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BRIGHTON
ZONING BOARD OF APPEALS
MEETING

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

PRESENT:

DENNIS MIETZ
Chairperson

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

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

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

1 CHAIRPERSON MIETZ: Good evening, everyone.
2 This is the October meeting of the Zoning Board of
3 Appeals.

4 Let me tell you quickly how we do the
5 meeting. We only have three applications this
6 evening.

7 So what happens is when you hear your
8 application read, you come up to the front, give us
9 your name and your address. Just let us know why you
10 feel we should approve your application.

11 Most of the locations the members have
12 visited. We have the materials that you sent in with
13 your application.

14 But the members then, after you made your
15 presentation, may ask you a few questions to clarify
16 something, whatnot. And then we'll see if there's
17 anybody that needs to speak from the public. Since
18 it's the two of you here, doesn't look like that will
19 be the case.

20 Then we close the public hearing and move to
21 the next one. And we'll just finish quickly and
22 deliberate one by one.

23 You're welcome to stay and listen to that.
24 If you don't want to, you can call Rick DiStefano in
25 the building office tomorrow and learn, you know, what

1 happened with your application.

2 Can you call the roll, sir?

3 (Whereupon the roll was called.)

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

6 CHAIRPERSON MIETZ: All right. So thank you
7 very much. And then how about the notification?

8 MR. DiSTEFANO: Let the record show that the
9 meeting was advertised in the Daily Record of
10 September 28th, 2023.

11 CHAIRPERSON MIETZ: Yes. Thank you very
12 much. Is there anything you want to talk about before
13 we do the minutes?

14 MR. DiSTEFANO: No. I think it's pretty
15 straightforward. I sent you over some material.
16 That's also -- I put it in your packet. Do you have
17 any questions? Any questions?

18 CHAIRPERSON MIETZ: I don't think so. Okay.
19 All right. So we have the minutes.

20 MS. SCHWARTZ: Yes. Are you ready?

21 CHAIRPERSON MIETZ: She's ready.

22 MS. SCHWARTZ: Page 9, line 7, first word
23 should be "street." And that's it.

24 MS. TOMPKINS-WRIGHT: I have one. It's
25 substantive. On page 51, the first two conditions.

1 This was the application for the tent on Monroe Avenue
2 for the temple.

3 The conditions -- either it was said and not
4 captured or it wasn't said and I didn't pick up on it.
5 The conditions don't actually say the tent has to come
6 down by October 9th. It just says that the event
7 shall be between those dates for 2023. It never says
8 that the tent ever has to come down.

9 And then on 2, there was a previous
10 condition before that for 2024, the event will only be
11 so long. So the tent will be erected two days before
12 and taken down two days -- but it doesn't say how long
13 the event can be. Which means if they had a 10-day
14 event and that -- so I just thought we should read it,
15 make sure we're okay with the language as it stands.
16 That's not how we discussed it in our meeting last
17 week. And either -- if this is what was said, I just
18 missed it. Because this doesn't convey --

19 CHAIRPERSON MIETZ: Well, certainly no
20 intention to let events go longer than a day. They
21 didn't request that and we didn't agree to that.

22 MR. DiSTEFANO: Give me one second real
23 quick. I'll go grab my decision letter.

24 CHAIRPERSON MIETZ: Is there anything else
25 with the minutes while Rick does that?

1 Procedurally, can we clarify those? It was
2 my motion.

3 MR. GORDON: So you can do a motion to
4 reconsider would be the proper part of the procedure.

5 CHAIRPERSON MIETZ: Okay. Let's see if it's
6 necessary.

7 MR. GORDON: Anyone who voted in favor to
8 make that motion could second it and you could make a
9 motion.

10 CHAIRPERSON MIETZ: Let's see what Rick's
11 got.

12 MS. SCHWARTZ: I do remember that we did
13 jump back and forth about how many days after the 9th
14 we were going to give them.

15 MS. TOMPKINS-WRIGHT: Right. All this says
16 is they can have six events between these two days.
17 Period. Which --

18 MS. SCHWARTZ: Doesn't reflect our
19 conversation.

20 MS. TOMPKINS-WRIGHT: -- doesn't say
21 anything about the tent.

22 CHAIRPERSON MIETZ: Well, I think what went
23 wrong is that what was taken down was no later than
24 two days. That should be out of there because it's
25 not going to be taken down.

1 MR. DiSTEFANO: So why don't you make a
2 change of what's said there.

3 MR. GORDON: If what you wrote is what we
4 actually captured in the minutes and is correct, just
5 need a correction to the minutes. If what we adopted
6 is correct --

7 MR. DiSTEFANO: What I wrote is what --

8 CHAIRPERSON MIETZ: It was not captured
9 correctly.

10 MR. GORDON: So the minutes are not correct.
11 So we'll just amend the minutes, which is fine.

12 MS. TOMPKINS-WRIGHT: Let's amend the
13 minutes --

14 CHAIRPERSON MIETZ: To replace 1 and 2.

15 MR. DiSTEFANO: Why don't you read them for
16 the record?

17 CHAIRPERSON MIETZ: Page 51.

18 MR. GORDON: Yup. And amend or change to
19 the minutes for the September 6th, 2023, meeting, page
20 51 starting at line 4 and ending at line 11, a are
21 conditions 1 and 2. And Member Wright is going to
22 read the replacement language now.

23 MS. TOMPKINS-WRIGHT: Number 1, the
24 temporary and revocable use permit is valid as
25 follows: For the year 2023, three events in which the

1 tent can remain up from September 21st, 2023, through
2 October 9th, 2023. For the year 2024, six events,
3 which shall last no longer than two days each.

4 Number 2, the tent used for the event in
5 2024 may be erected no more than two days prior to the
6 event and must be taken down no later than two days
7 after the event.

8 CHAIRPERSON MIETZ: Yeah. That thing in
9 number 2 was only valid for the second. They asked
10 for the first year to keep it up, but not the second
11 year. That's how the mix-up was -- we got it right.

12 MS. TOMPKINS-WRIGHT: Are you good?

13 MS. MCKAY-DRURY: Do you need a second?

14 MR. GORDON: No. We need --

15 MS. TOMPKINS-WRIGHT: This was just --

16 MR. GORDON: We need a motion to approve the
17 minutes.

18 MS. TOMPKINS-WRIGHT: I'll move.

19 CHAIRPERSON MIETZ: So as amended?

20 MS. TOMPKINS-WRIGHT: As amended.

21 CHAIRPERSON MIETZ: Very well. Who made it?
22 Matt?

23 MR. D'AUGUSTINE: I second.

24 MR. DiSTEFANO: The motion is to approve
25 minutes as amended.

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

(Upon roll motion to approve minutes as
amended carries.)

CHAIRPERSON MIETZ: Let's start when
10A-01-23.

Application 10A-01-23

Application of Andrew Sheppard, agent, and
David Kolczyski, owner of property located at 1501
Monroe Avenue, for a Sign Variance from Section
207-26D to allow a business identification sign to
incorporate a pictorial sign that exceeds the maximum
allowable 25% of total sign area. All as described on
application and plans on file.

CHAIRPERSON MIETZ: Whenever you're ready.

MR. SHEPPARD: I'm Andy Sheppard. I'm the
facilities coordinator for Care-A-Lot Child Care
centers.

CHAIRPERSON MIETZ: And address, please.

MR. SHEPPARD: It's 1501 --

CHAIRPERSON MIETZ: Your address for
yourself.

MR. SHEPPARD: Yes. 15 -- oh, my address.

1 My current address -- 1501 Monroe Avenue.

2 CHAIRPERSON MIETZ: Go ahead. Please
3 proceed.

4 MR. SHEPPARD: This is a sign for 1501
5 Monroe Avenue, which is our office building for
6 Care-A-Lot and Generations Child Care centers.

7 We're just requesting a variance to the
8 pictorial percentage on the overall sign.

9 MR. PREMO: Do we know what the percentage
10 is for the proposed sign?

11 MR. SHEPPARD: To be honest, I know that the
12 allowed amount is 25 percent. And I think that the --
13 if we had the sign -- the squiggly line I think is
14 what, you know, Steven Naukam told me is what pushed
15 it over the tolerance. I don't have the exact number
16 for what it currently is though.

17 MR. PREMO: And Steven Naukam is the --

18 MR. SHEPPARD: Zoning. Planning -- or --

19 MR. DiSTEFANO: Planning technician who
20 basically staffs the ARB and does sign reviews.

21 MR. PREMO: Okay. And the reason why the
22 sign has two names is because there's been a merger;
23 is that correct?

24 MR. SHEPPARD: Yes. Yes, that's correct.
25 Technically Care-A-Lot acquired Generations last year.

1 MR. PREMO: But there's still -- the child
2 care centers are still using the same names as they're
3 operating?

4 MR. SHEPPARD: Yes. There's multiple sites
5 under each side of the business, which is why we're
6 keeping the same name.

7 MR. PREMO: Okay. And these are the
8 administrative offices on Monroe Avenue?

9 MR. SHEPPARD: Yes, sir.

10 MR. PREMO: For HR and back office building,
11 things like that?

12 MR. SHEPPARD: HR, accounting. Yes,
13 administrative only.

14 MS. SCHWARTZ: So according to your
15 application, you're making this new sign because
16 what's up there doesn't have the top part. So you're
17 making a brand new sign and you want the variance for
18 that.

19 MR. SHEPPARD: This is -- yes. It's a new
20 sign. It's a -- it's in the same sign -- it's just an
21 insert that goes into it.

22 CHAIRPERSON MIETZ: A new face.

23 MR. SHEPPARD: New face, yes, sir.

24 MS. TOMPKINS-WRIGHT: And on every building
25 that runs as a Generations daycare or Care-A-Lot

1 daycare, are these the graphics that are used exactly,
2 just enlarged or smaller?

3 MR. SHEPPARD: Depending whether it's
4 Generations or Care-A-Lot, yes.

5 MS. TOMPKINS-WRIGHT: All right.

6 MR. SHEPPARD: It's either one or the other.

7 MS. TOMPKINS-WRIGHT: So just to confirm,
8 this Generations logo is essentially a whole-scale
9 marketing for your entire portfolio.

10 MR. SHEPPARD: Yes, that's correct.

11 CHAIRPERSON MIETZ: But there are still
12 Care-A-Lot locations that have no Generations on it;
13 correct?

14 MR. SHEPPARD: Yes, sir.

15 CHAIRPERSON MIETZ: So it's either/or on the
16 sites, but the corporate office you want both; is that
17 fair?

18 MR. SHEPPARD: Yes, sir.

19 CHAIRPERSON MIETZ: Okay. Is there other
20 questions? Are there other --

21 MS. SCHMITT: This is probably just me
22 trying to understand. When you say the squiggly line,
23 is that what looks like a blue wave? Is that the
24 squiggly line?

25 MR. SHEPPARD: Yes. Sorry for my wording.

1 MS. SCHMITT: I guessed that's what it was,
2 but I figure you only have -- the wavy squiggle was
3 the tree and I was wondering why you didn't call it a
4 tree branch.

5 CHAIRPERSON MIETZ: Very good. Other
6 questions?

7 MR. PREMO: I still have some. So I'm
8 trying to figure out the purpose behind the sign, the
9 way that it's set up. So is this so you can separate
10 out the fact that you're operating under two names?
11 So you want to have some separation between the two
12 logos? Is that why we're having it set up this way?

13 MR. SHEPPARD: I guess I would say combining
14 rather than separation. You know, we're bringing two
15 companies together and we want to represent that. You
16 know, they both have a long history with childcare as
17 far as, you know, track record of -- reputation, you
18 know. So we're trying to demonstrate the combination
19 of the two here at this building.

20 CHAIRPERSON MIETZ: Okay. That's fair.
21 Anything else? Questions? Good? You good, Ed? You
22 look like you're not good.

23 MR. PREMO: Yeah. There's a couple tough
24 things. I guess one is the -- if we're granting a
25 variance, I don't know how big the variance is I'm

1 granting.

2 CHAIRPERSON MIETZ: You mean over what a
3 normal sign would be allowed on this building?

4 MR. PREMO: Correct. I mean, it's 25
5 percent on the -- we believe it's over 25 percent.

6 CHAIRPERSON MIETZ: Yeah. I don't know
7 about the square footage, Rick, on the sign. I mean,
8 we have the square footage on here, but I don't know
9 how much --

10 MR. D'AUGUSTINE: Is it the part that's
11 shaded blue that makes it over 25 percent?

12 MR. DiSTEFANO: It's "What do you want to
13 consider the pictorial design?" You can make an
14 argument that the entire blue area is pictorial
15 design.

16 I mean, you have a branch. You have some
17 birds. You have a squiggly line separating that --
18 the Care-A-Lot I think is pretty simple. It's the
19 name on a white background with the heart, the heart
20 being the pictorial design for that portion of
21 Care-A-Lot.

22 What is the pictorial design for
23 Generations? It's a very difficult thing to
24 determine. So, yes, it is a little bit of a more
25 general type of request.

1 MS. TOMPKINS-WRIGHT: Can I comment on
2 something? When I was talking about how large -- how
3 substantial -- I don't know if you have to have a
4 number because you can condition it that it can only
5 look like this.

6 But the other half of that is the purpose --
7 I believe we've talked about this before -- of having
8 a limit of how large a logo can be is so that signs
9 are clear and visible and directional in the town.

10 And I would suggest that this, even with
11 this pictorial depiction is not unclear, it is not
12 difficult to read, in which case it's not substantial
13 because it's not substantially above whatever the code
14 was attempting to do with this current restriction.

15 MR. PREMO: And I take it this sign is going
16 to be put in the box that's currently on the building.

17 MR. SHEPPARD: Yes, sir.

18 MR. PREMO: Right now it's just Generations;
19 correct?

20 MR. SHEPPARD: Correct.

21 MR. PREMO: It will go right into the same
22 box.

23 MR. SHEPPARD: Correct.

24 MR. PREMO: And it's backlit?

25 MR. SHEPPARD: Yup.

1 MS. MCKAY-DRURY: Do you know the sign that
2 previously just had Generations, was that all blue
3 background?

4 MR. SHEPPARD: A light blue background.
5 Yeah.

6 MR. GORDON: I was going to ask the same
7 thing. I just pulled up Generations signs and each
8 one of them, correct, has this exact same color blue
9 in the background. That's why you're having both blue
10 and white.

11 MR. SHEPPARD: Yes, sir.

12 MR. GORDON: White is the background for
13 Care-A-Lot and the blue is the recognized background
14 for Generations; is that right?

15 MR. SHEPPARD: That's correct.

16 CHAIRPERSON MIETZ: Okay. All right. Any
17 other questions on it? Okay. All right.

18 Is there anyone in the audience who would
19 like to speak regarding this application? I guess
20 not. There being none, then the public hearing is
21 closed.

22 **Application 10A-02-23**

23 Application of Erik Bjorneby, agent, and
24 Larry Chen, owner of property located at 2852 West
25 Henrietta Road for an Area Variance from Section

1 205-12 to allow for 47 on-site parking spaces in lieu
2 of the minimum 60 parking spaces required by code for
3 The establishment of a Papa John's take-out pizza
4 restaurant. All as described in application and plans
5 on file.

6 MR. GUILLOD: Good evening, Mr. Chairman,
7 members of the Board. My name is Paul Guillod, FORM 2
8 Architecture. We're at 1851 Stone Road, Suite 102,
9 Rochester, New York 14626, here tonight representing
10 the applicant for the proposed Papa John's at 2852
11 West Henrietta Road.

12 The project would require a change of use
13 for an existing 1500 square foot tenant space,
14 formally a Cricket Wireless retail location, which
15 would become a delivery/take-out pizzeria.

16 We are seeking a variance for parking space
17 requirements as set forth by the Town. As we've
18 calculated, our proposed use, in addition to
19 requirements for the existing tenant spaces, would
20 require 60 parking spaces by code where 47 exist for
21 existing site conditions.

22 The applicant sent out and had a site survey
23 done monitoring traffic and parking conditions on the
24 site over the course of four days and noted that there
25 were consistently -- even through dinner hours, there

1 were consistently 30-plus vacant spaces out of 47
2 on-site. And there were never more. There were never
3 more full than having those 30 vacant spaces.

4 We'd probably only add that our view --
5 demand for parking spaces between the former Cricket
6 Wireless and the Papa John's, given that it's takeout
7 only, no dine-in spaces, and the majority of their
8 business is delivery -- 30 percent or so of their
9 orders actually are showing up to pick up. And those
10 would be quick turnaround, kind of park, get in, get
11 your pizza, be on your way. We wouldn't be
12 substantially burdening the existing parking situation
13 on-site.

14 MS. SCHMITT: Do you anticipate having any
15 chairs or seating outside?

16 MR. SHEPPARD: No.

17 MS. SCHMITT: And it's correct -- I read
18 it -- that you are anticipating two delivery drivers
19 at the most coming and the other employees that you
20 may have at the restaurant generally are, I think you
21 said, dropped off or take public transportation?

22 MR. SHEPPARD: So total employees on the
23 site at any given time is projected to be four, the
24 two people working in the store and then potentially
25 two drivers that would be there at the same time.

1 It's possible that public transportation
2 would be used by the people among the store, but we
3 wouldn't know that until --

4 MS. SCHMITT: My final question is just to
5 confirm as well that I think your application noted
6 that deliveries take place after hours, not during
7 when other stores are open; is that correct as well?

8 MR. SHEPPARD: Yes. So hours of operation
9 for the proposed Papa John's would be past what the
10 retail locations on either side generally are.

11 CHAIRPERSON MIETZ: But there would be
12 deliveries, takeout during the day when the other
13 stores are open.

14 MR. SHEPPARD: Correct.

15 CHAIRPERSON MIETZ: Yeah. It's not that
16 it's going to be only open after they close.

17 MR. SHEPPARD: Correct.

18 MS. SCHMITT: I thought that said the
19 deliveries were after hours.

20 MR. SHEPPARD: I apologize if that was -- it
21 will occur that way. It will not be exclusively that
22 way.

23 MS. SCHMITT: Okay.

24 CHAIRPERSON MIETZ: Likely be more later in
25 the evening or whatever. But during the day there

1 will be some.

2 MR. SHEPPARD: Correct.

3 CHAIRPERSON MIETZ: Okay.

4 MR. PREMO: Just so -- I got a little
5 confused when I went out there to the site. And I
6 think I know where it is. So the Papa John's is going
7 to be located -- on the corner there's a liquor store,
8 I believe.

9 MR. SHEPPARD: Correct.

10 MR. GORDON: And Papa John's will be next to
11 the liquor store.

12 MR. SHEPPARD: Yes.

13 CHAIRPERSON MIETZ: Yeah. On that corner.

14 MR. PREMO: And then there's the auto
15 supply.

16 MR. SHEPPARD: The auto supply is on the
17 other side.

18 MS. TOMPKINS-WRIGHT: Is that fully
19 operational? Because it is for lease right now.

20 MR. SHEPPARD: I don't have the particulars
21 on what their situation is.

22 MR. PREMO: When I went out there -- where
23 the sign was for the variance I don't think is where
24 the Papa John's space is.

25 CHAIRPERSON MIETZ: They didn't place it

1 right in that area.

2 MR. PREMO: Yeah.

3 CHAIRPERSON PRICE: I didn't see the sign
4 because I know the plaza. So I didn't go there.

5 It's in line there. It's just to the left
6 of the former pawn shop, which is now the liquor
7 store. It's to the left. That's where the Cricket
8 place was.

9 MR. SHEPPARD: Correct.

10 MR. PREMO: Do we have any information, I
11 mean, typically on how many spaces most Papa John's
12 stores have? Parking spaces or --

13 MR. SHEPPARD: I do not have that
14 information.

15 MR. PREMO: But this is -- the store itself
16 is just going to be, you know, take-out orders.

17 MR. SHEPPARD: Correct.

18 MR. PREMO: I think there's some reference
19 that sometimes it's DoorDash or people like that.

20 MR. SHEPPARD: There are third parties that
21 Papa John's is affiliated with that might be stopping
22 in to pick up, but it wouldn't be any more traffic.

23 CHAIRPERSON MIETZ: Okay. You had
24 something?

25 MS. TOMPKINS-WRIGHT: Rick, do you know if

1 this 6,000 -- the largest tenant space is actually
2 fully operational? Because it didn't appear to be.

3 MR. DiSTEFANO: No, I'm not for sure. I
4 know there's been turnover over in that plaza.
5 There's been some long-term vacancies over in that
6 plaza. I really don't know what their overall --

7 MS. TOMPKINS-WRIGHT: I'm concerned that the
8 traffic -- the parking survey that was done was done
9 not at full capacity. And granting a variance to
10 allow for less parking would apply when it is at full
11 capacity.

12 So I just want to make sure I understand.
13 All of the other retail stores require 44 parking
14 spaces for compliance. And this parking lot has 47.
15 So we are saying that Papa John's only requires three
16 parking spaces for compliance.

17 MR. DiSTEFANO: No. No. You're saying that
18 it would need --

19 CHAIRPERSON MIETZ: 60.

20 MS. TOMPKINS-WRIGHT: No. But I'm saying
21 the variance is granted at 47 would be saying that
22 Papa John's only requires three parking spaces.
23 Because we're not granting a variance on the retail
24 space. We're only granting that variance on the Papa
25 John's space.

1 MR. GORDON: I think what you're saying is
2 that the rest of the plaza -- and this is in their
3 application. The rest of the tenant usage requires 44
4 parking spaces.

5 CHAIRPERSON MIETZ: Based on square footage.

6 MR. DiSTEFANO: Based on square footage.

7 MR. GORDON: And so they're asking for a
8 reduction from 60 to 47.

9 You're saying, well, then I guess we're
10 saying only three spots for Papa John's. There's
11 three employees. Maybe they take public
12 transportation as is represented here. But then where
13 do the Uber drivers and the people picking up the
14 pizza individually park.

15 CHAIRPERSON MIETZ: But the inference, like
16 other plazas like this is, that all those other 47
17 spaces -- that is for 44 spaces, those are required.
18 It doesn't mean they're used. That's how we've done
19 variances on other plazas.

20 Whether it's required or not, if someone
21 makes a case that we don't really use all those
22 spaces, then it's easier to ascertain why we would do
23 that.

24 Now, if one of the larger ones is empty, it
25 makes it a little more problematic because, you know,

1 they would -- I think the better question is if this
2 variance was done, Rick, then what happens if that
3 other store is rendered to something else. As long as
4 they comply under the 47, do we have a visit on it?
5 Or what? That would be my thought.

6 MR. DiSTEFANO: Yeah. Basically this is
7 going to kind of pigeonhole the plaza into there's
8 nothing else -- no other use but the retail or a use
9 that requires one space to 300 square feet could be
10 established.

11 CHAIRPERSON MIETZ: Without --

12 MR. DiSTEFANO: Without coming back for a
13 larger variance.

14 MS. TOMPKINS-WRIGHT: I'm concerned because
15 even if all of these stay traditional retail, if you
16 get some -- a retail that's actually visited at a more
17 traditional level like a pharmacy or something like
18 that, then I'm concerned we will create a really
19 substantial parking issue here.

20 MR. DiSTEFANO: But that's true any time
21 that you're going to grant a parking variance for a
22 plaza. I mean, you know, it's like we've done it with
23 Twelve Corners many times with different users in
24 there. And we can only base our decision on the
25 current situation.

1 But as a vacant retail, that's fine. And we
2 can't control what the retail user is going to be.

3 You know, this is one of the big arguments
4 when CVS opened up on Monroe Avenue, we should have
5 required them to have more parking. Well, they're a
6 retail. The retail is supposed to have 1 to 300.
7 Just because they're busy and they're popular doesn't
8 mean that they need more parking.

9 MS. TOMPKINS-WRIGHT: No. But they may use
10 all their parking, which is -- then could be a problem
11 for Papa John's, who only has three parking spaces.

12 MR. DiSTEFANO: A lot of the time, that's
13 stuff that's also a landlord problem.

14 MS. McKAY-DRURY: I was about to say, the
15 applicant is the property owner; correct?

16 MR. DiSTEFANO: Yeah.

17 MS. McKAY-DRURY: It's not just Papa John's?

18 CHAIRPERSON MIETZ: They agreed to allow
19 them to represent them on this issue.

20 MS. McKAY-DRURY: So to me, it's not really
21 our concern if they pigeonhole themselves with respect
22 to what other tenants they can put in here.

23 CHAIRPERSON MIETZ: They'll have to face
24 that when they try to rent it. That's how we've done
25 C of C. The reason this is here is it doesn't fit the

1 C of C.

2 MR. DiSTEFANO: We can only analyze based on
3 zoning code. And our zoning code says this is how
4 many parking spaces they need for a retail shop,
5 retail facility.

6 Now they want to put something in that's not
7 retail that requires more parking, are we comfortable
8 with that or aren't we comfortable with that?

9 CHAIRPERSON MIETZ: Right. Well, let's
10 discuss this at the deliberation part a little bit
11 more.

12 Is there any questions for this gentleman?
13 Does everybody understand what he's trying to do and
14 what his business is?

15 It would be nice to know a little more about
16 Papa John's. I know we're finding them all over
17 Rochester and beyond, but more of these take-out pizza
18 places are coming into, you know, existence because
19 they don't want to have to deal with the issues of
20 people coming in and cleaning up. And it's much
21 easier. We know about Pizza Hut and what they're
22 doing at Twelve Corners. Same thing virtually.

23 MS. SCHMITT: Let me make just a clarifying
24 question maybe because I don't want to assume my pizza
25 picking up is typical with everybody. Is it typical

1 for a person who comes to the store to pick up their
2 pizza -- are they generally coming in for five minutes
3 or less?

4 MR. SHEPPARD: That would be the assumption.
5 The order's been placed, the order's been ready. Or
6 they've been notified that the order is ready and
7 they're there to pick it up and leave.

8 CHAIRPERSON MIETZ: Versus someone coming in
9 and waiting. I'm sure they may have national stats on
10 that.

11 MR. SHEPPARD: I don't have a hard
12 scientific answer on that one. But yeah, that is my
13 assumption.

14 CHAIRPERSON MIETZ: Okay.

15 MR. GORDON: Can I ask one question?

16 CHAIRPERSON MIETZ: Yes.

17 MR. GORDON: So the variance you are
18 seeking, is it for a reduction to 40 -- fixing if you
19 will -- 47 parking spaces for this plaza building
20 regardless of what the uses are in the building? Or
21 are you asking for a variance for a -- fixing at 47 of
22 the parking spaces needed for this entire plaza
23 building with the stipulation that this particular
24 use, which is a 1,318 square foot take-out food
25 service operation, which has no indoor or outdoor

1 seating, is going to be part of the plaza?

2 MR. SHEPPARD: The latter.

3 MR. GORDON: I think so too.

4 CHAIRPERSON MIETZ: Yeah. Because the owner
5 would have to make the first one.

6 MR. GORDON: Say that again.

7 CHAIRPERSON MIETZ: I think the owner would
8 have to make the first one if it was the first one.

9 MR. GORDON: Well, this is the owner's
10 application.

11 CHAIRPERSON MIETZ: Okay. He's just
12 presenting on behalf of them.

13 MS. TOMPKINS-WRIGHT: I thought this was
14 Papa John's application.

15 MR. GORDON: I'm looking at the application.

16 MR. DiSTEFANO: It's the application of the
17 architect, who is the agent, and the property owner,
18 Mr. Chen.

19 CHAIRPERSON MIETZ: Larry Chen, the tenant.

20 MR. DiSTEFANO: He is the applicant, but I
21 don't believe that they're representing Mr. Chen.
22 Correct me if I'm wrong. I think they're representing
23 Papa John's.

24 CHAIRPERSON MIETZ: Yes. That's what I
25 thought.

1 MS. TOMPKINS-WRIGHT: The letter says, "We
2 have been hired by Ajay Choudhary of Papa John's."
3 That's what the letter says.

4 CHAIRPERSON MIETZ: So there's no way, the
5 first thing you said, that the tenant could say that.

6 MR. DiSTEFANO: And I'm surprised we don't
7 have a representative of the owner here.

8 MS. McKAY-DRURY: So I was mistaken.

9 CHAIRPERSON MIETZ: I'm not sure what you --

10 MS. McKAY-DRURY: I said the property owner
11 is the applicant.

12 CHAIRPERSON MIETZ: Sounds like that is not
13 the case.

14 MR. GORDON: The property owner has to be an
15 applicant.

16 (Simultaneous conversation interrupted by the court
17 reporter.)

18 MS. McKAY-DRURY: It says the property owner
19 has signed off on it. Can you tell me where on the
20 applicant it says that?

21 MS. TOMPKINS-WRIGHT: Usually in every
22 application I see there's permission from the property
23 owner to file a zoning application.

24 MR. DiSTEFANO: Yeah. They submitted a
25 lease agreement basically saying that the property

1 owner signed off on it. I have it right here.

2 MR. PREMO: On the form we have, there's a
3 question or a statement, "We as the owners of the
4 above-described property, or as legal agent of said
5 owner, hereby swear to all statements as true." And
6 then there's just --

7 MR. DiSTEFANO: Well, we get something -- we
8 always get something. We usually get some kind of
9 sign-off. And they gave us a physical lease
10 agreement, which is signed by the property owner.

11 CHAIRPERSON MIETZ: Okay.

12 MR. GORDON: Which says something about the
13 authority to apply for a variance for this property?

14 MS. TOMPKINS-WRIGHT: Yeah.

15 MR. DiSTEFANO: I have no idea if that's
16 what it says.

17 CHAIRPERSON MIETZ: This gentleman is not --

18 MS. McKAY-DRURY: The lease agreement might
19 provide for parking.

20 MR. GORDON: It could say that somewhere, I
21 agree.

22 CHAIRPERSON MIETZ: The lease can say
23 whatever they put in the lease, but it's only valid as
24 to what's approved; right? So the lease says you're
25 entitled to use 13 spaces. As a landlord, I can say

1 that any time I want. But that doesn't mean you have
2 the parking there to use.

3 But the gentleman can't speak for the plaza.
4 He's representing Papa John's. He's telling us how
5 they're going to use the space. But the owner part of
6 it is where the restriction problem is with the
7 parking of the rest of the plaza.

8 MS. McKAY-DRURY: Well, and we need to know
9 we have the legal right to be granting the variance.
10 I mean --

11 CHAIRPERSON MIETZ: It's going to be --
12 (Simultaneous conversation interrupted by the court
13 reporter.)

14 MS. TOMPKINS-WRIGHT: Do we have any
15 additional questions for the applicant?

16 CHAIRPERSON MIETZ: We can stop now. That's
17 what I said earlier. We can wait and do it in
18 deliberations. I think we understand what you're
19 trying to do here.

20 MR. DiSTEFANO: I guess the question for me
21 is have you been in discussions with the property
22 owner at all?

23 MR. SHEPPARD: Personally, I have not.

24 MR. DiSTEFANO: Has your firm been in
25 conversations with the property owner? Has anybody

1 been in conversation with the property owner?

2 MR. SHEPPARD: I can't speak to that,
3 unfortunately.

4 MR. GORDON: And one follow-up. Can you
5 represent to this board, this Zoning Board of Appeals,
6 that you have the authority of the property owner to
7 ask for this variance on the property owner's behalf?

8 MR. SHEPPARD: Outside of the materials that
9 were presented as --

10 MR. GORDON: No. Including the materials
11 presented, do you have the authority?

12 MS. TOMPKINS-WRIGHT: I think he may not
13 know.

14 MS. MCKAY-DRURY: If you don't know, that's
15 your answer.

16 MR. SHEPPARD: I don't have the answer to
17 that question.

18 CHAIRPERSON MIETZ: Okay. That's a fair
19 answer.

20 MR. GORDON: That is a fair answer.

21 CHAIRPERSON MIETZ: We're not trying to trap
22 you here.

23 MR. GORDON: If you knew you had that
24 authority, you'd point us to a spot where it is. That
25 would be helpful.

1 CHAIRPERSON MIETZ: Yes.

2 MR. SHEPPARD: We were contracted to
3 represent the applicant. What conversations or
4 agreements are had between the applicant and the
5 building owner, I can't speak on.

6 MR. DiSTEFANO: And I think that's the
7 problem that we're having right now is that we don't
8 have anybody from Papa John's and we have nobody from
9 ownership to address questions to.

10 MR. SHEPPARD: Sure.

11 MR. DiSTEFANO: And you're kind of the
12 middleman. You're the one caught in the middle.

13 MS. SCHMITT: Is it appropriate for the
14 applicant on this issue that if we're not a hundred
15 percent clear for us --

16 MR. DiSTEFANO: Absolutely.

17 MS. SCHMITT: -- to table it?

18 MR. DiSTEFANO: Absolutely.

19 CHAIRPERSON MIETZ: Let's wait until we do
20 deliberations.

21 Okay. Is there any other questions for this
22 gentleman? Thank you very much.

23 Anyone here want to speak about this
24 application? Okay. Hearing none, then the public
25 hearing is closed.

1 **Application 10A-03-23**

2 Application of Exceptional Exteriors and
3 Interiors, contractor, and Matt DeRosa, owner of
4 property located at 148 Dale Road, for an Area
5 Variance from Section 205-2 to allow a covered porch
6 to extend 8 feet into the existing 30-foot front
7 setback where a 40-foot front setback is required by
8 code. All as described in application and plans on
9 File.

10 MR. KOGLER: Good evening. My name's Brian
11 Kogler. I'm representing Matt DeRosa for the -- and I
12 am co-owner of Exceptional Exteriors and Interiors. I
13 reside at 524 Maiden Lane. And the area code is
14 14616.

15 CHAIRPERSON MIETZ: Great. Thank you.

16 MR. KOGLER: We're looking to get approval
17 to build a 8-foot by 14-foot front porch, covered
18 porch, on 148 Dale Road.

19 CHAIRPERSON MIETZ: Can you explain what is
20 the purpose? I think we generally understand, but for
21 the record.

22 MR. KOGLER: Right now they have a concrete
23 stoop, which protrudes about 5 feet out. We just want
24 to tear that down and fill and pretty much build a new
25 deck and a place they can enjoy the front of their

1 house with the covered porch.

2 MS. TOMPKINS-WRIGHT: Just to clarify, the
3 application states the existing porch is starting to
4 become a safety hazard. Did they mean the stoop?

5 MR. KOGLER: The stoop, yeah.

6 MS. TOMPKINS-WRIGHT: Because I couldn't
7 find a porch. Wasn't sure what I was missing.

8 MS. SCHWARTZ: So it's all open except for
9 the roof. Is it just going to have that kind of
10 railing?

11 MR. KOGLER: It's going to have a railing
12 around except for the stairs obviously. But the
13 railing will go around all the way to the stairs and
14 downstairs.

15 MS. SCHWARTZ: And made of --

16 MR. KOGLER: Vinyl PVC railing.

17 MS. SCHWARTZ: And so it's being raised up
18 above the stoop?

19 MR. KOGLER: It's going to be even with the
20 door. That's one step out.

21 MS. SCHWARTZ: And the steps are going to
22 come up to it?

23 MR. KOGLER: Correct.

24 MS. TOMPKINS-WRIGHT: Is that included in
25 the map?

1 MR. KOGLER: The steps are not. It's an
2 extra 3 foot.

3 CHAIRPERSON MIETZ: The steps have to be in
4 there?

5 MR. DiSTEFANO: No. Steps can intrude.
6 It's further into the setback.

7 CHAIRPERSON MIETZ: Okay.

8 MR. DiSTEFANO: I mean, it doesn't hurt to
9 mention the steps as maybe a maximum approval.

10 CHAIRPERSON MIETZ: All right. Good. And
11 this is going to remain open?

12 MR. KOGLER: Yes. I mean covered porch,
13 but, yes.

14 MR. DiSTEFANO: Have you been to the
15 Architectural Review Board yet?

16 MR. KOGLER: Yes.

17 MR. DiSTEFANO: And --

18 MR. KOGLER: We got the approval on that.

19 MR. DiSTEFANO: Okay. Great.

20 CHAIRPERSON MIETZ: Good.

21 MS. TOMPKINS-WRIGHT: In the neighborhood,
22 there are other covered porches that extend further
23 into the -- or --

24 MR. KOGLER: I don't know if they extend
25 into the zone, you know, setback, yeah. But there are

1 covered porches on that street.

2 MS. TOMPKINS-WRIGHT: Okay.

3 CHAIRPERSON MIETZ: Very fine. Very good.

4 Very good. Okay. Thank you very much.

5 Anyone want to speak? At this point the

6 public hearing is closed.

7 (Public hearings concluded.)

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1 REPORTER CERTIFICATE

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

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

11
12 Dated this 4th day of October, 2023
13 at Brighton, New York.

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21 *Holly E. Castleman*

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23 HOLLY E. CASTLEMAN, ACR,
24 Court Reporter
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BRIGHTON
ZONING BOARD OF APPEALS
MEETING
DELIBERATIONS AND DECISIONS

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

PRESENT:

DENNIS MIETZ
Chairperson

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

KEN GORDON, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

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

1 **Application 10A-03-23**

2 Application of Exceptional Exteriors and
3 Interiors, contractor, and Matt DeRosa, owner of
4 property located at 148 Dale Road, for an Area
5 Variance from Section 205-2 to allow a covered porch
6 to extend 8 feet into the existing 30-foot front
7 setback where a 40-foot front setback is required by
8 code. All as described in application and plans on
9 file.

10 Motion made by Ms. Schwartz to approve
11 application 10A-03-23 based on the following findings
12 of fact.

13 **Findings of Fact:**

14 1. This variance of a covered porch and steps to
15 extend 8 feet into the existing 30-foot front setback
16 where a 40-foot setback is required by code may seem
17 excessive, but will really not have a negative impact
18 on the character of the neighborhood.

19 2. The depth of the porch will only be 8 feet, which
20 is the minimum for furniture placement and the
21 availability to move easily.

22 3. The house is situated on a corner lot with many
23 mature trees and other vegetation on the property and
24 the setback will barely be noticeable.

25 4. There are other front porches in the neighborhood;

1 so this porch will be in keeping with the character of
2 the area.

3 5. There's no other alternative that will provide the
4 desired outcome for the applicant.

5 **Conditions:**

6 1. The variance only applies to the written
7 application and testimony presented.

8 2. The steps will only protrude 3 feet into the
9 setback.

10 3. All necessary building permits must be obtained.

11 MR. GORDON: Was there a second?

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

13 MR. DiSTEFANO: Can you just repeat the
14 conditions?

15 MS. SCHWARTZ: This variance only applies to
16 the written application and testimony presented; the
17 steps will only protrude 3 feet into the setback; and
18 3, all necessary building permits shall be obtained.

19 CHAIRPERSON MIETZ: Should we say additional
20 3 feet?

21 MR. DiSTEFANO: I want to go back --

22 MR. GORDON: To number 1 findings.

23 MR. DiSTEFANO: Yeah. I want to go back to
24 number 1 findings.

25 MS. SCHWARTZ: Okay. Yes. The variance of

1 a covered porch and steps to extend 8 feet into the
2 existing 30-foot front setback --

3 MR. GORDON: Stop.

4 MR. DiSTEFANO: Stop. But the steps are
5 going to extend more. You don't want to say -- you
6 wanted to say the porch would extend 8 feet.

7 MS. SCHWARTZ: I was going leave the
8 steps --

9 MR. DiSTEFANO: No. I didn't know you were
10 going to phrase your finding that way. Read back the
11 steps again.

12 MS. SCHWARTZ: I'll take it out of the
13 condition.

14 MR. DiSTEFANO: No, no. I don't want you to
15 take out the condition. I just want you to modify the
16 finding to say to allow a porch to extend 8 feet into
17 the 30-foot setback with --

18 MS. SCHWARTZ: The word steps; correct?

19 MR. DiSTEFANO: With steps extending 3 feet
20 from the porch.

21 MS. SCHWARTZ: With steps.

22 MR. DiSTEFANO: Because the porch is going
23 to be in the 22-foot setback. These steps aren't
24 going to be in the 22 foot setback.

25 MS. SCHWARTZ: Porch to extend 8 feet.

1 MR. DiSTEFANO: Did you get that or do you
2 need her to reread that?

3 MR. GORDON: Can you reread that?

4 MS. SCHWARTZ: The variance of a covered
5 porch and steps to extend 8 feet in the existing 30
6 foot front setback where a 40 foot setback is required
7 by code may be extensive but will really not have a
8 negative impact on the character of the area.

9 MR. DiSTEFANO: Is that finding number 1?

10 MS. SCHWARTZ: Yes.

11 MR. DiSTEFANO: So you want to take the
12 steps out of the starting point of it. So the porch
13 extends 8 feet, however you wrote that; right? And
14 then with steps extending an additional 3 feet, do not
15 have an impact on the character of the neighborhood or
16 whatever.

17 Start from the very beginning, Judy. Start
18 from the beginning.

19 MS. SCHWARTZ: The variance of the covered
20 porch to extend 8 feet into the existing 30-foot front
21 setback with steps where a 40-foot setback is required
22 by code may seem excessive, but really would not have
23 a negative impact on the character of the area.

24 MR. GORDON: Can I just add to that the
25 words "extending an additional 3 feet" after the word

1 steps?

2 And if you can consolidate those, is there a
3 way you could read that back to us?

4 (The reporter read the requested material.)

5 **Findings as Amended:**

6 1. The variance of the covered porch to extend 8 feet
7 into the existing 30 foot front setback, with steps
8 extending an additional 3 feet, where a 40 foot
9 setback is required by code may seem excessive, but
10 really would not have a negative impact on the
11 character of the area.

12 2. The depth of the porch will only be 8 feet, which
13 is the minimum for furniture placement and the
14 availability to move easily.

15 3. The house is situated on a corner lot with many
16 mature trees and other vegetation on the property and
17 the setback will barely be noticeable.

18 4. Three are other front porches in the neighborhood
19 so this porch will be in keeping with the character of
20 the area.

21 5. There's no other alternative that will provide the
22 desired outcome for the applicant.

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

24 CHAIRPERSON MIETZ: Thanks, Heather.

25 MR. DiSTEFANO: Motion is to approve with

1 conditions.

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

6 (Upon roll motion to approve with conditions
7 carries.)

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1 **Application 10A-01-23**

2 Application of Andrew Sheppard, agent, and
3 David Kolczyski, owner of property located at 1501
4 Monroe Avenue, for a Sign Variance from Section
5 207-26D to allow a business identification sign to
6 incorporate a pictorial sign that exceed the maximum
7 Allowable 25% of total sign area. All as described on
8 application and plans on file.

9 MR. PREMO: With respect to application
10 10A-01-23, I move that this Board having considered
11 the information presented by the applicant and having
12 conducted the required review pursuant to SEQRA adopts
13 the negative declaration prepared by town staff and
14 determines that the proposed action will not likely
15 have a significant environmental impact.

16 I also move that we approve application
17 10A-01-23 for a sign variance from Section 207-26D to
18 allow for a business identification sign to
19 incorporate pictorial images that exceeds the
20 allowable 25 percent of the total sign area based on
21 the following findings of fact.

22 **Findings of Fact:**

23 1. The requested area variance is to allow a business
24 identification sign for newly merged childcare
25 businesses' administrative offices located on Monroe

1 Avenue.

2 2. The new sign incorporates the existing logos of
3 the two merged childcare businesses.

4 3. The requested variance allows wavy lines to
5 separate the two logos and offers better business
6 identification given the merged offices.

7 4. Other than the requested variance, there is no
8 other practical way to create an effective sign given
9 the two logos for the merged businesses.

10 5. The businesses will continue to use the two logos.

11 6. The requested variance is the minimum necessary to
12 address the benefit sought by the applicant.

13 7. No other alternative can alleviate the difficulty
14 and produce the desired result.

15 8. The variance in context is not substantial.

16 9. There will be no unacceptable change to the
17 neighboring properties in this commercial area and the
18 health, safety and welfare of the community will not
19 be adversely affected by approval of the variance.

20 **Conditions:**

21 1. The variance is based on the application, material
22 submitted and testimony given and only authorizes the
23 project described therein.

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

1 (Second by Ms. Schwartz.)

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

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

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

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1 **Application 10A-02-23**

2 Application of Erik Bjerneby, agent, and
3 Larry Chen, owner of property located at 2852 West
4 Henrietta Road for an Area Variance from Section
5 205-12 to allow for 47 on-site parking spaces in lieu
6 of the minimum 60 parking spaces required by code for
7 the establishment of a Papa John's take-out pizza
8 restaurant. All as described in application and plans
9 on file.

10 MS. MCKAY-DRURY: I move we deny without
11 prejudice application 10A-02-23, the application for
12 the property located at 2852 West Henrietta Road for
13 an area variance from section 205-12 to allow for 47
14 on-site parking spaces in lieu of the minimum 60
15 required by code for the establishment of a Papa
16 John's take-out pizza restaurant.

17 (Second by Mr. D'Augustine.)

18 MR. DiSTEFANO: Motion is to deny without prejudice.

19 (Mr. Premo, yes; Ms. Schwartz, yes;

20 Ms. Tompkins-Wright, yes; Mr. Mietz, yes;

21 Ms. Schmitt, no; Mr. D'Augustine, yes;

22 Ms. McKay-Drury, yes.)

23 (Motion to deny without prejudice carries.)

24 (Proceedings concluded at 8:18 p.m.)

25 * * *

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 4th day of October, 2023
13 at Brighton, New York.

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21 *Holly E. Castleman*

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HOLLY E. CASTLEMAN, ACR,
23 Court Reporter
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