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**BRIGHTON**  
**ZONING BOARD OF APPEALS**  
**MEETING**

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November 1, 2023  
At approximately 7 p.m.  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

**PRESENT:**

DENNIS MIETZ  
Chairperson

HEATHER McKAY-DRURY                    )     Board Members  
KATHLEEN SCHMITT                        )  
ANDREA TOMPKINS-WRIGHT                )  
    (Present for decisions)  
MATTHEW D'AUGUSTINE                    )

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

**ABSENT:**

JUDY SCHWARTZ  
EDWARD PREMO

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

1 CHAIRPERSON MIETZ: Welcome. This is the  
2 November meeting of the Brighton Zoning Board of  
3 Appeals. Let me go over how we handle this meeting.

4 So there's four applications. 11A-02 has  
5 withdrawn their application if anybody was interested  
6 in that application.

7 We have four applications to hear tonight.  
8 So when your application is called by Mr. DiStefano,  
9 please come up to the podium and give us your name and  
10 address. And then please explain to us why you feel  
11 that your application should be approved. Most of the  
12 members have visited the location and got the  
13 information ahead of time.

14 And once you finish your presentation, the  
15 board members will ask questions if they need  
16 clarification on anything. Then we will go back to  
17 the audience to see if anyone in the audience wants to  
18 speak regarding the application.

19 And when we finish that, then we close the  
20 public hearing, move to the next one. Once we finish  
21 all four, we'll begin the deliberations.

22 You're welcome to stay and listen. There's  
23 no discussion between the board members and the  
24 applicant at that point, but you're free to stay and  
25 listen to the deliberations if you want because,

1 unless something's tabled, then we make the decisions  
2 tonight.

3 Now, if you don't want to stay, you can call  
4 Mr. DiStefano in the building office tomorrow. He can  
5 let you know what the results of your application is.  
6 Then you'll know. Then you get the paperwork later.  
7 Okay.

8 So Rick, was the meeting properly  
9 advertised?

10 MR. DiSTEFANO: Yes, Mr. Chairman. It was  
11 advertised in the Daily Record of October 26th, 2023.

12 CHAIRPERSON MIETZ: Okay. Can you call the  
13 roll?

14 (Whereupon the roll was called.)

15 MR. DiSTEFANO: Please let the record show  
16 that Mr. Premo and Ms. Schwartz are not present and  
17 will not be present tonight.

18 Ms. Tompkins-Wright is -- hopefully will be  
19 here by 8, 8:15 to join the meeting.

20 MR. GORDON: But is not currently present.

21 CHAIRPERSON MIETZ: Okay. Is there anything  
22 that you would like to point out?

23 MR. DiSTEFANO: Yeah. There is a  
24 communication that you'll find in your folder that did  
25 not make the final agenda, the letter regarding

1 application 11A-01-23 from a neighbor.

2 And if the applicant in the audience would  
3 like to take a look at that letter, I have a copy that  
4 they can look at. Or are you aware of the letter that  
5 was sent by your neighbor? You want to take a look at  
6 it?

7 MS. KAY: No. I knew nothing of this.

8 CHAIRPERSON MIETZ: Take a quick gander.  
9 Okay.

10 MR. DiSTEFANO: That's all I have. Any  
11 members have any questions regarding any applications?

12 CHAIRPERSON MIETZ: Okay. So I guess we can  
13 begin with 11A-01.

14 **Application 11A-01-23**

15 Application of Rhonda Kay, owner of property  
16 located at 1534 Crittenden Road, for an Area Variance  
17 from Section 207-49 to allow for the installation of  
18 ground-mounted solar panels in lieu of roof-mounted  
19 panels as required by code. All as described on  
20 application and plans on file.

21 CHAIRPERSON MIETZ: I'll let her finish  
22 reading quickly.

23 You're up.

24 MS. KAY: Okay. This is Daniel. He is  
25 from --

1 MR. DiSTEFANO: Just introduce yourself and  
2 address. Thank you.

3 MS. KAY: My name is Rhonda Kay and I live  
4 at 1534 Crittenden Road.

5 CHAIRPERSON MIETZ: Ma'am, can you move into  
6 the mic so that -- it's harder for the court reporter  
7 to hear you.

8 MS. KAY: Okay. So, yeah. I live at 1534  
9 Crittenden Road. I'm here to ask for a variance for  
10 ground-mounted solar panels to be placed at my house.

11 I have old-growth trees, three of them, very  
12 large, at my home that is -- covers the majority of my  
13 roof to where I cannot have solar panels.

14 As we all know, RG&E is your only choice for  
15 power in Rochester. So even if you go with someone  
16 else, which I've done -- trust me -- you know, you're  
17 still going through RG&E. And every time I do that, I  
18 end up with a bill of \$400, which I cannot afford.

19 So I need to have the panels to be  
20 ground-mounted. And I'm also -- I'm putting up  
21 a 6-foot fence.

22 So this would not affect this person here.  
23 And plus, no one has lived in this house for almost a  
24 year. It's been empty. There's no one living in it  
25 and has not lived in it for quite some time.

1 CHAIRPERSON MIETZ: You're talking about --

2 MS. KAY: This property next to this has  
3 been empty for almost a year. No one has been in this  
4 property for over a year.

5 CHAIRPERSON MIETZ: The adjacent property?

6 MS. KAY: No one has done anything at that  
7 property. Right.

8 MR. DiSTEFANO: Just for the record, that  
9 property is 1544 Crittenden Road.

10 CHAIRPERSON MIETZ: That sent the letter?

11 MR. DiSTEFANO: That sent the letter.

12 MS. KAY: Yes.

13 MR. DiSTEFANO: Go ahead.

14 MS. KAY: So I need to actually have my  
15 panels ground-mounted. And my plan is to actually put  
16 up a 6-foot fence. The panels would not be more  
17 than 9 feet high.

18 Correct, Dan?

19 MR. VANVALKENBURG: Correct.

20 So that means that only 3 feet of the panels  
21 would be seen because I'm putting up the 6-foot  
22 privacy fence all the way around my property to be  
23 included with the panels.

24 CHAIRPERSON MIETZ: Okay. How long have you  
25 lived in the home, ma'am?

1 MS. KAY: I've lived in the home since 2017.  
2 I've owned it.

3 CHAIRPERSON MIETZ: All right. Board  
4 members, questions?

5 THE COURT REPORTER: What is your name?

6 MR. VANVALKENBURG: Daniel Vanvalkenburg,  
7 V-A-N-V-A-L-K-E-N-B-U-R-G, from 3rd Roc Solar.

8 MS. McKAY-DRURY: I just want to make sure I  
9 understand what you're indicating in the application.  
10 So the panel height has a minimum height of 7 feet  
11 with a max height of 9 feet.

12 MS. KAY: Yes.

13 MS. McKAY-DRURY: Is that something, first  
14 of all -- so the minimum of 7 feet, that means that a  
15 6-foot privacy fence will never cover all of it;  
16 correct?

17 MS. KAY: Correct.

18 MR. DiSTEFANO: I don't want to interrupt  
19 you, but maybe, Daniel, if you can kind of give us the  
20 layout, why they need to be 9 feet, where they're  
21 going to be located, setbacks of these things just so  
22 the Board has a little more information on the  
23 installation that might address all the questions.

24 CHAIRPERSON MIETZ: Did you give your  
25 address and all that?

1 MR. VANVALKENBURG: Yup. I'll give my  
2 address. Business address, 101 Sully's Trail,  
3 Perinton, New York. And I don't know the zip code.

4 CHAIRPERSON MIETZ: Thanks. We'll look it  
5 up.

6 MR. VANVALKENBURG: So basically this ground  
7 mount or any typical ground mount that we have will  
8 go -- there'll be ground screws put into the ground.  
9 These are just long 6-foot screws that are augered in.  
10 There's no demolition. There's no -- they're just  
11 screwed into the ground. So that would be basically  
12 the base of the unit.

13 Then the racking system, that middle racking  
14 system, will be built up from that. And then we would  
15 position this one due south with a 30-degree angle  
16 facing due south.

17 So we have a few different options. The  
18 height of 9 feet or so is with four panels high in a  
19 portrait -- I'm sorry -- in a landscape format.

20 So we were at 16? Where were we at?

21 MS. KAY: I thought it was like 10.

22 MR. VANVALKENBURG: Whatever the  
23 configuration is, it's typically four panels. So it's  
24 40 inches, 40 inches, 40 inches. So that would be the  
25 height. By the time it's extended at 30 degrees, it's



1 approximately 9 feet.

2 Now, depending upon what the setbacks are  
3 for Brighton, whichever way we go, deep or along the  
4 way, we can change that somehow to configure that.  
5 Maybe only go three high and then that is closer to 6  
6 feet.

7 The front as it's tapered down could be  
8 anywhere from 2 to 3 feet high.

9 MR. DiSTEFANO: Off the ground?

10 MR. VANVALKENBURG: Off the ground.

11 MR. DiSTEFANO: 2 to 3 feet off the ground.

12 MR. VANVALKENBURG: Yes.

13 MR. GORDON: Each panel is 6 feet 2 inches  
14 long?

15 MR. VANVALKENBURG: I just looked up a  
16 different panel that we used. So that was Silfab. So  
17 it's very similar to that, correct.

18 MR. GORDON: I'm just looking at the  
19 application materials. Q Peak Duo --

20 MR. VANVALKENBURG: Yes. Because I was  
21 looking at Silfab and these are Q-cell, correct.

22 MR. GORDON: Right. So 74 inches by 41.1  
23 inches is the dimension of each panel. You're saying  
24 you're planning to stack them three or four high.

25 And I guess the question that is still

1       buzzing around in my mind is how many panels? 10?  
2       16? Some other number? I think the Board needs a  
3       sense of the massing of this installation.

4               MR. VANVALKENBURG: This is a unique  
5       circumstance as that Ms. Kay went ahead and tried to  
6       apply for the permit before actually installing the  
7       panels.

8               We would have an exact configuration once a  
9       contract was signed of how many panels it was going to  
10      be.

11              MR. GORDON: So you don't --

12              MR. VANVALKENBURG: Plus all the other --

13              MR. GORDON: That sounds like you don't know  
14      how many.

15              CHAIRPERSON MIETZ: It's not been designed  
16      or not firmly designed?

17              MR. VANVALKENBURG: We've gone probably  
18      through five different designs.

19              MS. MCKAY-DRURY: What defines the number of  
20      panels? Is it the need of the home?

21              MS. KAY: Right.

22              MR. VANVALKENBURG: Correct.

23              MS. KAY: Per kilowatt. Which I use 484,  
24      something like that, per month.

25              MR. VANVALKENBURG: Which would not cover

1 the usage.

2 MR. DiSTEFANO: Can you give us a maximum  
3 length and height that this array would be?

4 MR. VANVALKENBURG: Maximum width and depth?

5 MR. DiSTEFANO: And depth.

6 MR. VANVALKENBURG: So that would be 14 foot  
7 deep with four panels. The width would be depending  
8 upon the number of panels.

9 MR. DiSTEFANO: Right. Is there a maximum  
10 number for this sized property that you feel  
11 comfortable saying it will never be bigger than this  
12 size?

13 MR. VANVALKENBURG: It would never be bigger  
14 than 16.

15 MR. DiSTEFANO: 16 feet?

16 MR. VANVALKENBURG: No. 16 panels.

17 MR. DiSTEFANO: 16 panels.

18 MR. VANVALKENBURG: At 74 or 5 inches.

19 MS. McKAY-DRURY: And the panels are side by  
20 side we're talking about?

21 MR. VANVALKENBURG: Yes.

22 MR. GORDON: So you have a stack and in a  
23 parallel line to that stack the other stacks. You're  
24 not --

25 MR. VANVALKENBURG: That's correct.

1 MR. GORDON: You're not having two rows.  
2 You're having it all in one row.

3 MR. VANVALKENBURG: One array, yes.

4 MR. GORDON: So you'd potentially have  
5 four -- I'm going to call them stacks, each of them  
6 approximately 6 feet 2 inches long. So maximum  
7 length, 24 and a half feet roughly.

8 MR. VANVALKENBURG: Correct.

9 MR. GORDON: If I'm doing my math right.

10 MS. KAY: Yes. There's a quarter-inch gap  
11 in between them.

12 MR. GORDON: 25.

13 CHAIRPERSON MIETZ: Somebody provided a  
14 drawing, you know, on the survey map.

15 MS. KAY: That's me.

16 CHAIRPERSON MIETZ: There's 88 feet across  
17 the back of the lot. And the line is past the halfway  
18 point. So it looked like it's showing like 40-plus  
19 feet long. Is that more than it would be?

20 MR. VANVALKENBURG: 44, 24, 25 -- it would  
21 not be any -- it definitely would not be more than 44.

22 CHAIRPERSON MIETZ: Because half of this is  
23 44 feet from the width of the back of the lot. And  
24 the line the way whoever drew it is just past that.  
25 So you're saying you think it's less than 44 feet.

1 MR. VANVALKENBURG: Yes.

2 MS. McKAY-DRURY: I think I'm understanding.  
3 We're talking potentially 24 feet in what I would  
4 think of as length. Okay.

5 MR. VANVALKENBURG: Probably a tad more,  
6 but, yes.

7 MS. McKAY-DRURY: Okay. And then we're  
8 talking about they're up on these risers. And then  
9 you've got a slanted surface where at its shortest  
10 point, it's 7 feet and its highest point it's 9?

11 MR. VANVALKENBURG: No. Shortest point  
12 would be between 2 and 3 feet. And the highest point  
13 would be 9.

14 MS. McKAY-DRURY: Okay. Thank you. I think  
15 I can picture this.

16 MS. SCHMITT: Is it possible to make it  
17 longer in length so that it can try to be under the  
18 6-foot fence? So that the neighbors aren't seeing it  
19 as much.

20 MS. KAY: So in other words, two panels  
21 per -- I mean, because what -- two panels is? So how  
22 many feet is that across once you do that?

23 MR. GORDON: 49.

24 MS. KAY: Sorry. I didn't calculate that  
25 all out.

1 (Simultaneous conversation interrupted by the court  
2 reporter.)

3 MS. SCHMITT: And can you do that and  
4 achieve the desired result?

5 MR. VANVALKENBURG: If it was --

6 MS. SCHMITT: No taller than 6 feet.

7 MR. VANVALKENBURG: Yes, we can do that. I  
8 don't know how long it would be and I don't know if it  
9 would include all 16 panels if we did do that  
10 depending upon the setbacks that are on the side.

11 MS. KAY: With them south-facing.

12 CHAIRPERSON MIETZ: Okay. So it's really --  
13 what this is coming down to is a design issue. So it  
14 sounds like there are -- there's some flavors here,  
15 varieties, but we're not sure -- you're trying to, I  
16 gather, meet a minimum requirement as it relates to  
17 the ability of these panels to produce a certain  
18 amount of energy.

19 MR. VANVALKENBURG: I believe we were at --  
20 the last one was probably 78 percent offset of the  
21 utility usage.

22 CHAIRPERSON MIETZ: And what is a reasonable  
23 expectation, if you --

24 MR. VANVALKENBURG: For this household?

25 CHAIRPERSON MIETZ: In general for your

1 installations.

2 MR. VANVALKENBURG: We want almost -- we  
3 want a hundred percent offset with this south-facing  
4 array.

5 MS. MCKAY-DRURY: Can we talk glare?

6 MR. VANVALKENBURG: Sure.

7 MS. MCKAY-DRURY: How -- what's the glare on  
8 these?

9 MR. VANVALKENBURG: Yeah. They're all  
10 anti-glare glass.

11 MS. MCKAY-DRURY: Okay. And how effective  
12 is anti-glare glass?

13 MR. VANVALKENBURG: I would say a hundred  
14 percent, but I don't have that answer.

15 MS. MCKAY-DRURY: Because obviously, if  
16 you've got a multi-story house next door that could  
17 see the panel, even if it was below the fence, once  
18 they're up, if they look outside -- or even if they're  
19 not looking at those, you can get some serious glare.

20 MR. VANVALKENBURG: Yup. I could get that  
21 answer for you.

22 CHAIRPERSON MIETZ: Okay. You have  
23 something?

24 MR. GORDON: Yeah. I'm curious more about,  
25 again, the massing of this. So you're going to

1 surround it by a 6-foot fence; correct?

2 MS. KAY: Yes, sir.

3 MR. GORDON: Is there a requirement of  
4 distance between the bottom of the fence and the  
5 beginning of where the first bottom panel is? Because  
6 I would imagine if your bottom panel was tucked right  
7 up against the fence, it's not going to get a whole  
8 lot of sunshine.

9 MR. VANVALKENBURG: The bottom of the panel  
10 would be the furthest away from the back fence.

11 MR. GORDON: So how far?

12 MR. VANVALKENBURG: I don't know what the  
13 setbacks are for Brighton.

14 MR. GORDON: I'm asking for your design, how  
15 far?

16 MR. VANVALKENBURG: The back of the fence  
17 from -- I'm sorry. The back -- the depth of the  
18 array.

19 MR. GORDON: From the fence to the array,  
20 how far?

21 MR. VANVALKENBURG: That I don't know.

22 MR. GORDON: So it could be a hundred feet?

23 MS. KAY: No.

24 MR. GORDON: Okay. It could be 50 feet?

25 MR. VANVALKENBURG: Again, I did not design



1 this yet. I can just tell you the dimensions of what  
2 it would be is -- that is 14 feet.

3 MS. McKAY-DRURY: Well, if it's a  
4 south-facing array, then the highest point is going to  
5 be towards the fence; right?

6 MR. VANVALKENBURG: That's correct.

7 MS. McKAY-DRURY: Okay. So you don't have  
8 so much of a concern -- if you have fence between sun  
9 and array, then you'd have a problem where the fence  
10 could block the array. But that's not going to be an  
11 issue.

12 MR. VANVALKENBURG: Then it would be facing  
13 north.

14 MS. McKAY-DRURY: So presumably, it could  
15 get pretty close to the fence.

16 CHAIRPERSON MIETZ: You'd just have to be  
17 able to maintain it. You can only get so close to the  
18 fence.

19 MR. GORDON: Is there a fence going all the  
20 way around this array?

21 MS. KAY: So the way my backyard is -- it's  
22 drawn on there. Yes. It's only -- it goes from the  
23 garage all the way around my house.

24 CHAIRPERSON MIETZ: She's wrapping the whole  
25 backyard.

1 MS. KAY: Yeah.

2 MR. DiSTEFANO: So the house could cast a  
3 shadow.

4 MR. VANVALKENBURG: And we have a septic.

5 MR. DiSTEFANO: And you have a septic.

6 MR. VANVALKENBURG: The leach field is, you  
7 know --

8 MR. DiSTEFANO: And I'll ask that question.  
9 What kind of possible damage do these screws do to  
10 the --

11 MR. VANVALKENBURG: So that's why --

12 MS. KAY: It's moved back away from the --

13 MR. DiSTEFANO: So you're out of the leach  
14 field.

15 MS. KAY: Yes. These are out of the leach  
16 field.

17 MR. DiSTEFANO: So the limits you showed on  
18 here were the limit of the leach --

19 MS. KAY: Yes. Exactly. I calculated --

20 MR. DiSTEFANO: So the area that you want to  
21 put these is very limited on your yard.

22 MS. KAY: Yes.

23 MR. DiSTEFANO: Because of other --

24 MS. KAY: Well, because of other trees that  
25 I have on my property.

1 MR. DiSTEFANO: There are issues on your  
2 property that limit where you can put these panels.

3 MS. KAY: Exactly. And get the sun needed  
4 to actually produce enough power.

5 MR. DiSTEFANO: Understandable.

6 MS. KAY: Because originally it was going to  
7 be that we thought, okay, we can put part of it on my  
8 garage. And then part -- it's not -- it's not -- it's  
9 cost prohibitive to do that. It doesn't get enough  
10 sun.

11 CHAIRPERSON MIETZ: All right. Board  
12 members, any other questions? We'll have to talk  
13 about this a little bit. Just going around here. But  
14 there's no more design information available at this  
15 time.

16 MR. GORDON: I still have a couple  
17 questions.

18 CHAIRPERSON MIETZ: Go ahead.

19 MR. GORDON: So how are you running your  
20 lines to the house and avoiding the leach field?  
21 Because you have to cable this into the house.

22 MR. VANVALKENBURG: To the east of the leach  
23 field, which would run to the east side of the  
24 property to the northeast corner of the house.

25 MR. GORDON: And who is doing the fencing?

1 The fencing -- the 6-foot fence is not up; correct?

2 MS. KAY: No, it is not.

3 MR. GORDON: So who is doing that work?

4 MS. KAY: So I have already gotten quotes  
5 from Home Depot. You know, they have their own  
6 contractor.

7 Then I had another contractor -- you know,  
8 because I've always planned on putting the fence in.  
9 But this is, you know, just going to make it to where  
10 the fence is going to go in and it's also going to  
11 obscure the panels as well.

12 MR. GORDON: If the Board was willing to  
13 give you this variance, you would have no problem with  
14 the condition being that you complete the fence before  
15 installing the panels.

16 MS. KAY: No. I have no problem with that.

17 MR. GORDON: Is that a problem with the  
18 solar contractor if the fence is up before you put in  
19 your panels?

20 MR. VANVALKENBURG: No.

21 MS. KAY: I think it's going to make it  
22 easier personally if the fence is up before the panels  
23 go in.

24 MR. GORDON: And if the Board was to  
25 condition approval on this being set back a certain

1 distance from the property line, that wouldn't be a  
2 problem as long as that setback wasn't too great and  
3 pushed into the leach field; correct?

4 MS. KAY: Exactly. There's only so much  
5 room there because -- even though I have another piece  
6 of property, the way that my property is set up and  
7 with it never joined together, Dolenger never did  
8 that.

9 So I have an abstract, but Rick said,  
10 Rhonda, you don't use that piece of property or  
11 anything like that. It's got easements all over it  
12 and everything else.

13 So, you know, we can't even move it over to  
14 the other side because it's not joined to my property.

15 MR. DiSTEFANO: So Daniel, in your  
16 professional opinion, you'll be able to fit this array  
17 between the fence and the leach fields without the  
18 arrays on the tilt going over the property line. So  
19 they'd be going over the fence line.

20 MR. VANVALKENBURG: Yeah. Absolutely not.

21 MS. McKAY-DRURY: Well, but doesn't it  
22 depend on the setbacks?

23 MR. DiSTEFANO: Well, that's what I'm  
24 asking.

25 MR. VANVALKENBURG: If the setbacks are too

1 far, we're going to have to one, either restrict it to  
2 how many panels high we can go. And say we only can  
3 it to the 14 feet, then 8 feet, and then try to -- and  
4 go as wide or as long as we could go.

5 CHAIRPERSON MIETZ: Okay. Are there other  
6 questions by the board members?

7 MR. GORDON: Just one minor point of  
8 clarification. A 5-foot setback, for example,  
9 wouldn't be problematic?

10 MS. KAY: I don't think so, but I haven't  
11 had my property lines actually -- you know, I did it  
12 from where my fence is now to the back of the  
13 property. And I know where the property line is  
14 according to the trees.

15 But it hasn't been measured out to there. I  
16 only have the plaques. Does that make sense? In  
17 other words, I would want someone to come and actually  
18 put the --

19 MR. DiSTEFANO: The pins in.

20 MS. KAY: The pins in. So I know exactly  
21 where it is.

22 CHAIRPERSON MIETZ: It's pretty tight, this  
23 leach field here.

24 MR. GORDON: Okay. Thanks. That's all.

25 CHAIRPERSON MIETZ: Good? Okay. Thanks

1 very much.

2 MS. KAY: Thank you.

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

6 MS. O'BRIEN: Hi. My name is Shauna  
7 O'Brien. I live at 127 Southern Parkway. And I'm the  
8 executor of the estate for my parents who own the home  
9 at 1544 Crittenden Road.

10 The estate is currently in probate, which is  
11 why it's not currently occupied. But it is  
12 maintained.

13 My concern with the solar panels is the  
14 concern that was brought up by several of the board  
15 members. The 6-foot tall privacy fence would not  
16 prevent -- from the inside of the house at 1544  
17 Crittenden Road. The backyard -- the kitchen windows  
18 stand about 10 foot high. So very easily would see  
19 over a 6-foot tall privacy fence.

20 And the -- even with the anti-glare, from  
21 what I read about the solar panels, there still is the  
22 glare that does come in. And also just the appearance  
23 of the solar panels on their own.

24 If it were possible to do a longer array, as  
25 was pointed out, with nothing taller than 2 to 3 feet

1 with 6-foot tall fence, I would not have a problem  
2 with that. But that is my objection, which I outlined  
3 in the email this morning to Mr. DiStefano.

4 CHAIRPERSON MIETZ: Okay. Very good. Thank  
5 you very much.

6 Is there anyone else that would like to  
7 speak regarding this application? Okay. There being  
8 none then the public hearing's closed.

9 **Application 11A-03-23**

10 Application of Christopher Pacilio, agent,  
11 and Anne Wilder, owner of property located at 58  
12 Superior Road, for an Area Variance from Section  
13 207-11A to allow a hot tub to be located in a side  
14 yard in lieu of the rear yard as required by code.  
15 All as described in application and plans on file.

16 MR. PACILIO: Good evening, everyone. My  
17 name is Chris Pacilio. I live at 58 Superior Road  
18 with Ann Wilder.

19 And we are looking to place a hot tub on the  
20 side of the property. Unfortunately, the rear of our  
21 property, which is where it's preferred to be, has a  
22 utility line that comes about two-thirds up the center  
23 of the side of the property and comes diagonally into  
24 the house.

25 By code, you have to be 10 foot on either



1 side.

2 CHAIRPERSON MIETZ: Sir -- folks, if you're  
3 going to talk, you have to outside. The reporter  
4 can't hear more than one conversation at a time.

5 Go ahead.

6 MR. PACILIO: Yup. I was just saying the  
7 utility line runs diagonally across the property  
8 essentially to the side of the house.

9 Because of that, we have to be 10 feet on  
10 either side of the property. The other side -- the  
11 wire -- obviously you don't want the wire dropping  
12 into your water when you're in the hot tub.

13 So for that reason, we've had to find a new  
14 location for it. The only location we can find is  
15 going up the side of the house, in which case comes up  
16 about 18 feet from what I would call the rear of the  
17 house, which is the rear corner of the home.

18 The setback from -- if you look at the hot  
19 tub, it will sit at about -- I think about 54 feet or  
20 so from the front road, the main road, 58 Superior  
21 Road. So when you look at the road, you will have to  
22 look back 58 feet before you'd see the hot tub.

23 We'll be, of course, within 10 feet of our  
24 side neighbor, who has written a letter with this  
25 attachment with no problem with us having that

1 available to us.

2 We also -- you can see we've also outlined  
3 the landscaping for you as well. That was in the  
4 picture that was attached. If you don't have it, I  
5 have it here for you so you can see. Anybody wants a  
6 copy of that?

7 You can see from the picture when you take a  
8 look at this, essentially the way you're looking at  
9 the top of that picture, the right-hand side of the  
10 picture would be facing Superior Road.

11 So as you can see, it's pretty well covered.  
12 It won't look like a hot tub. It will look like a  
13 garden. We're big gardeners and trying to stay to the  
14 period of the properties. The home was built in the  
15 1920s. It's a Sears Roebuck home. So we're trying to  
16 stay to the era of the property.

17 Our intention is to make sure we make it  
18 look appealing to all of our neighbors. We want to  
19 kind of buffer the look and feel of it to our  
20 neighbors from the road. That's our intent. We don't  
21 want it to look ugly.

22 But the hardship is the utility line. We're  
23 just having difficulty finding a place to put it. So  
24 that's why we're asking for that.

25 CHAIRPERSON MIETZ: Sir, can you approximate

1       how far -- you said 10 feet from the property line.

2       But how far would it be to the next house?

3               MR. PACILIO:   The adjacent home?

4               CHAIRPERSON MIETZ:   Yeah.   About.

5               MR. PACILIO:   It's about 15 feet.   The back  
6       of the hot tub will be about 15 feet from our lot  
7       lines.   There's a tree line there today that would --  
8       we have right now.

9               CHAIRPERSON MIETZ:   Okay.   Board members,  
10      questions?   Anything?   Okay.

11              MR. GORDON:   I have a question.   So you say  
12      that it is the utility lines that are pushing you to  
13      put this hot tub on the side of your home.   I'm  
14      looking at your application and I just wanted to  
15      understand what I'm looking at here.

16              There's a mark on the south boundary of your  
17      property that is apparently demarcating the power  
18      lines running from just over the Penfield border  
19      towards the -- what I would describe as the -- I guess  
20      that would be the southeast corner of your house;  
21      right?

22              MR. PACILIO:   Yeah.   That's about --

23              MR. GORDON:   And there's a little square box  
24      denoting where you want to place the hot tub.   And  
25      there's a measurement of 18 feet showing the distance

1 from the hot tub to the power lines; correct?

2 MR. PACILIO: 18 feet to the corner.

3 MR. GORDON: To the corner. Okay.

4 Tell me why the hot tub couldn't be placed  
5 behind the house where -- you know, near the open  
6 porch and steps or near the overhang?

7 MR. PACILIO: That's all current landscaping  
8 today. That's not shown there. It's all landscaped.

9 MR. GORDON: So the reason you're not  
10 putting it there is not because of the power lines but  
11 because of the existing landscaping.

12 MR. PACILIO: I mean it's 10 feet in, which  
13 would take it to the center of the property, which we  
14 currently have trees. Two different trees are  
15 Japanese maples. There's two different types of  
16 Japanese maples in those spaces today.

17 Because where it says -- it says overhang.  
18 And see where those steps are? And see where the  
19 curvature of the driveway is? You almost have to  
20 finish that curvature as you come -- to where it comes  
21 just about straight, that is all garden. That's all  
22 trees and shrubs and such all in that back area.

23 MR. GORDON: But I just want the record to  
24 be clear, if you were able or willing to remove some  
25 landscaping directly behind the house, you could place

1 the hot tub there and not have a variance at all; is  
2 that right?

3 MR. PACILIO: Well, I suppose if that's what  
4 you would like. There's a patio there. There'd be a  
5 lot of movement and lot of change to the property.

6 MR. GORDON: All right. That's it.

7 MR. PACILIO: That's a good question. Thank  
8 you.

9 CHAIRPERSON MIETZ: Okay. Any other  
10 questions? Okay. Thank you.

11 MR. PACILIO: Yup. Thank you. Appreciate  
12 your time.

13 CHAIRPERSON MIETZ: Is there anyone here  
14 that would like to speak regarding this application?  
15 Okay. There being none, the public hearing's closed.

16 **Application 11A-04-23**

17 Application of Kenneth and Lauren  
18 Goodfellow, owners of property located at 7 Del Rio  
19 Drive, for an Area Variance from Section 207-2A to  
20 allow a front yard fence to be 4 feet in height in  
21 lieu of the maximum 3.5 feet allowed by code. All as  
22 described on application and plans on file.

23 MS. GOODFELLOW: Hi. My name is Lauren  
24 Goodfellow. This is my husband Kenny. We're at 7 Del  
25 Rio.

1           It's a corner lot on Westfall at Del Rio.  
2       We're installing a fence that's around the majority of  
3       our yard, which is considered the front yard, even  
4       though it doesn't really look like a front yard in my  
5       opinion.

6           And the contractor went through and in  
7       general, chain link fences are 4 foot high. We're  
8       getting about 215 feet. And the majority of it is  
9       considered a front yard. So instead of 3 and a half  
10      feet, we would like to go with the standard 4 feet  
11      height of chain link fence.

12           CHAIRPERSON MIETZ: Okay. How is the fence  
13      going to look? What type of fence are we talking  
14      about?

15           MR. GOODFELLOW: It's vinyl-coated chain  
16      link fence.

17           CHAIRPERSON MIETZ: So like the color?  
18      Black?

19           MR. GOODFELLOW: Black.

20           MS. GOODFELLOW: Black, yeah.

21           MR. D'AUGUSTINE: Did you investigate  
22      getting a wooden 3-and-a-half-foot fence so you  
23      wouldn't have to apply for a variance?

24           MS. GOODFELLOW: I wanted the chain link  
25      fence. It's just -- in my opinion, better looking.

1 And it'll be a little more secure. We have a dog.

2 And more affordable for us.

3 MR. D'AUGUSTINE: Can you talk about how the  
4 3-and-a-half-foot fence versus the 4-foot fence would  
5 make a difference for the dog?

6 MS. GOODFELLOW: We do have a large dog. So  
7 the height would be a little bit more protective for  
8 her.

9 But otherwise, it's mainly because the  
10 standard height -- and we talked to our contractor.  
11 We would either have to do a lot more work to bury the  
12 fence or we would have to cut the fence a lot more to  
13 make it 3 and a half feet. And the majority of it  
14 would be in the front yard. So that's like almost the  
15 entire fence.

16 So it's just a lot more time and money and  
17 work.

18 MR. GOODFELLOW: A good deal of the fence is  
19 going to be hidden by the bushes in the front yard.

20 CHAIRPERSON MIETZ: Can you describe -- for  
21 the record describe where the shrubs are.

22 MR. GOODFELLOW: The shrubs are inset maybe  
23 20 feet from the --

24 MS. GOODFELLOW: Yeah. So the fence is  
25 about 25 feet away from the road. And there's a

1 garden strip that's about 5 feet all the way to the  
2 side yard that's parallel to the road.

3 And I would say half of it is pretty high  
4 bushes. So you won't really see the fence from the  
5 road. The majority that can be seen from the road  
6 really is closer to the house at the driveway.

7 CHAIRPERSON MIETZ: So you're talking about  
8 from Del Rio; correct? When you say the road?

9 MR. GOODFELLOW: The road is Del Rio,  
10 correct.

11 CHAIRPERSON MIETZ: Because it butts up to  
12 the back of the two lots back there to your neighbors.

13 MR. GOODFELLOW: Can you repeat the  
14 question? I'm sorry.

15 CHAIRPERSON MIETZ: The fence will also but  
16 up to two houses to the south of you.

17 MR. GOODFELLOW: Correct. Yes.

18 CHAIRPERSON MIETZ: Have you spoken to those  
19 folks?

20 MS. GOODFELLOW: Yes. Yes.

21 CHAIRPERSON MIETZ: And?

22 MS. GOODFELLOW: They were fine with it.

23 CHAIRPERSON MIETZ: All right. Other  
24 questions?

25 MR. DiSTEFANO: Just -- can I just -- I



1 think you said this, but I just want to make it clear.  
2 The distance from the edge of pavement, not from your  
3 front property line, but from the edge of pavement to  
4 where this fence would be is how far?

5 MS. GOODFELLOW: The majority of it that's  
6 parallel to the road, 25 feet.

7 MR. DiSTEFANO: 25 feet off the edge of  
8 pavement.

9 MS. GOODFELLOW: Yes.

10 CHAIRPERSON MIETZ: So well outside the  
11 right-of-way. Okay.

12 Is there any other comments? Questions?  
13 Yes? No? Maybe? Okay. Thank you very much.

14 Is there anyone in the audience who would  
15 like to speak regarding this application? Okay.  
16 There being none, then the public hearing's closed.

17 **Application 11A-05-23**

18 Application of Erik Bjorneby, agent, and  
19 Greece Landing Properties - Larry Chen, owner of  
20 property located at 2852 West Henrietta Road for an  
21 Area Variance from Section 205-12 to allow for 47  
22 on-site parking spaces in lieu of the minimum 60  
23 parking spaces required by code allowing for the  
24 establishment of a Papa John's takeout pizza  
25 restaurant. All as described in application and plans

1 on file.

2 MR. LADUE: Good evening. My name is Jeff  
3 LaDue. I'm the architect and owner of FORM2  
4 Architecture located in Rochester, New York.

5 CHAIRPERSON MIETZ: Address for me. The  
6 street address.

7 MR. LADUE: 1851 Stone Road in Greece.

8 CHAIRPERSON MIETZ: Very good.

9 MR. LADUE: I'm here on behalf of EAB  
10 Architectural Design, who is working with Papa John's.  
11 It's their client. EAB is basically the architect of  
12 record and assisting with the meeting tonight  
13 presenting material.

14 Also here with me tonight is David Kruse  
15 with Passero. He's senior traffic planner with  
16 Passero.

17 And also, Jamie McVannan in the back there  
18 hiding, he's regional manager with Papa John's.

19 CHAIRPERSON MIETZ: Just one thing because  
20 it was a little confusing the last time we heard this.  
21 So you folks or representing the tenant; correct? Is  
22 that correct?

23 MR. LADUE: Well --

24 CHAIRPERSON MIETZ: I think that's important  
25 for us to understand.

1 MR. LADUE: Yes. So EAB -- I -- yes.  
2 Basically if you do the tree, I'm here on behalf of  
3 the EAB, who's representing Papa John's.

4 And an affidavit was signed and presented as  
5 part of the reapplication that named both the  
6 principal as EAB and myself as, I guess, able to speak  
7 on his behalf, Bruce Chen.

8 MR. GORDON: I'll just confirm. The Town  
9 does now have on file adequate documentation to show  
10 that Mr. LaDue and the architectural firm are  
11 authorized agents for not only Papa John's but also  
12 the owner, Larry Chen.

13 CHAIRPERSON MIETZ: Okay. Great. We just  
14 wanted to make it clear.

15 MR. LADUE: I do want to at least mention,  
16 and apologize to the Board, the confusion at that  
17 previous meeting. I know time is valuable. So we  
18 tried to get our ducks in a row with respect to that,  
19 also to have someone here to speak operationally if  
20 there's any questions.

21 CHAIRPERSON MIETZ: Excellent.

22 MR. PACILIO: And certainly, I know from the  
23 parking and the variance requests, having David here  
24 to speak professionally about his assessment, the  
25 demand assessment that he provided in the last -- you

1 know the application materials.

2 So again, we're here requesting an area  
3 variance at the property location 2852 West Henrietta  
4 Road. It's in the BF2 general commercial district.

5 On-site now it's a 14,536 square foot  
6 existing structure that currently has 40 -- I'm  
7 sorry -- 47 existing parking spaces on-site.

8 The tenant, Papa John's -- the proposed  
9 tenant, Papa John's, is looking to occupy the existing  
10 Cricket Cellular store, which is roughly 1300 square  
11 foot in size.

12 Because of the change of use from retail to  
13 restaurant, the parking demand is different, which  
14 is -- pushes the parking requirement on-site to be 60  
15 parking spaces. So we're requesting the variance --  
16 the variance is requested because of the increase  
17 above the 13 -- part of the 13 parking spaces -- or 12  
18 is the deficiency. I think 14 would be -- or a  
19 deficiency of 13. I'm sorry.

20 While it falls under the restaurant  
21 category, dine-in, the restaurant itself -- and I  
22 don't want to get out of my lane because we can get  
23 into deeper with -- operationally. But the -- it has  
24 no dine-in or dining on the premises either inside or  
25 outside. Basically, the customer area of the 1300

1 square foot is roughly 140 square feet. The remainder  
2 of it is for staff, kitchen, prep area and storage.

3 The -- so the proposed hours -- I'm sorry.  
4 The proposed hours of operation would be seven days a  
5 week, 11 a.m. to midnight. I think in the letter it  
6 might have mentioned 1 a.m., but I think based on  
7 code, midnight is the latest without a request for  
8 that. And at current, the tenant is fine with the  
9 midnight restriction, not the 1 a.m., as mentioned, I  
10 believe, in the cover letter or the letter of intent.

11 Again, as mentioned, it's primarily takeout  
12 and delivery. The staffing is two employees in-store  
13 and two delivery drivers.

14 The deliveries -- the store deliveries for  
15 product happens off hours. I think we had said it  
16 would be midmorning when to expect. I believe it's  
17 two deliveries a week. And then those are basically  
18 coming from a commissary in New Jersey, I believe,  
19 bringing materials up.

20 What I'd like to do is -- because we're  
21 talking about the parking and parking demand, I would  
22 like to give David a chance to speak about the parking  
23 demand assessment. I know initially a parking count  
24 was provided to the Board and there was some question  
25 about how that -- they wanted to have basically a

1 stronger understanding of what that meant and having  
2 someone like David to do an analysis of the site. So  
3 I'd like to have him speak.

4 MS. MCKAY-DRURY: Before that, can I just  
5 ask you, in your capacity appearing on the owner's  
6 behalf, do you know anything about the owner's plans  
7 for the spaces in this plaza that are vacant  
8 currently?

9 MR. LADUE: The plan with respect to the  
10 variance request and the park is that the proposed  
11 current uses and/or future of the remainder of this  
12 space would stay retail.

13 If there was anything that was different  
14 than that, I believe that, within the ordinances of  
15 the Town, has triggers in which that would have to  
16 come either before Planning Board or Zoning Board to  
17 ask for permission.

18 But at present, the plan is that it would  
19 be -- stay retail. It would fall under the 300 square  
20 feet per parking space in that area.

21 And even -- and that would be the extent of  
22 what he would know to date about whether -- the vacant  
23 space or not. So if the vacant space user came in and  
24 had a more dense parking requirement, obviously that  
25 would come before you and be treated as such.

1           My guess, if it went the other direction, I  
2           guess it would be at the discretion of both planning  
3           and building of whether or not it would need -- you  
4           know, in the change of the process, if it would need  
5           to come here.

6           MS. MCKAY-DRURY: So are there -- there's  
7           not currently negotiations going on?

8           MR. LADUE: No. The only negotiations going  
9           on currently is -- and I believe they've signed a  
10          10-year lease already -- would be Papa John's at that  
11          location. There's no other -- the remainder of the  
12          vacant space, there's no current discussions with any  
13          serious tenants.

14          MS. MCKAY-DRURY: And no current tenants  
15          looking to expand either?

16          MR. LADUE: No.

17          MS. MCKAY-DRURY: Thank you.

18          MR. KRUSE: Good evening, everyone. Thank  
19          you very much for the time. As Jeff mentioned, my  
20          name is Davis Kruse. I'm with Passero Associates.  
21          Passero is located at 242 West Main Street, Rochester,  
22          14614.

23                 We were brought on on behalf of the Papa  
24          John's project as well as speaking with the site  
25          owner. To answer your question, Ms. McKay-Drury,

1 about the vacant space, it is one of the largest --  
2 it's the largest space out there right now outside the  
3 vacant space the Papa John's is going in.

4 The conversations that I've had with him,  
5 because we were talking about that, especially, as  
6 Jeff was mentioning, about the intensity -- the  
7 potential intensity of the use for a future tenant in  
8 that space, the idea would be to perhaps go back to  
9 what it was before, which was that auto parts store,  
10 if anything.

11 So you have perhaps seen in the letter, and  
12 I can go through it and feel free to ask any questions  
13 about it, that's the type of use that we sort of  
14 backfill back into this parking assessment to show  
15 that if the site were to be fully occupied again, we  
16 would just use what was formally there, what could  
17 perhaps be there again and then we came up with our  
18 figures like that.

19 MS. MCKAY-DRURY: So all of your  
20 calculations contemplate essentially that kind of use  
21 in what is now vacant. It does -- none of your  
22 conclusions are based on the vacancies just remaining  
23 vacant?

24 MR. LADUE: Correct. The conclusion at the  
25 end of this letter was assuming that the entire site



1 would be reoccupied or occupied. Yeah. That every  
2 tenant space would be occupied.

3 And that was definitely a point of concern  
4 from our end was and especially if they were to come  
5 back in front of the Board to make sure they're not  
6 going to box themselves in as well. I mean, there's  
7 only so much parking they can accommodate on the site  
8 or have be accommodated by their space. So, you know,  
9 really it's -- the potential use is dictated by what  
10 supply they have.

11 So in terms of the actual letter, we took a  
12 look at what the use was going to be, especially about  
13 the operational aspects of it. This is not our  
14 typical quick-service or fast food, sit-down-type  
15 restaurant, given the fact there's no indoor space to  
16 eat at, as opposed to perhaps a Mark's Pizzeria or  
17 even a Pizza Hut. Those spaces being, of course, one  
18 you would go to actually eat on-site.

19 The parking accumulations there are  
20 certainly going to be higher versus something that's  
21 more takeout and delivery-oriented, which this site  
22 is. So we looked at that.

23 The hours of operation of the other tenant  
24 spaces on there, based on the Town Code with the  
25 remainder of the site in play, occupied, as well as

1 proposed space as a restaurant use, we come up with a  
2 requirement of 60 spaces, as was mentioned.

3 We're looking at this -- given our  
4 observations of the site and in speaking with the  
5 property owner and doing a little more research on  
6 this, the use to the backside of the building to the  
7 east of the property there, the parking spaces or the  
8 parking demand from that site is typically an island  
9 business where it's focused in front of that building  
10 and does not spill over into the main plaza here on  
11 any frequent basis. It's infrequent, rare.

12 So in this case, the letter looked at the 40  
13 main spaces, which would be the most applicable and  
14 the ones that would be used the most. So therefore,  
15 based on that 60, there's the deficit of 20 spaces or  
16 so.

17 However, going a little further with that,  
18 there was some information that was provided in terms  
19 of a parking count on-site over several days during  
20 typical peaks of the proposed use. And what was found  
21 based on those days of study was that during the peak  
22 lunchtime period, there were nine vehicles parked  
23 on-site. This is the 2852 site. And then during the  
24 dinner peak, there were ten vehicles.

25 So taking that, we have a sense of what the

1 site is -- basically parking rate per se, what the  
2 actual parking rate is for the site itself right now  
3 based on the occupied uses.

4 So on the second page of the report in the  
5 second section there, the parking demand analysis, we  
6 actually come up with an occupied parking rate based  
7 on what's out there. And that results in a much lower  
8 rate of demand versus what the Town Code requires.

9 Looking a little further, we observed couple  
10 sites, collected data at one, but based on our  
11 observations at other sites -- we looked at the Mark's  
12 Pizzeria on Jefferson Road in Henrietta and observed  
13 that site during peak lunchtime and peak dinnertime  
14 periods and found that the maximum spaces that were  
15 used there -- and it should be noted that that  
16 facility, that does have indoor seating. And I was  
17 certainly a former patron of that during lunchtime.  
18 That is a space people do go in to sit at to eat.  
19 That space and that site accumulated 12 parking spaces  
20 as a max demand.

21 To finish up the letter then, just to  
22 summarize the parking demand assessment, the existing  
23 uses we are assuming are taking up 11 spaces. The  
24 proposed site, proposed Papa John's, we assume that it  
25 would have a demand of approximately 12 spaces. This

1 is the peak demand.

2 And then redeveloping that vacant space,  
3 that 6,000 square feet of space into an auto parts  
4 store again, again that's 11 spaces for a total demand  
5 of 34. So with that and laying that onto the 40  
6 spaces that are just in front of the building itself,  
7 there is a buffer to accommodate the future supply or  
8 the future demand.

9 CHAIRPERSON MIETZ: Did you consider at all  
10 any data available for Papa John's and operations like  
11 this on what the real use for a store of this use?

12 MR. McVANNAN: My name is Jamie McVannan. I  
13 live at 268 Ashley Road in the town of Main, New York,  
14 which is down near -- and I apologize for my  
15 hoarseness. Thank you for your time.

16 Two main things come to mind right away in  
17 that plaza where the Parts Plus went out of business.  
18 Adjacent to that is a truck accessory store. They're  
19 closed on Saturday and Sunday, which would leave only  
20 the Papa John's and the liquor store as the operating  
21 business for Saturday and Sunday, which is  
22 coincidentally our busiest time of our week. Friday  
23 night, Saturday, Sunday are the three busiest days.

24 The business model for Papa John's has  
25 shifted significantly in the last three or four years.

1 And in particular, the biggest difference between  
2 Domino's and Papa John's is we use third-party  
3 DoorDash drivers. They're integrated right into the  
4 POS system.

5 So in the past, I opened Ithaca in 2003. So  
6 I'm in my 21st year with Papa John's. We used to have  
7 17 drivers on Friday night. So that's a lot of  
8 parking that you need.

9 That same store on Friday night runs two to  
10 three drivers because we have the ability to have  
11 DoorDash drivers. Push a button, they come and get  
12 it. They're quick. They're gone. You know, so those  
13 spots -- that same spot is being used by several  
14 vehicles now where in the past it was occupied by one  
15 of our own drivers.

16 We also have Grubhub and Uber Eats and they  
17 send their own drivers. So the business has really  
18 changed a lot in the past few years. And it's  
19 actually a good thing.

20 I went by the Domino's tonight. I was over  
21 at 2852 West Henrietta and about a mile or two up the  
22 road is a Domino's. They had four of their own  
23 vehicles there for the drivers, plus vehicles in the  
24 front for their patrons. And that's not going to  
25 happen with Papa John's.

1           So this particular location that we're  
2 building has no seating whatsoever. All my stores in  
3 the Binghamton and Syracuse area, they don't have  
4 seating. We're not doing slices at this location.  
5 There's zero seating.

6           So it's really going to be quick in, quick  
7 out, whether it's the customer picking up their food  
8 to take it home or the drivers coming in, coming out.

9           And like Jeff had mentioned, you know, two  
10 drivers is really all we need. And we have stores  
11 that we run now we don't even schedule a driver. We  
12 hit the button for DoorDash because it's a labor issue  
13 now. So we try to save -- you know, it's more  
14 cost-effective for us to not schedule a driver for the  
15 slower periods. And we can utilize the third-party  
16 delivery instead of paying a driver for the entire  
17 time.

18           So in my opinion -- I sat over a weekend and  
19 I sat a couple of the days in that same parking and  
20 did my own surveys. In my humble opinion for doing  
21 this for 21 years, there's plenty of parking available  
22 in that plaza.

23           There was, you know, one or two vehicles at  
24 the liquor store. And when Cricket was open and  
25 operating, again, one or two on the weekends. That

1 truck accessory store is closed. And of course, Parks  
2 Plus has been out of business for a while.

3 So that whole three-quarters of that left  
4 side of the plaza, the parking is wide open. And then  
5 there's -- you know, it's at the front of the building  
6 and then there's also parking across the back way too.  
7 So in my opinion there's plenty of parking for what my  
8 model is going to be for that particular location.

9 CHAIRPERSON MIETZ: And at the busiest time,  
10 how many of your personnel would be in the building  
11 max?

12 MR. McVANNAN: Typically three to four. And  
13 as volume increases, of course, we increase our staff.  
14 But it's not -- again, it's not like -- it's not like  
15 it used to be. We run it with less. It's like  
16 everything else.

17 CHAIRPERSON MIETZ: Okay. Any other  
18 questions for this gentleman about Papa John's or  
19 their experience at other locations?

20 MR. D'AUGUSTINE: He answered my question  
21 from last time about the food drivers.

22 CHAIRPERSON MIETZ: Okay. Thank you.

23 MR. McVANNAN: One other thing, you know,  
24 our operational standards are extremely high. So we  
25 like to be a good business partner in the community as

1 well.

2 So it's -- the onus is on the staff to make  
3 sure the parking lot is clean. We often sweep and  
4 clean neighboring businesses just to help keep, you  
5 know, the plaza looking better.

6 CHAIRPERSON MIETZ: Okay. Thank you. All  
7 right. You guys have more to present?

8 MR. LADUE: No.

9 CHAIRPERSON MIETZ: You're all set. Okay.  
10 Then let's see if there's any questions by the Board  
11 for any of the three of you. Any questions?

12 MR. DiSTEFANO: One question. Jamie, you  
13 were talking about -- I'm sorry. David, you were  
14 talking about the back rear parking. There's nothing  
15 that precludes the staff to park in that rear portion  
16 of the -- when I say the rear portion, that's further  
17 down Brighton Henrietta Townline Road. Those back  
18 seven parking spaces; correct?

19 Is there any regulation by the owner that  
20 says I don't want any Papa John's employees to be  
21 parking in those seven parking spaces that are in the  
22 rear?

23 MR. LADUE: No.

24 MR. McVANNAN: There was two or three cars  
25 parked there today and --



1 MR. DiSTEFANO: So in essence, those seven  
2 parking spaces, you can include those in the numbers.  
3 I understand why you didn't and I appreciate that  
4 showing you can do that with the 40, but there's still  
5 seven additional parking spaces that are available to  
6 staff.

7 MR. LADUE: Correct.

8 MR. DiSTEFANO: Okay. Thank you.

9 MR. McVANNAN: And on that point, sir, a lot  
10 of our employees are using electric scooters and  
11 electric bikes if they live local instead of taking  
12 cars. So we're seeing a big change in our Syracuse  
13 and Ithaca markets where in the past, everybody drove  
14 a car or, you know, the kids would get dropped off by  
15 a parent. A lot of them are taking electric scooters  
16 and bikes to come to work. So that saves a little bit  
17 of parking as well.

18 CHAIRPERSON MIETZ: Okay. Good. Anything  
19 else? We're good? Okay. Thanks.

20 Is there anyone -- I don't think there's  
21 anyone, but is there anyone who would like to speak  
22 regarding this application? I see none. So public  
23 hearing's closed.

24 (Public hearings concluded at 8:14 p.m.)

25 \* \* \*

## 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 1st day of November, 2023  
13 at Brighton, New York.

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21 *Holly E. Castleman*  
-----  
22 HOLLY E. CASTLEMAN, ACR,  
23 Court Reporter.  
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**BRIGHTON**  
**ZONING BOARD OF APPEALS**  
**DELIBERATIONS AND DECISIONS**

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November 1, 2023  
At approximately 7 p.m.  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

**PRESENT:**

DENNIS MIETZ  
Chairperson

|                         |   |               |
|-------------------------|---|---------------|
| HEATHER McKAY-DRURY     | ) | Board Members |
| KATHLEEN SCHMITT        | ) |               |
| ANDREA TOMPKINS-WRIGHT  | ) |               |
| (Present for decisions) |   |               |
| MATTHEW D'AUGUSTINE     | ) |               |

KEN GORDON, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

**ABSENT:**

JUDY SCHWARTZ  
EDWARD PREMO

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

1 MR. DiSTEFANO: I want to say that Member  
2 Wright has shown up and will be participating in the  
3 decision portion of the meeting.

4 **Application 11A-03-23**

5 Application of Christopher Pacilio, agent,  
6 and Anne Wilder, owner of property located at 58  
7 Superior Road, for an Area Variance from Section  
8 207-11A to allow a hot tub to be located in a side  
9 yard in lieu of the rear yard as required by code.  
10 All as described in application and plans on file.

11 MS. SCHMITT: I move to approve application  
12 11A-03 based on the following findings of fact.

13 **Findings of Fact:**

- 14 1. The variance requested is to allow a hot tub to be  
15 installed in the homeowner's right side yard rather  
16 than in the backyard as required by code.
- 17 2. The placement of the hot tub in the side yard is  
18 necessitated by the restriction of it being 10 feet  
19 from an overhead utility line, which on this property  
20 runs diagonally across significant areas of the  
21 backyard and because of the existing extensive  
22 landscaping on the part of the yard that does not have  
23 an overhead utility line.
- 24 3. Granting the variance request will not result in a  
25 change in the character of the neighborhood or be a

1 detriment to the nearby properties as the hot tub will  
2 be shielded from passersby due to the existing mature  
3 trees and extensive landscaping, which includes a  
4 living wall next to the property of the neighbor  
5 closest to where the hot tub will be placed. That  
6 neighbor also has sent a statement of support for the  
7 project. Moreover, the owners will install additional  
8 landscaping around the hot tub to further shield it  
9 from view.

10 4. The benefit sought by the applicant cannot  
11 reasonably be achieved by any other method or without  
12 this variance.

13 5. There's no evidence that there would be a negative  
14 impact on the health, safety and welfare of the  
15 neighborhood nor the environmental condition in the  
16 neighborhood.

17 **Conditions:**

18 1. The variance requested applies only to the hot tub  
19 described in and regulations the location depicted on  
20 the application and in the testimony given.

21 2. The homeowner shall install additional landscaping  
22 around the hot tub to further shield it from view.

23 3. All necessary building permits shall be acquired.

24 MS. TOMPKINS-WRIGHT: Second.

25 MR. GORDON: May I suggest two additional

1 findings?

2 MS. SCHMITT: I'd love to hear them.

3 MR. GORDON: Two simple findings. One is  
4 that the requested variance is not substantial. And  
5 two that the variance is the minimum necessary to  
6 grant the relief needed to accomplish the installation  
7 of the hot tub. Are those acceptable?

8 MS. SCHMITT: Those are acceptable.

9 MS. TOMPKINS-WRIGHT: Agreed.

10 **Additional Findings of Fact:**

11 6. The requested variance is not substantial.

12 7. The variance is the minimum necessary to grant the  
13 relief needed to accomplish the installation of the  
14 hot tub.

15 MR. DiSTEFANO: Motion is to approve with  
16 conditions.

17 (Mr. D'Augustine, yes; Mr. Mietz, yes;  
18 Ms. McKay-Drury, yes; Ms. Tompkins-Wright,  
19 yes; Ms. Tompkins-Wright, yes.)

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

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1     **Application 11A-05-23**

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

11            MS. TOMPKINS-WRIGHT: I move having  
12    considered the information presented by the applicant  
13    and having completed the required review pursuant to  
14    SEQRA, the Board determines that the proposed project  
15    would not likely have a significant environmental  
16    impact and has made the following decision: I move to  
17    approve application 11A-05-23 based on the following  
18    findings of fact.

19     **Findings of Fact:**

20     1. The granting of the requested variance will not  
21     produce an undesirable change to the character of the  
22     neighborhood or be a detriment to the nearby  
23     properties. The parking variance is for a plaza with  
24     shared parking in mostly retail uses with different  
25     peak hours. The demand for parking can be met by a

1 reduced number of parking spaces in the plaza as a  
2 whole. As indicated by the parking study, the number  
3 of available parking spaces in the plaza at tested  
4 times and at presumed 100 percent occupancy rates for  
5 the applicant's use is enough to accommodate the  
6 applicant's parking needs so as not to put a strain on  
7 any neighboring property or public rights-of-way.

8 2. The requested variance is not substantial given  
9 the evidence presented that the current available  
10 parking is sufficient and given the fact that the  
11 applicant's use is takeout and delivery only, which  
12 limits the number of parking spaces needed due to the  
13 generally shorter duration of the parking use by  
14 customers.

15 3. The benefit sought by the applicant cannot  
16 reasonably be achieved by any other method as there  
17 are no other parking areas that could lessen the  
18 variance request that are not already being utilized  
19 as parking.

20 4. There is no evidence that the proposed variance  
21 will have an adverse effect or impact on the physical  
22 or environmental condition in the neighborhood or  
23 district.

24 5. The difficulty leading to this variance request is  
25 not self-created as it stems from the physical



1 limitation of available parking on the property and  
2 the current demands for additional space.

3 **Conditions:**

4 1. The variance granted herein applies only to the  
5 parking described in and the location as depicted in  
6 the application and in the testimony given.

7 2. This variance only applies so long as the 1,318  
8 square foot space in question is utilized as a Papa  
9 John's restaurant that operates by takeout and  
10 delivery only with no indoor or outdoor dining seating  
11 as was described in the testimony given.

12 3. All remaining portions of the plaza must only be  
13 occupied by uses with parking requirements of not more  
14 than one space per 300 square feet.

15 MR. D'AUGUSTINE: Second.

16 MR. GORDON: I just have two requests. For  
17 condition 3, after the words "parking requirements,"  
18 can you insert the word "under Brighton's  
19 comprehensive development regulations? Those words.

20 MS. TOMPKINS-WRIGHT: Agreed.

21 MR. D'AUGUSTINE: Yes.

22 MR. GORDON: And also, maybe I missed it,  
23 Andrea, but I didn't hear a finding that this was the  
24 minimum necessary.

25 MS. TOMPKINS-WRIGHT: I said the benefit

1 sought by the applicant cannot reasonably be achieved  
2 by any other method as there are no other parking  
3 areas.

4 MR. GORDON: Can we just add the finding  
5 therefore, this is also the minimum necessary variance  
6 needed to achieve the applicant's goal.

7 MS. TOMPKINS-WRIGHT: Isn't that the same  
8 thing?

9 MR. GORDON: It's a separate piece of the  
10 code.

11 MS. TOMPKINS-WRIGHT: Okay.

12 MR. D'AUGUSTINE: Okay.

13 MR. DiSTEFANO: Motion is to approve with  
14 conditions.

15 **Findings of Fact as Amended:**

16 1. The granting of the requested variance will not  
17 produce an undesirable change to the character of the  
18 neighborhood or be a detriment to the nearby  
19 properties. The parking variance is for a plaza with  
20 shared parking in mostly retail uses with different  
21 peak hours. The demand for parking can be met for a  
22 reduced number of parking spaces in the plaza as a  
23 whole. As indicated by the parking study, the number  
24 of available parking spaces in the plaza at tested  
25 times and at presumed 100 percent occupancy rates for

1 the applicant's use is enough to accommodate the  
2 applicant's parking needs so as not to put a strain on  
3 any neighboring property or public rights-of-way.

4 2. The requested variance is not substantial given  
5 the evidence presented that the current available  
6 parking is sufficient and given the fact that the  
7 applicant's use is takeout and delivery only, which  
8 limits the number of parking spaces needed due to the  
9 generally shorter duration of the parking use by  
10 customers.

11 3. The benefit sought by the applicant cannot  
12 reasonably be achieved by any other method as there  
13 are no other parking areas that could lessen the  
14 variance request that are not already being utilized  
15 as parking.

16 4. There is no evidence that the proposed variance  
17 will have an adverse effect or impact on the physical  
18 or environmental condition in the neighborhood or  
19 district.

20 5. The difficulty leading to this variance request is  
21 not self-created as it stems from the physical  
22 limitation of available parking on the property and  
23 the current demands for additional space.

24 6. Therefore, this is also the minimum necessary  
25 variance needed to achieve the applicant's goal.

1       **Conditions:**

2       1. The variance granted herein applies only to the  
3       parking described in and the location as depicted in  
4       the application and in the testimony given.

5       2. This variance only applies so long as the 1,318  
6       square foot space in question is utilized as a Papa  
7       John's restaurant that operates by takeout and  
8       delivery only with no indoor or outdoor dining seating  
9       as was described in the testimony given.

10      3. All remaining portions of the plaza must only be  
11      occupied by uses with parking requirements under  
12      Brighton's comprehensive development regulations of  
13      not more than one space per 300 square feet.

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

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

1     **Application 11A-01-23**

2             Application of Rhonda Kay, owner of property  
3     located at 1534 Crittenden Road, for an Area Variance  
4     from Section 207-49 to allow for the installation of  
5     ground-mounted solar panels in lieu of roof-mounted  
6     panels as required by code. All as described on  
7     application and plans on file.

8             MS. McKAY-DRURY: I move that we reopen the  
9     public hearing and table application number 11A-01-23.

10            MR. D'AUGUSTINE: Second.

11            MS. McKAY-DRURY: I would add for further  
12     information.

13            MR. DiSTEFANO: Motion is to table and keep  
14     the public hearing open.

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

18            (Upon roll motion to table and keep the  
19     public hearing open carries.)  
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1     **Application 11A-04-23**

2             Application of Kenneth and Lauren  
3     Goodfellow, owners of property located at 7 Del Rio  
4     Drive, for an Area Variance from Section 207-2A to  
5     allow a front yard fence to be 4 feet in height in  
6     lieu of the maximum 3.5 feet allowed by code. All as  
7     described on application and plans on file.

8             MS. McKAY-DRURY: I move that we approve  
9     application 11A-04-23 based on the following findings  
10    of fact.

11    **Findings of Fact:**

12    1. The variance requested will not result in a  
13    substantial change in the character of the  
14    neighborhood or detrimentally affect the surrounding  
15    properties because the fence is only 6 inches higher  
16    than the maximum allowed for a front yard fence on  
17    what is a corner lot. The majority of the fence will  
18    be hidden by existing landscaping and will be located  
19    approximately 25 feet from the road.

20    2. The difficulty necessitating the variance request  
21    can't be solved in any other manner not requiring a  
22    variance because the homeowners have a dog, a tall  
23    dog, and would like to ensure that the dog is secure  
24    within their property.

25    3. The variance requested is not substantial in that

1 it is only a 6-inch difference.

2 4. The variance request is the minimum necessary to  
3 grant relief from the difficulty in that, again, the  
4 homeowners believe that it is necessary to secure  
5 their dog. And according to their contractor, a fence  
6 is not four feet in height on custom orders.

7 5. The proposed variance is consistent with  
8 surrounding properties so as not to have an adverse  
9 effect or impact on the physical or environmental  
10 conditions of the neighborhood or district because  
11 there are other chain link fences located nearby and  
12 the fence proposed will not be particularly noticeable  
13 given that it will be a black chain link fence.

14 **Conditions:**

15 1. It's limited to the application on file and the  
16 testimony provided.

17 2. All necessary building permits should be obtained.

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

19 MR. DiSTEFANO: Now, can we do a finding  
20 about the cost? I don't like that finding.

21 MR. GORDON: We're just going to delete the  
22 portion of that finding, which was number 4.

23 MS. McKAY-DRURY: After "secure their dog."

24 MR. GORDON: We're going to delete the  
25 portion prior to "secure their dog" where you said

1 that it is because the contractor said that the fence  
2 is only 4 feet or custom order. So we want to delete  
3 that portion of finding number 4.

4 MS. TOMPKINS-WRIGHT: Can we also add a  
5 finding with respect to -- on the substantialness that  
6 it's -- the fence will be located 25 feet from the  
7 pavement?

8 MS. SCHMITT: Did you say if there were  
9 other chain link fences -- did their application say  
10 that there are no chain link fences on neighboring  
11 properties?

12 MS. MCKAY-DRURY: I live on Westfall  
13 nearby --

14 MR. GORDON: But your hearing record, your  
15 testimony, does not substantiate that. Had you  
16 brought that up during the testimony --

17 MR. DiSTEFANO: And just because there may  
18 be chain link fences, they might not meet code.

19 MR. GORDON: So I believe that was actually  
20 finding number 5 where you said that there would not  
21 be a detrimental -- or would not have an adverse  
22 impact on the neighborhood because there are other  
23 chain link fences nearby or something like that.  
24 Let's delete that phrase as well.

25 MS. SCHMITT: She can put instead --



1 MR. GORDON: She had two.

2 MS. McKAY-DRURY: That's fine. I approve  
3 those changes.

4 (Simultaneous conversation interrupted by the court  
5 reporter.)

6 MR. DiSTEFANO: Can I just -- my typical  
7 conditions for fences is as per plans submitted and as  
8 per style and location.

9 CHAIRPERSON MIETZ: That will cover it.  
10 That's fine. As per plans submitted and as per style  
11 and location.

12 MS. McKAY-DRURY: So that's what we're  
13 adding to condition one?

14 MR. GORDON: We're adding to --

15 MS. McKAY-DRURY: Add a third?

16 MR. DiSTEFANO: I thought that would replace  
17 condition number 1. What condition --

18 MS. McKAY-DRURY: Application on file and  
19 testimony given --

20 MR. DiSTEFANO: In particular as per style  
21 and location shown.

22 **Findings of Fact as Amended:**

23 1. The variance requested will not result in a  
24 substantial change in the character of the  
25 neighborhood or detrimentally affect the surrounding

1 properties because the fence is only 6 inches higher  
2 than the maximum allowed for a front yard fence on  
3 what is a corner lot. The majority of the fence will  
4 be hidden by existing landscaping and will be located  
5 approximately 25 feet from the road.

6 2. The difficulty necessitating the variance request  
7 can't be solved in any other manner not requiring a  
8 variance because the homeowners have a dog, a tall  
9 dog, and would like to ensure that the dog is secure  
10 within their property.

11 3. The variance requested is not substantial in that  
12 it is only a 6-inch difference.

13 4. The variance request is the minimum necessary to  
14 grant relief from the difficulty in that, again, the  
15 homeowners believe that is necessary to secure their  
16 dog.

17 5. The proposed variance is consistent with  
18 surrounding properties so as not to have an adverse  
19 effect or impact on the physical or environmental  
20 conditions of the neighborhood or district because  
21 there are other chain link fences located nearby and  
22 the fence proposed will not be particularly noticeable  
23 given that it will be a black chain link fence.

24 **Conditions:**

25 1. It's limited to the application on file and the

1 testimony provided in particular as per style and  
2 location shown.

3 2. All necessary building permits should be obtained.

4 MR. DiSTEFANO: The motion is to approve  
5 with conditions.

6 (Ms. Schmitt, yes; Mr. D'Augustine, no;  
7 Mr. Mietz, yes; Ms. Tompkins-Wright, yes;  
8 Ms. McKay-Drury, yes.)

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

11 (Proceedings concluded at 9:03 p.m.)

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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 1st day of November, 2023  
13 at Brighton, New York.

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21 ----- *Holly E. Castleman* -----

22 HOLLY E. CASTLEMAN, ACR,  
23 Court Reporter.  
24  
25