTEFANO: No, no. So it can be up  
13 from May through October for years 2023 and 2024.

14 MR. GORDON: Fair enough. But the two years  
15 that we're talking about is not May of 2025.

16 CHAIRPERSON MIETZ: No.

17 MR. DiSTEFANO: No. Two seasons.

18 CHAIRPERSON MIETZ: Okay. Very good. Okay.  
19 Any other questions for Don? Thank you, Don.

20 MR. GEER: Okay.

21 CHAIRPERSON MIETZ: Is there anyone else in  
22 the audience who would like to address this  
23 application? There being none, then the public  
24 hearing is closed.

25 **Application 5A-04-23**

1 Application of Robin Wells and Jason Wells,  
2 owners of property located at 58 Torrington Drive, for  
3 an Area Variance from Section 207-10A(2) to allow an  
4 Emergency access window well to extend 6 inches into  
5 the minimum 4 foot side setback required by code. All  
6 as described in application and plans on file.

7 CHAIRPERSON MIETZ: Okay.

12 CHAIRPERSON MIETZ: Okay.

19 So to do that, that well will now extend  
20 about six inches into the required four foot setback  
21 of the side yard. And we're just seeking a variance  
22 to do that.

23                   We do have -- we've talked to all of the  
24                   neighbors and I do have a supporting letter from the  
25                   neighbor immediately adjacent that we can provide to

1 you if you don't already have that. And that's what  
2 we're looking for.

3 MR. DiSTEFANO: I believe that letter was  
4 part of the packet, application packet.

5 MR. ROSSIGNOL: Great.

6 MS. TOMPKINS-WRIGHT: There are no windows  
7 along the rear yard-facing portion of the building  
8 that would be in that room. So you put it in the  
9 backyard rather than the side yard.

10 MR. ROSSIGNOL: Yeah. Not in the room.  
11 That's like the laundry and furnace rooms. So there  
12 are windows in the rear, but they -- one of them is  
13 under a porch. And then they -- they'd have to be in  
14 the room that we're using for the sleeping space.

15 CHAIRPERSON MIETZ: So really just -- not to  
16 put words in your mouth, but this is the only location  
17 that it would work.

18 MR. ROSSIGNOL: This is the only location to  
19 put it.

20 CHAIRPERSON MIETZ: Okay. Is there any  
21 other questions? Okay. Thank you.

22 MR. ROSSIGNOL: Thank you.

23 CHAIRPERSON MIETZ: Is there anyone in the  
24 audience who would like to speak regarding this  
25 application? Okay. There being none, the public

1 hearing is closed.

2 **Application 5A-05-23**

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

12 **Application 5A-06-23**

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

20 MS. MARCHIONI: Good evening. My name is  
21 Monique Marchioni. I'm appearing before you this  
22 evening as counsel for Westmarsh Properties. My  
23 office address is 2024 West Henrietta Road, Suite 3G,  
24 Rochester, New York.

25 CHAIRPERSON MIETZ: Can you just pull that

1 mic over?

2 MS. MARCHIONI: Sure. Hear me better?

3 Okay.

4 Also appearing with me this evening is  
5 Westmarsh's engineer, Greg McMahon with McMahon LaRue.

6 Westmarsh is seeking three area variances  
7 from the Board in connection with this plan to  
8 construct a 2,562 square foot two-story single-family  
9 home with a 634 square foot attached garage located at  
10 57 Eldridge Avenue for retail purposes.

11 Westmarsh purchased this property in  
12 December of '22 and since then has been diligently  
13 working with the Town to get the necessary approvals  
14 to demolish the existing hazardous structure that is  
15 on the property and clear the site to allow for new  
16 construction to begin.

17 To this end, in February Westmarsh met with  
18 town staff regarding its proposed site plan and  
19 incorporated the comments it received including  
20 reducing the garage from three-car to a two-car, which  
21 reduced the overall footprint of the home.

22 We also recently went before the Planning  
23 Board just this last month seeking their preliminary  
24 feedback on the east/west orientation of the home  
25 versus a more conventional layout on the site. And

1       they expressed no objection to the east/west  
2       orientation before coming before you this evening.

3           Many considerations were taken into account  
4       by Westmarsh in determining the layout of the house on  
5       the property including requiring as few variances as  
6       possible while providing Westmarsh an economically  
7       viable project.

8           The first of those considerations was the  
9       zoning designation of the property. Despite only  
10       being 11,500 square feet, this property is zoned RLL,  
11       which has disproportionately large front and rear  
12       setback requirements in relationship to the small  
13       pre-existing lot, which makes new construction  
14       unfeasible without variances. Thus, in looking around  
15       at the surrounding residential neighbors, we've done  
16       the best to attempt to confirm the design of this  
17       project to an RLB standard, which is more prevalent in  
18       the area and would allow for development that's more  
19       proportionate to our small lot size.

20           Another consideration for the layout of the  
21       home was its unique placement around the Town's  
22       parkland and the fact that no other homes exist or  
23       will be built in the future on Eldridge Avenue. We  
24       felt that the east/west orientation of the home would  
25       allow us to fully engage in the environment with sight

1 lines and in all directions. And this would  
2 ultimately benefit the homeowner who purchases the  
3 property from Westmarsh by including visibility of the  
4 approach from the top of the street toward Highland  
5 Avenue as well peripheral views of the park towards  
6 Clinton Avenue to the east and the majority of the  
7 park towards the south.

8 The perception of the house from the street  
9 would be improved for those visiting the park by  
10 reducing the width of the home and allowing the side  
11 of the home to be down in elevation. Furthermore, an  
12 east/west orientation would provide greater privacy  
13 and space between the boundary lines of those homes  
14 that are on Midland Avenue.

15 I am going to defer to Westmarsh's submitted  
16 application and the March 20th memo from its architect  
17 for a thorough explanation of it. That is the action  
18 of the five various factors under the RLL designation.  
19 But I just would like to reiterate that when looking  
20 at Westmarsh's request through an RLB lens, the asks  
21 are not that great.

22 Without reorienting the house, the variances  
23 sought are the minimum necessary to develop a  
24 single-family home like others nearby. And there's no  
25 detriment to nearby properties nor physical or

1 environmental conditions.

2 CHAIRPERSON MIETZ: Okay. Questions?

3 MS. SCHMITT: Yup. I have some questions.

4 Thank you.

5 You talked about how you reduced the size of  
6 the garage from a three-car to a two-car. Did you  
7 explore building a smaller home, less than 2,500  
8 square feet, so that you could have smaller setbacks?

9 MS. MARCHIONI: Well, we are marketing this  
10 for a four-bedroom home for resale purposes that would  
11 attract a family to live there. So we didn't -- we  
12 didn't reduce the footprint of the home for that  
13 reason.

14 CHAIRPERSON MIETZ: Just a quick follow-up  
15 on that. So is there economics here at play as it  
16 relates to what the value of this home would be for  
17 resale and what the owner is hoping to realize on  
18 this?

19 MS. MARCHIONI: Sure. Sure. We want --

20 CHAIRPERSON MIETZ: Could you speak to that  
21 a little bit?

22 MS. MARCHIONI: Well, we want it to be an  
23 economically viable project and we -- in speaking with  
24 realtors in the area that commonly sell homes,  
25 single-family homes, in Brighton -- and I believe you

1 received two letters from two of the realtors that we  
2 had spoken with, that the homeowners are looking for  
3 four-bedroom homes.

4 So that was where our -- the design of the  
5 footprint of the home came from.

6 MS. SCHMITT: I know you said briefly that  
7 the home that you're proposing is like others in the  
8 neighborhood and I think your application says it's  
9 similar to other homes in the area. But when I drove  
10 around, the homes directly behind it, they're  
11 beautiful homes, but they're not 2500 square feet for  
12 the most part. And across they're not 2500 square  
13 feet. There's obviously the very large home at  
14 Highland and South Clinton.

15 But the homes in that neighborhood don't  
16 seem to be anywhere near that size. And I would say  
17 when it was listed for sale, the property, underneath  
18 that listing, it had similar homes and the largest was  
19 I think 1800 square feet, 1200 square feet. And I get  
20 that there was -- you know, obviously that rental  
21 property was, you know, one bedroom, one bath. So I'm  
22 not sure what they were saying was similar.

23 But I'm trying to figure out what makes you  
24 believe that 2500 is like the other properties on  
25 Midland.

1                   MS. MARCHIONI: The home on Midland, which  
2 is the street directly behind 57 Eldridge, they are  
3 somewhat smaller. But I don't think there's a great  
4 disproportion in size to what we're proposing here.  
5 And certainly the home that is directly across from  
6 Highland is, you know, a very large mansion-type home.  
7 So I don't think that it's that disproportionate to  
8 the neighborhood with -- in comparison to those two.

9                   MS. SCHMITT: Okay. We can just agree to  
10 disagree on that one.

11                  But there's also -- when I looked at the  
12 property today -- now, keep in mind, it's been raining  
13 for four days straight -- there's water all over the  
14 place. I don't know if those are considered wetlands,  
15 verdant ponds. You don't seem to speak to the  
16 environment. You talk about how it's not going to  
17 have an impact on most of the neighbors because three  
18 of those neighbors would be parklands. And you speak  
19 to -- minimally to the people behind you, but not  
20 about the question that says, will there be an adverse  
21 effect or impact on the physical or environmental  
22 conditions.

23                  MR. McMAHON: Greg McMahon with McMahon  
24 LaRue Associates, 822 Holt Road, Webster, New York.

25                  There are wetlands. Not on this property.

1 There are wetlands to the south on the parkland.  
2 Those are federal wetlands. We're aware of their  
3 location.

4 We haven't at this point done anything more  
5 than site the house on the property. We will have to  
6 prepare a grading plan, erosion control. We'll  
7 address the drainage as part of engineering plans.  
8 But it didn't make sense to proceed with full  
9 engineering plans until we secured the variances that  
10 we need.

11 But we fully believe -- we've done hundreds  
12 and hundreds of this type of development that we can  
13 provide grading and drainage features that will not  
14 impact the neighbors on Midland, nor will they provide  
15 any problems to the future homeowner of this lot.

16 Naturally, drainage will be graded probably  
17 to the south to further enhance the wetlands by, you  
18 know, continuing drainage into that area. So we don't  
19 see any detriment to the wetlands or any detriment to  
20 the current parklands.

21 MS. SCHMITT: Do you know how many trees are  
22 coming down? Because it seems like quite a few would  
23 have to come down.

24 MR. McMAHON: We're proposing 9 cottonwoods.  
25 There is a cluster right in the middle of the

1 property. And then there is one other smaller tree,  
2 which falls within the footprint of the house. So  
3 there would be a total of ten trees.

4 We've discussed this also with the Planning  
5 Board. Our intent would be if we move ahead, the  
6 Planning Board will present a robust landscape plan to  
7 replace those trees and to provide a landscaped lot  
8 that would certainly enhance the area and be desirable  
9 for a future home.

10 MS. SCHMITT: And since I have you up there,  
11 I'm just going to ask you -- and I don't mean to be  
12 harping on this, but is it your position that, let's  
13 say, a 2,000 square foot home cannot have four  
14 bedrooms and would work? I'm just trying to  
15 understand. It seems -- my main concern, just to be  
16 upfront with you, is getting rid of -- I think you're  
17 asking for a 15 foot front setback, when it requires  
18 70. That is such a large hurdle for me to get past.  
19 And even if you had the 40, 40 -- 15 is quite a bit of  
20 difference from 40 as well.

21 So that's why I keep wondering if a smaller  
22 home would get you closer to the number that would  
23 make me feel more comfortable.

24 MR. McMAHON: I can only offer my opinion.  
25 I'm not a realtor. But from what we've seen, new

1 homes in the town of Brighton, the market is looking  
2 for four-bedroom homes. Largely -- the people that  
3 we're aware of that are for a large part moving into  
4 Brighton into new homes are young families. They're  
5 interested in the Brighton school system. There's a  
6 lot of people working for the University of Rochester  
7 and Strong Memorial Hospital that are -- would like to  
8 make Brighton their home. And a four-bedroom home is  
9 the prime of the market for quick resale.

10 You know, if this were an area for empty  
11 nesters, we'd certainly be looking at probably a  
12 single-story, two-bedroom or something like that. But  
13 that's not the market that's currently hot or  
14 that's -- to see a return in the town of Brighton.

15 MS. SCHMITT: But again, your testimony is  
16 that you could not -- that you do not build  
17 four-bedroom homes under 2500 square feet?

18 MS. MARCHIONI: I would have to say in my  
19 experience only, yeah. I am not an architect, but of  
20 all the homes that we do that are four bedrooms,  
21 they're definitely in that 24- to 2800 square feet. A  
22 lot of the times they'll want -- other amenities might  
23 go into the home, if you're talking libraries.

24 But from what I've seen of the rough  
25 architectural plans, this is not an elaborate home.

1       It's a fairly straightforward four-bedroom, living,  
2       dining, garage, two-bathroom-type home.

3            MS. SCHMITT: Okay. Thank you.

4            CHAIRPERSON MIETZ: You all set?

5            MS. SCHMITT: Yup.

6            CHAIRPERSON MIETZ: Other questions for  
7       either of these folks?

8            MS. SCHWARTZ: I want to comment on the  
9       trees. You're saying all these trees that are coming  
10      down are all cottonwood except for maybe one?

11          MS. MARCHIONI: Except for maybe one. The  
12      cluster in the center of the property are cottonwoods.

13          MS. SCHWARTZ: And none of it -- it's going  
14      to change the look. It's so dense with trees there,  
15      regardless of what kind, and they're all coming down.

16          MS. MARCHIONI: Well, we did -- I mean, we  
17      did in front of the Planning Board -- that we would  
18      definitely -- I mean, if some of those are determined  
19      to be viable trees and the owners are willing to keep  
20      a couple in there, they don't interfere with the  
21      construction of the project, we'll take a look at  
22      that.

23          I think one of the things they talked to the  
24      Planning Board about was to get an arborist to look at  
25      those trees, look at the age and condition of those

1       trees and make an evaluation. And we will do that as  
2       part of our process with the Planning Board.

3               But to evaluate them -- I mean, a cottonwood  
4       is not a desirable tree from the homeowner's  
5       standpoint. And certainly any that come down will be  
6       replaced. I realize they're not going to be replaced  
7       with 24-inch trees, but --

8               MS. SCHWARTZ: That's the problem.

9               MR. McMAHON: Yeah. We're looking at that  
10      and we'll address that with the Planning Board.

11               MS. TOMPKINS-WRIGHT: I have a question.  
12       It's more for Rick and I think it's just for some  
13       context here. Is it normal to have a residential lot  
14       basically in the middle of the park? How did this --

15               MR. DiSTEFANO: Yeah. The history of this  
16       is pretty interesting being that Persimmon Park was a  
17       state-owned piece of property that when they were  
18       going to put the Genesee Expressway through, this was  
19       going to be an off-ramp. So at one point in time the  
20       state came in and condemned whatever houses were  
21       there, except for this one, and basically took over  
22       the land.

23               Well, obviously the expressway was never put  
24       in. The Town acquired that land. You got Persimmon  
25       Park.

1                   With another project that came in just about  
2 a couple years ago, there was an incentive zoning  
3 project on Willard. Are you guys familiar with the  
4 Willard Avenue project? That's what I was going to  
5 ask you guys is if your house is similar to those  
6 houses that were built.

7                   And that project is just two streets over.  
8 They as part of their incentive zoning gave the Town  
9 another eight, ten acres of land, which almost started  
10 enveloping this existing piece of property.

11                  So for some reason this was the only  
12 property that survived during that condemnation for  
13 the off-ramp. And the park grew basically around this  
14 property.

15                  MS. TOMPKINS-WRIGHT: And then can you  
16 also -- maybe the history of why this is RLL when the  
17 homes are -- none of them in the area --

18                  MR. DiSTEFANO: Yeah. Back in '92, the Town  
19 created -- it might have been even later than that.  
20 But the Town created a large lot residential district  
21 that they wanted to protect sensitive areas.

22                  The lands that were south of Highland here,  
23 because of the wetlands, because of the woodlot, they  
24 wanted it to be protected with an acre-sized lot on  
25 them. So RLL was an acre-sized lot, minimum size.

1                   As part of that, we wanted larger setbacks.  
2 Well, this lot was already existing. So it got thrown  
3 into an RLL zoning classification, which basically,  
4 what they're testifying to, makes it undevelopable  
5 without variances.

6                   So let me just say a couple other things  
7 that -- it's going in front of the Planning Board.  
8 They're going to thoroughly vet drainage issues. They  
9 need an EPOD permit to remove the trees, which they've  
10 applied for. You certainly can take down trees in an  
11 EPOD. You just have to mitigate the loss of those  
12 trees. So I think what they're testifying to,  
13 depending on what the Planning Board decides for them  
14 to do, they will mitigate trees as part of that EPOD  
15 request.

16                  MS. SCHWARTZ: I mean, I personally think  
17 that's going to be a huge problem. If you're taking  
18 almost every tree -- it's soaking wet now.

19                  MR. DiSTEFANO: Yeah. But again, it's  
20 soaking wet because you have a piece of property that  
21 was never properly graded. You know? I mean, a house  
22 was put there who knows when.

23                  With this house, you're going to have a much  
24 better grading situation. And that's the plan that  
25 the Planning Board's looking at. They have to approve

1 it's going to work.

2 CHAIRPERSON MIETZ: And by the testimony.

3 MR. DiSTEFANO: Right. And they haven't  
4 done it yet because if they don't get the variances,  
5 why do it?

6 I did have a question for you, either one of  
7 you. Can you explain the uniqueness of this lot in  
8 terms of its configuration, the distance from the  
9 actual street and how much distance you actually have  
10 between the front of the house and, let's say, if  
11 someone were to drive down the street, the distance.

12 MS. MARCHIONI: So the property line, for  
13 whatever reason, as you alluded to, it does follow the  
14 street line as illustrated on the plan. So the front  
15 setback from Eldridge Avenue, it provides  
16 approximately 50 feet to the edge of the pavement and  
17 the house.

18 MR. DiSTEFANO: So what you're saying is the  
19 house as it sits -- would sit -- would be about 50  
20 feet from the actual pavement.

21 MS. MARCHIONI: Correct.

22 MR. DiSTEFANO: Okay. Thank you.

23 MR. PREMO: Rick, just so I understand the  
24 point there, but the variance deals with the property  
25 line.

1 MS. MARCHIONI: Correct.

2 MR. DiSTEFANO: Correct. So there's a huge  
3 right-of-way in there.

4 MR. PREMO: Right. Huge right-of-way.

5 And there's also a sanitary force main in  
6 there? Sanitary sewer?

7 MR. GORDON: Yes.

8 MR. PREMO: Force main? Because I think we  
9 had -- in Midland before we had a property that needed  
10 power --

11 MR. DiSTEFANO: But that is right behind  
12 them. So that's the house that we -- I'm sorry I'm  
13 pointing -- but this house to the southwest of the  
14 property is the one that we had variances for.

15 MR. PREMO: So they could have a generator.

16 MR. DiSTEFANO: So they could have a  
17 generator, enforce it. And then they have -- there  
18 is -- I believe there is an easement that was placed  
19 over this at the time of the granting of the incentive  
20 from the project just a few years ago, the Willard  
21 project, that basically runs along this property line.

22 So they would have the ability to get over  
23 to here and then eventually to Willard where there's  
24 actually a physical storm sewer.

25 MR. PREMO: This house, correct, to the

1 sewer.

2 MR. DiSTEFANO: Yes. By force main.

3 MR. McMAHON: Yes. It will be connected to  
4 the existing sewer on Midland through the existing  
5 easements. There is a long force main that would be  
6 constructed as part of this and it would utilize  
7 what's called an Environment One unit, similar to the  
8 house directly to the west on Midland, which also  
9 incorporated an Environment One unit to get off their  
10 septic system.

11 MR. GORDON: And actually, just to make the  
12 record a little bit more precise, that easement  
13 predated the granting of the amenity of the additional  
14 parkland.

15 CHAIRPERSON MIETZ: Okay. So that's all  
16 resolvable, all Planning Board issues. Okay.

17 MS. TOMPKINS-WRIGHT: Can I ask just one  
18 more thing? It's in your application. Just to make  
19 sure it's in the testimony as well. The setbacks  
20 you're requesting, neighboring properties,  
21 particularly along Midland Avenue all require -- they  
22 do not meet all their setback requirements either?

23 MS. MARCHIONI: Correct. No, they don't.  
24 So the rear setback -- the houses on Midland have  
25 between four and ten foot rear setbacks. So they're

1 very close to the boundary lines, which is another  
2 reason why we like the east/west orientation of the  
3 house to give greater privacy from those boundary  
4 lines.

5 MS. TOMPKINS-WRIGHT: And have you looked at  
6 all at the building coverage for some of those  
7 properties along Midland Avenue to see how that  
8 compares to the building coverage that you're  
9 proposing on this property?

10 MR. McMAHON: We have not. I would note  
11 though, however, the percentage for building coverage  
12 is based on the RLL zoning. So when you take that  
13 percentage of a one-acre lot, you have -- we're taking  
14 a RLL percentage and applying it to a 11,500 square  
15 foot lot, which, again, gives -- you know, is a little  
16 deceptive. In fact, we have to request the variance.  
17 But we're requesting 0.9 percent, which we think is --  
18 certainly is close.

19 And we reduced that by addressing town  
20 staff's comments. We originally started this project  
21 with a three-car garage. We cut that down to a  
22 conventional two-car garage.

23 MS. TOMPKINS-WRIGHT: Thank you.

24 CHAIRPERSON MIETZ: Other questions for  
25 these folks?

1                   MS. MCKAY-DRURY: The thing that's kind of  
2 catching me up is the standard that we have to  
3 identify is, you know, that the variance is the  
4 minimum necessary to grant relief. And I guess what  
5 I'm trying to understand is like, you know, the  
6 letters from realtors, they're indicating things like,  
7 you know, the house facing a park can be more valuable  
8 and appealing to buyers, but like there's not any --  
9 there's no numbers.

10                  And so like, I guess, I'm just having a  
11 little bit of trouble seeing how the records are  
12 indicating that, you know, there's nothing really  
13 showing that a house has to be this size, but even  
14 more to the point, this orientation in order to be  
15 economically viable. So can you help us?

16                  MS. MARCHIONI: You know, a conventional  
17 layout, it would still be economically viable, but it  
18 would -- it's more important for us to provide a  
19 greater buffer between the existing homes that are on  
20 Midland Avenue versus a buffer to no one else. So  
21 that is another benefit of the east/west orientation.

22                  The other thing that I had gone through  
23 would be that, you know, with no other homes that are  
24 going to exist or be built on here, the east/west  
25 orientation would allow it to have the new owners to

1 have sight lines in all directions. And I almost view  
2 it as a safety issue as well. If I'm a homeowner  
3 there, I want to see what's coming down the street  
4 from me to a public park and for people parking there.  
5 I don't -- I don't want to see it -- or not see it  
6 because they've parked and now I can't see their car.

7 So I do think there's some safety issues  
8 there too with a new homeowner wanting to see the  
9 visibility from Highland Avenue.

10 MR. McMAHON: I'd also reiterate, with --  
11 first, talking about the orientation, with the side  
12 orientation, we're keeping the separation from the  
13 Midland neighbors. We're also putting the side of the  
14 garage facing there. There's basically no lights.  
15 You know, car comes in, light goes on and goes off.

16 It's not the same as if we put the rear of  
17 the house facing where more activity, more lights.  
18 Now you've got your rear yard abutting the house with  
19 a four or five foot setback. So there's the privacy  
20 issues.

21 As far as the size of the home, I think it's  
22 not necessarily fair to compare it to the Midland  
23 homes. The Midland homes were built I would suspect  
24 probably in the '50s and '60s. They're not what you  
25 would call a typical Brighton home today. You know,

1       they'd be more comparable to the new homes under  
2       construction, which I think are much bigger than this  
3       home, just to the west of Midland. And again Highland  
4       Avenue is another case.

5               You know, a wide variety of homes on  
6       Highland that are very -- we did a development on the  
7       corner of Highland and Clinton Avenue a number of  
8       years ago, renovated that brick house and built two  
9       houses, two modern four-bedroom houses on that lot.  
10       And that was the market that they were looking for.  
11       And that's, you know, while not abutting this  
12       property, it's several hundred feet away. So I think  
13       it's certainly appropriate for the market.

14               Again, I'm not a realtor, but we do enough  
15       development in most of the houses of Monroe County to  
16       get a good flavor for what's selling and not selling.

17               CHAIRPERSON MIETZ: Okay. Other questions?  
18       Okay. Thank you. Do you have anything else or are  
19       you all set?

20               MS. MARCHIONI: All set.

21               CHAIRPERSON MIETZ: Thank you very much.

22               Is there anyone in the audience who would  
23       like to speak regarding this application? Okay.

24               There being none, the public hearing's  
25       closed.

1 Do you need a little break?

2 (Public hearings concluded.)

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1 | **REPORTER CERTIFICATE**

2

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

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

11

12 | Dated this 3rd day of May, 2023

13 at Rochester, New York.

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Holly E Castleton

HOLLY E. CASTLEMAN,  
Notary Public.

# BRIGHTON

## ZONING BOARD OF APPEALS

## MEETING

## **DELIBERATIONS**

May 3, 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 5A-01-23**

2                   Application of Reza Hourmanesh, architect,  
3 and Guiyan Li, owner of property located at 2720 West  
4 Henrietta Road, for an Area Variance from Section  
5 205-12 to allow for 37 parking spaces in conjunction  
6 with a grocery store in lieu of the minimum 55  
7 Parking spaces required by code. All as described on  
8 application and plans on file.

9                   **Application 5A-02-23**

10                  Application of Reza Hourmanesh, architect,  
11 and Guiyan Li, owner of property located at 2720 West  
12 Henrietta Road, for an Area Variance from Section  
13 205-7 to allow impervious lot coverage to be 83.2% of  
14 the lot area, after site modifications, in lieu of the  
15 maximum 65% allowed by code. All as described on  
16 application and plans on file.

17                  Motion made by Ms. McKay-Drury to table  
18 application 5A-01-23 and 5A-02-23 and reopen the  
19 public hearing.

20                  (Second by Mr. Premo.)

21                  MR. DiSTEFANO: The motion is to table  
22 5A-01-23 and 5A-02-23 and reopen the public hearings.

23                  (Ms. Schwartz, yes; Ms. Tompkins-Wright,  
24 yes; Mr. D'Augustine, yes; Mr. Mietz, yes;  
25 Ms. Schmitt, yes; Mr. Premo, yes;

1 Ms. McKay-Drury, yes.)

2 (Upon roll motion to table applications and  
3 reopen the public hearing carries.)

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1                   **Application 5A-03-23**  
23                   Application of John and Vanessa Geer, owners  
4                   of property located at 2171 West Henrietta Road, for a  
5                   Temporary and Revocable Use Permit pursuant to Section  
6                   219-4 to erect a 30 foot by 30 foot tent partially  
7                   covering an outdoor dining area from May through  
8                   October 2023. All as described on application and  
9                   plans on file.10                  Motion made by Mr. Mietz to approve  
11                  application 5A-03-23 as amended for a two-year  
12                  temporary revocable permit.13                  **Findings of Fact:**14                  1. The granting of this permit will not negatively  
15                  affect health, safety or welfare of the community.  
16                  It may have a positive effect as the applicant has  
17                  provided protection from weather and heat by placing a  
18                  tent that will partially cover the existing outdoor  
19                  dining area for the summer and fall of the years 2023  
20                  and 2024, providing shade where there currently is  
21                  none.  
22                  2. The applicant has explored alternatives other than  
23                  the tent that do not meet the requirements.  
24                  3. If the permit is granted, there will be no  
25                  negative effect on the facility and limited outdoor

1 seating was approved originally by the order. There  
2 will be no lighting or music.

3 4. Granting of the request will not change the  
4 character of the neighborhood or be a detriment to  
5 neighboring properties. The location of the proposed  
6 tent is near the rear part and the side of the  
7 restaurant and is partially blocked on two sides by  
8 trees and a large parking lot.

9

10 **Conditions:**

11 1. The application is granted and submitted for use  
12 from May 1st, 2023, through October 31st, 2023 and May  
13 1st, 2024 through October 31st, 2024.

14 2. All conditions related to the outdoor dining and  
15 previously in place on the property shall remain in  
16 effect.

17 3. The tent must be removed no later than October  
18 31st of 2023 and '24 and stored indoors.

19 4. The tent must remain open with no side covering.

20 5. Five all necessary fire marshal permits shall be  
21 obtained.

22 (Second by Ms. Schwartz.)

23 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;  
24 Mr. D'Augustine, yes; Ms. Tompkins-Wright,  
25 yes; Mr. Premo, yes; Ms. Schwartz, yes;

1 Mr. Mietz, yes.)

2 (Upon roll motion to approve with conditions  
3 carries.)

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1                   **Application of 5A-05-23**

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

11                  MS. TOMPKINS-WRIGHT: I move to approve  
12 applications 5A-05-23 based on the following findings  
13 of fact.

14                  **Findings of Fact:**

15                  1. The requested variance, while substantial for the  
16 requirements of the RLL district, is significantly  
17 less substantial if this property were zoned in the  
18 RLB zoning district. The unique nature of the parcel  
19 is surrounded on three sides by public property  
20 including parkland and the orientation of the house  
21 resulting in the setbacks minimally affects all  
22 neighbors making this significantly less substantial.  
23                  2. The variances requested are the minimum necessary  
24 given that all other variances that would be required  
25 to develop this property more closely in line to the

1 code would have a significantly greater effect on all  
2 neighboring properties.

3. The granting of the requested variance will not  
4 produce an undesirable change in the character of the  
5 neighborhood or be a detriment to nearby properties.  
6 The setbacks at other nearby properties within the  
7 immediate areas including the two properties  
8 immediately adjacent to the property and the distance  
9 between the proposed structure and the actual road  
10 make the orientation and setbacks of this structure  
11 appear more in line and/or benefit the neighborhood.

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

16 **Conditions:**

17. 1. The variance granted herein applies only to the  
18 structure as presented in the plans submitted and  
19 testified to.

20. 2. All necessary Planning Board and Architectural  
21 Review Board approvals and building permits must be  
22 obtained.

23. (Second by Mr. D'Augustine.)

24. (Mr. Premo yes; Ms. Schwartz, no;

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

1                   Mr. McKay-Drury, yes; Ms. Schmitt, no;  
2                   Ms. Tompkins-Wright; yes.)  
3                   (Upon roll motion to approve with conditions  
4                   carries.)

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1                   **Application 5A-06-23**

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

9                   Motion made by Ms. Schwartz to approve  
10                   application 5A-06-23 based on the following findings  
11                   of fact.

12                   **Findings of Fact:**

13                   1. This variance request for 0.9 % over the maximum  
14                   15 percent lot coverage allowed by code is very  
15                   minimal.

16                   2. There will be no detriment in character of the  
17                   area with the granting of this variance as this will  
18                   be the only house on the street.

19                   **Conditions:**

20                   1. The variance granted herein applies only to the  
21                   structure as presented in the plans submitted and  
22                   testified to.

23                   2. All necessary Planning Board and Architectural  
24                   Review Board approvals and building permits must be  
25                   obtained.

1 (Second by Mr. D'Augustine.)  
2 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;  
3 Mr. Mietz, yes; Ms. Tompkins-Wright, yes;  
4 Mr. Premo, yes; Mr. D'Augustine, yes;  
5 Ms. Schwartz; yes.)  
6 (Upon roll motion to approve with conditions  
7 carries.)  
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1                   **Application 5A-04-23**

2                   Application of Robin Wells and Jason Wells,  
3                   owners of property located at 58 Torrington Drive, for  
4                   an Area Variance from Section 207-10A(2) to allow an.  
5                   Emergency access window well to extend 6 inches into  
6                   the minimum 4 foot side setback required by code. All  
7                   as described in application and plans on file.

8                   Motion made by Mr. Premo to approve  
9                   application 5A-04-23 based on the following findings  
10                   of fact.

11                   **Findings of Fact:**

12                   1. The requested area variance for a single-family  
13                   home is a Type II action pursuant to 6 NYCRR §  
14                   617.5(c)(17) and no review is required pursuant to the  
15                   State Environmental Quality Review Act.

16                   2. The requested area variance is the only variance  
17                   necessary to address the benefit sought by the  
18                   applicant. The house is pre-existing and the request  
19                   for an emergency access window is to meet fire code  
20                   requirements for a basement sleeping room. The  
21                   requested emergency access window is the minimum size  
22                   required by code and is to allow the safe use of the  
23                   basement space. In context the requested variance of  
24                   six inches is not substantial.

25                   2. No other alternative can alleviate the

1 difficulty to produce the desired result

2 3. There will be no undesirable change to the  
3 neighborhood and no substantial impact to the nearby  
4 properties expected.

5 4. The hardship is not self-created by the applicant.

6 5. The health safety and welfare of the community  
7 will not be adversely affected by the variance.

8 **Conditions:**

9 1. The variance is based on the application and  
10 materials submitted and testimony and only authorized  
11 the window access described therein.

12 2. Subject to the necessary permits and inspections.

13 (Second by Ms. Schwartz.)

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

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

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1                   MR. DiSTEFANO: Since I was not able to  
2 advertise the postponement I would just like a quick  
3 vote that you're postponing this based on the letters  
4 submitted.

5                   MS. TOMPKINS-WRIGHT: I move we postpone  
6 based on the letter submitted by the applicant.

7                   MS. SCHWARTZ: Second.

8                   MR. DiSTEFANO: Thank you. Motion is to  
9 postpone 4A-01-23.

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

14                   (AUpon roll motion to postpone carries.)

15                   (Proceedings concluded at 9:04 p.m.)

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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.

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12 Dated this 3rd day of May, 2023  
13 at Rochester, New York.

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