
BRIGHTON
ZONING BOARD OF APPEALS
MEETING

December 6, 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)	
JUDY SCHWARTZ)	
MATTHEW D'AUGUSTINE)	

LAUREN BARON, ESQ.
Attorney for the Town

RICK DISTEFANO
Secretary

ABSENT:

ANDREA TOMPKINS-WRIGHT

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

1 CHAIRPERSON MIETZ: Good evening, folks.
2 We'll get ourselves rolling. Welcome to the December
3 meeting of the Zoning Board of Appeals.

4 Let me just tell you briefly how we run this
5 meeting. Tonight we have 5 applications to go
6 through. What we do is that when your application is
7 called by Mr. DiStefano, please come up to the podium,
8 give us your name and address -- business address is
9 fine -- and then you can present your case. You would
10 try to explain to us why you feel we should approve
11 your application.

12 Obviously, we have the materials, the
13 application. Most of the board members visit each
14 location just to understand the geographics of it. We
15 will ask you questions to clarify anything.

16 Then when we complete that, we will ask
17 anyone in the audience that might have interest in
18 your application to speak if they wish. And after
19 they do that, we will then close the public hearing,
20 move to the next.

Once we complete all five, we might take a couple minutes before we start and then we will go in order and go through the deliberations.

24 You're welcome to stay and listen to that if
25 you wish. There's no interaction between the

1 applicant and the board members at that point, but
2 you're welcome to hear the deliberations. We make a
3 decision tonight on everything except for an
4 application that ends up needing to be tabled for some
5 reason.

6 Other than that, if you stay, you'll hear
7 the result tonight. If you don't stay -- you don't
8 need to you -- call Mr. DiStefano in the building
9 office tomorrow and he'll let you know what the result
10 of your application was.

11 Okay. So Rick, was the meeting properly
12 advertised?

13 MR. DiSTEFANO: Yes, Mr. Chairman. It was
14 advertised in the Brighton -- excuse me -- the Daily
15 Record of November 30th, 2023.

16 CHAIRPERSON MIETZ: Okay. Can you call the
17 roll?

18 (Whereupon the roll was called.)

19 MR. DiSTEFANO: Please let the record show
20 Ms. Tompkins-Wright is not present.

21 CHAIRPERSON MIETZ: Okay. And Rick, do you
22 have anything you want to talk to us about?

23 MR. DiSTEFANO: Yeah. There are a couple
24 additional communications in your folder that did not
25 make the final agenda.

1 Judy, they're attached, all stapled
2 together. Yeah. That whole packet is -- has that in
3 there.

4 So if you want to take a quick second, if
5 you haven't yet reviewed them, you can take a quick
6 second to take a look at them.

7 Basically, if there's anybody in the
8 audience that would like to see them, I can give
9 you -- or show you a copy of those. They are
10 pertaining -- well, basically to application
11 12A-02-23.

12 CHAIRPERSON MIETZ: Okay. Very good.

13 MR. DiSTEFANO: Were there any questions
14 regarding any other applications from the board
15 members?

16 CHAIRPERSON MIETZ: Rick, can you just do me
17 a favor just real quick? Who has each application?
18 Could you run down the list?

19 MR. DiSTEFANO: I hope I brought it.

20 CHAIRPERSON MIETZ: If not, we can --

21 MR. DiSTEFANO: I got it. So Matt's got
22 12A-01; Heather, 12A-02; you got 12A-03, you know
23 that; Ed got 12A-04 and Kathleen's got 12A-05.

24 CHAIRPERSON MIETZ: Okay. So we have
25 minutes. We have October and November, Rick?

1 MR. DiSTEFANO: Yes.

2 CHAIRPERSON MIETZ: Okay. So how about --

3 MR. DiSTEFANO: Hold that mic closer so
4 everyone can hear.

5 MS. SCHWARTZ: Can you hear me now?

6 CHAIRPERSON MIETZ: Yes.

7 MS. SCHWARTZ: Page 20, line 3, it should be
8 Mietz, M-I-E-T-Z.

9 Page 28, line 20, the first word should be
10 application.

11 Page 33, line 13, toward the end should be
12 zip code.

13 Page 43, line 18, number 4, the first word
14 is T-H-E-R-E.

15 That's all.

16 CHAIRPERSON MIETZ: Does anyone have
17 anything else on the October minutes to add? No?
18 Motion please.

19 MR. D'AUGUSTINE: Motion.

20 MR. PREMO: Second.

21 MR. DiSTEFANO: Motion to approve with the
22 corrections.

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

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

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

3 CHAIRPERSON MIETZ: Okay. Now the November
4 minutes. Judy wasn't there. So did anyone else have
5 anything they looked at, see anything wrong with the
6 November minutes? Okay. I didn't see anything
7 glaring there. Anybody? Nope.

8 Can we get a motion for those?

9 MR. D'AUGUSTINE: Motion.

10 CHAIRPERSON MIETZ: Second, please.

11 MS. MCKAY-DRURY: Sure.

12 CHAIRPERSON MIETZ: Thank you.

13 MR. DiSTEFANO: Motion is to approve the
14 November 1st, 2023, minutes.

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

18 (Upon roll motion to approve carries.)

19 CHAIRPERSON MIETZ: All right. Thank you.
20 So we're caught up on minutes.

21 MR. DiSTEFANO: All

22 CHAIRPERSON MIETZ: When you're

23 first application.

audience is here for application 11A-01-23, which was

1 tabled at our November meeting, they have requested a
2 postponement to the January meeting.

3 So we'll go into 12A-01-23.

4 **Application 12A-01-23**

5 Application of Excelsior Communities, LLC,
6 agent, and Brighton Village Apartments, owner of
7 property located at 1625 Crittenden Road, for an Area
8 Variance from Section 203-30A(1) and 203-2.1B(3) to
9 allow a storage garage to be 2,400 square feet in lieu
10 of the maximum 600 square feet allowed by code. All
11 as described on application and plans on file.

12 CHAIRPERSON MIETZ: So who do we have
13 speaking for this application? Nobody?

14 All right. You want to pass on --

15 MR. DiSTEFANO: Yeah. We'll go -- hold this
16 open and move on to the next one.

17 CHAIRPERSON MIETZ: Okay. Excuse me,
18 gentlemen. Are you here for Brighton Village
19 Apartments?

20 UNIDENTIFIED SPEAKER: No, sir.

21 CHAIRPERSON MIETZ: Okay. Thank you.

22 **Application 12A-02-23**

23 Application of Rafiullah Sahak, lessee, and
24 Taib Samir Elkettani, owner of property located at
25 2829 West Henrietta Road, for an Area Variance from

1 Section 205-12 to allow for 17 on-site parking spaces
2 in lieu of the minimum 26 parking spaces required by
3 code, allowing for the establishment of a specialty
4 food store (refer to parking variance application
5 10A-02-17). All as described in application and plans
6 on file.

7 CHAIRPERSON MIETZ: Who do we have speaking
8 for this application? Please come forward. Give us
9 your name and address, sir. Whoever's going to speak
10 needs to give us their address.

11 MR. BELHSEINE: Okay. My name is Samir,
12 S-A-M-I-R, Belhseine, B-E-L-H-S-E-I-N-E. And I am on
13 behalf of Cox Building Properties, LLC, about the
14 matter of approving the new application for new
15 tenant.

16 CHAIRPERSON MIETZ: Can you give us a
17 business address or your address?

18 MR. BELHSEINE: Yes.

19 CHAIRPERSON MIETZ: Just a street address.

20 MR. BELHSEINE: It's West Henrietta.

21 CHAIRPERSON MIETZ: Do you have an office?

22 MR. BELHSEINE: Yes, we have an office.

23 It's 5912 Benz Drive, Zephyrhills, Florida 33540.

24 CHAIRPERSON MIETZ: Okay. Great. When
25 you're ready.

1 MR. BELHSEINE: Okay. So the application
2 for, you know, to have a new store there. They said
3 they have to have dumpster there. We did have the
4 dumpster already.

5 MR. DiSTEFANO: Just -- I think you're
6 getting a little confused with what the Planning Board
7 wanted to see and what the Zoning Board needs to see.

8 MR. BELHSEINE: Okay.

9 MR. DiSTEFANO: Just for the record, they
10 have been in front of the Planning Board and they got
11 tabled from the Planning Board because they needed a
12 conditional use permit also besides the area variance
13 for parking. And it was tabled. And they need
14 additional information to go to the Planning Board.

15 So anything that the Planning Board
16 requested, you need to talk to the Planning Board at
17 their meeting about it. We're here just basically to
18 talk about the need for the parking variance.

19 MR. BELHSEINE: Okay. For the parking, I
20 mean, we have the two tenants already. I think the
21 number we have issue with parking lot because the tea
22 place is mostly take out. So they have four parking
23 lot there. And plus additional we have some parking
24 in the back where, you know, the employees -- I mean,
25 each store have their own employee. They have parking

1 lot there.

2 And his store is not even corner store.
3 It's like kosher special, you know, food, like dry
4 food, some special meats and stuff. So the customer
5 they would have -- that would come is not that busy.
6 So it's not really that corner store where you have to
7 request a lot of parking lot.

8 And with this parking lot, because we have,
9 you know, extra parking lot, we have Chinese food
10 parking in our -- you know, in our parking. Plus next
11 door pawn shop that use our parking because we all
12 time have enough space for parking.

13 So the store actually, if you see, is a
14 really small store. It's not a big store. So we can
15 have a lot of parking. But smaller store there in the
16 plaza.

17 MR. DiSTEFANO: For the record, can you tell
18 us how big that store is going to be?

19 MR. BELHSEINE: I don't have how many square
20 feet, but I can show you.

21 CHAIRPERSON MIETZ: There's a plan here,
22 Rick.

23 MR. BELHSEINE: 650 square feet.

24 CHAIRPERSON MIETZ: That's the one that says
25 2829 North? Is that the space you're talking about?

1 The one on the angle on the corner.

2 MR. BELHSEINE: Yes. It's this one here.

3 MR. DiSTEFANO: Turn that around.

4 MR. BELHSEINE: I have more --

5 CHAIRPERSON MIETZ: It shows on here 750
6 square feet. This one right here?

7 MR. BELHSEINE: (Indicating.)

8 It shows 770 square feet.

9 MR. D'AUGUSTINE: It's outlined in orange,
10 guys.

11 MR. BELHSEINE: Plus we have a letter that
12 said the owner -- he did send it -- explain -- I have
13 a couple of copies here. I have more copies for each
14 one to give. Give me one second.

15 But we have a letter from the -- explaining
16 everything else.

17 MR. DiSTEFANO: They might have it. Let me
18 see the letter that you're -- they have this letter.

19 MR. BELHSEINE: They have this?

20 MR. DiSTEFANO: The board members have this.

21 MR. BELHSEINE: We have different pictures
22 we took. That's the parking lot all time, at
23 different times on the weekends and everything.

24 MR. DiSTEFANO: For the record, can you tell
25 us what time these pictures were taken?

1 MR. BELHSEINE: What time?

2 MR. SAHAK: So like 11 o'clock.

3 MR. BELHSEINE: 11 a.m.

4 MR. SAHAK: 11:30.

5 MR. BELHSEINE: 11:30.

6 CHAIRPERSON MIETZ: Guys, only one of you
7 can speak because she has to try to record all this.

8 MR. BELHSEINE: Okay.

9 CHAIRPERSON MIETZ: It doesn't matter which
10 one. Just only one can talk at a time.

11 MR. BELHSEINE: No problem. I'm sorry. So
12 like I said, it's different time. We never have full
13 parking lot there.

14 CHAIRPERSON MIETZ: Okay.

15 MR. BELHSEINE: So like I said, the tea
16 place is like takeout. It's special Korean tea that
17 people -- they don't come and sit there. So we don't
18 have to do the parking lot.

19 And plus we have like lady she do like nails
20 and stuff, all time she only have one customer. She
21 work only by herself. The customer comes and is the
22 only one.

23 And like I said, the owner before, because
24 the parking is all time empty, the pawn shop all time,
25 his employees or sometimes Chinese people come there

1 and park in our area.

2 Now, the time that he came and we see that
3 we have zoning problems, we did said to him -- we put
4 sign. We don't want no more of that employees to park
5 in our area to make sure that we don't have no problem
6 with zoning or with anything.

7 That's why we did have something. If you
8 want the letter I think I has it. We sent it to Jason
9 that we did that. And I did call the town to put
10 signs there that we're not allowing anybody there on
11 our premises.

12 MR. DiSTEFANO: So there has never been an
13 agreement between the property owner and these other
14 users to use that parking?

15 MR. BELHSEINE: No. No. They just come
16 there. And Samir told them -- he said please -- but
17 to him, make an agreement or nothing with them.

18 MR. DiSTEFANO: And can you explain what
19 else is in there? Isn't there a number of apartments
20 or a few apartments --

21 MR. BELHSEINE: Okay. We have --

22 MR. DiSTEFANO: -- also in that building?

23 MR. BELHSEINE: We have few apartments
24 there. And each one is one unit. They have one cars.
25 And they work whole day. And I think we have -- I

1 think we sent letters. You have those letters. We
2 did send something signed by them.

3 Like I said, I did have their plate numbers,
4 license, so we can make sure that when we call the
5 towing company, we have two cars in the back there.

6 MR. DiSTEFANO: And what will the hours of
7 operation be for the new tenant?

8 MR. BELHSEINE: 9 a.m. to 10 p.m.

9 MR. DiSTEFANO: So there could be some
10 conflict with the apartments.

11 MR. BELHSEINE: Yeah. But the apartment in
12 the back, like I said, all time -- we can show you the
13 pictures. In front we have plenty of parking lot.

14 MR. DiSTEFANO: Yeah. I'm just saying that
15 at some point in time there could be customers,
16 employees of the new store at the same time the
17 apartment users are home.

18 MS. McKAY-DRURY: Can I ask -- we're talking
19 about apartment users. I'm trying to catch up. Are
20 we talking about the apartments that are located at
21 2805?

22 MR. DiSTEFANO: No. The second floor of the
23 existing building.

24 MS. McKAY-DRURY: The subject property.

25 MR. DiSTEFANO: Yeah. The subject property

1 has apartments on the second floor.

2 MR. D'AUGUSTINE: Couple submitted letters.

3 MR. DiSTEFANO: Two or three.

4 MS. MCKAY-DRURY: How many apartments are
5 there?

6 MR. BELHSEINE: Two.

7 MS. MCKAY-DRURY: Two apartments.

8 MR. BELHSEINE: Yeah.

9 MS. MCKAY-DRURY: And what's their need for
10 parking?

11 MR. BELHSEINE: One. Each one. Because it
12 is one unit.

13 CHAIRPERSON MIETZ: One thing -- go ahead.

14 MR. BELHSEINE: One bedroom.

15 MS. MCKAY-DRURY: You said that there's
16 people parking in violation there?

17 MR. BELHSEINE: Yes. We have Chinese. If
18 you see the pawn shop there, they have -- they own the
19 Chinese. And we all time we have the four cars all
20 time parking. We have no problems before.

21 So now with the zoning -- I don't think we
22 have problems now to be honest with you because we
23 never parked in front because, like I said, the
24 business we have there is not sit down people that
25 will come there and use our parking lot.

1 But because of the zoning, we need talk to
2 the pawn shop and tell them, okay, from tomorrow, we
3 don't want nobody there. We give you -- you know,
4 that nobody can allowed to be there. If anybody do
5 that, we be towing cars from there. So keep the
6 space.

7 MS. MCKAY-DRURY: So those cars were from
8 the --

9 MR. BELHSEINE: Pawn shop and the Chinese.
10 I think the letter explains that to -- the letter, you
11 know, he said you have it. It explain everything.

12 But like I said again, I don't think we have
13 any problems with parking lot there. Because like I
14 said, the kind of business we have there is not like
15 people come and use the parking all day.

16 MS. MCKAY-DRURY: Do the apartments have
17 certain of these 17 spots?

18 MR. BELHSEINE: Yeah. In the back.

19 MS. MCKAY-DRURY: Labeled for them?

20 MR. BELHSEINE: Yeah.

21 MS. MCKAY-DRURY: And then parking for the
22 remainder of the building, can that happen anywhere
23 within the 17?

24 MR. BELHSEINE: The customer or -- yeah. We
25 have just -- like I said, the only -- got two

1 apartments and then one of the employees in the back
2 they want him and whatever there, they can park in the
3 back.

4 But the front we never have those -- like I
5 said, we don't have to worry about the front and
6 stuff.

7 Like I said, again, we want just make sure
8 that everybody's comfortable. That's why we take that
9 option to that other guy not to park in our area
10 anymore to keep everything open all the time.

11 MS. MCKAY-DRURY: Thank you.

12 CHAIRPERSON MIETZ: Can you just -- it would
13 be helpful maybe to the board members. Could one of
14 you describe this new operation, what is it really
15 going to be? What's going to happen there? How
16 you're using it. He just answered -- are those hours
17 seven days a week, what you just told us? 9 to 10
18 p.m., is that 7 days a week?

19 MR. BELHSEINE: Okay. It would be seven
20 days. Like I said --

21 CHAIRPERSON MIETZ: Can you describe the
22 operation?

23 MR. BELHSEINE: So there will be -- like I
24 said, it would be dry food like rice, all from
25 overseas, outside of the country. Nothing would be

1 like -- like I said, the community of, you know,
2 either halal or halal or something like that.

3 And we have a lot of stores, bigger stores,
4 around the area. This one just for -- because he
5 wanted to do something small so he can help himself.

6 CHAIRPERSON MIETZ: It's not prepared food.

7 MR. BELHSEINE: No. No.

8 CHAIRPERSON MIETZ: Is there anything else
9 the other gentleman wanted to explain to us about it?

10 MR. BELHSEINE: He says you see this
11 picture, but I mean, he took it himself. I have other
12 picture.

13 CHAIRPERSON MIETZ: Okay. I just want to
14 make sure we can be as clear as to what kind of
15 operation it is.

16 MR. BELHSEINE: Like I said, it's a store,
17 halal. Kosher, we call it.

18 CHAIRPERSON MIETZ: So not really a
19 convenience store.

20 MR. BELHSEINE: No, it's not.

21 CHAIRPERSON MIETZ: Okay. Good.

22 MS. SCHMITT: I have two questions. One,
23 the variance says that you're supposed to have 26
24 parking spaces but you only have 17. And you want --
25 is that correct? Are you required to have 26 and it's

1 been reduced to 17?

2 MR. DiSTEFANO: Yes. With the bubble tea,
3 they came in for a variance -- which I think I sent
4 the minutes for in regards to that variance back in
5 2017, I believe -- that we gave them a reduction in
6 parking because of the bubble tea being a delivery
7 only type of takeout and delivery type of facility.

8 So we're adding onto that variance. And in
9 actuality, all we're doing is reducing it by one
10 space. It used to be 25 were required before this
11 store. Now 26 would be required for that plaza prior
12 to the store moving in.

13 So now we've had to up that variance
14 basically for -- allowing for one less parking space
15 than what the Code allows with this new user.

16 MS. SCHMITT: So one of the questions I had,
17 because I thought it was more of a restaurant than a
18 kind of takeout, why would it be that there would only
19 be three people including an employee shopping at one
20 time? Don't most stores have -- have or want to have
21 multiple people coming in and purchase the rice or the
22 other dry goods that you're talking about?

23 MR. BELHSEINE: Yeah. Because like I said,
24 our -- I talk to my, you know -- we talk to them. We
25 go to the place. Even they have lot parking, we all

1 time have two or three. Even the cashier, sometimes
2 we have only have one guy there helping and putting
3 everything away.

4 Like I said, this is basically a store you
5 go one, two times to pick up. Not every day you go
6 there. And you pick up rice, special rice, special
7 spices and like that. We never -- I never go and even
8 seen like six or seven people at the same time.

9 MS. SCHMITT: And how many employees would
10 be parking at the store?

11 MR. BELHSEINE: So he said in beginning now,
12 because of the business, it would only be himself.

13 MS. SCHMITT: Okay.

14 MR. DiSTEFANO: Just make a little
15 clarification too please for the Board. There was a
16 retail store in this location when we granted the
17 bubble tea variance.

18 The only difference is that because it's now
19 a specialty food store, a specialty food store has a
20 higher demand for parking than a regular retail
21 establishment. The difference is -- because it's a
22 small specialty food store, the difference is only one
23 parking space.

24 So if this was coming in as a -- he was
25 coming in as a gift shop let's say, there would be no

1 variance necessary because it would require the same
2 amount of parking as when we granted the variance for
3 bubble tea.

4 CHAIRPERSON MIETZ: Was there any issues
5 with the parking previously when the retail was there?
6 None that were --

7 MR. DiSTEFANO: From what I'm familiar with,
8 no. It was a cellular store. So they don't
9 generate -- they're not a heavy traffic generator.

10 CHAIRPERSON MIETZ: You received no
11 complaints?

12 MR. DiSTEFANO: We received no complaints,
13 no.

14 MR. BELHSEINE: I mean, we never had issue
15 with parking, like I said before.

16 MS. MCKAY-DRURY: Is there a -- what's the
17 situation with garbage? Are there dumpsters taking
18 up --

19 MR. BELHSEINE: Yes. We have an agreement.
20 We have an agreement. We have pictures here.

21 CHAIRPERSON MIETZ: He's showing us the side
22 of the building and the dumpster is located on the
23 corner. It's sitting kind of in -- next to the last
24 parking space. And it's kind of open. It's not
25 shielded in any way. It's just sitting in the parking

1 lot.

2 MR. DiSTEFANO: And it's not physically in a
3 parking space; correct?

4 CHAIRPERSON MIETZ: Well, it looks like it
5 is. I mean, there's snow and ice in this picture. So
6 I can't see the stripe line. So I guess we'd have to
7 look at the other one and see if -- hold on. See if
8 we can match it up here and see where it is as far as
9 the spaces are concerned.

10 So show on here, sir, where it is and I'll
11 say it. So it's -- yeah. It's up in the front
12 corner. So it is -- looks like it's kind of at the
13 edge of the space. It's not a full space, but it's
14 like at the edge of the space.

15 MS. MCKAY-DRURY: Can you explain what
16 space?

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

19 CHAIRPERSON MIETZ: If you look at this --
20 sorry, guys. If you're looking at this drawing, it's
21 right down here.

22 MR. D'AUGUSTINE: It's to the left of the
23 space that says HC.

24 CHAIRPERSON MIETZ: Yes. It's right down in
25 the corner. Right here.

1 MS. BARON: I also just want to note for the
2 record the initial correspondence that was received
3 from the property owner, Cox Building Properties,
4 indicates that he's also agreed that both the
5 applicant and the bubble tea shop tenant use one
6 single parking lot spot to accommodate both their
7 small size dumpster. So he did say that in the letter
8 he submitted.

9 MR. DiSTEFANO: Are you good with that,
10 Heather? Are you okay, Heather?

11 MS. MCKAY-DRURY: Yeah.

12 CHAIRPERSON MIETZ: So what other questions
13 for these gentlemen do we have?

14 MR. DiSTEFANO: Can we just touch back --
15 because we kind of interrupted you when you were going
16 to kind of tell us -- show us the pictures and kind of
17 give us a time that those pictures were taken kind of
18 showing, you know, the parking lot, just kind of
19 showing us what the usage of the parking lot was.

20 MS. BARON: The date and the time if
21 possible.

22 MR. BELHSEINE: The one with snow is --

23 MR. DiSTEFANO: You're going to need to --
24 you're going to need to do it from back here so that
25 it's on the stenographer's transcript.

1 So you can kind of hold it -- give it to me.

2 Tell me what time it is and then I'll pass it around.

3 MR. BELHSEINE: This one was Saturday.

4 MR. DiSTEFANO: Do you know what time?

5 MR. BELHSEINE: 11:30.

6 MR. DiSTEFANO: Okay. Thank you.

7 MR. BELHSEINE: This was today around 12,
8 12:30.

9 MR. DiSTEFANO: 12/6 at 12:30 approximately.

10 MR. BELHSEINE: This is yesterday about 2
11 p.m. That showed the back of the area in the street.

12 MR. DiSTEFANO: 2 p.m. yesterday.

13 MR. BELHSEINE: This is Saturday at about 3
14 p.m.

15 MR. DiSTEFANO: Saturday at 3 p.m.

16 Do you need to see any more?

17 CHAIRPERSON MIETZ: No.

18 MR. DiSTEFANO: We're good.

19 CHAIRPERSON MIETZ: I'm satisfied.

20 MR. BELHSEINE: He said has videos too. We
21 have two videos of different times.

22 CHAIRPERSON MIETZ: Okay. We've got it.

23 Okay.

24 So what else can you tell us?

25 MR. BELHSEINE: As owner of the property, we

1 have a right to have him there, first of all, to help
2 the community area and plus as business to have spot
3 planted, as you know.

4 We all time -- you know, good with
5 everybody, our neighbors, our tenants. We have good
6 reviews. We have letters. We showed these letters
7 before. We all time for them -- do the best to get
8 them going.

9 CHAIRPERSON MIETZ: Who would take
10 responsibility going forward if people from the
11 adjacent businesses continue trying to park there or
12 whatever? Who's responsible?

13 MR. BELHSEINE: I would be because I would
14 be calling --

15 CHAIRPERSON MIETZ: So you're like the
16 property manager in a sense.

17 MR. BELHSEINE: Yes.

18 CHAIRPERSON MIETZ: So they would tell you,
19 oh, there's cars here.

20 MR. BELHSEINE: I drive around all the time.
21 I go myself and see.

22 CHAIRPERSON MIETZ: You're local --

23 MR. BELHSEINE: Yeah. Local. I'm sorry.
24 To see if anything happened and check with them if
25 they need anything.

1 CHAIRPERSON MIETZ: Okay. And you said
2 you're putting up signage too?

3 MR. BELHSEINE: Yes.

4 CHAIRPERSON MIETZ: In order to tow cars,
5 you have to have a sign up.

6 MR. BELHSEINE: Of course. That's why I
7 said I called the company and they said they come and
8 put signs. That would resolve, I think, problems.

9 CHAIRPERSON MIETZ: Okay. Is there any
10 other questions for this gentleman?

11 MR. DiSTEFANO: Can you spell your last name
12 for me?

13 MR. BELHSEINE: Belhseine. B-E-L -- I will
14 give you my business card.

15 MR. DiSTEFANO: That'd be great. I don't
16 want to hold anybody up.

17 CHAIRPERSON MIETZ: Okay, gentlemen. Thank
18 you very much.

19 Is there anyone in the audience who would
20 like to speak regarding this application? One at a
21 time, I guess, please.

22 MR. FREUDENVOLL: Hi, everybody.

23 CHAIRPERSON MIETZ: Name.

24 MR. FREUDENVOLL: Adam Freudenvoll,
25 F-R-E-U-D-E-N-V-O-L-L. And I'm 2831 West Henrietta

1 Road. So I am the parking lot that shares where
2 they're going.

3 So basically this is all news to me. This
4 gentleman here, I've never met before. I'm there
5 every day. I basically live there. I work six days a
6 week.

7 I know the owner is Taib. Taib and I had a
8 natural relationship just from being neighbors. And,
9 you know, the parking was never really an issue on
10 either side.

11 In terms of a mix-use lot, the Chinese
12 restaurant that we have as a tenant, oftentimes they
13 would grab a bubble tea. You know, they'll park and
14 have some food at the restaurant, walk over, get a
15 bubble tea. Everything was copacetic.

16 It was a relationship between really me and
17 Taib's son, who owned the cell phone store.
18 Unfortunately, he had an untimely passing.

19 So then, you know, Taib was out of town.
20 He's usually not even in the country.

21 So lately, it's been tough to even
22 communicate. But everything's been fine until this,
23 you know, has come up. I was notified on Monday just
24 a few days ago of this whole situation.

25 The parking spot where the dumpsters are --

1 and I've talked to Chris Roth about it multiple times
2 because they're corralled and garbage goes everywhere.
3 And I'm always out there cleaning. I have nice
4 landscaping on the site to keep nice greenspace, which
5 again, was a moot point. I did what I could. But,
6 you know, it's -- in addition to everything else going
7 on, it's a lot.

8 So where the dumpster is, me and Taib had an
9 agreement one of my employees would park in the spot
10 where the dumpster is. It's right in front of the
11 dumpster. That's the only person that parks over
12 there.

13 Three feet to the right of that is a stoned
14 area where my employee could park no problem and it
15 would be on our property.

16 So it was never really an issue, you know.
17 But now, with the amount of -- you have retail space
18 and then two apartments. There's just simply not
19 enough parking.

20 So when he's saying everyone from our
21 businesses are parking over there, it's usually the
22 other way around. And, you know, I can show you live
23 feed from all my surveillance cameras, but if you do,
24 each business has one, oftentimes two, people in there
25 that work there or are, you know, like Meetra has her

1 and her husband there. There's only eight spots up
2 front.

3 So if they're taking up -- including
4 handicap spaces. So if each business needs one
5 handicap spot -- I don't know what the regulation
6 is -- or two, however it may have you by the size and
7 then on top of the employees parking up front, I don't
8 see where there's any more room to fit anybody.

9 You know, the back lot is always, you know,
10 the tenants with the apartments. You know, different
11 people come in and out of there. It's a constant type
12 of rotation. It's not really a long-term tenant. So
13 a lot of people come in and out. You know, it's kind
14 of a month-to-month situation.

15 But in the gist of it, it's -- you know, now
16 we have two dumpsters because the other dumpster was
17 just delivered, I think, yesterday. So where are you
18 going to put another dumpster?

19 The trucks can barely fit back there to even
20 pick the dumpster up. I'm shocked that they can. And
21 then, you know, now you got two spots.

22 So one is literally tucked behind the other.
23 I don't know how they're going to pull this off, but,
24 you know, Casella could never get the other dumpster,
25 you know.

1 But then also deliveries. I mean, where are
2 these semis going to back up into? You know, semis
3 already tried to back into that parking lot for bubble
4 tea. Blocking that whole parking lot. None of my
5 employees or the restaurants can go in there -- or
6 patrons can go in there.

7 So I don't see how this is really feasible
8 with what's already there, you know.

9 CHAIRPERSON MIETZ: What was your experience
10 when the phone store was there?

11 MR. FREUDENVOLL: Well, the fun thing about
12 the phone store is the son occupied one of the
13 apartments. So he parked in one of the spots in the
14 back and he just walked to the front and opened the
15 store. And you know, it was not a busy store. You
16 know, one, two people here or there, you know.

17 But now if you're talking one or two
18 employees, then, you know, couple customers at a time,
19 I just don't see how.

20 But again, with the son, it was an
21 understanding. We never had -- if something happened
22 or we needed something, we just called each other.
23 Like I said, this is all out of you know, completely
24 left field.

25 CHAIRPERSON MIETZ: I think --

1 MS. SCHWARTZ: How many parking spaces are
2 in the back?

3 MR. FREDENZOLL: Of their place?

4 MS. SCHWARTZ: Of the area you're speaking
5 of.

6 MR. FREDENZOLL: Of where the dumpster is?

7 MS. SCHWARTZ: No. There's a dumpster in
8 the front you said. But in the back --

9 MR. FREDENZOLL: No. The dumpster is on the
10 back of the building.

11 UNIDENTIFIED SPEAKER: There might be five
12 parking spaces right back there.

13 MR. FREDENZOLL: Yeah. I think five.

14 So there's only eight up front. So I don't
15 know where the number -- there's only 13 available
16 spots. I haven't even seen a map. I don't --

17 MS. SCHWARTZ: But do any of the staff park
18 in the back if they need to?

19 MR. FREUDENVOLL: From their businesses?

20 MS. SCHWARTZ: Or in general. I mean, in
21 the spaces that are there.

22 MR. FREUDENVOLL: Yeah. That's where the --
23 because bubble tea is usually two to three employees
24 on at a time.

25 So again, you know, it's two to three people

1 working there. Meetra's Spa parks right in front of
2 her building. So her customers always park in my lot.
3 But me and Meetra get along very well. She visited my
4 store before today. There was no issue.

5 CHAIRPERSON MIETZ: This shows 17 spaces.

6 MR. FREUDENVOLL: Can I see it by chance?

7 CHAIRPERSON MIETZ: Sure.

8 MR. FREUDENVOLL: So you got three spots by
9 road, one, two, three. Okay. I believe this is
10 three.

11 MR. DiSTEFANO: That's four. One, two,
12 three, four.

13 MR. FREUDENVOLL: I understand, but --

14 MR. DiSTEFANO: Is it striped?

15 MR. FREUDENVOLL: No. It's striped three as
16 far as I know.

17 MR. DiSTEFANO: It can fit four. I mean, we
18 don't -- you know, the thing is that --

19 MR. FREUDENVOLL: But if it's striped for
20 three, you can't park four there. You know?

21 And then that's -- when I went out there and
22 there's -- there's only five here. So then Meetra
23 parks in front of the one. And they have a dumpster
24 where that one is.

25 MR. DiSTEFANO: Aerial's showing seven on --

1 in the front, including this one.

2 MR. FREUDENVOLL: There's only seven spots.

3 MR. DiSTEFANO: There's ten in front -- at
4 least ten in front. I count 11 in front.

5 So right now, we're going based on what
6 we're calling the 17 parking spaces on the site.

7 MR. FREUDENVOLL: So you're just basing off
8 the drawing, not what's actually there?

9 MR. DiSTEFANO: Well, we can condition that
10 that parking space be striped.

11 MR. FREUDENVOLL: Yeah. It'd have to be
12 striped that way for them to park.

13 MR. DiSTEFANO: That can be a condition of
14 the thing -- I mean, of the approval if we go that
15 route.

16 MR. FREUDENVOLL: Do you know if the width
17 would fit four spots? Because then you --

18 MR. DiSTEFANO: I don't have a measurement
19 of this, but this is the -- one of the things you got
20 to realize is that -- and a lot of the properties on
21 West Henrietta Road there's a lot of nonconformance in
22 terms of parking space size and number of parking
23 spaces.

24 So basically when we've looked at this in
25 the past, we have accepted the fact that they need 17

1 parking spaces there.

2 MR. FREUDENVOLL: Well, all I'm saying is
3 though if there's not 17 spaces striped, no one's
4 going to park and take up --

5 MR. DiSTEFANO: Well, we can condition that
6 17th space is striped.

7 MR. FREUDENVOLL: I understand 100 percent.
8 But I don't think there's enough space. And the
9 condition of the parking lot itself, there's three,
10 four grates that literally have bricks on them. How
11 you gonna park on that?

12 CHAIRPERSON MIETZ: We've been over there.
13 We've seen it.

14 MR. FREUDENVOLL: Yeah. It's not, you
15 know -- and I'm trying to do what I can over there.
16 You see my parking lot. It's saw cut and paved the
17 whole one side. I'm trying to keep it as nice as
18 possible, you know.

19 And that's why I said, I'm out there
20 cleaning the garbage. It's non-corralled. It's
21 like -- it's pushing it. You know?

22 Now it's like another -- are they sharing
23 this dumpster? Are the two tenants sharing the --

24 MR. DiSTEFANO: One thing I want to make
25 sure is we're getting a little crossover with what the

1 Planning Board looks at and what the Zoning Board
2 looks at. The Zoning Board is looking at the
3 requirement for them to meet parking.

4 CHAIRPERSON MIETZ: Gentlemen, stop talking,
5 please.

6 MR. DiSTEFANO: The conditional use permit,
7 it allows the use to be there. That also talks about
8 hours, numbers of employees, garbage collection and
9 everything. That goes through under the conditional
10 use permit with the Planning Board.

11 Now, the Planning Board tabled that at their
12 last meeting. They're supposed to be going back to
13 them on December 20th to address the concerns that the
14 Planning Board had. Okay?

15 What we're really working on, yes, if the
16 dumpster -- if there's multiple dumpsters that take up
17 parking spaces, then that is an issue for this board.

18 MR. FREUDENVOLL: Okay.

19 MR. DiSTEFANO: We have to look at how many
20 available parking spaces there are on site.

21 MR. FREUDENVOLL: Feasibility-wise, yeah.

22 MR. DiSTEFANO: And how many really do they
23 need? The Code is just used as an arbitrary
24 calculation for parking, but is that really what the
25 uses on that site are going to need to meet their

1 parking needs?

2 MR. FREUDENVOLL: Totally understandable.

3 Does it have anything to do with traffic
4 either? Like the amount that comes in and out?

5 Because it is -- you know, that's a very precarious
6 little area, you know, with a lot of accidents.

7 MR. DiSTEFANO: And this is why I kind of
8 get into the nonconformance of many of these parking
9 lots on West Henrietta Road. They don't all meet the
10 necessary drive aisle lanes because they were
11 basically developed in that manner long before some of
12 the zoning codes went into effect.

13 MR. FREUDENVOLL: Yeah. Everything was
14 built. Yeah. I get it. No, totally.

15 It's just when I saw a convenience store,
16 I'm like, how are we going to manage? And in and
17 out -- the cops are in and out, in and out, in and
18 out. Because that is a hairy area. There's almost an
19 accident every day out front. I mean, it gets pretty
20 crazy. That's all.

21 CHAIRPERSON MIETZ: Okay.

22 MR. FREUDENVOLL: Any questions for me?

23 CHAIRPERSON MIETZ: No. Appreciate you
24 giving your insight.

25 Is there someone else that would like to

1 speak? Please come up, sir.

2 MR. URBONAVICIUS: My name is Mindis,
3 M-I-N-D-I-S. Last name's U-R-B-O-N-A-V-I-C-I-U-S.
4 164 Southern Drive.

5 My past experience with the prior store is
6 that with parking and stuff. I am appointment-only.
7 So --

8 CHAIRPERSON MIETZ: Where are you, sir?
9 What is your business?

10 MR. URBONAVICIUS: I'm 164 Southern Drive.

11 CHAIRPERSON MIETZ: What is it?

12 MR. URBONAVICIUS: I have a cabinet shop.
13 It's right behind both of these two businesses.

14 CHAIRPERSON MIETZ: Very good.

15 MR. URBONAVICIUS: And tractor trailers
16 would block my spot to deliver to the phone place when
17 I wasn't there. And I always had to go outside there
18 to try to find somebody to move them. They didn't
19 have any respect to not block my alleyway because they
20 didn't see anybody there so they would just go park
21 there.

22 So on there -- other thing was the garbage.
23 You know, to put a corral back there, it probably
24 needs two spaces. But I'm always picking up garbage.
25 I hate it. That's all I got.

1 CHAIRPERSON MIETZ: Okay. I appreciate it.
2 Is there anyone else that would like to speak
3 regarding this application? Okay.

4 You needed a clarification?

5 MS. SCHMITT: I do. I want --

6 CHAIRPERSON MIETZ: Hold on one second.

7 So could we have one of you gentlemen come
8 back up? We have just one question here before we
9 close the public hearing.

10 Go ahead.

11 MS. SCHMITT: I wanted to talk a little bit
12 about where do the tractor trailers park when they're
13 delivering items to the various stores?

14 MR. BELHSEINE: For him?

15 MS. SCHMITT: For any of your tenants.

16 MR. BELHSEINE: We have the back there.

17 MS. SCHWARTZ: And how would they get -- I'm
18 looking at kind of a Google Maps of that area as well
19 as pictures that you've drawn and I'm not sure how --

20 MR. BELHSEINE: I'm sorry to cut you a
21 little bit. The tea place -- I mean, we don't have
22 those big trucks delivering there. You have to
23 understand what kind of business we have.

24 The tea place is, you know, little tea,
25 specialty tea. Even for him, he would not have those

1 big trucks delivering.

2 And they have nail salon. She never have
3 delivery there.

4 So really to be honest with you, we never
5 have any problems that we have big delivery truck come
6 back there.

7 MS. SCHMITT: So why do you think two people
8 who are next door neighbors, the two people that just
9 testified, said that they have tractor trailers
10 blocking their store, their alleyway and their
11 driveway?

12 MR. BELHSEINE: I don't know why he said
13 that, to be honest with you. My opinion, we never
14 have -- if we have problems before -- we never had any
15 complaint to us never. Never complaint to the Town.
16 Nothing.

17 MS. SCHMITT: So do you think that
18 they're -- I'm just trying to -- why do they think
19 there are trucks there?

20 MR. BELHSEINE: We don't. It cannot be.
21 For small --

22 MS. SCHMITT: I want to understand why
23 the --

24 MR. BELHSEINE: My opinion, that's the guy
25 that owns the pawn shop, they don't want these guys to

1 be there first of all. I can tell you he don't like
2 the guy. Period. I have no further explanation for
3 that. I'm sorry.

4 MS. SCHMITT: Okay. Thank you.

5 MS. MCKAY-DRURY: I have a question.

6 CHAIRPERSON MIETZ: Whoa, whoa, whoa.

7 Go ahead.

8 MS. MCKAY-DRURY: Is any of this building
9 vacant?

10 MR. BELHSEINE: The apartment?

11 MS. MCKAY-DRURY: Any of the building.

12 MR. BELHSEINE: No. The only one, you
13 know -- he's the new tenant in it. He's the only
14 space. Because we have three space in the bottom and
15 we have long time tenant and --

16 MS. MCKAY-DRURY: I see behind this unit --
17 the one that's marked with the orange, it says
18 retail/office and then office. Are those parts of the
19 spa?

20 MR. BELHSEINE: Which office? I'm sorry.

21 MR. D'AUGUSTINE: I think that's a business
22 office.

23 MR. BELHSEINE: We have no business office.

24 MS. MCKAY-DRURY: Who has those spaces that
25 are in the second map that you have?

1 MR. BELHSEINE: This is one store. Nobody
2 have anything here. Nothing here.

3 MS. MCKAY-DRURY: So it's vacant?

4 MR. BELHSEINE: Yeah. Nothing there.
5 Because never any tenant there.

6 MS. MCKAY-DRURY: Okay. So just for
7 purposes of the record, we're talking about a spot
8 that's labeled office in the center of the building.
9 And that's vacant.

10 And then what about the one that's labeled
11 retail/office? That's located west, I believe. That
12 one.

13 MR. BELHSEINE: I think before it was a
14 computer store. It was computer store before the tea
15 place. So there's no offices there.

16 MR. DiSTEFANO: What I do think is that this
17 particular floor plan is not a hundred percent
18 accurate.

19 CHAIRPERSON MIETZ: I think the question's
20 important though. Is there vacancy there that are
21 going to be --

22 MR. BELHSEINE: No vacancy. Only vacancy is
23 this store.

24 CHAIRPERSON MIETZ: Does that answer your
25 question?

1 MS. MCKAY-DRURY: Okay. It's hard to --

2 CHAIRPERSON MIETZ: I agree.

3 MS. MCKAY-DRURY: And to credit something,
4 when I the have floor plan in front of me that's
5 showing what would be vacant and leasable space --

6 I was very confused.

7 CHAIRPERSON MIETZ: All right. We can
8 deal -- we'll deal with that in the deliberations.

9 That's a fair question. Okay. Thank you.

10 MR. SAHAK: I have two, three questions.

11 CHAIRPERSON MIETZ: You're going to need to
12 come up, your name and address, if you're going to
13 speak.

14 MR. SAHAK: So sorry. My English is not
15 very good. My friend, he translate my English for
16 you.

17 My name is Rafiullan Sahak,
18 R-A-F-I-U-L-L-A-N, last name, S-A-H-A-K.

19 I'm the owner of this new business, this
20 very small business. Only for like 30 families. I
21 don't know this like -- how much situation.

22 He translate.

23 MR. BELHSEINE: I'm sorry, guys.

24 CHAIRPERSON MIETZ: It's okay. Take your
25 time. You need to have it all correct.

1 MR. BELHSEINE: He said I already talk about
2 this.

3 CHAIRPERSON MIETZ: We don't need to go over
4 it again. We understand.

5 Okay. So at this point, I think we can
6 close the public hearing and move to the next
7 application.

8 **Application 12A-03-23**

9 Application of Amanda Costanza, architect,
10 and Jonathan Zhe, owner of property located at 73 Cobb
11 Terrace, for an Area Variance from Section 205-2 to
12 allow attached garage area to be 1,140 square feet,
13 after construction of a 646 square foot garage
14 addition, in lieu of the maximum 900 square feet
15 allowed by code. All as described on application and
16 plans on file.

17 MS. COSTANZA: I am Amanda Costanza,
18 architect, 9 by 30 Design, 314 Hollywood Avenue. I'm
19 here representing Jonathan Zhe, the owner of 73 Cobb
20 Terrace.

21 They have a 1929 house on Cobb Terrace.
22 It's one and a quarter acres -- one and a quarter acre
23 lot. So that's pretty substantial for that street.
24 It's a large lot. It's 240 feet of frontage.

25 The issue that they've encountered, they

1 started to have kids and need slightly larger vehicles
2 than the compact cars they moved in with.

3 Their attached garage is located under the
4 house. It has really low ceilings, low doors. And
5 their driveway slopes down into the doors. And so
6 it's hard for them to get larger vehicles into the
7 garage.

8 It's also only 19 feet wide. And so once
9 they're in, with their baby, they can't get out of the
10 car. And so it makes the whole idea of having a
11 detached garage not quite as useful if you can't get
12 out of the car.

13 So we looked at ways to alter their existing
14 garage to make it more functional for them, but
15 because it's under the house and the way it's
16 situated, it was -- just wasn't really feasible to
17 enlarge that existing garage.

18 So the idea that we've come up with to solve
19 this problem for them was to add an additional
20 detached garage on the side of the house at the main
21 level of the house because of the sloped lot.

22 This new garage is the right size for two of
23 today's sized vehicles, but not larger. And it would
24 be side access. So the doors wouldn't face the
25 street. There will be the least impact on the

1 neighbors as possible and not look like you have a
2 four-car garage on the house.

3 It's using the same curb cut as the existing
4 driveway. So it'll enter down the existing driveway
5 and curve around and go into the side of the garage to
6 the back of the property.

7 It's screened from the street and the
8 neighbor's view with really large evergreen trees.
9 That will remain.

10 And the next-door neighbor who would be most
11 impacted by this project has seen the plans and
12 supports it.

13 CHAIRPERSON MIETZ: Okay. Was there any
14 other option that you looked at to solve their problem
15 besides this?

16 MS. COSTANZA: We did a -- we started with
17 trying to see if we could raise the headers above the
18 garage doors. There's basically 4 inches to work with
19 there. So we could recess steel headers into the
20 floor framing to give us an additional 4 inches. That
21 wasn't going to be enough.

22 So then we looked at if we were to lower the
23 slab of the garage, how do we do that? That's, you
24 know, not an easy undertaking. And there'd be issues
25 with that. So we --

1 CHAIRPERSON MIETZ: It would be --

2 MS. COSTANZA: Yeah. And the problem with
3 that is the house has all stone on the outside. We
4 were trying to maintain that and not disturb that.
5 The way it's graded was going to be too difficult.

6 So this is the solution we came up with.

7 CHAIRPERSON MIETZ: Okay.

8 MS. SCHWARTZ: The only vegetation that
9 would be removed is right there. But the vegetation
10 that's going toward the neighbor, all that's going to
11 remain?

12 MS. COSTANZA: Right. Yes. Yeah.

13 CHAIRPERSON MIETZ: Okay. Good. Okay.

14 MR. DiSTEFANO: Just with what Ms. Schwartz
15 was saying, there is a fairly large tree right by the
16 driveway now as you pull in. It's a town tree. It's
17 located in the Town right-of-way. You will not be
18 removing or disturbing that tree; correct?

19 MS. COSTANZA: No, we won't be.

20 MR. DiSTEFANO: Great.

21 CHAIRPERSON MIETZ: Good idea. Okay. Good.

22 Other questions by the board members?

23 MR. PREMO: Just trying to understand when
24 this is all done and you're looking at the front of
25 the house, where the garage is currently located, will

1 that still be there?

2 MS. COSTANZA: That will still be there,
3 yes.

4 MR. PREMO: And that will be used for
5 storage?

6 MS. COSTANZA: Because the new garage is
7 only large enough for the vehicles, that would still
8 be used for lawn mowers, bikes, that kind of thing.

9 MR. PREMO: Okay. Has this gone to ARB?

10 MR. DiSTEFANO: Have you gone to
11 Architectural Review Board?

12 MS. COSTANZA: Not yet.

13 MR. PREMO: But it will have to go to them?

14 MR. DiSTEFANO: Yes.

15 MR. PREMO: I was just wondering when they
16 would link maps and everything else. That's kind of
17 not our issue, but --

18 CHAIRPERSON MIETZ: We just have to
19 condition it. That's all okay.

20 Any other questions for this? Thank you
21 very much.

22 MS. COSTANZA: Thank you.

23 CHAIRPERSON MIETZ: Is there anyone in the
24 audience that would like to speak regarding this
25 application?

1 Okay. There being none, then the public
2 hearing's closed.

3 **Application 12A-04-23**

4 Application of Frank Magnola, agent, and
5 A.C. Monroe, LLC, owner of located at 2600 Monroe
6 Avenue, for an Area Variance from Section 207-6B to
7 allow an accessory structure to be located in a side
8 yard in lieu of the rear yard as required by code.

9 All as described in application and plans on file.

10 MR. MAGNOLA: Good evening. I'm Frank
11 Magnola and I am the owner of the business at 2600
12 Monroe Avenue in the Town of Brighton. And --

13 CHAIRPERSON MIETZ: Can you give us an
14 address please for the record. An address for
15 yourself.

16 MR. MAGNOLA: Personal address?

17 CHAIRPERSON MIETZ: Yeah. Or business
18 address.

19 MR. MAGNOLA: The business address is 2600
20 Monroe Avenue in the Town of Brighton.

21 CHAIRPERSON MIETZ: That's fine.

22 MR. LUTZ: Chris Lutz, associate of Frank
23 Magnola, 2600 Monroe Avenue, Brighton.

24 CHAIRPERSON MIETZ: Thank you. Go ahead,
25 please.

1 MR. MAGNOLA: We're here to request a
2 variance to relocate our menu board. It's now located
3 presently on the side lot of the property. And it had
4 obtained a variance prior for that location. And we
5 just would like to move it approximately 36 feet in
6 order to allow our drive-through to reduce its time,
7 speed up traffic in that drive though and hence,
8 alleviate any traffic problems that might occur all
9 the way out to Monroe Avenue.

10 It's a safety issue that we're looking for
11 here to speed up the traffic and reduce the amount the
12 cars in the queue for our drive-through and also add a
13 speaker canopy post next to this to protect our guests
14 from the weather.

15 CHAIRPERSON MIETZ: Is that little hump
16 going to go away? It's like a speed hump that's back
17 there in the drive lane that's right near the right
18 current drive-through when you pull up that goes up
19 and down.

20 MR. MAGNOLA: The little knoll?

21 MR. LUTZ: I think it's pretty level. A
22 little bump.

23 MR. MAGNOLA: Well, we are going to address
24 the drive-through lane. We're going to repave the
25 drive-through.

1 There might be a little bump there, yes.
2 But the purpose of it is to speed up the
3 drive-through. That's the reason why we're requesting
4 the variance. And also to place a speaker canopy that
5 will protect our guests from inclement weather.

6 CHAIRPERSON MIETZ: Can you tell us how long
7 that drive-through's been there?

8 MR. MAGNOLA: I believe since 2006, if I'm
9 not mistaken. My uncle had the property prior to my
10 purchasing of it.

11 CHAIRPERSON MIETZ: Yeah. The Town's
12 regulations changed.

13 MR. MAGNOLA: And he was able to get the
14 variance to put the drive-through lane in and put the
15 drive-through in and put a menu board in.

16 So currently, the menu board is about
17 halfway from the distance where we would like it from
18 the building. So it's currently here. We would like
19 it here.

20 And actually, it's going to be screened
21 better also because there's some shrubbery there.
22 They protect it.

23 The drive-through, speaker, canopy and
24 drive-through menu board currently can only be visible
25 from Monroe Avenue. There are no -- we have an

1 embankment here from 590 that protects it from being
2 seen.

3 So basically the building screens it from
4 the west. The embankment screens it from the east and
5 south. And the westerly direction is the only way you
6 can see that drive-through, speaker post and canopy
7 and menu board.

8 MS. SCHMITT: I just -- I'm not sure if it's
9 related to the variance, but how does moving the
10 signpost speed up the drive-through?

11 MR. MAGNOLA: Okay. By having more distance
12 to the menu board, you can stack more cars from the
13 window to the menu board. And by doing that, it
14 allows us the time necessary to process the order and
15 it gives a faster through time.

16 MS. SCHMITT: As a person who's used that
17 many times, I'm just trying to think like -- it seems
18 like a minute --

19 MR. LUTZ: It seems counterintuitive for it
20 to be that way because the more cars we have in
21 between -- so in terms of fast food operations, they
22 start the clock at how long are you spending at the
23 drive-through window.

24 And so we're spending -- if we're spending
25 twice as long at our drive-through window in Brighton

1 as we are at any of our other stores because we have
2 less time in between the customer orders and when
3 they're showing up to the window to get their order.

4 So I'm sure if you guys have gone there, if
5 you wanted a chicken sandwich and we didn't have any
6 there, we're dropping it right then and there. It's
7 going to take you minutes. So you probably sat at
8 that window for several minutes at a time
9 unfortunately, which is one of the things we want to
10 address.

11 MS. SCHMITT: Okay. All right.

12 CHAIRPERSON MIETZ: How many cars will fit
13 between the new location and the actual pick-up
14 window?

15 MR. MAGNOLA: It's going to add two cars.

16 MR. D'AUGUSTINE: That was my question.

17 CHAIRPERSON MIETZ: How about that. Okay.
18 Because you pull up there that you -- there's two
19 ahead of you. You can't go forward until one of
20 them --

21 MR. MAGNOLA: Exactly.

22 MR. LUTZ: So we're trying to speed up that
23 process. And the other documentation is just a photo
24 of an existing canopy at our general location to give
25 you an idea of what it's going to look like when you

1 pull up through the drive-through lane.

2 MR. DiSTEFANO: And you can see that the
3 backside of it is dark colored, black, brown. And it
4 kind of blends in with the bank that's there. So you
5 almost can't even notice it's going to be there.

6 And for the record, the maximum height of
7 that structure?

8 MR. MAGNOLA: I think it's on -- does it say
9 right to -- 10 foot 2 and a half inches it looks like.

10 MR. DiSTEFANO: Thank you.

11 CHAIRPERSON MIETZ: Okay. Finally then,
12 would it be fair to say for the record that in the
13 last three or four years the uses of this
14 drive-through has gone up?

15 MR. MAGNOLA: Yes.

16 CHAIRPERSON MIETZ: Like the rest of the
17 world.

18 MR. MAGNOLA: Correct. Drive-through
19 business in general with all of the drive-through
20 restaurants has gone up. And that stems from the
21 period of time when COVID began until now. People
22 change their habits.

23 CHAIRPERSON MIETZ: Yup. Okay. Just didn't
24 want to put words in your mouth, but I presumed that
25 was the case.

1 MR. MAGNOLA: That is the case.

2 CHAIRPERSON MIETZ: Okay. Is there any
3 other questions for these gentlemen? All right. All
4 set. Thank you very much.

5 Is there anyone in the audience that would
6 like to speak regarding this application? Then the
7 public hearing is closed.

8 **Application 12A-05-23**

9 Application of Randall Peacock, architect,
10 and Lara Evans and Joel Rosen, owners of property
11 located at 92 Viennawood Drive, for an Area Variance
12 from Section 205-2 to allow a front porch to extend
13 10.5 feet into the 40-foot front setback required by
14 code. All as described on application and plans on
15 file.

16 MR. PEACOCK: Good evening. I'm Randy
17 Peacock. My address is 545 Spring Meadow Lane in
18 Webster, New York. And I am here this evening as --
19 for this application for a front porch.

20 I think this is the third front porch I've
21 done that's required a variance here in Brighton over
22 the last 25 years or so.

23 Ms. Evans and Mr. Rosen would like to
24 construct a 10 foot deep front porch. The reason it's
25 10 foot deep, they would like to put a double hanging

1 bed on the front porch.

2 CHAIRPERSON MIETZ: A what?

3 MR. PEACOCK: A bed. It's like a swinging
4 bed.

5 CHAIRPERSON MIETZ: Like a hammock?

6 MR. PEACOCK: No. It's actually a rigid
7 frame bed, like a twin-size bed. It's about 6 feet
8 long and 4 feet deep.

9 And they would like to put that on the front
10 porch. So the reason the porch is going to be 10-feet
11 deep is that -- it is that bed.

12 Right now, the house sits on the corner. It
13 faces the corner. It's skewed so it faces the apex of
14 the corner. You've got the site plans that I prepared
15 for it.

16 Here's the corner here. The house faces
17 there. The southeast corner of the house touches the
18 setback line at 40 feet.

19 The porch will be 10 feet deep. And then
20 there's another 1 foot for the overhang. That gives
21 us the requested setback, which I've looked at 30
22 times. 29.5 feet at that corner.

23 Because of the way the house is skewed to
24 the lot, only about a third of the front porch goes
25 into that front setback. The other two-thirds

1 actually sits behind the front setback.

2 There's a group of trees there on the corner
3 that help soften that view of the porch. It will
4 stick out a little bit out of the front of the house.
5 As you're coming around the corner, I think it will
6 look very natural on the house. The porch fits well
7 with the house.

8 There's enough room to the second-floor
9 windows. We'd get a decent roof pitch on it for the
10 depth of the porch.

11 The floor of the porch is only about 16
12 inches above grade. It's two steps up to that and
13 another step up into the house.

14 Porches are valuable in a neighborhood.
15 They provide interaction between neighbors. They kind
16 of soften that line between house and street.
17 Altogether, I think this porch will be an enhancement
18 for the neighborhood.

19 And I would be happy to answer any questions
20 you have.

21 MS. SCHMITT: Just to clarify, right now
22 there's no cover over the doorway?

23 MR. PEACOCK: Well, there is 6 inches of
24 overhang from the second floor. If you're really
25 skinny.

1 MS. SCHMITT: The rain and snow can get in
2 as you're coming into the house.

3 MR. PEACOCK: Absolutely.

4 MS. SCHMITT: And just to clarify as well,
5 to the point that you were making with that
6 two-thirds, the 75 percent of the porch are within the
7 provisions of this setback?

8 MR. PEACOCK: Correct. Correct. It's this
9 triangle right here that sticks over it.

10 MS. SCHMITT: Thank you.

11 CHAIRPERSON MIETZ: Okay. All right. Other
12 questions for Mr. Peacock?

13 MS. BARON: I just had one question. It
14 looks like there's a cluster of trees. I don't know
15 how close they are to the house. Will any of those
16 trees need to be removed?

17 MR. PEACOCK: No. They'll stay there.

18 CHAIRPERSON MIETZ: Good. Any other
19 questions? Okay. Thank you, Randy.

20 MR. PEACOCK: Thank you.

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

25 MR. DiSTEFANO: Just let me -- I'm pretty

1 sure I know what the answer is, but I do want to call
2 12A-01-23, Crittenden Road property. Anybody here for
3 that application?

4 Okay. Now you can close the public
5 hearings.

6 CHAIRPERSON MIETZ: I can't hear you.

7 MR. DiSTEFANO: Now you can close the public
8 hearings.

9 CHAIRPERSON MIETZ: So we'll close them.
10 Very good. Do we need a break? Okay.

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

12 (Deliberations and decisions begin.)

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1 REPORTER CERTIFICATE
23 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 6th day of December, 2023
13 at Brighton, New York.

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22 HOLLY E. CASTLEMAN, ACR,
Court Reporter.

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**BRIGHTON
ZONING BOARD OF APPEALS
MEETING**

December 6, 2023
At approximately 7 p.m.
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

10 PRESENT:

DENNIS MIETZ
Chairperson

15 LAUREN BARON, ESQ.
16 Attorney for the Town

17 RICK DiSTEFANO
Secretary

18 | ABSENT:

19 ANDREA TOMPKINS-WRIGHT

21 REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
22 FORBES COURT REPORTING SERVICES, LLC
23 21 Woodcrest Drive
Batavia, NY 14020

1 **Application 12A-01-23**

2 Application of Excelsior Communities, LLC,
3 agent, and Brighton Village Apartments, owner of
4 property located at 1625 Crittenden Road, for an Area
5 Variance from Section 203-30A(1) and 203-2.1B(3) to
6 allow a storage garage to be 2,400 square feet in lieu
7 of the maximum 600 square feet allowed by code. All
8 as described on application and plans on file.

9 MR. D'AUGUSTINE: Motion to table
10 application 12A-01-23.

11 MS. SCHWARTZ: Second.

12 MR. DiSTEFANO: The motion is to table and
13 leave the public hearing open.

14 (Mr. Premo, yes; Ms. Schwartz, yes;
15 Mr. Mietz, yes; Ms. McKay-Drury, yes;
16 Ms. Schmitt, yes; Mr. D'Augustine, yes.)
17 (Upon roll motion to table carries.)

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1 **Application 12A-02-23**

2 Application of Rafiullah Sahak, lessee, and
3 Taib Samir Elkettani, owner of property located at
4 2829 West Henrietta Road, for an Area Variance from
5 Section 205-12 to allow for 17 on-site parking spaces
6 in lieu of the minimum 26 parking spaces required by
7 code, allowing for the establishment of a specialty
8 food store (refer to parking variance application
9 10A-02-17). All as described in application and plans
10 on file.

11 MS. MCKAY-DRURY: I move that the Board
12 having considered the information presented by the
13 applicant and having conducted the required review
14 pursuant to SEQRA adopts the negative declaration
15 prepared by town staff and determines the proposed
16 action will not likely have a significant
17 environmental impact.

18 I move we approve application 12A-02-23
19 based on the following findings of fact.

20 **Findings of Fact:**

21 1. The requested variance will not result in a
22 substantial change in the character of the
23 neighborhood or surrounding properties where there is
24 a significant amount of commercial use and the parking
25 of the new store is not anticipated to greatly exceed

1 the prior tenant in that location.

2 2. The difficulty necessitating the variance request
3 cannot be found in another matter not requiring a
4 variance because the property is already fully
5 developed with parking spots in all available
6 locations.

7 3. Although the variance is substantial, the
8 specialty food store is not anticipated to require
9 more than the parking spaces that exist currently.

10 4. The variance is the minimum necessary to grant
11 relief from the difficulty because the 17 existing
12 parking spots are the only ones existing on the fully
13 developed lot.

14 5. The proposed variance will not have a negative
15 impact on the physical or environmental conditions on
16 West Henrietta Road with its vast commercial uses.

17 6. The difficulty is not self-created given the fully
18 built-up lot and existing spaces as they are.

19 **Conditions:**

20 1. It's limited to the application on file and the
21 testimony provided today.

22 2. The property owner will ensure that there are, in
23 fact, 17 usable parking spaces on the property and
24 will line the lot in such a way to ensure those 17
25 spaces.

1 3. All necessary Planning Board approvals shall be
2 obtained.

3 MS. SCHWARTZ: I second.

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

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

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

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1 Application 12A-03-23

2 Application of Amanda Costanza, architect,
3 and Jonathan Zhe, owner of property located at 73 Cobb
4 Terrace, for an Area Variance from Section 205-2 to
5 allow attached garage area to be 1,140 square feet,
6 after construction of a 646 square foot garage
7 addition, in lieu of the maximum 900 square feet
8 allowed by code. All as described on application and
9 plans on file.

10 CHAIRPERSON MIETZ: I move we approve
11 application 12A-03-23 based on the following findings
12 of fact.

13 Findings of Fact:

- 14 1. The proposed garage is on a 1.2-acre lot, which is
15 substantial within the residential neighborhood.
- 16 2. The proposed addition to the existing garage will
17 be side-loaded, which shall screen it partially from
18 the street.
- 19 3. Due to the existing landscaping, the size of the
20 garage will be mitigated and will not have any adverse
21 effect on the character of the neighborhood.
- 22 4. While the request is substantial, it is the
23 minimum necessary to achieve the desired result in
24 conjunction with the existing structure.
- 25 5. Other options were examined on the site and the

1 only way to meet the requirements of the applicant
2 were to construct the addition onto the existing
3 building due to an inability to construct a way to use
4 the lower garage.

5 **Conditions:**

6 1. This variance is based on the testimony given and
7 plans submitted.

8 2. There shall be no livable space in the constructed
9 garage.

10 3. All ARB approvals and building permits shall be
11 obtained.

12 MR. D'AUGUSTINE: Second.

13 MR. DiSTEFANO: So your second condition, no
14 livable, I don't know why we need that. They're not
15 going to build above it. I mean, I'm not sure exactly
16 what your second condition --

17 CHAIRPERSON MIETZ: Well, I guess because
18 I'm looking at the total, Rick, of the two. We got
19 1,190 square feet.

20 So we wouldn't want them to convert the
21 lower section to some other livable space.

22 MR. DiSTEFANO: Why not?

23 CHAIRPERSON MIETZ: Could they do that
24 though?

25 MR. DiSTEFANO: Yeah. Why not?

1 CHAIRPERSON MIETZ: If it wouldn't require
2 them triggering back here, then I --

3 MR. DiSTEFANO: Yeah. I don't think it will
4 because they have such a huge lot.

5 Yeah. I don't think we need --

6 CHAIRPERSON MIETZ: Okay. That's fine. We
7 can take it out.

8 MR. DiSTEFANO: So strike number 2.

9 CHAIRPERSON MIETZ: Yes. Okay. All right.

10 MR. DiSTEFANO: Is that acceptable?

11 MR. D'AUGUSTINE: Absolutely.

12 **Conditions as amended:**

13 1. This variance is based on the testimony given and
14 plans submitted.

15 2. All ARB approvals and building permits shall be
16 obtained.

17 MR. DiSTEFANO: The motion is to approve
18 with conditions.

19 (Mr. Premo, yes; Ms. McKay-Drury, yes;

20 Ms. Schmitt, yes; Ms. Schwartz, yes;

21 Mr. D'Augustine, yes; Mr. Mietz, yes.)

22 (Upon roll motion to approve with conditions
23 carries.)

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1 Application 12A-04-23

2 Application of Frank Magnola, agent, and
3 A.C. Monroe, LLC, owner of located at 2600 Monroe
4 Avenue, for an Area Variance from Section 207-6B to
5 allow an accessory structure to be located in a side
6 yard in lieu of the rear yard as required by code.
7 All as described in application and plans on file.

8 MR. PREMO: I move we approve application
9 12A-04-23 based on the following findings of fact.

10 Findings of Fact:

11 1. The requested action to allow a nonresidential
12 accessory use of less than 4,000 square feet is a Type
13 II action pursuant to 6 NYCRR § 617.5(b)(9) and no
14 further review is required pursuant to the State
15 Environmental Quality Review Act.

16 2. The proposed menu board and canopy speaker updates
17 and replaces similar facilities located currently in
18 the side yard. The new location for the menu board
19 and canopy/speaker responds to business needs for such
20 equipment to deal with increased business and speed up
21 customer service.

22 3. The area behind the store, the rear yard, is
23 already taken up by the drive-through lane and window
24 and is impracticable to relocate the menu board and
25 canopy/signpost there based on the size and shape of

1 the lot and the existing store.

2 4. The requested area variance is the minimum

3 variance necessary to address the benefit sought by

4 the applicant.

5 5. No other alternative can relieve the difficulty

6 and provide the desired result.

7 6. The variance in context is not substantial.

8 7. There will be no unacceptable change in the

9 neighborhood and no substantial change to neighboring

10 properties is expected. The surrounding use of I-590

11 and the ESL drive-in and Monroe Avenue will not be

12 adversely impacted.

13 8. The hardship results from the shape, size and

14 configuration of the existing lot and was not created

15 by this applicant.

16 9. The health, safety and welfare of the community

17 will not be adversely affected by the approval of the

18 variance.

19 **Conditions:**

20 1. The variance is based on the application material

21 submitted and testimony given and only authorizes

22 projects described therein.

23 2. Subject to obtaining all necessary building

24 permits and inspections.

25 MR. D'AUGUSTINE: Second.

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

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

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

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1 **Application 12A-05-23**

2 Application of Randall Peacock, architect,
3 and Lara Evans and Joel Rosen, owners of property
4 located at 92 Viennawood Drive, for an Area Variance
5 from Section 205-2 to allow a front porch to extend
6 10.5 feet into the 40-foot front setback required by
7 code. All as described on application and plans on
8 file.

9 MS. SCHMITT: I move to approve application
10 12A-05-23 based on the following findings of fact.

11 **Findings of Fact:**

- 12 1. The request is to allow a front porch to extend
13 10.5 feet into the 40-foot front setback required by
14 code.
- 15 2. Currently the applicant's home has no covered
16 entranceway. With the addition of a front porch the
17 homeowners will have a safe and spacious entranceway
18 for themselves and their guests.
- 19 3. The granting of the requested variance will not
20 produce an undesirable change in the character of the
21 neighborhood or be a detriment to nearby homes as an
22 open front porch is consistent with the look and style
23 of nearby properties.
- 24 4. Because the applicant's home is on a corner lot, a
25 front porch of any size would extend over the front

1 setback line. Moreover, the variance is not
2 substantial as most of the proposed front purchase
3 will be within the front setback required by code and
4 it is only the southeast corner that will be extended
5 into the front setback.

6 5. While the variance is self-created, the benefit
7 sought by the applicant cannot reasonably be achieved
8 by any other method or without variances and is the
9 minimum necessary to accommodate the needs of the
10 applicant.

11 6. There's no evidence that there would be a negative
12 impact on the health, safety and welfare of the
13 neighborhood.

14 **Conditions:**

15 1. The variance granted only applies to the front
16 porch addition described in and in the location
17 depicted on the application and in the testimony
18 provided and will not apply to future projects.

19 2. The variance shall be the construction of a roofed
20 open porch and proposal for enclosing said porch would
21 require an application for further variance.

22 3. All necessary building permits and Architectural
23 Review Board approval shall be obtained.

24 MS. SCHWARTZ: Second.

25 MR. DiSTEFANO: The motion is to approve

1 with conditions.

2 (Mr. Premo, yes; Mr. D'Augustine, yes;

3 Mr. Mietz, yes; Ms. McKay-Drury, yes;

4 Ms. Schwartz, yes; Ms. Schmitt, yes.)

5 (Upon roll motion to approve with conditions

6 carries.)

7 (Proceedings concluded at 8:52 p.m.)

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1 REPORTER CERTIFICATE
23 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 6th day of December, 2023
13 at Brighton, New York.

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22 HOLLY E. CASTLEMAN, ACR,
Court Reporter.

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