
BRIGHTON
ZONING BOARD OF APPEALS
MEETING

January 3, 2024
At approximately 7 p.m.
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ
Chairperson

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

LAUREN BARON, ESQ.
Attorney for the Town

RICK DiSTEFANO
Secretary

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

1 CHAIRPERSON MIETZ: Good evening, everyone.
2 I'd like to welcome you to the January 24th Zoning
3 Board of Appeals meeting.

4 Just want to let you know quickly how we run
5 this meeting. We have eight applications on the
6 docket tonight. So what we'll do is when your
7 application is called, you come to the podium -- most
8 of the board members will either have visited the
9 property or are familiar with the package of
10 information that you provided -- and you can present
11 to us how you -- or why you feel we should approve
12 your application. The board members may ask
13 questions.

14 When we finish that, we'll open it up for
15 the audience to see if there's anyone in the audience
16 that would like to speak regarding the application
17 material. Once we finish that, we'll close the public
18 hearing and move to the next application.

19 We'll finish those up. We may take a few
20 minute break. And then we deliberate on each of them
21 tonight. Unless something's tabled, then we would
22 reach a decision tonight. You can stay and listen to
23 the deliberations if you'd like or you can call Mr.
24 DiStefano in the building office tomorrow to find out
25 what the result of your application was.

1 All right. So other than that, Rick, do you
2 want to say anything to the Board now or --

3 MR. DiSTEFANO: First of all, just like to
4 say that the amended agenda from the one that was
5 posted on the website is to include a new business
6 item regarding the tentative 2024 meeting schedule,
7 which we can take a look at after the public hearings.

8 I don't have anything other than that except
9 for to announce that both 11A-01-23 and application
10 1A-07-24 have been postponed to the February meeting,
11 if there's anybody in the audience for those
12 applications.

13 And I'd ask the Board members if they have
14 any questions regarding any applications.

15 CHAIRPERSON MIETZ: Okay. So Rick, was the
16 meeting properly advertised?

17 MR. DiSTEFANO: Yes, Mr. Chairman. The
18 meeting was advertised in the Daily Record of December
19 28th, 2023.

20 CHAIRPERSON MIETZ: Okay. Can you call the
21 roll.

22 (Whereupon the roll was called.)

23 MR. DiSTEFANO: Let the record show all
24 members are present.

25 CHAIRPERSON MIETZ: Okay. Now, we have no

1 minutes, yes?

2 MR. DiSTEFANO: The minutes -- we did not
3 receive the December minutes. We'll hold those over
4 to February.

5 CHAIRPERSON MIETZ: Okay. Very good. Let's
6 begin at the beginning.

7 **Application 12A-01-23**

8 Application of Excelsior Communities, LLC,
9 agent, and Brighton Village Apartments, owner of
10 property located at 1625 Crittenden Road, for an Area
11 Variance from Section 203-30A(1) and 203-2.1B(3) to
12 allow a storage garage to be 2,400 square foot in size
13 in lieu of the maximum 600 square feet allowed by
14 code. All as described on application and plans on
15 file. **TABLED AT THE DECEMBER 6, 2023 MEETING - PUBLIC**
16 **HEARING REMAINS OPEN. POSTPONED TO THE JANUARY 3,**
17 **2024 MEETING AT APPLICANTS REQUEST**

18 CHAIRPERSON MIETZ: Sir, could you give us
19 your name and address?

20 MR. GOLDSTEIN: Sure. My name is Jake
21 Goldstein. I am the -- I guess the owner/partner of
22 Elevation Builders. Our business address is 277
23 Alexander Street, Suite 305, Rochester, New York
24 14607.

25 CHAIRPERSON MIETZ: Okay. Please proceed.

1 MR. GOLDSTEIN: So in summation -- I didn't
2 start anywhere. But basically, we are -- I represent
3 a company called Excelsior Communities, which is the
4 property owner/developer of commercial and residential
5 real estate in Rochester. And they own a property
6 called Brighton Village on -- 16 I think it's 1620
7 Crittenden Road. 1625 Crittenden Road is the address
8 in question.

9 There's been a persistent problem for the
10 past --

11 CHAIRPERSON MIETZ: Don't touch the
12 microphone. It's better to kind of talk towards it.

13 MR. GOLDSTEIN: Okay. Past couple years,
14 due to the lack of adequate storage on site -- so
15 we're proposing to construct a relatively small
16 storage facility in the southeast corner of the lot, I
17 guess, you'd call it.

18 Each apartment building within Brighton
19 Village is actually its own lot number. So this
20 storage facility would be in the southeast corner of
21 the entire Brighton Village apartments.

22 So that's essentially the proposition
23 ultimately.

24 CHAIRPERSON MIETZ: Okay. So what are you
25 storing there that you don't have room for?

1 MR. GOLDSTEIN: Primarily there's
2 construction materials for the area. I would say
3 that's probably the largest -- that probably takes up
4 the most amount of room.

5 They're consistently remodeling. And right
6 now they have three currently unoccupied units that
7 are utilized as storage because they don't have
8 adequate storage for materials.

9 Also, just things that are always needed
10 during the winter like salt. When they take their
11 plows off their trucks in the winter, they have
12 nowhere to put them. So they keep them outside. They
13 want to keep them in so that at a minimum, out of the
14 weather.

15 There currently is no other storage unit
16 on-site besides for the current apartments that
17 they're using and some mobile storage units.

18 CHAIRPERSON MIETZ: Where do they store
19 other equipment now? Not construction materials, but
20 like you just mentioned, plows, for example. Where
21 are they stored now?

22 MR. GOLDSTEIN: The plows are being stored
23 in either mobile storage units or just outside.

24 MR. D'AUGUSTINE: Have the owners -- they've
25 been using apartments the entire time they've owned

1 the complex?

2 MR. GOLDSTEIN: I believe they bought it
3 about -- I want to say about five or six years ago.
4 And from the time they moved in and started remodeling
5 the apartments, they have been using vacant units for
6 that purpose.

7 They have gotten complaints from tenants,
8 which I think was a catalyst to -- making this try to
9 happen.

10 MR. D'AUGUSTINE: Could you explain why you
11 chose that particular spot as the desired location for
12 the storage unit?

13 MR. GOLDSTEIN: Sure. I believe the primary
14 reason was that it's kind of tucked away into the
15 corner of the property where it would be least visible
16 to both tenants and neighboring properties.

17 There is a pretty significant tree line that
18 is a visual block from most other -- most of the other
19 neighboring properties. But it's kind of tucked away
20 down there that hopefully it's not very visible.

21 MS. TOMPKINS-WRIGHT: And the mobile storage
22 units, would those mobile storage units be removed
23 once this --

24 MR. GOLDSTEIN: Yes.

25 MS. TOMPKINS-WRIGHT: And just a question

1 for you, Rick. The 600 square foot limitation
2 generally is the same for residential as it is for
3 multi-family as it is for commercial.

4 MR. DiSTEFANO: Not for commercial. But for
5 multi-family and single-family residential, yes.

6 MS. TOMPKINS-WRIGHT: Okay. Thank you.

7 CHAIRPERSON MIETZ: Okay. Question? I got
8 one more.

9 How did you determine that 2,400 square feet
10 is the right size?

11 MR. GOLDSTEIN: That's a good question.
12 We've been going back and forth on that. But the way
13 we ultimately came to that decision was that right
14 now, we're utilizing three apartments consistently.
15 Each apartment is about 800 square feet. So that's
16 going to be 2,400.

17 And then we do have some, like I said,
18 additional mobile storage space. We didn't factor
19 that into the equation. We're looking at what's the
20 minimum size we need. So we pretty much took the
21 square footage of the apartments and converted that
22 into a square.

23 CHAIRPERSON MIETZ: And then would they be
24 driving trucks in there or working on trucks or what
25 would -- I mean, storing plows I understand. But what

1 about are they -- I imagine they have pickups or
2 something that they --

3 MR. GOLDSTEIN: Yeah. A hundred percent.
4 That is something that does need to be considered.
5 This is kind of a closer-up plan. I wish I had
6 something to blow it up.

7 Essentially there will be a drive lane that
8 goes in between buildings 254 and 248 that would allow
9 for vehicle access. So the plan is to have parking
10 signs for these two buildings here that essentially
11 they should be parking in these parking spots.

12 And then for building 248 and the adjacent
13 building to the parking in these parking spots is less
14 foot traffic going across the driveway. But the plan
15 is we're going to have this for the driving access to
16 the property.

17 CHAIRPERSON MIETZ: Again, to just put
18 materials in there, not vehicles. That's my question.

19 MR. GOLDSTEIN: As far as vehicle storage, I
20 don't think they're trying to put vehicles in there
21 for storage, no.

22 CHAIRPERSON MIETZ: Okay. Any other
23 questions for this gentleman?

24 MR. DiSTEFANO: Just one quick question.
25 The question was asked why you picked that location.

1 Can you explain what the neighboring properties in
2 that location are?

3 MR. GOLDSTEIN: To my knowledge, there's a
4 Movies 10, which is due southeast of the property as a
5 whole. East of the property -- directly east is a
6 Vision Hyundai.

7 MR. DiSTEFANO: So basically, commercial
8 activity.

9 MR. GOLDSTEIN: Yeah. Correct. Commercial
10 slash maybe industrial.

11 MR. DiSTEFANO: Thank you.

12 CHAIRPERSON MIETZ: Okay other questions?

13 Okay. Thank you, sir.

14 MR. GOLDSTEIN: Thank you.

15 CHAIRPERSON MIETZ: Okay. Is there anyone
16 in the audience that would like to speak regarding
17 this application?

18 Okay. There being none, then the public
19 hearing is closed.

20 MR. DiSTEFANO: The next five applications
21 are the same property, but instead of reading all five
22 applications, I think it'd be best if we took each
23 application kind of individually even though it's an
24 overall. But try to stick to each application and
25 then we can move on. I think it will be a little more

1 easier to control the discussion that way.

2 So we will start off with application
3 1A-01-24.

4 **Application 1A-01-24**

5 Application of Rodney Buffington, agent, and
6 Cameron Sands, owner of property located at 3601
7 Elmwood Avenue, for Area Variances from Section 205-2
8 to 1) allow a rear addition to extend 8.5 feet into
9 the existing 27 foot rear setback where a 60-foot rear
10 setback is required by code, and 2) allow a second
11 addition to extend 9 +/- feet into the 39.1-foot side
12 setback (west) required by code. All as described in
13 application and plans on file.

14 MR. DiSTEFANO: If you could kind of keep it
15 to each application. And when you're done with that
16 and questions, we'll move on and I'll read the second,
17 third, fourth and fifth. Okay?

18 MR. CROWE: Understood. Got it completely.

19 Just for introductions, my name is Dave
20 Crowe. I'm the architect on the project with DJC
21 Architecture.

22 This is Mark Bayer with Bayer Architecture.

23 My address is 99 Garnsey Road, Pittsford,
24 New York.

25 MR. BAYER: 19 North Main Street in Honeoye

1 Falls, New York.

2 MR. CROWE: Sorry. I ran outside to get my
3 notes. So I'm out of breath.

4 However, so -- just to start. So 3601 is
5 owned by Cameron Sands. And it's an existing house.
6 It's a really good example of a mid-20th century
7 modern. I think it's dated 1960 or so.

8 And it hadn't seen a lot of improvements
9 over the years. At the moment we did get a demo
10 permit for the interior to be gutted, the interior of
11 the building. So it's sitting as we design and get
12 ready to do the pending project, which, of course,
13 we're here to talk to you about tonight.

14 And the idea -- at the end of the day -- so
15 what we're trying to do is put the house into new and
16 good condition. Everything is going to be replaced,
17 all the mechanical systems, the roof, the windows, the
18 skin. The house will be completely redone in its
19 current footprint.

20 But as part of that, there's two major
21 pieces of work. And one is -- I can sort of show you
22 there. There's two additions that are part of the
23 house. And the first addition is a 9-foot extension
24 of what is the bedroom wing. We'll talk about that.
25 There's some variances needed for that.

1 And the second is what we call the west
2 wing. But it will be connected, conditioned, enclosed
3 pergola or pathway that goes to what will contain a
4 one-car garage and then sort of a recreation facility
5 on the first floor. And then at the basement level --
6 we'll explain how we'll do that --there will be a
7 guest room down there.

8 So it's all connected. When it's finished,
9 it's a single residence on the property. And Mark is
10 here -- you guys probably know Mark -- landscape
11 architect of the site. It's a really wonderful site.
12 It's about 3 and a half acres or so.

13 MR. BAYER: Yeah. It's three and a half
14 acres. If you've seen the site, it's very heavily
15 vegetated and very private around the borders of the
16 property right now.

17 MR. CROWE: Nicely enclosed.

18 And the house, by the way, sits back about
19 somewhere between 3- and 400 feet from the road.

20 MR. BAYER: It's almost -- it's -- yeah.
21 Just about 400 feet from the road right now. So it's
22 really set deeply off Elmwood.

23 MR. CROWE: And heavily treed. So there
24 isn't a lot of exposure to the neighbors. Not that
25 we'd be doing anything that would be inappropriate.

1 Okay. So as I -- so that's basically the
2 project. I'll walk through the individual variances
3 then.

4 So the first has to do with the addition on
5 the bedroom. So part of the problem that we're having
6 is that this house was setback as -- almost as --
7 probably to the current zoning as of 1960. It's about
8 27 feet from the property line.

9 Since then, zoning has changed. The setback
10 from the rear property line is 60 feet. So if you
11 look at that, this dashed line -- so almost half of
12 the house sits within the current setback. And that's
13 just a time -- an issue of time and pre-existing
14 nonconforming condition.

15 We're looking to extend the bathroom wing
16 8.5 feet back, which would take the closest corner of
17 the property line, which is right now 27 feet, and
18 we're looking for a setback of 17.5 feet for that
19 addition.

20 So that's the first request on the first
21 application. And then --

22 MR. BAYER: And one of the things to
23 recognize about that too is that on that addition,
24 topography is -- rises up in that back corner lot
25 about 12 or 13 feet. And the house sits level

1 relative to the adjacent parcels. And that property
2 border's also fully treed and vegetated.

3 And this is -- if you've seen the house,
4 it's a very low horizontal building. So the addition
5 will sit nicely down in the landscape and well
6 below -- well, it will be very close to the ridge
7 height that's behind the house.

8 MR. CROWE: The highest point of this house
9 above grade is about 14 feet. It's a single-story
10 home. So it's very short, very low, very mid-20th
11 century modern. Nice example of that.

12 The second variance on the first application
13 would be for what we're calling the west wing. So
14 there is -- this is an enclosed condition connection
15 to this structure, which is the west addition.

16 And you can see -- if you can see the red
17 line, that is the current setback, which is, if I
18 recall, I think it's calculated as 15 percent.

19 MR. BAYER: Right. 15 percent of the lot
20 width is 39.1, I think.

21 MR. CROWE: So that's all based on the size
22 of the total width. That works out to be 39.1 feet is
23 the required setback. However, on that one, we're
24 asking for approval of a variance to extend 9 feet
25 into that. So we would be 30 feet from the property

1 line instead of 39 on that particular piece.

2 And that is the first application.

3 CHAIRPERSON MIETZ: Okay. So let's talk
4 about that. Okay. Questions by the Board for these
5 gentlemen?

6 MS. SCHWARTZ: Yes. I want to say
7 something. Do you feel that back in the '60s, if
8 that's when the house was built, the code may have
9 been a 27-foot rear?

10 MR. DiSTEFANO: I don't know if it was that.
11 I know it was less than the 60 that it is today.

12 MS. SCHWARTZ: Okay.

13 MR. DiSTEFANO: I'm thinking it was probably
14 in the 40 range back then.

15 Whether or not they had a variance for it or
16 what exactly transpired I'm not sure.

17 MR. SCHWARTZ: But gives me an idea.

18 MR. DiSTEFANO: I would just consider it
19 pre-existing nonconforming.

20 MS. SCHWARTZ: Okay.

21 CHAIRPERSON MIETZ: Other questions about
22 this first variance?

23 MS. TOMPKINS-WRIGHT: The location of the
24 addition that contains the single bay garage to the
25 north, what was the reasoning behind having such a

1 longer walkway and then putting that property or that
2 extension across the setback line versus having a much
3 shorter walkway or no walkway and connecting it
4 directly?

5 MR. CROWE: Just trying to get -- Mark can
6 speak to this too. But just trying to get enough
7 space in that forecourt to be able to navigate cars.

8 MR. BAYER: That's one of the predominant
9 reasons.

10 And the other thing is we wanted to -- if
11 you notice, the building is L-shaped there.

12 MS. TOMPKINS-WRIGHT: Yes.

13 MR. BAYER: And the reason for that is --
14 two reasons. One, we want to -- again, as David
15 mentioned, we wanted to utilize the existing garage
16 entry to also enter this garage so that that court is
17 given enough backing space.

18 And the second thing is we turned the garage
19 doors away from the neighbor.

20 And then it also allows us to connect
21 through to the backyard, that little breezeway. It's
22 a nice architectural detail.

23 And if you aren't aware, there was a
24 pre-existing garage here that was about 900 hundred
25 square feet that we took down. It was a three-car

1 garage. And it was detached. And it was about -- I
2 think it was around 16 or 17 feet off the property
3 line, but much closer to the neighbor to the west.

4 And so we intentionally pulled the garage
5 away from that house and we turned it and rotated it
6 so that it would be a better presence for both
7 properties.

8 MR. CROWE: I'll just note that that garage
9 had nothing to do with the style of the architecture.
10 It was sort of a colonial kind of weird -- and it was
11 almost twice -- it was over 20 feet tall.

12 And, you know, we could have kept it and
13 given them a three-car garage, but it was just
14 inappropriate. We're working very hard to try to make
15 this all very in sync with the style and the
16 architecture and create something beautiful for the
17 client. And that garage just had to go. So we tore
18 it down.

19 Probably shouldn't have gotten that ahead of
20 it, but we did. And now we're just looking to put
21 back -- there is a single -- there's a three-car
22 garage right here.

23 MS. TOMPKINS-WRIGHT: Detached?

24 MR. CROWE: Yeah. Exactly. And then -- so
25 they're looking for a fourth bay. Trying to keep it

1 reasonable and sensible. So that's the plan to just
2 give it the fourth bay, not the -- the original had
3 six.

4 CHAIRPERSON MIETZ: Okay. For the record,
5 can you cite the western properties to this property,
6 especially adjacent to the garage addition and the
7 bedroom addition? How close are the nearest
8 properties as far as the building itself on those
9 properties?

10 MR. CROWE: Well, the garage itself, if
11 we're able to build what we're proposing, is 30 feet
12 from the west property line.

13 CHAIRPERSON MIETZ: But how close is the
14 nearest house? We visited there, but can you, just
15 for the Board, cite it, approximately how many feet it
16 would be away?

17 MR. BAYER: I don't know exactly, Dennis.
18 But I would have to say the Judson garage sits about
19 here. It's very -- this is the existing footprint of
20 the old garage. And it was more or less that way.

21 And so backing distance out of the Judson
22 garage is at least 35 feet or so, plus or minus.

23 CHAIRPERSON MIETZ: Okay. 50 feet or so.

24 MR. BAYER: Then there's a shrub border
25 there. It's probably -- this building -- this is just

1 a guess -- I'd say 75, 80 feet away.

2 CHAIRPERSON MIETZ: Okay. How about the
3 bedroom addition to the closest property?

4 MR. BAYER: That, again --

5 MR. CROWE: That distance --

6 MR. BAYER: Well, this is -- this is 20
7 scale. So even to the rear property line, the
8 addition.

9 MR. DiSTEFANO: We're talking bedroom
10 addition.

11 MR. CROWE: It's probably --

12 MR. BAYER: Well, I would say that is --

13 CHAIRPERSON MIETZ: To the structure, not
14 the property.

15 MR. BAYER: I would say that's 17 feet to
16 the property line, 17 and a half. And there's
17 probably another 40, 50 feet easy.

18 CHAIRPERSON MIETZ: So 65, 70 feet. Okay.
19 That's all.

20 MR. BAYER: Those are approximates.

21 CHAIRPERSON MIETZ: Just for the record,
22 it's nice to know.

23 MR. BAYER: There's a comfortable distance
24 to both.

25 MR. CROWE: Yeah. It is heavily treated.

1 If you were back there, you can tell it's dense. The
2 idea is to keep that and embellish it.

3 CHAIRPERSON MIETZ: All right. Questions?
4 Any more questions? Questions? Okay.

5 **Application 1A-02-24**

6 Application of Rodney Buffington, agent, and
7 Cameron Sands, owner of property located at 3601
8 Elmwood Avenue, for an Area Variance from Section
9 205-2 to allow for total size of attached garage(s) to
10 be 1,114 square feet in lieu of the maximum 900 square
11 feet allowed by code. All as described on application
12 and plans on file.

13 MR. CROWE: Okay. All right. So on the
14 second application, we have a existing garage that
15 measures 846 square feet. It's three-bay. 900's the
16 limit.

17 We're proposing this -- this is the garage.
18 Here's the bay that we're adding. The adjacent space
19 is a bit of a game room with some golf-simulating
20 equipment in it.

21 So that -- the footprint of that garage is
22 268 square feet. So the net add that we're looking
23 for, the total is about 1,114. And we would -- so we
24 need a variance for 214 square feet over the maximum.
25 I think is 900; right? So that's the second. That

1 would be the four-car garage.

2 MS. TOMPKINS-WRIGHT: Do you mind just kind
3 of advising what is typically stored -- what they plan
4 on storing in four bays?

5 MR. CROWE: Cars. Yeah. They own cars.
6 They have many cars. Very successful family. They
7 needed a fourth garage.

8 MS. TOMPKINS-WRIGHT: Okay.

9 MR. BAYER: Just one other point on the
10 garages just to make that -- the distance, again, from
11 the right-of-way in the road, this one -- this new
12 structure, not just the garage, the whole structure is
13 about 390 feet from Elmwood Avenue.

14 And again, the bays are turned into the
15 site. You cannot see these structures from Elmwood.
16 They're -- it's so deep. They're not there.

17 MR. CROWE: Or from the neighbors.

18 MR. BAYER: And the way they're turned they
19 orient away.

20 MR. DiSTEFANO: Can you just state for the
21 record again the reduction in total garage area
22 that --

23 MR. CROWE: What was the square footage?

24 MR. BAYER: It's 912 -- plus or minus 912
25 square feet for the three-car garage previously.

1 MR. DiSTEFANO: Plus --

2 MR. BAYER: Plus the existing garage was 800
3 and change.

4 MR. CROWE: Well, the existing garage is
5 846. We're looking net -- well, we're adding 268
6 square feet, but that's 214 over the --

7 MR. BAYER: But to answer your question,
8 Rick, it was -- the old garage was 912 square feet
9 that was torn down, plus the 800 and change on the
10 three-car that stays.

11 MR. DiSTEFANO: So approximately the net
12 loss of garage area would be --

13 MR. BAYER: 17 -- say 1700 square feet minus
14 11.

15 MR. CROWE: So about 600 square feet less
16 roughly. We can give you specific numbers.
17 Definitely a reduction. Definitely an improvement
18 tearing that old garage down.

19 CHAIRPERSON MIETZ: Okay. Other questions
20 on the second one?

21 Is there going to be any other accessory
22 storage buildings on the site planned?

23 MR. CROWE: There is no plan for that.

24 CHAIRPERSON MIETZ: I assume they contract
25 out their services. They don't need to keep lawn

1 mowers and things like that.

2 MR. CROWE: Yeah. This is the design. This
3 is what we're looking to build.

4 CHAIRPERSON MIETZ: All right. Any other
5 questions? Okay. Thank you.

6 **Application 1A-03-24**

7 Application of Rodney Buffington, agent, and
8 Cameron Sands, owner of property located at 3601
9 Elmwood Avenue, for Area Variances from Section 207-2
10 to 1) allow for a 5-foot-high front yard wall with a
11 6.5-foot-high gate in lieu of the maximum 3.5 feet
12 in height allowed by code, 2) allow for a side yard
13 (east) wall to be 8 feet in height in lieu of the
14 maximum 6.5 feet allowed by code, and 3) allow for
15 sunken garden walls to be 10 feet in height in lieu of
16 the maximum 3.5 feet and 12.75 feet in height in lieu
17 of the maximum 6.5 feet allowed by code. All as
18 described in application and plans on file.

19 MR. CROWE: To start that first -- item one,
20 I just want to make a clarification. That's actually
21 two things there. Allow for the 5-foot-high front
22 wall. I'll have Mark point to that.

23 So that's actually sort of in the forecourt.

24 MR. BAYER: That's -- the arrival court wall
25 is that. That's what we're referring to.

1 MR. CROWE: Sorry for the confusion on that,
2 Rick.

3 MR. DiSTEFANO: Well, I thought --

4 MR. CROWE: Yeah. It says width, but we're
5 not proposing a 5-foot-high wall at Elmwood.

6 MR. DiSTEFANO: Right.

7 MR. BAYER: It's an arrival court space that
8 has a surround wall. When you pull up to the house,
9 that's what that is.

10 MR. CROWE: Yup. So that's set back and
11 it's really just part of the whole architecture trying
12 to create a smaller space within this very large
13 property.

14 MR. BAYER: That wall is -- again, the
15 closest point on that wall is about 300-plus -- over
16 300 feet to Elmwood. It's about 70 feet to the east
17 property line and over 150 feet to the west property.

18 So it's internal to the site. And it's
19 something that is on 3 and a half -- plus or minus 3
20 and a half acre site. So scale-wise, it's going to
21 look like nothing.

22 MR. DiSTEFANO: But in essence, it's still
23 in the front yard. That's the point.

24 MR. CROWE: It's the front yard. Even
25 though it's the front yard, it's way, way back.

1 MR. DiSTEFANO: Exactly. It's in front of
2 the -- between the house and the right-of-way. So in
3 that front yard area.

4 MR. BAYER: Exactly.

5 MR. CROWE: Yeah. Just want to make sure,
6 we're not looking to put a 5-foot wall on Elmwood.

7 But what we would like to do is to do --
8 probably something less, but we'd ask for 6.5 feet
9 high -- it would be a gate at the street. Mark can
10 point to that.

11 They're looking for a privacy gate just
12 because of the nature of who they are and where they
13 are. They would like to control the vehicles coming
14 onto the site. So they're proposing a gate at
15 Elmwood, one that we can talk about.

16 So I'll continue here and we'll talk about
17 the rest.

18 MR. PREMO: Can you point to the gate, where
19 it would be again?

20 MR. BAYER: Right here. Here's Elmwood.
21 The gate would be about 30 feet in from the road.

22 MR. PREMO: Okay.

23 MR. CROWE: It will be set in the distance,
24 comfortable distance for a car or truck to pull in and
25 trigger the gate so that you're not blocking traffic

1 on Elmwood. But you are stopping vehicles from
2 coming -- unauthorized vehicles from coming into the
3 site.

4 MR. DiSTEFANO: And you have no detail of
5 that at this point I assume.

6 MR. CROWE: Schematic. We don't have the
7 final design.

8 MR. DiSTEFANO: But basically, you have two
9 large pillars on either side and a gate.

10 MR. CROWE: Correct.

11 MR. BAYER: Masonry piers and then the gate.
12 And then there will be plantings up to it.

13 MR. CROWE: The point is for vehicles. You
14 could walk around it; right? But the idea is cars
15 pulling into the site, they're looking to limit that.

16 MS. TOMPKINS-WRIGHT: Just a quick question.
17 Did I hear you say it would probably be smaller than 6
18 foot?

19 MR. CROWE: Well, the height maybe -- we
20 asked for 6.5. We're probably more around 6 feet.

21 MR. BAYER: That's the piers.

22 CHAIRPERSON MIETZ: Can you describe it just
23 so that we have --

24 MR. BAYER: We're still in the process of
25 working through the details of it, but it would be

1 designed with -- it'd be kind of a horizontal kind of
2 format like the house is. Two-leaf gate. Automatic
3 gate design.

4 CHAIRPERSON MIETZ: But is it going to read
5 as a wall or it is going to read --

6 MR. BAYER: It will have some transparency
7 to it for sure.

8 MR. CROWE: It will be steel. And most of
9 the coverage will be at least 50 percent open. Like
10 we've done them on other properties. And they're just
11 sort of wrought iron -- probably more of a
12 contemporary design, but just still a wrought iron --

13 CHAIRPERSON MIETZ: It's going to serve the
14 purpose.

15 MR. CROWE: And look beautiful. And not be
16 too heavy so we can't make it work.

17 CHAIRPERSON MIETZ: All right. Okay.
18 Questions on this part?

19 MR. CROWE: Yeah. I'm not finished. I'm
20 sorry.

21 So for side yard. So while we haven't
22 spoken about the side yard.

23 MR. DiSTEFANO: We haven't talked about side
24 yards yet.

25 MR. CROWE: So right here on this side --

1 and Mark, I'll have him embellish here a bit, but
2 we're putting a generator, 100 kVA generator, but
3 we're --

4 CHAIRPERSON MIETZ: That's the next one.

5 MR. CROWE: Well, but this is where the
6 generator's going to go.

7 So the idea is that this is an 8-foot-tall
8 masonry wall made of the same brick as the home and it
9 creates a small sort of forecourt for the master
10 bedroom with a lovely garden that they can enjoy in
11 privacy.

12 And then that line continues up. And then
13 enclosed is where the generator is going to go.

14 We would love to put the generator behind
15 the house, but there simply isn't room.

16 CHAIRPERSON MIETZ: Again, we'll talk about
17 that next.

18 MR. CROWE: Yup, yup. So that's why that's
19 going there.

20 And the wall will look like it's enclosing
21 the whole area. You won't realize that part is a
22 garden -- is a generator with a door in the front for
23 access. It will screen the generator and it will
24 control the noise as well.

25 So that's -- that is the side yard east.

1 MR. BAYER: The driver behind that wall
2 is -- essentially the master suite is going to look
3 into the private garden.

4 And so the wall height per the owner's
5 request is about window height and about 8 feet. And
6 it will be fully planted inside, fully planted
7 outside.

8 And as David mentioned, in addition to being
9 a private garden, that wall will extend with a
10 partition wall in the middle of it to isolate the
11 generator. That's the design intent.

12 CHAIRPERSON MIETZ: Okay. All right. Any
13 more questions on the walls here?

14 MR. DiSTEFANO: There's more walls.

15 CHAIRPERSON MIETZ: One more wall.

16 MR. CROWE: Yeah. So this one is probably
17 going to be a little bit unusual, but we love the
18 concept.

19 So right here going into the home and right
20 on the back of the guest wing, the west wing, we call
21 the sunken garden, but basically, it's a walk-out
22 basement. How we're achieving that is with the
23 retaining wall.

24 So we're going to excavate down 10 feet here
25 and 12.75 feet here and then have a small patio area

1 down at the bottom of those so that those basement
2 areas walk out into the sunken gardens. And they'll
3 both have stairways out.

4 So you know, the challenge here is -- and I
5 know this got a little gray. We said already we'll
6 get the variance for it. But that's a retaining wall.
7 It's not necessarily a fence or a garden wall. But
8 it's what's holding the soil out of the sunken
9 gardens.

10 In addition to that retaining wall -- we'll
11 only come up from grade. But from grade up, because
12 of the building code, you need 36, we'll probably end
13 up about a 42-inch guardrail, which will be a metal
14 guardrail with cable, stainless steel cable, to keep
15 them from falling into these.

16 So that hole there and that hole there will
17 come up to grade. And then above grade will be
18 guardrail.

19 But because the way the zoning is written,
20 that amounts to a 10-foot-tall wall and a 12-foot-tall
21 wall, even though they're really just retaining walls,
22 plus the 42 inches to the garden.

23 The guardrails will be open. We don't want
24 them to be very visible. And when you're on the site
25 or you're off the site, all you will see is the

1 guardrails anytime you're in the sunken gardens when
2 you're at the basement level.

3 Think of it as a walk-out basement without
4 having the hill to accommodate that. So we're
5 creating the hole for it.

6 So there's two of those. This is the
7 10-foot-tall one and that's the 12.75-foot-tall wall.

8 CHAIRPERSON MIETZ: Okay.

9 MR. CROWE: So --

10 MR. BAYER: Essentially a green room outside
11 of the lower level and getting light into the lower
12 level.

13 CHAIRPERSON MIETZ: Okay. So questions,
14 Board, on these walls?

15 MS. MCKAY-DRURY: So we talked about
16 proximity to the neighboring homes in the context of
17 the setbacks.

18 Can you speak to those in the context of the
19 walls? Is it the same, roughly 65 to 70 feet?

20 MR. CROWE: Yeah. This will be into the
21 setback, but it's not -- it's not a building. It's
22 just a retaining wall.

23 So we are showing it -- I think it comes
24 out 10. So it'd be 20 feet.

25 Do you know, Mark, what the width is?

1 MR. BAYER: From -- are you saying from the
2 side property line to the garden?

3 MR. CROWE: What's the width of the sunken
4 garden?

5 MR. BAYER: It's about 10 to 12 feet.

6 MS. McKAY-DRURY: Okay. And then
7 particularly to the wall around the generator and that
8 garden off of the master, can you speak to -- is there
9 any closer structure to that than the house that you
10 mentioned that was 65 to 70 feet back?

11 MR. BAYER: There is the house over here.
12 But, again -- you know, again, I don't know the exact
13 distance. But it's -- it's got to be in that general
14 range. It's a good distance off the property line.

15 And just to clarify, this wall is only 12
16 feet from the face of the main house. And it's the
17 same relationship of brick to the eve of the house.
18 So it's going to look like the house.

19 MR. CROWE: Our walls are 8 feet to the eve
20 and another 6 feet to the roof.

21 MR. PREMO: I'm sorry. I think I'm a little
22 confused from when I was out there. Just trying to
23 figure out something.

24 Where is the current road access to the
25 house?

1 MR. BAYER: Current road access is the
2 same -- it's basically the same curb cut except we're
3 bringing -- instead of bringing it in at an angle like
4 it does today like this, we're turning it 90 degrees
5 for better site distance. But it's coming in at the
6 same place plus or minus.

7 MR. PREMO: And then there's access to the
8 neighboring properties, which --

9 MR. BAYER: This here?

10 MR. PREMO: Yes.

11 MR. BAYER: Okay. So this is an existing
12 lane that's here today that comes off of the drive.
13 It's just -- more or less just what you see here.
14 There's a little spur that goes up the west property
15 line. It's there today.

16 MR. PREMO: Okay. But there's homes kind of
17 over to the back.

18 MR. BAYER: There's a home here, but this is
19 not the access to that home.

20 CHAIRPERSON MIETZ: It's a private area.

21 MR. BAYER: That driveway is over here.

22 MR. PREMO: Okay. That's where I got
23 confused, where the driveway --

24 MR. BAYER: That driveway is further west.

25 MR. DiSTEFANO: I think one thing we haven't

1 mentioned at this point in time, this is actually
2 currently three lots on this whole total parcel of
3 land. And there was a house in front of this house at
4 one point in time, which was taken down probably a
5 good 20 years ago now, maybe more.

6 They do plan -- and correct me if I'm
7 wrong -- to subdivide into one lot. If they weren't
8 doing that, there'd be multiple more variances that
9 would be required.

10 MR. CROWE: We'll do that, Rick. If we can
11 build what we're proposing, the family is happy to
12 consolidate into a single lot.

13 MR. DiSTEFANO: Well, I think if they got
14 the variances, they'll probably condition it.

15 CHAIRPERSON MIETZ: Otherwise they don't
16 work. The variances don't work. Chicken and egg.

17 MR. CROWE: But that's important. And I did
18 not mention that. That's a big deal.

19 And they're open to that. They're
20 supportive fully.

21 MR. DiSTEFANO: Good.

22 MS. SCHWARTZ: We've been going back and
23 forth with walls and I just want to go back a moment.
24 When you're putting the generator in with all of these
25 hard surfaces around it, isn't that going to make it

1 louder?

2 MR. DiSTEFANO: We're going to get into the
3 generator in a minute. Hold those questions for the
4 generator.

5 CHAIRPERSON MIETZ: Just hold it.

6 MR. DiSTEFANO: Some of these overlap in
7 detail, but I think we can -- when we heard them all
8 and if you have questions, we can kind of do them all.

9 MS. McKAY-DRURY: Can you speak to how many
10 driveways have gated access in this area?

11 MR. CROWE: I can't. I am not able to. I
12 do know just given the nature of the family, they do
13 have security issues that they're concerned about. So
14 that's why they're asking to do it. It may not seem
15 like a big deal, but it is a big deal.

16 MS. McKAY-DRURY: I'm just asking.

17 MR. BAYER: There's one on Allens Creek that
18 I'm aware of. And I think there's maybe one or two
19 others. But, you know, that's all I'm aware of.

20 MR. CROWE: We understand it's not common.
21 We get that. But that's --

22 CHAIRPERSON MIETZ: All right. We can
23 discuss that. Okay.

24 MR. CROWE: Sure.

25 CHAIRPERSON MIETZ: Any other questions

1 regarding the walls? No. Okay.

2 Let's proceed to the generator.

3 **Application 1A-04-24**

4 Application of Rodney Buffington, agent, and
5 Cameron Sands, owner of property located at 3601
6 Elmwood Avenue, for an Area Variance from Section
7 203-2.1B(6) to allow a stand-by emergency generator to
8 be located in a side yard (east) in lieu of the rear
9 yard behind the house as required by code. All as
10 described on application and plans on file.

11 MR. CROWE: So we're proposing that the
12 generator go on the east side of the house. As we
13 mentioned, we're going to close that mason -- do
14 everything we can do to knock down the view and the
15 sound of it.

16 But I will say that the generator, we did
17 provide the specifications. It does not exceed 72
18 decibels at 23 feet distance. So it's in compliance
19 with the Town's requirements for performance and
20 noise.

21 And we're proposing it goes on the east side
22 because that's the only place we have to put it. So
23 no room to the rear unfortunately. Wait until we talk
24 about the pool.

25 MR. BAYER: And again, that generator

1 location just to give you a sense, it's -- the closest
2 point is more than 50 feet from the east property
3 line. It's well off the east property line. And
4 it's, you know -- again, I believe it's over 400 --
5 it's over 400 feet to Elmwood.

6 CHAIRPERSON MIETZ: Can you describe will it
7 be the wall that will be shielding it? Will there be
8 anything else shielding?

9 MR. BAYER: There will be heavy planting all
10 along the east property line. We have plantings in
11 front of the wall. There'll be a ton of planting in
12 the front yard in front of the wall. It's going to be
13 heavily buffered.

14 MR. CROWE: It will also operate based on
15 the Town requirements in terms of when you can run it.
16 It's only for exercise purposes unless there's an
17 outage. You can't just run it at your discretion.
18 They understand that.

19 MR. DiSTEFANO: And the power source,
20 natural gas?

21 MR. CROWE: Natural gas, yes.

22 CHAIRPERSON MIETZ: Okay. Now, you can go
23 ahead.

24 MS. SCHWARTZ: I thought in the previous
25 conversation with generators that if something was

1 hardscaped around it, it may increase the noise even
2 more so.

3 I understand you're putting landscaping on
4 the outside and around it. So it won't be visible.
5 But I'm concerned with the generator and what
6 immediately goes around it.

7 Are you guaranteeing that it will not be any
8 louder because of these hardscapes?

9 MR. CROWE: Yes. I will give you that
10 guarantee. It won't be louder.

11 What we're doing is we're surrounding it to
12 knock the sound down. Best way to control sound --
13 sound is just energy. And if you want to diminish
14 energy, what you need is mass. So you surround it
15 with mass so that sound hits that mass and it converts
16 to heat basically is what happens.

17 So not surrounding it would just be the free
18 dispersal of the sound. By surrounding it, we're
19 enclosing it, you know, and dispersing it within that.
20 That's specifically being done so we do control the
21 sound. So you can't see it and we do everything we
22 can to knock down the sound.

23 I have a Generac. I have it in Butler with
24 my cabin. And I built a little masonry enclosure for
25 it and it's wonderful because I can't hear it. It's

1 about 40 feet away from my cabin. It works great.
2 The masonry really knocks down the sound. Does a nice
3 job.

4 CHAIRPERSON MIETZ: Does your generator spec
5 have a sound shield on it?

6 MR. CROWE: It does. It is operating to --
7 actually below the standards that the Town mandates.
8 The 72 decibels at 23 feet, it is actually less than
9 that. I think it's like 68 or 69 decibels.

10 MR. DiSTEFANO: Is it a type 1 or type 2 --

11 MR. CROWE: It is. We're buying a sound
12 enclosure --

13 (Simultaneous conversation interrupted by the court
14 reporter.)

15 MR. CROWE: Yeah. We're doing everything.
16 Beyond masonry, we're also buying all the sound
17 control provisions. It's -- yeah. It will be the
18 best generator that they can buy.

19 CHAIRPERSON MIETZ: Okay.

20 MR. CROWE: We're sensitive to the noise
21 too. The owner doesn't want to hear it either.

22 CHAIRPERSON MIETZ: Very good. Other
23 questions about the generator or generator placement?
24 Okay.

25 **Application 1A-05-24**

1 Application of Rodney Buffington, agent, and
2 Cameron Sands, owner of property located at 3601
3 Elmwood Avenue, for an Area Variance from Section
4 207-11A to allow an in-ground swimming pool to be
5 located in a yard other than the rear yard as required
6 by code. All as described on application and plans on
7 file.

8 MR. CROWE: This one's pretty easy. The way
9 the house is designed, this is actually an outdoor
10 court. So the house surrounds it and then this is the
11 garden. That's how it was originally designed.
12 That's how it's being used now.

13 There is no backyard. So we can't put the
14 pool in the backyard. So Mark has come up with a
15 brilliant little plan to create this enclosed pool
16 area. So technically, the pool is not behind the
17 house. So we're asking for a variance.

18 So that's the whole story behind the pool.
19 Unless you got anything else to add.

20 MR. BAYER: That's it in a nutshell.
21 Basically, we're putting it inside the house. It's
22 not interior because it's got no roof, but essentially
23 it's in the house.

24 MR. D'AUGUSTINE: So it's completely
25 surrounded? No site lines to the pool from anywhere

1 else?

2 MR. CROWE: Correct.

3 MR. BAYER: Only through the interior.

4 MR. PREMO: Is there a hot tub?

5 MR. BAYER: Yes.

6 MS. PREMO: Do they need a variance for the
7 hot tub also?

8 MR. DiSTEFANO: Yes. And I don't think we
9 talked about the hot tub when the application came in.
10 I don't know. But we can certainly --

11 MR. BAYER: And they're -- also they're
12 connected basically.

13 MR. DiSTEFANO: Yeah. It's all part of the
14 same --

15 MR. BAYER: It's all the same gunite
16 structure.

17 MR. DiSTEFANO: That's fine.

18 CHAIRPERSON MIETZ: Okay. Questions about
19 the pool area? No? Okay.

20 All right, gentlemen. Thank you very much.
21 Let me just go to the audience.

22 Is there anyone in the audience that would
23 like to speak regarding any of the 3601 Elmwood
24 applications?

25 Okay. At this time then the public hearing

1 is closed. And thank you, gentlemen.

2 MR. CROWE: Thank you.

3 **Application 1A-06-24**

4 Application of Thomas Fitzgerald, MRB Group,
5 agent, Robert Hurlbut, owner of property located at
6 1919 Elmwood Avenue, for an Area Variance from Section
7 203-16B(2) (a) to allow an addition to a nursing home
8 be 50 feet from a lot line in lieu of the minimum 100
9 feet required by code. All as described on
10 application and plans on file.

11 MR. FITZGERALD: So my name is Thomas
12 Fitzgerald. I'm with MRB Group on behalf of Robert
13 Hurlbut from Hurlbut Care Communities.

14 We are requesting a variance --

15 CHAIRPERSON MIETZ: Just give a business
16 address for MRB or your address.

17 MR. FITZGERALD: Sure. It's 145 Culver
18 Road.

19 CHAIRPERSON MIETZ: Very good. Proceed.

20 MR. FITZGERALD: So we are requesting a
21 50-foot side setback variance for the building
22 addition on the east side of the existing nursing
23 home. There currently is a 70-foot side setback
24 variance that was granted back in 2004 for the east
25 side of the building. It's located over on this side

1 over here.

2 The building addition is going to be
3 identical to the existing height at 36 feet. The
4 nursing home is going to be the same amount of
5 patients at 54 beds.

6 With this building addition, it will reduce
7 the room requirements. So right now, there is three
8 to two patient beds per room. With the new building
9 addition, there will be 10 additional bedrooms. So
10 overall it will include one to two bedrooms per
11 patient room.

12 And as well, the parking requirements will
13 still remain the same.

14 The building coverage will be less than 20
15 percent of the requirement per the resident low
16 district.

17 And I believe that should be it.

18 CHAIRPERSON MIETZ: Okay. So what is the
19 purpose of -- what are we trying to accomplish here?

20 MR. FITZGERALD: So pretty much we're trying
21 to accomplish -- right now, there is -- trying to
22 reduce the size of the patients -- right now, there's
23 54 beds kind of crammed in, two to three patients per
24 bed in each room.

25 So it's just pretty much going to spread out

1 the patient beds so that way there's less -- less, I
2 guess, cluster, I guess you could say.

3 CHAIRPERSON MIETZ: Okay. And what is the
4 total square footage for the addition for the record?

5 MR. FITZGERALD: The total for the building
6 addition is going to be less than about 5,000 square
7 feet.

8 CHAIRPERSON MIETZ: Okay.

9 MS. TOMPKINS-WRIGHT: On the site plan there
10 seems to be a lot of space to the south of the -- you
11 know, to the south of the building, away from Elmwood
12 Avenue for expansion.

13 Did you consider kind of re-engineering the
14 building so it wouldn't require a variance? Is there
15 a kind of structural reason or cost reason that that's
16 the best location for this expansion?

17 MR. FITZGERALD: So located south of the
18 site, there is an EPOD limit. It's -- it's a little
19 bit -- about 20 feet south from the existing parking
20 lot.

21 MS. TOMPKINS-WRIGHT: Okay. So what I'm
22 hearing is there's really no other space on the site
23 to build an expansion?

24 MR. FITZGERALD: Just for that east side of
25 the existing building.

1 CHAIRPERSON MIETZ: Okay. More questions?

2 MS. SCHMITT: Just one question. I couldn't
3 tell from walking out there on the property, nor could
4 I tell in the papers, how close this addition will be
5 to the closest neighboring building.

6 MR. FITZGERALD: So the neighbor most near
7 the building will be the -- I would say the
8 residential one located on this side. Well, it'd also
9 be close to the DPW as well. So it would be at least
10 greater than 100 feet or more.

11 MS. SCHMITT: Thank you.

12 CHAIRPERSON MIETZ: Okay. Any other
13 questions? Okay, sir. Thank you.

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 MR. DiSTEFANO: I think before I call this
18 one, I think Lauren had some comments that she wanted
19 to share with the Board.

20 CHAIRPERSON MIETZ: Sure.

21 MS. BARON: Yeah. Thanks, Rick.

22 So before this next application, since this
23 Board doesn't often hear these, I just want to kind of
24 give a quick overview. You should have in your
25 folders the section of the comprehensive plan that --

1 pertains to historical designation, which is section
2 224-3.

3 And I just wanted to read the criteria just
4 for the record really quick so you can consider that.
5 Which states -- 224-3A states, "The commission may
6 designate an individual property, site or a structure
7 or significant feature of any such property, site or
8 structure as a landmark (any property, site or
9 structure or feature thereof so designated is
10 hereinafter referred to a quote/unquote 'landmark' if
11 it one, possess historic value as part of the
12 cultural, political, economic, architectural or social
13 history of the locality, region, state or nation; or
14 two, is identified with historic personages; or three,
15 embodies the distinguishing characteristics of an
16 architectural style; or four, is the work of a
17 significant designer.)"

18 So I just wanted to go through to state
19 those for the record and also remind the Board that
20 you are reviewing this next application de novo, which
21 essentially means you're looking at this application
22 with fresh eyes as you yourself are considering for
23 the first time whether or not a landmark designation
24 should be issued for this property.

25 CHAIRPERSON MIETZ: Very good. Okay, Rick.

1 **Application 1A-08-24**

2 Application of Jon Tantillo, agent, and
3 Salafia Nunzio, owner of property located at 125 Old
4 Mill Road, appealing the Historic Preservation
5 Commission's landmark designation of said property,
6 pursuant to Section 224-3F of the code. All as
7 described on application and plans on file.

8 MR. TANTILLO: Good evening, everybody. My
9 name is Jon Tantillo. I'm the attorney for Nunzio and
10 Mirella Salafia. My office address is 100 South
11 Clinton Avenue Rochester.

12 By way of background, Brighton's code
13 provides that when a property owner applies to
14 demolish a structure, the HPC will review the
15 application, decide whether the property should be
16 considered for landmark status before the demolition
17 can occur.

18 The Salafia's applied to demolish the
19 structure at 125 Old Mill so that they could build
20 their residence there.

21 The HPC decided to hold a hearing on whether
22 or not to designate the property and then ultimately
23 did designate the property.

24 We're here tonight on this appeal because we
25 think the HPC sets way too low a bar for what

1 qualifies as a landmark in the Town of Brighton.

2 I should point out that the Brighton
3 community is not here en masse tonight to support the
4 designation of an important cultural landmark for the
5 Town. The Salafia's immediate neighbors are here
6 because they don't want new construction.

7 As your attorney pointed out, this is a de
8 novo appeal. As the New York State Town Law states,
9 the question tonight is what the ZBA's own opinion on
10 landmark designation should be. No deference is
11 required to the HPC's decision.

12 So the Town of Brighton's code has four
13 criteria as to whether to designate a property a
14 landmark. The first is whether the property, quote,
15 "possesses historic value as part of the cultural,
16 political, economic, architectural or social history
17 of the locality, region, state or nation."

18 The town historian, when she submitted the
19 application for designation, which was part of the HPC
20 review process, did not even attempt to rely on this
21 factor in her -- in support of her position. No basis
22 for this factor applying to this property was provided
23 by the town historian and it was not cited by the HPC
24 in its own resolution.

25 But just in the interest of thoroughness, we

1 submitted a report by Hudson Cultural Services, which
2 is a company that does a lot of the same work that the
3 Town's own historic review officials do. And the HCS
4 report explained why this factor did not support
5 designation. The property is just one of countless
6 houses that was put up outside of Rochester in the
7 1930s and is in no way noteworthy in how it fits in
8 the history of the region and the socioeconomics of
9 the region.

10 I'm going to jump ahead to the third factor,
11 whether or not the property embodies the
12 distinguishing of an architectural style. The HPC
13 ultimately did not rely on this factor either. In any
14 event, as the HCS report points out, while the
15 property had been constructed in the colonial revival
16 style, it was significantly modified prior to the
17 Salafia's taking ownership, most notably the green
18 metal corrugated roof that greatly diminishes any
19 architectural qualities the house may have had.

20 And also colonial revival style isn't
21 particularly noteworthy in this area. And if all
22 colonial-style houses were landmarks, that would,
23 again, be far too low a bar.

24 The other two factors are the ones that the
25 HPC did rely on in its determination. The second

1 factor asks whether the property is identified with
2 historic personages.

3 Here the HPC just set the bar far too low
4 for what constitutes a landmark. The HPC said, quote,
5 "The property is associated with a prominent local
6 family, the Bentleys, a family who was active in
7 philanthropy throughout the Rochester area and the
8 founding of the Harley School in Brighton."

9 Now, there are a few problems with this
10 statement as far as using it to support the
11 designation of a landmark. First, the property was
12 the home of Janet and Raymond Bentley. These Bentleys
13 did not found the Harley School. The Harley School
14 was founded by Harriet Bentley, who did not own or
15 reside at the property.

16 It was also suggested by the HPC that Janet
17 E. Bentley was engaged in philanthropy, so much so
18 that she is a historic personage and her home is,
19 therefore, a landmark, which must be untouched in
20 perpetuity.

21 But at no point did the HPC or anyone
22 introduce into evidence before the HPC identify any
23 specific historic philanthropic efforts or acts that
24 she performed. The standard for landmark designation
25 can't be so nebulous as to encompass a property where

1 there's a vague assertion that a former owner was a
2 philanthropist and nothing more.

3 In any event, as HCS pointed out in our
4 report, the property itself has no association with
5 the undefined philanthropic efforts and this factor
6 can't support designation.

7 Though it wasn't referenced in the
8 resolution, the HPC also mentioned the Bentleys' son
9 Charles as a potential historic personage, but it
10 wasn't his house either. The house passed to the
11 Bentleys' daughter, Ruth, not Charles. Charles
12 Bentley was not even a resident in the town of
13 Brighton for very long.

14 Finally, the fourth factor is the work of a
15 significant designer. And this one was where I really
16 have no idea what the HPC's reasoning was. The HPC
17 determined that the residents' architect Herbert C.
18 Williamson was a significant designer, but there's no
19 explanation provided.

20 There was a list of buildings that he
21 designed, but every architect that has ever worked
22 will have a list of buildings they designed. No
23 explanation was given as to why those buildings were
24 significant or why Mr. Williamson's impact in the area
25 was significant.

1 I tried to do some research on
2 Mr. Williamson myself. The only thing I could find
3 was the listing for the HPC meeting by the Town. He's
4 in no way a significant architect by any demonstrable
5 standard. And if he is, I think there's a lot of
6 landmarks in the Town of Brighton that just don't know
7 it yet.

8 Finally, the HPC also referenced Fletcher
9 Steele, who was the landscape architect for the
10 property as a significant designer. Admittedly,
11 Fletcher Steele is significant; however, the
12 application was not related just to the property's
13 landscaping.

14 As your attorney read to you, the Town of
15 Brighton's code says that landmark designation can be
16 for, and I quote, "individual property, site or
17 structure or a significant feature of any such
18 property, site or structure."

19 The landscaping from nearly a century ago
20 can't be the basis to designate the entire parcel as a
21 landmark, especially the onsite structure. We tried
22 to make that clear before the planning board when we
23 were trying to do the site plan approval. We're
24 ultimately just trying to work with the Town to keep
25 any amount of the Fletcher Steele landscape that is

1 practicable, but we just weren't afforded the
2 opportunity. Thank you.

3 MR. KNAUF: I'm Al Knauf, 100 South Clinton
4 Avenue, Suite 2600, Rochester.

5 I'm just going to add a few -- chime in on a
6 couple of points to add to what my partner, Jon
7 Tantillo presented on behalf of the Salafia's.

8 Again, the point about the historic
9 personages is really weak. Ms. Bentley, apparently
10 she was wealthy so she gave money to charity. A lot
11 of people in the area that have money give money to
12 charity. That doesn't make their house a landmark.

13 And Mr. Bentley was a lawyer. Well, there's
14 a lot of lawyers in Brighton. Doesn't make their
15 house historic.

16 And their son went off and did accomplish
17 some things in science long after, but he didn't even
18 go to Harley. He went to Phillips Academy and
19 Boarding School -- he wasn't even in Brighton -- and
20 went off. And I'm sure a lot of children that were
21 raised in Brighton have gone off to do great things
22 like be on Saturday Night Live or be professional
23 soccer players, but that doesn't make their house
24 historic.

25 The other point I just want to hit on is the

1 architect. I had never heard of, I don't think the
2 people on the Historic Commission for the most part
3 had heard of this morning, is Herbert Williamson. He
4 apparently designed Norton Village Apartments. I
5 mean, nobody has come up with -- explained how he is
6 significant.

7 When I think of historic architects in
8 Rochester, I think of Claude Bragdon, J. Foster
9 Warner, James Johnson, maybe Don Hershey, people
10 you've heard of, you've said oh, there's a James
11 Johnson house or whatever. And I actually -- or
12 there's some really famous architects in my
13 neighborhood, in Park Avenue, the Frank Lloyd Wright
14 house on East Boulevard. Louis Kahn did the first
15 Unitarian church. Those are very significant.

16 But there are a lot of other historic or
17 great architects in Rochester. And I found -- I was
18 researching online because the researches -- Herbert
19 Williamson online, the only thing you find besides the
20 agenda for the Brighton meetings on this case are his
21 obituaries. That's it.

22 And I'm -- not to denigrate him, but he was
23 not a -- you know, he was kind of a small-time
24 developer. He did do some design work.

25 I found a publication, "Brighton's Country

1 Homes and Their Architects." And it goes through
2 significant architects, including J. Foster Warner,
3 Claude Bragdon, the Ward Wellington Ward, Carl
4 Schwaber. There's a list of up to 15. This man's
5 name is not on the list.

6 And I was kind of surprised -- my wife
7 called while I was waiting earlier for the case. I
8 went out to the hallway to take the call so I didn't
9 disturb anybody. And I walked down this hallway and
10 sure enough, this publication is posted with pictures
11 of houses in your hallway right there and celebrating
12 the great architects who have done work in Brighton.
13 And again, Mr. Williamson is not on the board. He is
14 not a significant architect.

15 The only reason we're here is because our
16 client made an application. It wasn't like people
17 were saying oh, that house on Old Mill is historic and
18 it should be designated.

19 And we just think this -- again, as Jon
20 said, really sets the bar far too low for landmark
21 designation. Thank you.

22 CHAIRPERSON MIETZ: Thank you. Okay.
23 Questions?

24 MS. SCHWARTZ: I was wondering how long the
25 applicant has owned the house.

1 MR. TANTILLO: Just about two years.

2 MR. PREMO: Jon, I just had a couple
3 questions. Concerning the landscaping, the Steele
4 design, is it your client's position that if the
5 designation was limited to the landscaping itself
6 versus the building itself, that would be acceptable?

7 MR. TANTILLO: We haven't looked at the
8 exact specifics about what we could preserve with the
9 new construction and what we couldn't. But it's been
10 the Salafia's position the entire time that we'd like
11 to work with the Town and see what can be preserved.

12 MR. PREMO: It appeared to me that even your
13 experts recognized Fletcher Steele's prominence as a
14 landscape architect/designer.

15 MR. TANTILLO: Yeah. If the application had
16 been to designate landscaping only, it would have been
17 a different question. But the application was to
18 designate this house based on the landscaping.

19 MR. PREMO: We're just trying to go
20 through -- and maybe you can help me -- the changes
21 that have been made to the house that reduce its value
22 as a colonial revival, American revival --

23 MR. TANTILLO: Colonial revival.

24 MR. PREMO: Yeah. What were the changes?

25 MR. TANTILLO: Yeah. So really not my area

1 of explicit expertise. So there's a large section on
2 that in the HCS report. But a good portion of it is
3 excerpted in page 3 of my letter.

4 Let's see. Changes to the northern
5 elevation, enclosure of the portico of the garage,
6 changes in elevation to the west terrace, expansion of
7 the dormers on the southern portion of the house,
8 change from double hung windows to casement windows,
9 updated the garage with a new roof line, kitchen
10 addition, eliminated a hipped roof. Let's see.

11 MR. PREMO: Skylights.

12 MR. TANTILLO: Skylights were added.

13 The huge one is the metal corrugated roof.
14 I was in shock when I went to the property the first
15 time and this was suggested as a landmark. It's
16 glaring. I couldn't imagine being -- seeing this
17 house designated a landmark with that roof on it.

18 But there are other ones on that page and in
19 the report that are referenced, but I think those are
20 the big ones. The shape, the layout, the size of the
21 roof, just altered.

22 CHAIRPERSON MIETZ: All set?

23 MR. PREMO: Yes.

24 CHAIRPERSON MIETZ: Any other questions?

25 MR. PREMO: No.

1 CHAIRPERSON MIETZ: Anyone else questions?

2 Okay. Very good.

3 All right. Thanks. Is there anyone in the
4 audience that would like to speak regarding this
5 application?

6 Give us your name and address and then fire
7 away.

8 MR. KOEGEL: My name is Robert Koegel, --
9 K-O-E-G-E-L. I live at 1960 Clover Street at the
10 corner of Old Mill Road. I've lived there for -- on
11 and off for about 35 years.

12 I come tonight to speak in favor of
13 retaining the designation of this property at 125 Old
14 Mill Road as a landmark and to oppose the application
15 to overturn that.

16 I'm glad we've already had the attorney for
17 the Town read off the standards which you must rely
18 on -- rather HPC had to rely on -- when you're
19 reviewing. That's one thing that we agree about, the
20 standards, they've -- the owner has brought up whether
21 or not the facts here are sufficient to meet the
22 criteria of designating. I agree with that. But what
23 we seem to disagree on is what those facts are, how
24 they should be interpreted and whether those standards
25 are met.

1 We also disagree right off the bat on the
2 one fact that -- the comment was made, well, the Town
3 only talked about a couple of them -- and that is the
4 Historic Preservation Board -- only a couple of the
5 standards. And I don't think that's true. And I'll
6 read to you from the transcript of that meeting where
7 they considered more than just historic personages and
8 the designer.

9 But first of all, I want to start off that
10 this application -- rather this matter is before you
11 because it was the Historic Preservation Board which
12 took it upon itself to look into the matter, not
13 because people made a lot of noise, showed up some
14 night, but decided whether or this house warrants --
15 this house, this property, warrants the attention so
16 that it might be designated, even against the will of
17 one that doesn't want that to happen.

18 And it retained Bero Architecture, which is
19 a very well-respected and well-used firm, not only
20 here, but in adjoining towns like Pittsford, which did
21 a very thorough study. And we'll get into what their
22 findings were and what they felt.

23 And yes, your attorney has said this is de
24 novo review. So you get to think yourselves about the
25 information before you. But it is still based on the

1 information in the Bero report, not what I've looked
2 up or what Mr. Knauf has looked up about
3 Mr. Williamson, but what was in the record. So I'm
4 going to speak to those things.

5 So step one, the standard of whether or not
6 the landscaping is the work of a significant designer.
7 The HPC found that, quote, "The landscaping consists
8 of one of only three intact design landscapes in
9 Brighton by Fletcher Steele, a Rochester-born,
10 nationally significant landscape architect and
11 designer, which features include design landscape
12 rooms throughout the property and forecourt gate and
13 fence and many or all of which features are located
14 within a 250-foot radius of the home."

15 That was its first finding. And an
16 important one it was. No one disputes the grandeur of
17 fame and prominence of Fletcher Steele.

18 So the owner here, unwilling to even try to
19 tarnish Mr. Steele's reputation or the work done on
20 the property -- which by their own consultant went
21 from the 1930s through the 1960s. 30 years of talking
22 between the owner Harriet -- not Harriet -- Janet
23 Bentley and Mr. Steele, in one of the longest-running
24 relationships he ever had in his preeminent life.

25 So with all that work done, there's no way

1 they're going to run that down. And they haven't
2 tried to do that.

3 Instead what they simply say is well, we
4 will work with the Town to preserve as much of
5 landscape designs as practicable. Well, even if the
6 law allowed the owner to pick and choose what
7 landmarked features they wanted to save, and I don't
8 think it does, the replacement house he's talking
9 about is shown on the owner's subdivision application
10 would wipe out the forecourt, fence and other features
11 described.

12 You see, because this thing is an -- the
13 application comes to you by way of this demolition.
14 But the owner first applied to the Planning Board for
15 a subdivision of the property running a line right
16 through the house north and south to divide it into
17 two lots. And then would put a new house easterly of
18 that. And so we know where the house would go based
19 on what they've submitted to the Town. And it would
20 obliterate these beautiful Steele features.

21 But even if, even if it didn't knock out
22 everything, the beautiful retaining walls at the back
23 of the property, all the various terraces, the
24 fountain, all the gorgeous gardens, the plantings,
25 trees, even if some of this could remain, it would be

1 out of place. It would be hanging on where it doesn't
2 belong.

3 All of these things were built as
4 embellishments to this beautiful house. So it's silly
5 to think that you're going to allow this beautiful
6 house to be knocked down and think that these features
7 that are out there will somehow be all right. They
8 wouldn't. So that's a hollow and, shall we say,
9 cynical argument to make.

10 Now, for the next item. This is whether the
11 house is a work of a significant designer. Now, this
12 is the house. Now, we're talking about Williamson --
13 who you've seen picked on as a low-grade person --
14 whether or not the house embodies the work of a
15 significant designer and whether also it has the
16 distinguishing characteristics of an architectural
17 style.

18 The HPC found, quote, "The residence on the
19 property is a noted example of the work of Herbert
20 Williamson, a Rochester-born noted designer and
21 architect and that the residence retains a high degree
22 of integrity at the location" -- this is important --
23 "location, setting, workmanship, feeling and
24 association despite several modifications to the
25 original design."

1 I want to talk about that feeling because at
2 the last hearing I appeared at before the Historic
3 Preservation Board, it wasn't just myself who talked
4 about the feeling that house gives to those that walk
5 down Old Mill, see it and look at it and the features
6 around it and go, ah, isn't that a beautiful house and
7 grounds? Aren't I lucky to live where I do?

8 That's what that house does. That's the
9 feeling you get from it. And that's important.

10 Now, the owner says that Mr. Williamson was
11 not a significant designer. But he sort of ignored
12 the work that was done by the Bero and cultural
13 resources survey. And if I knew they were going to
14 dump on him so much, I probably would have written out
15 more. But I will tell you that if you read the
16 record, which I'm sure you will on this, you'll see
17 that he designed the Norton Village Apartments,
18 completed in 1949, which were then the largest
19 city-sponsored housing development, executed in the
20 colonial revival style.

21 This is the style that the house is in,
22 colonial revival style. This is the style that he
23 fell in love with. This is the style he did over and
24 over again. And I'm getting this from the record,
25 from the survey, not something that I looked up on the

1 internet.

2 Also from the survey, he also designed the
3 First Federal Savings Bank main office on East Main
4 Street and the Hope Lutheran Church on Dewey Avenue.
5 There are a lot of other things that are mentioned in
6 there. You can look at those.

7 So no, he's not Claude Bragdon's fame, but
8 you don't have to reach to the very highest and the
9 greatest in name to say that this was not a work of a
10 significant designer.

11 Now, whether the property is identified with
12 historic personages, presumably it's too low a bar.
13 We've heard that so many times. The property is --
14 HPC found that the property is associated with
15 historic personages of a prominent local family, the
16 Bentleys, a family who is connected to philanthropy
17 throughout the Rochester area and the founding of the
18 Harley School in Brighton.

19 Well, the owner's quibbling again, dumping
20 on the Bentleys and the prominence of them. First,
21 they say he's just a lawyer. We can't -- he's just a
22 lawyer. Who cares about them?

23 Well, he was a very prominent lawyer and I
24 gave him a little something extra for starting off his
25 career in New York at Cadwalader, Wickersham and Taft

1 on Wall Street and ending up in Nixon, Hargrave,
2 Devans and Doyle. So you know, he was a pretty good
3 lawyer that was here locally.

4 The house was built for him and Janet
5 Bentley in 1931. And the Harley School, as I said,
6 was named after Harriet Bentley, Janet's
7 sister-in-law. But it says, as it's found in the
8 cultural study, both Harriet and Janet would remain
9 active in the growth and promotion of Harley with
10 several of Raymond and Janet's children attending
11 school there before embarking on their college
12 careers.

13 Now, one of the children was Charles. I
14 understood that this man -- that he also went to
15 Harley. You're being told outside of the record that
16 he went to another prep school. I don't know what's
17 true or not on that. But either way, the point is he
18 was reared in that home and he lived here and that was
19 part of his life and who he was.

20 It goes on to say Charles Bentley went on to
21 become a celebrated glaciologist and geophysicist,
22 whose pioneering mapping of the continent of
23 Antarctica and analysis of the movement of ice sheets
24 helped to inform a more nuanced understanding of the
25 rapid sea level rise and the effects of global

1 warming.

2 So, you know, he had quite a career. It
3 goes on to say, quote, "Several of his 15 total trips
4 to Antarctica were covered in the local news."

5 This was also brought out at the meeting of
6 the HPC. So I'd say the guy was kind of famous and
7 important.

8 And the owner argues that Janet Bentley's
9 philanthropic work and Charles' expeditions were not
10 derived from the house. Well, they don't have to be
11 derived from the house. Because other than writers
12 and painters and others, for example, properties are
13 rarely designated as being identified with historic
14 people because of what they did in those properties.
15 Rather, they're designated simply because historic
16 people lived there.

17 Charles was famous for what he did in
18 Antarctica, not for what he did where he grew up.
19 Nevertheless, his childhood home is properly
20 celebrated.

21 So for those reasons, I say that the
22 thoughts and discretion of the Board below you, based
23 on the record and the facts that were in the record
24 support the findings that were made. And it only took
25 one of these, but all of this that was made by the

1 Historic Preservation Board are sound and should be
2 approved by you.

3 Finally, just one last thing. Again, I
4 can't help but say, because that's why we have public
5 hearings, that I concur with the other people that
6 came to the Historic Preservation Commission and spoke
7 of why they are standing up for this house. And it's
8 because -- and I agree with them -- when you would
9 walk by it and you look over and you stop and you
10 think about it, it's magical. And that's the feeling
11 you get from this house. Thank you.

12 CHAIRPERSON MIETZ: Okay. Thank you.

13 MS. TOMPKINS-WRIGHT: Can I ask a question?

14 MR. KOEGEL: Sure.

15 MS. TOMPKINS-WRIGHT: Because you mentioned
16 this, there's three homes in Brighton that were --
17 that's landscape were designed by Fletcher Steele. Do
18 you know if the other two are designated historical?

19 MR. KOEGEL: I don't know. I don't know.
20 It is -- but that statement comes again from the
21 cultural resource survey. And it was particularly
22 picked up on at the HPC hearing as well.

23 MS. TOMPKINS-WRIGHT: Okay.

24 MR. PREMO: If we were to decide to
25 designate the landscaping and not the house, I mean,

1 that would mean the applicant would have -- the owner
2 would have to come back and get a certificate of
3 appropriateness; right? I mean, it wouldn't mean that
4 there'd be no protection.

5 MR. KOEGEL: There'd be protection for
6 whatever was left, yes.

7 MR. PREMO: And how about do you have any
8 position about the alterations to the house from the
9 original design?

10 MR. KOEGEL: Well, I personally -- sure. I
11 would say that reasonable alterations to the house
12 would be fine. I can -- I'd have to see what they
13 were. Especially since -- I'm not saying -- there
14 were changes, in the metal roof for example. There
15 were other additions.

16 But the difference is, is the Town's
17 consultant feels that they do not detract enough to
18 change the significance of this house and
19 architectural style.

20 But as long as these would be tasteful
21 changes, of course, of course.

22 CHAIRPERSON MIETZ: Okay. Very good. Thank
23 you very much.

24 Is there anyone also that would like to
25 speak, please?

1 MR. FLAUM: Hello. My name is Loren Flaum.
2 I live at 141 Old Mill, which is the direct neighbor
3 to 125, which is the applicant.

4 I just wanted to speak on behalf and support
5 of the HPC's declaration of 125 Old Mill being a
6 historic home.

7 Unfortunately, a lot of our neighbors were
8 not -- are not here tonight, but they were at the
9 hearing a month ago. It was probably six or seven
10 neighbors all in support of it being a historic
11 designation.

12 And I think it really comes down to what
13 basically Robert said, which is the feeling that you
14 get with that house. I mean, it is the original house
15 on the street. It is a beautiful property. It is a
16 beautiful historic home and one that I feel and
17 believe should be preserved.

18 And right now it's in a state of disrepair
19 and it -- architecture like that in Brighton should be
20 preserved. The landscaping should be preserved. I
21 understand the historic nature of Fletcher Steele and
22 the landscape and how beautiful it is. It is also
23 falling into disrepair.

24 And the whole point is to maintain that
25 house as a beacon of the street. And when you walk up

1 and down the street, all the other neighbors -- we
2 have a great community and you see that house and you
3 realize that it's a beautiful house. It's a magical
4 place and it should be preserved.

5 So just wanted to come and support the HPC's
6 declaration. And appreciate the time. Thank you.

7 CHAIRPERSON MIETZ: Okay. Very good.
8 Anyone else that would like to speak regarding this
9 application?

10 We don't allow rebuttals, sir. If we have
11 questions, we'll ask you later.

12 MR. TANTILLO: Understood.

13 CHAIRPERSON MIETZ: So anyone else? Okay.
14 We want to leave this open?

15 MS. BARON: Yeah. At this time, I think
16 leaving the public hearing open until the next meeting
17 is appropriate for any additional public comments we
18 want.

19 CHAIRPERSON MIETZ: We'll discuss it
20 further, but we'll leave it.

21 MR. DiSTEFANO: Right. I do believe we will
22 get some response from the Historic Preservation
23 Commission. Their December meeting was canceled. And
24 they will be taking this matter up at their January
25 hearing, which will be obviously prior to our February

1 meeting.

2 CHAIRPERSON MIETZ: And also just so the
3 neighbors understand, we have access to the testimony
4 and everything that was done at the HPC. If other
5 neighbors spoke, we'll obviously be able to review all
6 of that as well.

7 MR. DiSTEFANO: That is all part of your
8 packet that you received.

9 CHAIRPERSON MIETZ: Ensure them that that's
10 the case.

11 MR. PREMO: Is there any chance that the
12 town historian --

13 MR. DiSTEFANO: Yes. She does plan on being
14 here after she has discussed this with the Historic
15 Preservation Commission.

16 MR. PREMO: Would she be available at the
17 next hearing?

18 MR. DiSTEFANO: Yes. Yes. She will be
19 available.

20 And again, we'll probably be receiving some
21 documentation from the commission itself.

22 CHAIRPERSON MIETZ: Okay.

23 MR. DiSTEFANO: Also, just so everybody
24 knows, the public hearing is left open. So anybody
25 can speak next month also after you hear testimony

1 from other -- the Board itself, the commission itself.
2 So that's available.

3 Do you have a question?

4 MR. KNAUF: Yeah. I understand the Board --
5 we don't -- we request the hearing be closed as the
6 applicant, but -- and I don't really understand the
7 purpose -- the Historic Preservation Commission's
8 already made its decision. We've got its resolution.
9 We've got all the testimony.

10 MR. DiSTEFANO: Sure. I think this Board's
11 going to have some questions for them.

12 MR. KNAUF: Okay. Well --

13 CHAIRPERSON MIETZ: I think it's relevant
14 information that we could review. I mean, it's up to
15 us, as Lauren said, to make this decision
16 independently. I mean, we understand what they did.
17 We understand what you guys just said and the
18 neighbors just said. And you know, we've got to take
19 all of that into account.

20 MS. BARON: Additionally, Mary Jo Lanphear,
21 the town historian, was the original applicant. And
22 as you know -- and would like potentially want to make
23 a comment as well.

24 MR. KNAUF: I understand keeping the hearing
25 open and giving testimony. I just thought we were

1 done with the first board and we're in front of the
2 second board. But, you know. So that's our position.
3 But thank you very much.

4 CHAIRPERSON MIETZ: Thank you.

5 MR. KNAUF: I guess Jon will be here next
6 month.

7 CHAIRPERSON MIETZ: Okay. So --

8 MR. TANTILLO: Anything else on this or --

9 CHAIRPERSON MIETZ: Well, we'll maybe
10 discuss it further, but. Yeah. There's not -- I
11 don't think there's any other action on here. If you
12 want to stay, you can.

13 All right. Do we need a little break?

14 MR. DiSTEFANO: Do you want to close the
15 public hearing?

16 CHAIRPERSON MIETZ: It's open. It's open.
17 Yeah. We'll move to our deliberations, but she needs
18 a break.

19 (Public hearings concluded at 8:33 p.m.)

20 (Begin deliberations and decisions.)

21

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23

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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 3rd day of January, 2024
13 at Brighton, New York.

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21 -----
22 HOLLY E. CASTLEMAN, ACR,
23 Court Reporter.
24
25

BRIGHTON
ZONING BOARD OF APPEALS
MEETING
DELIBERATIONS AND DECISIONS

January 3, 2024
At approximately 7 p.m.
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ
Chairperson

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

LAUREN BARON, ESQ.
Attorney for the Town

RICK DiSTEFANO
Secretary

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

1 MR. DiSTEFANO: Before we go into
2 deliberations, I want to touch on the new business
3 item, the tentative agenda for 2024.

4 CHAIRPERSON MIETZ: Yes.

5 MR. DiSTEFANO: As you see in my highlighted
6 scribbles under the Board of Appeals, July 3rd is
7 obviously the night before the 4th. I don't think we
8 really want to meet. And October 2nd is the first
9 night of Rosh Hashanah.

10 So my suggestion is that we meet on Tuesday,
11 July 2nd and Tuesday, October 1st, if you guys are in
12 agreement to those modifications.

13 MS. SCHWARTZ: The 1st is Tuesday?

14 MR. DiSTEFANO: Yeah. October 1st is the
15 Tuesday.

16 MS. SCHWARTZ: I have a question for you. I
17 haven't looked at the calendar. There's a holiday --

18 MR. DiSTEFANO: The 2nd is the first night
19 of Rosh Hashanah. So October 1st would not be part of
20 Rosh Hashanah.

21 MS. SCHWARTZ: But our holiday is always the
22 night before. I want to make sure it's the night of.

23 MR. DiSTEFANO: Yeah. Sundown, October 2nd
24 begins the holiday.

25 MS. SCHWARTZ: So it's the 1st and 2nd?

1 MR. DiSTEFANO: So the first -- the 2nd of
2 July, the first of October, both be Tuesdays.

3 MS. SCHWARTZ: Thank you very much.

4 MR. DiSTEFANO: Is that -- I know you don't
5 know for sure, but do you think that's a good thing to
6 consider at this point in time? So I can get that on
7 the agenda and put it on the Town's calendar.

8 MR. PREMO: I think that's fine.

9 MR. DiSTEFANO: Okay. Thank you.

10 CHAIRPERSON MIETZ: Okay.

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1 **Application 1A-01-24**

2 Application of Rodney Buffington, agent, and
3 Cameron Sands, owner of property located at 3601
4 Elmwood Avenue, for Area Variances from Section 205-2
5 to 1) allow a rear addition to extend 8.5 feet into
6 the existing 27-foot rear setback where a 60-foot rear
7 setback is required by code, and 2) allow a second
8 addition to extend 9 +/- feet into the 39.1-foot side
9 setback (west) required by code. All as described in
10 application and plans on file.

11 MS. SCHWARTZ: I move we approve application
12 1A-01-24 based on the following findings of fact.

13 **Findings of Fact:**

14 1. The existing house was located within the rear
15 yard setback, which is currently 27 feet in lieu of
16 the 60 feet required by code. The variance is to
17 allow the rear addition to extend 8 and a half feet
18 into the existing 27 feet. The remainder of the rear
19 yard slopes up and even in the winter, there is a
20 considerable vegetative buffer that will shield this
21 rear addition from the abutting neighbors. The
22 nearest home to both setbacks is 60 feet plus or
23 minus.

24 2. The variance for the side and rear setbacks is the
25 only feasible option for the applicant to achieve the

1 results that are desired. The placement of the house
2 on the property and the driveway location necessitates
3 these variances.

4 3. The rear yard setback is an existing nonconforming
5 setback of 26 feet plus or minus and is proposed to
6 become 17.6 feet. The side yard setback requires 15
7 percent of the lot width, which is 39 feet 1 inch.
8 The proposed side setback will be 30 feet, which is
9 not substantial as a rear yard setback and will be
10 buffered by vegetation.

11 4. There will be no adverse effect on the character
12 or the health and safety of the neighbors.

13 **Conditions:**

14 1. These variances only apply to the testimony
15 presented in the written applications.

16 2. All necessary building and planning approvals must
17 be obtained.

18 MR. DiSTEFANO: Only thing I want to add to
19 number one -- probably should get a second. I'm
20 sorry.

21 MR. D'AUGUSTINE: Second.

22 MR. DiSTEFANO: The second condition I would
23 like to add in particular would not -- and in
24 particular will not apply to other structures
25 considered in the future. So they can't use that

1 setback as the prevailing setback for additional
2 additions.

3 And also I think we probably should put it
4 on -- although I get a little questionable. I'll ask
5 our attorney here. We probably should have the
6 condition on all of these in regards to the
7 subdivisions of the lot. Although it doesn't
8 specifically apply to the variances that are being
9 requested.

10 CHAIRPERSON MIETZ: It does though.

11 MR. DiSTEFANO: It really doesn't, but
12 overall --

13 CHAIRPERSON MIETZ: How would these
14 variances be -- because they are different --

15 MR. DiSTEFANO: Like the setbacks wouldn't
16 be any different if they subdivided or they didn't
17 subdivide.

18 What it does is it prevents other variances
19 from coming into play. If they don't subdivide,
20 there'd be like three or four other variances that
21 would be necessary.

22 CHAIRPERSON MIETZ: I think we're agreeing
23 with that. So I think I'm agreeing they should -- are
24 you okay to add that?

25 MS. McKAY-DRURY: Can I have some

1 understanding why the Town would care if it's
2 subdivided?

3 MR. DiSTEFANO: Well, let's put it this way.
4 Here's the discussions that I had with the applicants.

5 If you don't subdivide, that's fine.
6 However, you're going to need livable floor area
7 variance. You're going to need pavement in the front
8 yard variance. You're going to need probably a bunch
9 more variances. Yet you can subdivide and get rid of
10 those variances.

11 So when we look at is there another way to
12 accomplish what you want to do by not getting a
13 variance? Yes, there is. Subdivide.

14 MS. BARON: Making it more code compliant.

15 MR. DiSTEFANO: You own this land. So
16 subdivide it so you don't need variances.

17 MS. BARON: The town wants the property to
18 be code compliant as they possibly can be.

19 CHAIRPERSON MIETZ: And also by doing it,
20 you're minimizing the amount of variances on this
21 property. So what we try to do is what is the least
22 amount of variances we should have.

23 So by subdividing the lot, we're achieving
24 that in essence.

25 MR. DiSTEFANO: I mean, if we didn't

1 condition it and they say, okay, we're not going to
2 subdivide, they have to come back for those variances.

3 And we'd probably say, no. You can
4 subdivide. You don't need a livable floor area
5 variance. You don't need a coverage of the front yard
6 variance because you have all this three acres of land
7 that you certainly can adjust your lot lines.

8 Whether or not you got to get rid of all
9 three lots or not, but you can adjust your lot line so
10 you don't have it.

11 MS. TOMPKINS-WRIGHT: Are you suggesting we
12 should condition all five approvals on this?
13 Because --

14 MR. DiSTEFANO: Well that's one of my
15 questions.

16 I don't think we need to do all five
17 approvals because, you know, the generator, subdivide
18 or not --

19 CHAIRPERSON MIETZ: Swimming pools won't
20 be --

21 MR. DiSTEFANO: Right. I would maybe do the
22 garages and the additions.

23 CHAIRPERSON MIETZ: The walls.

24 MR. DiSTEFANO: Not the pool. Not the
25 generator.

1 MR. D'AUGUSTINE: But walls and --

2 CHAIRPERSON MIETZ: Not the pool.

3 MS. SCHWARTZ: Do you want me to read --

4 CHAIRPERSON MIETZ: We're adding it to
5 yours.

6 MR. SCHWARTZ: These variances only apply
7 with the subdivision of creating one single lot.

8 MR. DiSTEFANO: That would be number 3.

9 CHAIRPERSON MIETZ: All right. So we have a
10 second on that, Matt?

11 MR. DiSTEFANO: You're in agreement with
12 that.

13 MR. D'AUGUSTINE: Yes.

14 **Conditions As Amended:**

15 1. These variances only apply to the testimony
16 presented in the written applications and in
17 particular will not apply to other structures
18 considered in the future.

19 2. All necessary building and planning approvals must
20 be obtained.

21 3. These variances only apply with the subdivision of
22 creating one single lot.

23 MR. DiSTEFANO: Motion is to approve with
24 conditions.

25 (Mr. Premo, yes; Ms. Tompkins-Wright, yes;

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Mr. Mietz, yes; Ms. Schmitt, yes;
Ms. McKay-Drury, yes; Mr. D'Augustine, yes;
Ms. Schwartz, yes.)
(Upon roll motion to approve with conditions
carries.)

1 **Application 1A-02-24**

2 Application of Rodney Buffington, agent, and
3 Cameron Sands, owner of property located at 3601
4 Elmwood Avenue, for an Area Variance from Section
5 205-2 to allow for total size of attached garage(s) to
6 be 1,114 square feet in lieu of the maximum 900 square
7 feet allowed by code. All as described on application
8 and plans on file.

9 MS. TOMPKINS-WRIGHT: I move to approve
10 application 1A-02-24 based on the following findings
11 of fact.

12 **Findings of Fact:**

13 1. Granting the requested variance will not produce
14 an undesirable change in the character of the
15 neighborhood or be a detriment to the nearby
16 properties. Due to the size of the lot and the
17 overall size of the structure, the 1,114 square foot
18 garage is reasonably sized and will appear relatively
19 in line with the character of the home. In addition,
20 the additional garage bay will sit over 30 feet from
21 the neighboring property and will remain densely
22 planter to buffer the neighboring property.

23 2. The requested variance of an additional 214 square
24 feet is not substantial in light of the size of the
25 home and size of the lot. Importantly, the home

1 previously had well over 1,700 square feet of garage
2 space existing between the existing attached garage
3 and the former detached garage that was removed so the
4 overall effect of this additional garage bay will
5 still reduce the overall garage square footage on the
6 site.

7 3. The benefit sought by the applicant cannot
8 reasonably be achieved by any other method as the
9 homeowner is in need of a more usable garage space for
10 storage where no other expansion would be permitted
11 without a variance due to the setbacks. Thus, the
12 variance granted with respect to the garage size is
13 the minimum necessary to grant relief.

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

18 **Conditions:**

19 1. The variance granted herein applies only to the
20 addition of one garage bay to increase the total
21 garage square footage to 1,114 square feet in the
22 locations in and as presented in the plans submitted.

23 2. This approval is conditioned upon the owners
24 subdividing the lot to create one lot.

25 3. All necessary architectural review approvals and

1 building permits must be obtained.

2 MS. SCHWARTZ: Second.

3 CHAIRPERSON MIETZ: Okay. Any concerns?

4 Very good. Thank you.

5 MR. DiSTEFANO: Motion is to approve with
6 conditions.

7 (Ms. Schmitt, yes; Ms. McKay-Drury, yes;

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

9 Mr. Premo, yes; Ms. Schwartz, yes;

10 Ms. Tompkins-Wright, yes.)

11 (Upon roll motion to approve with conditions
12 carries.)

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1 **Application 1A-03-24**

2 Application of Rodney Buffington, agent, and
3 Cameron Sands, owner of property located at 3601
4 Elmwood Avenue, for Area Variances from Section 207-2
5 to 1) allow for a 5-foot-high front yard wall with a
6 6.5-foot-high gate in lieu of the maximum 3.5 feet
7 in height allowed by code, 2) allow for a side yard
8 (east) wall to be 8 feet in height in lieu of the
9 maximum 6.5 feet allowed by code, and 3) allow for
10 sunken garden walls to be 10 feet in height in lieu of
11 the maximum 3.5 feet and 12.75 feet in height in lieu
12 of the maximum 6.5 feet allowed by code. All as
13 described in application and plans on file.

14 MS. MCKAY-DRURY: I move to approve
15 application 1A-03-24 to the extent it seeks area
16 variances to one, allow for a 5-foot-high front yard
17 wall with a 6.5-foot-high gate --

18 MS. BARON: So I think this was the
19 confusion.

20 MR. DiSTEFANO: This was the confusion.

21 MS. BARON: So the 5 foot max height does
22 not have a --

23 MR. DiSTEFANO: 6 foot -- call it the
24 carport fence. Carport wall. Which is the 5-foot
25 carport wall.

1 MS. McKAY-DRURY: So to allow for -- so one,
2 to allow for a 5-foot-high front yard car corral wall
3 in lieu of the maximum 3.5 foot in height allowed by
4 code; two, allow for a side yard east wall to be 8
5 feet in height in lieu of the maximum 6.5 feet allowed
6 by code; and three, allow for sunken garden walls to
7 be 10 foot in height in lieu of the maximum 3.5 feet
8 and 12.7 foot in height in lieu of the maximum 6.5
9 foot allowed by code.

10 And I further move to table application
11 number 1A-03-24 to the extent it seeks a 6.5-foot
12 driveway gate in lieu of the maximum 3.5 foot in
13 height allowed by code to receive more information
14 from the applicant.

15 CHAIRPERSON MIETZ: How about specifically
16 to the design of said gate?

17 MS. McKAY-DRURY: Specifically as to the
18 design of said gate and --

19 MR. DiSTEFANO: Design and location.

20 MS. McKAY-DRURY: And necessitating of 6.5
21 feet height and --

22 MR. DiSTEFANO: Location.

23 MS. TOMPKINS-WRIGHT: Generally we say 3
24 feet. I don't know --

25 CHAIRPERSON MIETZ: I think they got the

1 gist of it.

2 MS. MCKAY-DRURY: Based on the following
3 findings of the fact.

4 **Findings of Fact:**

5 1. The requested variance to be approved will not
6 result in a substantial change in the character to the
7 neighborhood or detrimentally affect the surrounding
8 properties given that the walls will be consistent
9 with the brick material on the primary structure. The
10 existing mature landscape will nearly eliminate
11 visibility. The retaining walls will be only visible
12 from the sunken gardens with the exception of a
13 minimal guardrail.

14 2. The difficulty necessitating the variance request
15 cannot be solved in another matter not requiring a
16 variance given the desire for privacy from within the
17 home and the gardens to be constructed.

18 3. The variances are not substantial in relation to
19 the code requirements as applied to this particular
20 property given the grade of the property and its
21 overall approximately 3-and-a-half-acre size.

22 4. The variance is the minimum necessary to grant
23 relief from the difficulty given that the walls were
24 carefully considered for the scale and size of the
25 property and in light of the grade of the property in

1 the area surrounding the home to ensure the materials
2 and aesthetics are consistent with the architecture of
3 the house and complements the mature landscape.

4 5. The proposed variance is consistent with
5 surrounding properties so as not to have an adverse
6 effect or impact on the physical or environmental
7 conditions in the neighborhood including the fact that
8 the nearest other homes on all sides of the property
9 are approximately 65 to 70 feet away.

10 6. The need for the variance is self-created;
11 however, this factor is not dispositive and in light
12 of the efforts taken to minimize the visibility from
13 outside of the property, this wouldn't be a problem.

14 **Conditions:**

15 1. It's limited to the fences and walls described in
16 the application on file and testimony given.

17 2. All necessary building permits shall be obtained.

18 3. And conditioned upon the owner subdividing the
19 property to create a single lot.

20 MS. SCHWARTZ: Second.

21 MR. DiSTEFANO: Do we need to throw in there
22 somewhere that the public hearing portion of the
23 tabled portion of the application, the public hearing
24 shall remain open?

25 MS. BARON: Yeah. So that portion of the

1 public hearing should remain open to allow the
2 applicant to submit the additional information in any
3 way he wants to respond to it.

4 MR. DiSTEFANO: I don't know where we put
5 that. Do we put that in that motion that she made?

6 MS. BARON: It would -- I guess, in the
7 beginning where you spoke about -- when you're moving
8 to table to --

9 MR. DiSTEFANO: Actually, just where she
10 says tabling that portion, just after tabling and keep
11 the public hearing open.

12 MS. TOMPKINS-WRIGHT: In the condition she
13 says this only applies to the walls. Do we need to
14 express it does not apply to the gate in the
15 application? Only because we've never -- I've never
16 seen us approve and table before.

17 MR. DiSTEFANO: Table a portion of it.

18 Yeah. The times we've done it, we've been
19 very specific that number one is being approved,
20 number two being tabled. You know, part one and part
21 two. We've done that in the past.

22 This is kind of -- how was this advertised?
23 This was advertised just as a continuation of a group;
24 right?

25 I don't know that we have to condition

1 because we have it in the motion, we have it specified
2 that this approval does not apply to that.

3 MS. BARON: I agree. The motion is to table
4 as to that portion.

5 CHAIRPERSON MIETZ: So we're going to visit
6 that again. Okay. All right. Do we have anything
7 else to discuss?

8 MR. DiSTEFANO: The motion is to approve
9 with conditions.

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

14 (Upon roll motion to approve with conditions
15 and table carries.)
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1 **Application 1A-04-23**

2 Application of Rodney Buffington, agent, and
3 Cameron Sands, owner of property located at 3601
4 Elmwood Avenue, for an Area Variance from Section
5 203-2.1B(6) to allow a stand-by emergency generator to
6 be located in a side yard (east) in lieu of the rear
7 yard behind the house as required by code. All as
8 described on application and plans on file.

9 CHAIRPERSON MIETZ: I move we approve
10 application 1A-04-24 based on the following findings
11 of fact.

12 **Findings of Fact:**

13 1. The proposed location for the generator is the
14 minimum variance necessary since the generator cannot
15 be placed in the rear yard due to the setbacks and
16 grades.

17 2. The proposed location will be 56 and a half feet
18 from the property line and below grade shielded by a
19 masonry wall and vegetation.

20 3. No change to the character of the neighborhood
21 will result from this variance since it is in a
22 minimally obstructive location.

23 4. While the need for the generator is self-created,
24 the optimal location is the side yard for placement
25 due to screening and grades.

1 **Conditions:**

2 1. It is based on testimony given, plans and specs
3 submitted and discussed in testimony.

4 2. All building permits shall be obtained.

5 MS. SCHMITT: Second.

6 MR. DiSTEFANO: Motion is to approve with
7 conditions.

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

12 (Upon roll motion to approve with conditions
13 carries.)

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1 **Application 1A-05-24**

2 Application of Rodney Buffington, agent, and
3 Cameron Sands, owner of property located at 3601
4 Elmwood Avenue, for an Area Variance from Section
5 207-11A to allow an in-ground swimming pool to be
6 located in a yard other than the rear yard as required
7 by code. All as described on application and plans on
8 file.

9 MR. PREMO: I move we approve application
10 1A-05-24 based on the following findings of fact.

11 **Findings of Fact:**

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

16 2. The requested variance is to allow a pool and a
17 hot tub to be located in the courtyard area as opposed
18 to the rear yard area.

19 3. Given the existing home structure, the unique
20 shape of the lot, the location of the pool and hot tub
21 in the rear yard is not feasible and would require
22 demolition of a part of the existing home.

23 4. The requested area variance is the minimum
24 variance necessary to address the benefit sought by
25 the applicant.

1 5. No other alternative can relieve the difficulty
2 and provide the desired result.

3 6. The variance in context is not substantial.

4 7. There will be no unacceptable change to the
5 neighborhood and no substantial change to neighboring
6 properties. The pool and hot tub will be in the
7 courtyard and not visible from the neighboring
8 properties or the street.

9 8. The hardship request from the side shape and
10 configuration of the existing lot that was not created
11 by this applicant.

12 9. The health, safety and welfare of the community
13 will not be adversely affected by approval of the
14 variance.

15 **Conditions:**

16 1. The variance is based on the application and
17 materials submitted and testimony given and only
18 authorizes projects described therein.

19 2. Subject to obtaining all necessary building
20 permits and inspections.

21 MR. D'AUGUSTINE: Second.

22 MR. DiSTEFANO: Motion is to approve with
23 conditions.

24 (Ms. Tompkins-Wright, yes; Ms. Schwartz,
25 yes; Mr. Mietz, yes; Ms. McKay-Drury, yes;

1 Ms. Schmitt, yes; Mr. D'Augustine, yes;
2 Mr. Premo, yes.)
3 (Upon roll motion to approve with conditions
4 carries.)
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1 **Application 1A-08-24**

2 Application of Jon Tantillo, agent, and
3 Salafia Nunzio, owner of property located at 125 Old
4 Mill Road, appealing the Historic Preservation
5 Commission's landmark designation of said property,
6 pursuant to Section 224-3F of the code. All as
7 described on application and plans on file.

8 MS. TOMPKINS-WRIGHT: I move to table
9 application 1A-08-24 in order to receive additional
10 information from the Brighton historian as well as the
11 Brighton Historic Preservation Committee to better
12 understand the reasoning for the historic designation.

13 MR. D'AUGUSTINE: Second.

14 MS. TOMPKINS-WRIGHT: I move to keep the
15 public hearing open.

16 CHAIRPERSON MIETZ: Lauren, do you have any
17 concern?

18 MS. BARON: I would just like to add and to
19 allow the applicant to address any questions that the
20 Board has raised during the deliberations and to
21 Accept additional comments from the applicant as well.
22 I'm sorry. The --

23 CHAIRPERSON MIETZ: Anyone in the audience
24 really.

25 MR. DiSTEFANO: Well, the public hearing's

1 open. But specifically the property owner.

2 The motion is to table and to keep the
3 public hearing open.

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

8 (Upon roll motion to table and keep the
9 public hearing open carries.)

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1 **Application 1A-06-24**

2 Application of Thomas Fitzgerald, MRB Group,
3 agent, Robert Hurlbut, owner of property located at
4 1919 Elmwood Avenue, for an Area Variance from Section
5 203-16B(2) (a) to allow an addition to a nursing home
6 be 50 feet from a lot line in lieu of the minimum 100
7 feet required by code. All as described on
8 application and plans on file.

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

15 I also move to approve application 1A-06-24
16 based on the following findings of fact.

17 **Findings of Fact:**

- 18 1. The applicant is a nursing home which previously
19 was granted a variance to allow the building to be 70
20 feet from the lot line in lieu of the 100 feet
21 required by code. The current request is to allow the
22 building of an addition to the existing building,
23 which, if approved, will be 50 feet from the lot line
24 in lieu of the minimum 100 feet required by code.
25 2. The new addition will not produce an undesirable

1 change in the character of the neighborhood or be a
2 detriment to nearby homes as the proposed addition is
3 on the existing property and will be more than 100
4 feet away to the closest neighboring properties.

5 3. While the variance is self-created, the applicant
6 determined that the benefit sought cannot reasonably
7 be achieved without a variance as there is no location
8 on-site where the building addition will not create a
9 variance.

10 4. Moreover, while the variance at first appears
11 substantial, it is not as there's presently a
12 nonconforming setback.

13 5. According to the testimony presented, the variance
14 is the minimum necessary to accommodate the needs of
15 the applicant.

16 6. There is no evidence that there would be a
17 negative impact to the health, safety and welfare of
18 the neighborhood.

19 **Conditions:**

20 1. The variance granted only applies to the addition
21 described in and in the location depicted on the
22 application and testimony provided and will not apply
23 to future projects.

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

1 MR. D'AUGUSTINE: Second.

2 MR. DiSTEFANO: Motion is to approve with
3 conditions.

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

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

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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 foot in size
7 in lieu of the maximum 600 square feet allowed by
8 code. All as described on application and plans on file.

9 MR. D'AUGUSTINE: I recommend approval of
10 12A-01-23 based on the following findings of fact.

11 **Findings of Fact:**

- 12 1. The proposed storage unit will not result in a
13 substantial change in the character of the
14 neighborhood. Workers will be collecting and
15 returning equipment and materials on weekday mornings
16 and evenings and will not be engaging in frequent
17 back-and-forth traffic to the storage unit during the day.
- 18 2. The difficulty cannot be solved in another manner
19 not requiring a variance because the complex is
20 currently utilizing the three apartments to store
21 equipment. This is resulting in a loss of revenue
22 that the complex cannot recoup without a variance.
- 23 3. The requested variance is the minimum necessary to
24 grant relief because the current square footage of the
25 three apartments utilized as storage is 2,400 square

1 feet, which is the size that the applicant has
2 requested.

3 4. The proposed variance will not have an adverse
4 effect on the physical condition of the neighborhood.
5 The storage facility will be far away enough from the
6 property lines as to not create any disturbance.
7 Additionally, the neighboring properties are
8 commercial in nature and maintenance activity will not
9 create any quality of life issues for them.

10 **Conditions:**

11 1. This variance applies only to the structure as
12 described in the plans submitted and testimony given.

13 2. All necessary Planning Board approvals shall be
14 obtained.

15 MS. MCKAY-DRURY: Second.

16 MR. DISTEFANO: Motion is to approve with
17 conditions.

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

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

24 (Proceedings concluded at 9:51 p.m.)

25 * * *

REPORTER CERTIFICATE

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

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

Dated this 3rd day of January, 2024
at Brighton, New York.

HOLLY E. CASTLEMAN, ACR,
Court Reporter.