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

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March 6, 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     If you guys would take your seats here, we'll just go  
3     over how we run our meeting.

4           Welcome to the March meeting of the Zoning  
5     Board of Appeals. And so just for those of you who  
6     are not aware, just a quick little tutorial, I guess.

7           We have applications that you've all  
8     submitted. When your application is called, if you  
9     would come up to the podium, give us your name and  
10    address and then please talk to the Board members here  
11    about why you feel your application should be  
12    approved.

13          Most of the Board members will have visited  
14    the locations and they may have specific questions.  
15    So we'll answer those.

16          And then we'll ask if any in the audience  
17    wants to speak regarding any of the -- this  
18    application each at a time. And once that's finished,  
19    then we'll close the public hearing and move to the  
20    next one.

21          When we finish all of them, we may take a  
22    few minutes break. And then we will deliberate about  
23    the applications themselves. You're welcome to stay  
24    and listen to that if you wish. There's no more real  
25    discussion. We don't ask any more questions of the

1 applicant or all of that. We discuss it and we try to  
2 make a decision tonight on every application.

3 If you don't stay, you can call  
4 Mr. DiStefano in the office, Building Office, tomorrow  
5 and he can let you know the disposition of your  
6 application.

7 Okay. So Rick, was the meeting properly  
8 advertised?

9 MR. DiSTEFANO: Yes, Mr. Chairman. It was  
10 advertised in the February 28th, 2024, edition of the  
11 Daily Record.

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

14 (Whereupon the roll was called.)

15 MR. DiSTEFANO: Please let the record show  
16 all members are present.

17 CHAIRPERSON MIETZ: Okay. So before we do  
18 the minutes, do you have anything you want to talk  
19 about?

20 MR. DiSTEFANO: Before that I wanted to make  
21 sure everybody sees the material that's in their  
22 folders that I also sent over last night. If there's  
23 any questions from the Board members regarding any of  
24 the applications?

25 CHAIRPERSON MIETZ: Anybody? No? Okay. So

1 I guess we have minutes. Not I guess. I know we have  
2 minutes to go over.

3 MS. SCHWARTZ: Okay?

4 CHAIRPERSON MIETZ: Yes, ma'am.

5 MS. SCHWARTZ: Page 45, line 12, the first  
6 word is "designation."

7 Page 112, line 16, the middle of it should  
8 be "ranging."

9 And I think -- and page 115, line 18, insert  
10 the word "it" before "is."

11 And last on page 117, line 6, again, insert  
12 the word "it" before "is."

13 And that's all I have.

14 MR. D'AUGUSTINE: Motion.

15 CHAIRPERSON MIETZ: Okay. Second.

16 MR. PREMO: Second.

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

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

20 Ms. Tompkins-Wright, abstain;

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

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

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

25 CHAIRPERSON MIETZ: Okay. Judy, you have

1 another?

2 MS. SCHWARTZ: No. I finished. I'm sorry.  
3 I said that was it.

4 MR. DiSTEFANO: That is it. We've just  
5 approved them. So you're ready?

6 CHAIRPERSON MIETZ: Just having fun here.  
7 All right.

8 **Application 3A-01-24**

9 Application of The Country Club of  
10 Rochester, owner of property located at 2935 East  
11 Avenue, for a Temporary and Revocable Use Permit  
12 pursuant to Section 219-4 to erect a tent and hold up  
13 to six (6) outdoor wedding/club special events during  
14 the year 2024. All as described in application and  
15 plans on file.

16 MR. HOLFOTH: Good evening. My name is Rick  
17 Holfoth, H-O-L-F-O-T-H, representing the Country Club  
18 of Rochester at 2935 East Avenue, Rochester, 14610.

19 It's a pretty straightforward application.  
20 It's for six event tents -- up to six event tents for  
21 weddings or outdoor functions in the summertime.

22 I've worked at the Country Club of Rochester  
23 for 25 years. We've done this process for a long  
24 time. We coordinate with the fire marshal with each  
25 event and each tent. They come out and do an

1 inspection.

2 And I'm here to answer any questions you may  
3 have.

4 CHAIRPERSON MIETZ: Anything?

5 MS. TOMPKINS-WRIGHT: How many events did  
6 you end up having last summer?

7 MR. HOLFOTH: I think it was maybe four or  
8 five.

9 This year we have currently two booked.  
10 That doesn't mean there won't be a popup wedding or  
11 something.

12 MS. TOMPKINS-WRIGHT: Okay.

13 MR. DiSTEFANO: And the tent --

14 MS. SCHWARTZ: And you haven't had any  
15 complaints or anything?

16 MR. DiSTEFANO: No. We haven't had any  
17 complaints.

18 And the tent comes down between events? Or  
19 does it stay up?

20 MR. HOLFOTH: No, it comes down.

21 It usually goes up typically on a Friday.  
22 And then the event may be on a Saturday. Then it  
23 comes down on Sunday or Monday.

24 MR. DiSTEFANO: Have you ever had the need  
25 to leave it up because you had back-to-back events or

1 something like weekend events?

2 MR. HOLFOTH: Not that I recall, no. No.

3 I know there was one fairly elaborate  
4 decorated tent that maybe started on Thursday and  
5 didn't come down to Monday, but --

6 MR. DiSTEFANO: And that's over a weekend  
7 usually and a handful of days.

8 MR. HOLFOTH: Yup.

9 CHAIRPERSON MIETZ: Wunderbar.

10 MS. McKAY-DRURY: What you were granted  
11 previously was for three days total. Is that  
12 sufficient?

13 MR. HOLFOTH: I believe it's sufficient for  
14 the events that we have at this time, yup.

15 MS. McKAY-DRURY: Okay. Thank you.

16 CHAIRPERSON MIETZ: Okay. Any other  
17 questions? Okay. Thank you.

18 MR. HOLFOTH: Thank you.

19 CHAIRPERSON MEITZ: Anyone in the audience  
20 want to speak regarding this application?

21 There being none then the public hearing's  
22 closed.

23 **Application 3A-02-24**

24 Application of Shelly Straton, agent, and  
25 The Park at Allens Creek, LLC, owner of property

1 located at 100-160 Allens Creek Road, for a Temporary  
2 and Revocable Use Permit pursuant to Section 219-4  
3 allowing for a food truck to be on-site up to four (4)  
4 times per year for the years 2024 and 2025. All as  
5 described on application and plans on file.

6 MS. STRATON: Hello. My name is Shelly  
7 Straton. I'm representing The Park at Allens Creek.  
8 I've been there about four years.

9 We have 8 buildings on 12 acres and we'd  
10 like to create a community atmosphere. So we would  
11 like to bring in food trucks.

12 Last year we did three. And this year we're  
13 hoping to do four, one each month in the summer.

14 CHAIRPERSON MIETZ: How well were they  
15 attended?

16 MS. STRATON: On a rainy day, not so much.  
17 On a sunny day, wonderful.

18 CHAIRPERSON MIETZ: What would you say --  
19 just approximately how many?

20 MS. STRATON: On a rainy day we had 45 and  
21 on a sunny day I think we had 90.

22 CHAIRPERSON MIETZ: That's great.

23 MS. STRATON: Yeah.

24 CHAIRPERSON MIETZ: Good. Okay. Rick, I  
25 suppose --



1 MR. DiSTEFANO: No complaints.

2 CHAIRPERSON MIETZ: Pardon me?

3 MR. DiSTEFANO: No complaints.

4 CHAIRPERSON MIETZ: No invitation? I  
5 couldn't get a hot dog?

6 MR. DiSTEFANO: I didn't get an invitation.

7 MS. STRATON: You're welcome to come.

8 CHAIRPERSON MIETZ: Okay. All right. Any  
9 questions? Thank you.

10 MS. STRATON: Thank you.

11 CHAIRPERSON MIETZ: Is there anyone in the  
12 audience who would like to speak regarding this  
13 application?

14 There being none then the public hearing is  
15 closed.

16 **Application 3A-03-24**

17 Application of Talmudical Institute of  
18 Upstate New York, applicant, and TIUNY Holdings, Inc.,  
19 owner of property located at 1666 Winton Road South  
20 for 1) an Area Variance from Section 207-10D to allow  
21 a basketball court to be located in a front yard  
22 (Winton Road South) in lieu of the rear yard as  
23 required by code; and 2) an Area Variance from Section  
24 207-11 to allow an in-ground swimming pool to be  
25 located in a side yard in lieu of a rear yard as

1 required by code. All as described on application and  
2 plans on file.

3 MR. GOLDMAN: Good evening, Mr. Chairman,  
4 members of the Board. My name is Jerry Goldman. I'm  
5 the attorney and agent for the Talmudical Institute of  
6 Upstate New York.

7 With me this evening are Rabbi Shlomo Noble,  
8 who is the executive vice president of the Talmudical  
9 Institute. And also with us this evening are David  
10 Hanlon and Blair Benson from Hanlon Associates --  
11 Architects, who are the project architects for the  
12 site.

13 We're here this evening for two variances.  
14 We have gone through an extensive review process with  
15 the Planning Board.

16 And to update from our letter of February  
17 8th that was submitted with the application, the  
18 Planning Board has completed their review and did  
19 grant approval of the site plan, first granted  
20 approval of the negative declaration under the State  
21 Environmental Quality Review Act of which the Zoning  
22 Board consented to the Planning Board being lead  
23 agency. And also received site plan and environmental  
24 protection overlay district approval from the Planning  
25 Board last month.

1           So that approval, of course, was conditioned  
2           upon us receiving variances for the pool and the  
3           basketball court, which we are going to talk about now  
4           at this time.

5           The overall site is 21.8 acres. There's an  
6           existing 51,000-square-foot building roughly for what  
7           was formally the Brookside School. In that school is  
8           the Brighton Parks and Recreation Department, which is  
9           occupying a lot of space in the existing school. And  
10          they are going to have their facilities consolidated  
11          in the northern wing of the site.

12          In addition, there is a -- there's a toddler  
13          and pre-school, which is located in the southeast  
14          corner of the site. And that is -- and that is going  
15          to exist and be continued.

16          The Parks and Rec is up here, by the way.  
17          And this is continued.

18          What we have worked out -- neighbors were  
19          concerned about the degree of traffic coming out of  
20          the existing driveway at Idlewood Road. The only  
21          people who are allowed to access that are going to be  
22          the toddler and elementary school. There will be  
23          some -- during construction in order to improve the  
24          initial area over here, some parking which is going to  
25          be located in this area. But the primary parking

1 field for all the uses on the site are going to be in  
2 this area and access will come out onto South Winton  
3 Road.

4 What we're here for this evening is for a  
5 basketball court and pool which is proposed on the  
6 site. The basketball court and pool is to serve the  
7 residential high school, which is the primary use of  
8 the Talmudical Institute of Upstate New York.

9 Because of the property being essentially  
10 fronting on two streets, both South Winton and  
11 Idlewood, there is always a question of where's the  
12 front yard, where's the backyard and everything else.  
13 But our primary concern in design was to, one, have  
14 these facilities be proximate to the residential  
15 component of the school, which is down in this corner,  
16 and also, to screen it from the adjacent Evans Farm  
17 neighborhood.

18 The basketball court will be located in the  
19 front but will be located a great distance, well over  
20 200 feet from South Winton Road.

21 And the pool itself will be located in  
22 the -- essentially in the side yard and will be  
23 fenced.

24 Town regulations say that a pool must be  
25 located in the rear yard. Not actually sure where a

1 rear yard would be in this particular site. But the  
2 basketball court is in the front yard -- clearly in  
3 the front yard. So to that extent, it requires relief  
4 from the Code.

5 The variances are relatively  
6 straightforward. Our letter of intent as well as the  
7 application goes through the legal standards that you  
8 have to go through in consideration of an area  
9 variance request. And we believe that we have  
10 strategically located these facilities to minimize  
11 disturbance to any neighbors of the property but also  
12 to serve the residential component of the school  
13 itself.

14 So with that, we'd be glad to answer any  
15 questions that The Board may have.

16 MR. PREMO: Jerry, on the drawing that you  
17 have, the portion of the building that's shaded I  
18 guess tan or brown, is that an existing building?

19 MR. GOLDMAN: No. The existing building is  
20 in gray. The addition is in this area.

21 I should say we received an initial site  
22 plan approval for what was to be a two-phased project  
23 in 2022. We have since been successful -- the agency  
24 has been successful in their fundraising and now is  
25 prepared to do a one-phase project.

1           The lines which are located, you see, within  
2           this building site was the initial proposal. And the  
3           brown is what is now being proposed for the site  
4           itself.

5           So the pool and the basketball court are  
6           screened from the residential neighbors by the  
7           buildings on the site.

8           MR. PREMO: The new building?

9           MR. GOLDMAN: Correct. It's an addition.  
10          That actually will be one building.

11          MR. PREMO: What were some of the  
12          alternatives you looked at concerning the location of  
13          the basketball court and the swimming pool? Would any  
14          of those have been able to be located as required by  
15          code?

16          MR. GOLDMAN: I'm going to turn it over to  
17          Dave Hanlon for that purpose.

18          And as I said, we are challenged by the fact  
19          we have basically two frontages. So we're -- would  
20          have a difficult time locating it elsewhere.

21          But David, why don't you talk about the  
22          process you went through in designing.

23          MR. HANLON: Sure. David Hanlon, Hanlon  
24          Architects, 1300 University Avenue.

25          So as you can see, the one area that the

1 kids can play soccer, the open field, it's not a true  
2 regulation field. But we wanted to try to preserve  
3 this area just for some field activity.

4 This lighter gray is the ring road, more for  
5 fire department access around the building. So we  
6 needed to keep this clean from the pool or from  
7 placement of any recreational activity.

8 We didn't want to put the court or the pool  
9 any closer to the residence. So we pushed it over  
10 here.

11 This interior courtyard here, this is ringed  
12 by classrooms. So it wasn't really a good spot for a  
13 basketball court or pool.

14 This is -- the front entrance of the  
15 building is over on this side.

16 So these are -- what we have left really are  
17 the last strategic places for those facilities.

18 MR. PREMO: Okay. Thank you.

19 MR. DiSTEFANO: Judy had a question.

20 MS. SCHWARTZ: This is purely a question of  
21 curiosity. I have nothing to base it on. But the  
22 pool is a pretty good size. You're building basically  
23 in a residential neighborhood with lots of kids.

24 Was there any thought or will there be any  
25 thought -- and I'm not speaking on anyone's behalf --

1 of letting the neighborhood kids ever come and use the  
2 pool?

3 MR. HANLON: I'd have to let the Rabbi  
4 answer that question.

5 MR. GOLDMAN: You can come up. You have to  
6 introduce yourself.

7 We have some additional challenges. And  
8 Rabbi will probably speak to them. But there are a  
9 lot of religious overtones to who can swim at what  
10 time. He's telling me to shut up. This is the Rabbi.

11 RABBI NOBLE: Shlomo Noble, 31 Sylvan Road.

12 The straight answer to your question is that  
13 we have thought about it, but we don't really want to  
14 make it part of the process. We will decide as the  
15 time comes how and how long to keep it open.

16 MS. SCHWARTZ: I was just curious. That's  
17 all.

18 RABBI NOBLE: Yeah. No problem. That's a  
19 great question.

20 And the truth of the matter is my wife was  
21 the first to ask that question. I told her the same  
22 thing. I said, "Honey, when we build it, with God's  
23 help, we'll face all of these challenges with grace  
24 and dignity."

25 CHAIRPERSON MIETZ: Thank you. Okay. Other



1 questions? I think we're good.

2 Is there anyone in the audience who would  
3 like to speak regarding this application?

4 Okay. There being none then the publishing  
5 hearing is closed.

6 **Application 3A-04-24**

7 Application of Matt VanVleck, agent, and  
8 Thomas Walsh, owner of property located at 1 Westland  
9 Avenue, for an Area Variance from Section 203-2.1B(6)  
10 and 203-9A(4) to allow a standby emergency generator to  
11 be located in a side yard in lieu of the rear yard  
12 behind the house as required by code. All as  
13 described on application and plans on file.

14 MR. VANVLECK: Hello. My name is Matthew  
15 VanVleck. A little bit of a typo there. It's  
16 V-A-N-V-L-E-C-K. Not a big deal.

17 I'm here representing Thomas Walsh at 1  
18 Westland Avenue.

19 THE COURT: What's your address?

20 MR. VANVLECK: My address is 15 Sturbridge  
21 Lane, Pittsford, New York.

22 CHAIRPERSON MEITZ: Thank you. Go ahead.

23 MR. VANVLECK: So we are representing Thomas  
24 Walsh in regards to the generator. And as far as the  
25 footprint goes, it will be placed behind the den. So

1 it wouldn't really be viewable by the street or the  
2 sidewalk because there's the existing bush or tree  
3 that would be providing additional coverage for the  
4 generator as well.

5 There's also an existing air conditioning in  
6 that location. So it kind of makes sense to keep all  
7 the quote/unquote "eyesores" together.

8 And then as well as -- the customer has  
9 existing solar on his garage in the rear of the house.  
10 And the existing utility wire for the electric meter  
11 is in the rear and side yard as well, cutting across.  
12 So in order to do any of the underground or gas --  
13 underground gas or electric work that Thomas is  
14 looking to have -- because he doesn't want exposed gas  
15 pipe for the neighborhood and just the aesthetic of  
16 it. To avoid any, you know, concerns safety-wise for  
17 our electricians as well as just keeping it aesthetic,  
18 nice and clean, this seems to be the most feasible  
19 location.

20 Anyone on the Board have any questions for  
21 me?

22 MS. SCHMITT: Just real quick. And I think  
23 this is obvious.

24 You talked about how there is -- possible  
25 to -- I think you used the word trench. Is the choice

1 not to do that, was it cost reasons? Aesthetics?  
2 What made you determine that was not the best option?

3 MR. VANVLECK: So it was both. It was the  
4 cost and the aesthetic.

5 So in order to do the underground trenching  
6 to the rear of the house, it was, A, cost; B, the  
7 crossing over the existing lines that were already  
8 there. We didn't want to accidentally hit them and  
9 cause electric shocks or anything like that. And then  
10 also just aesthetic. He doesn't want the gas pipe  
11 exposed or the electric. He just wants it to be nice  
12 so he can mow around the area.

13 MS. SCHMITT: Okay. Thank you.

14 MR. VANVLECK: Yup. Any other questions?

15 CHAIRPERSON MIETZ: Everybody set?

16 MR. DiSTEFANO: Just for the record, could  
17 you state what the decibel rating of the unit is and  
18 at testing and at max?

19 MR. VANVLECK: So it's a 22KW. At 100  
20 percent load, it's a 69 decibel rating.

21 MR. DiSTEFANO: Okay. And when it tests  
22 it's about --

23 MR. VANVLECK: It's about 50 percent. So I  
24 think it's about 57 decibels on the test.

25 MR. DiSTEFANO: Okay. Thanks.

1 CHAIRPERSON MIETZ: Okay. Thank you. Is  
2 there anyone in the audience who would like to speak  
3 regarding this application?

4 Okay. There being none then the public  
5 hearing's closed.

6 **Application 3A-05-24**

7 Application of Blake Miller Group, agent,  
8 and Arin Olson, owner of property located at 226  
9 Meadow Drive, for an Area Variance from Section 207-2A  
10 to allow a front yard fence to be 4.5 feet in height  
11 in lieu of the maximum 3.5 feet allowed by code. All  
12 As described on application and plans on file.

13 MR. MILLER: My name is Blake Miller, 2343  
14 Penfield Road, Penfield, New York, on behalf of Arin  
15 Olson at 226 Meadow Drive.

16 We're here seeking a --

17 CHAIRPERSON MIETZ: Could you speak into the  
18 mic?

19 MR. MILLER: Did you get that or do I need  
20 to start over?

21 MR. DiSTEFANO: Why don't you start over.

22 MR. MILLER: My name is Blake Miller, 2343  
23 Penfield Road, Penfield, New York on behalf of Arin  
24 Olson at 226 Meadow Drive.

25 We're here seeking a variance for a fence

1 modifying it from the Town Code of 3 foot. And we're  
2 requesting it at the max of 6 foot 6 inches.

3 MR. DiSTEFANO: Just so -- I want to stop  
4 you for one second. In the application, one place it  
5 says 6 feet; one place it says 4 feet. So it was  
6 advertised at the 4 feet.

7 So I guess I need you to specifically modify  
8 the application request to 6 or 6 and a half feet,  
9 whichever you're going at because it was different. I  
10 tried to -- I came back to the person who made the --  
11 I don't know if you made the application, who made the  
12 application itself, but I did ask for that to be  
13 rectified and it wasn't.

14 MR. MILLER: We talked to Tracy about this,  
15 but -- yes. So for the record, we are requesting the  
16 maximum height of what the Town of Brighton allows,  
17 which is 6 foot 6 inches.

18 MS. SCHWARTZ: Repeat that, please.

19 MR. MILLER: 6 foot 6 inches is the maximum  
20 that the Town of Brighton allows on the side and rear  
21 yards.

22 We're requesting it despite us only  
23 installing at this time a 4-foot-6-inch fence should  
24 Arin down the road have any maintenance or if this  
25 fence needs to be modified and replaced because that

1 will allow her to put a fence that would be likewise  
2 around the specific area.

3 Do I need to keep talking in the microphone  
4 or can I go to my --

5 MR. DiSTEFANO: You can go, but I just lost  
6 you on that portion of the --

7 CHAIRPERSON MIETZ: Better go over that one  
8 again.

9 MR. MILLER: No problem. So what we have is  
10 that in the -- Arin's property actually butts up to  
11 490. There's a big concrete wall.

12 The reason why we're here is she's kind of  
13 on a corner. So there's Sunset Road that's over  
14 there.

15 Her corner that she has that's considered to  
16 be the end is nothing more than a little tiny setback  
17 that the Town maintains. It's kind of like a drainage  
18 culvert that's setting back there with more of this  
19 concrete wall. So, you know, it truly is more of just  
20 a side yard.

21 However, because that -- the municipality  
22 owns that, we are here for a variance.

23 MR. DiSTEFANO: Just a little clarification,  
24 that is actual right-of-way. That just is unimproved  
25 right-of-way.

1           So at one point in time the road was going  
2 to go through. Unfortunately, 590 cut the road off.

3           So there is unimproved right-of-way, which  
4 is owned by the Town, which acts as -- you know, no  
5 cars are going down there. I think there might be a  
6 pathway. I don't even know if it's a pathway through  
7 there, pathway to the wall. So it's considered a  
8 front yard because it's still on -- up against the  
9 Town right-of-way.

10           So that being said, I need you to go again  
11 with 6 and a half and 4 and a half --

12           MR. MILLER: Let me keep going with this.

13           So as you just stated, it's a Town  
14 right-of-way that goes to a concrete wall. It's not  
15 all that well looked after.

16           So we're requesting a 6-foot-6-inch height.  
17 But at this time, our plans that we have included  
18 there are showing a 4-and-a-half-foot tall fence  
19 because Arin's looking to landscape that section with  
20 some plantings to hope that that's going to make this  
21 area look nicer.

22           This second section that she's having  
23 trouble with is that her dog would jump over a  
24 3-foot-tall fence. She currently has a chain-link  
25 fence over there that's in excess of 4 foot tall, but

1     it's falling apart. So she needs to put a new one in  
2     and we need a fence permit for that.

3             The reason why I'm here asking on Arin's  
4     behalf for the 6 foot -- 6-foot-tall fence is should  
5     this area continue to not be maintained and look as  
6     nice as it is and she instead wants to put up like a  
7     privacy fence that -- those come in 6 foot 6 inches  
8     tall, she would have the ability to do so and not have  
9     to go back through this process and stake this claim.  
10    So she has some options of what she can install down  
11    the road.

12            MS. TOMPKINS-WRIGHT: Can I ask a question?  
13    Your application states that the difficulty  
14    necessitating this variance is because of the dog  
15    needing a fence in the yard.

16            So what is the minimum amount of fence that  
17    your client would need in order to fence in the dog?  
18    She has a chain-link fence now, 4 feet tall. So  
19    that's the minimum necessary?

20            MR. MILLER: Yeah. Her current fence is 4  
21    foot 6 inches. So we are looking to put in a 4 foot 6  
22    inch tall fence.

23            MS. TOMPKINS-WRIGHT: If this Board were to  
24    modify or accept the application as it is sort of in  
25    the record that it is a 4 foot 6 fence and approves



1 it, your client would have to come back if she ever  
2 wanted to replace it.

3 But part of this too is your application  
4 also has photos of an open fence. So that is often a  
5 condition that we're approving a fence in a condition  
6 that was presented to the Board. So I just want to  
7 make sure that's sort of --

8 MR. MILLER: Absolutely. There's two uses  
9 that are going on here.

10 First and foremost, it is for her dog.

11 The second part of it is for showing it  
12 open. You know, that's the aesthetic she wants today.  
13 Should the area continue to kind of not look so nice  
14 because it's not being maintained, then she may have  
15 to come back here anyways and do this process again.

16 So reading through the Town Law where it's  
17 approved to have fences as tall as 6 foot 6 inches --  
18 we're going through this process -- we were just  
19 seeking to see if we could have that in our  
20 application so if she does want to change this fence  
21 around at some point, she has the ability without  
22 having to redo these meetings and taking up your time.

23 MS. SCHWARTZ: On the subject of the dog,  
24 can we ask what kind of dog is it?

25 MR. MILLER: She has a lab -- she has a

1 golden lab, I believe.

2 MS. SCHWARTZ: Okay. So -- okay. Thank  
3 you.

4 CHAIRPERSON MIETZ: Questions? Yeah. We  
5 can discuss the issue of the 4 foot 6 and 6-6. We'll  
6 discuss that when we deliberate.

7 Is there any questions? Do we understand  
8 what this gentleman is trying to do here? Yes?

9 Okay. Good. Thank you, sir.

10 MR. MILLER: Great. Thank you.

11 CHAIRPERSON MIETZ: Okay. Is there anyone  
12 in the audience who would like to speak regarding this  
13 application?

14 Okay. There being none then the public  
15 hearing's closed.

16 **Application 3A-06-24**

17 Application of Colleen Cornell, agent, and  
18 Castle Office Group, LLC, owner of property located at  
19 180 Sawgrass Drive, for a Temporary and Revocable Use  
20 Permit Pursuant to Section 219-4 to allow for a food  
21 truck on-site once per week from May through September  
22 2024. All as described on application and plans on  
23 file.

24 MS. CORNELL: Hi. My name is Colleen  
25 Cornell. I'm here on behalf of Sawgrass Surgical

1 Center at 180 Sawgrass Drive.

2 And I am here to apply for a permit to have  
3 food trucks there for, as stated, once a week from May  
4 to September. This will be our fourth year doing it.

5 MS. TOMPKINS-WRIGHT: Any issues in previous  
6 years on the property?

7 MS. CORNELL: Nope.

8 MS. TOMPKINS-WRIGHT: Rick, no complaints?

9 MR. DiSTEFANO: No complaints.

10 CHAIRPERSON MIETZ: Okay. Anything?  
11 Straightforward. Okay. Thanks.

12 MS. CORNELL: Thanks.

13 CHAIRPERSON MIETZ: Anyone in the audience  
14 on this application?

15 Okay. There being none then the public  
16 hearing's closed.

17 **Application 3A-07-24**

18 Application of Vanessa and John Geer, owners  
19 of property located at 2171 West Henrietta Road, for a  
20 Temporary and Revocable Use Permit pursuant to Section  
21 219-4 to erect a second tent (25' x 25') covering a  
22 front outdoor patio from April through December for  
23 years 2024 and 2025. All as described on application  
24 and plans on file.

25 MR. GEER: Hi. John Geer from Sunny's

1 Family Diner, 2171 West Henrietta Road.

2 So we're looking to put another tent on the  
3 north side patio, a smaller one, a 20-by-20. And we  
4 were looking to possibly get some walls on the first  
5 one which is the 30-by-30 on the south patio with some  
6 possible heat.

7 CHAIRPERSON MIETZ: Okay. All right. So  
8 John, let's make sure we're clear here. So the  
9 existing tent that was approved previously that you  
10 have is on the south side of the building, correct,  
11 where the fire pit is?

12 MR. GEER: Yes.

13 CHAIRPERSON MIETZ: So that one you want to  
14 enclose, put curtains on it or something?

15 MR. GEER: Yeah. Not the full time. Just  
16 maybe a little bit in the springtime until it warms up  
17 and then maybe a little bit towards the end in the  
18 fall.

19 CHAIRPERSON MIETZ: Okay. And then the  
20 other one's on the opposite side of the property on  
21 the north side, I guess, basically.

22 MR. GEER: Yes.

23 CHAIRPERSON MEITZ: So the object there is  
24 the other tent is used too much or you need more  
25 capacity? What is it?

1           MR. GEER: Well, for survival purposes of  
2 this restaurant, you know, we would like to be able to  
3 utilize both patios as they were intended for, you  
4 know, with -- seating's going to stay the same.

5           We had the umbrellas up at one time. We  
6 kept losing them and there was some theft. And the  
7 tent was just a perfect fit.

8           So we just want to duplicate that on the  
9 other side so we can use it, you know, as we intended  
10 to back in the day without all these other obstacles  
11 like, you know, the sun, the rain, sometimes  
12 temperatures and stuff like that.

13          CHAIRPERSON MIETZ: Is that the side where  
14 the ice cream thing is too?

15          MR. GEER: Yes.

16          CHAIRPERSON MEITZ: So that will continue  
17 the same?

18          MR. GEER: Yes.

19          MS. SCHWARTZ: I noticed on your application  
20 you're going through December. What are you doing  
21 about staying warm in like October, November,  
22 December?

23          MR. GEER: Well, we wanted to -- we have a  
24 fire pit there that we were not using. But we would  
25 just like to get some little portable heaters, maybe

1 just a couple. We're not looking to fully heat it  
2 like extreme warmth. Maybe just something to take the  
3 chill out from under there.

4 MS. SCHWARTZ: I don't know, Rick. Is that  
5 part of the Code?

6 CHAIRPERSON MIETZ: Yeah. We can get into  
7 that.

8 MS. McKAY-DRURY: Well, my question is does  
9 a modification of this application have to happen?  
10 Because I don't see anything about sides and heat in  
11 the existing one.

12 MR. DiSTEFANO: No. I don't see anything  
13 about the sides in regards to the other one either.

14 So I think basically this application deals  
15 specifically with the second tent being proposed.

16 CHAIRPERSON MIETZ: Adding a second tent.

17 MR. DiSTEFANO: Yeah. I don't see --  
18 unfortunately, I don't see anything in your  
19 application regarding sides for a different -- for the  
20 other tent. At least it wasn't made clear as part of  
21 the application.

22 So I think we've got to concentrate on the  
23 second tent.

24 MS. McKAY-DRURY: Rick, I do see under  
25 section 8, it looks like it talks about the

1 25-by-25-tent, north patio with sides, possible heat.

2 MS. BARON: But that's not about the tent on  
3 the south side. It's confusing because I believe what  
4 you were saying is you want heat and sides on the tent  
5 you currently have; correct?

6 MR. GEER: Yes. That would be the one.

7 MS. McKAY-DRURY: Okay. So to the extent  
8 you indicated in section 8 of the application about  
9 the 25-by-25-tent, north patio, that's the second one  
10 you're seeking to add. And you want that one to also  
11 have the sides and heat; correct?

12 MR. GEER: Just the north one would have the  
13 sides and heat.

14 CHAIRPERSON MIETZ: The existing one you  
15 said.

16 MR. DiSTEFANO: Well, the existing one isn't  
17 north though. The existing one is south.

18 CHAIRPERSON MIETZ: Yes, yes.

19 MS. McKAY-DRURY: So this is just an  
20 application for a north one that will have sides and  
21 heat; correct?

22 MR. GEER: Yes. Yes. It says north on the  
23 application. So we intended for it to say south, but  
24 it was written north.

25 MR. DiSTEFANO: And then -- because you can

1 say it also was -- in one spot is a 25-by-25-tent and  
2 in another spot it was a 20-by-20-tent on the same  
3 application.

4 So my understanding, John, was that the  
5 intent of that patio for the ice cream was just  
6 basically a patio for the ice cream. It wasn't a  
7 outdoor dining area for the restaurant.

8 It was an area -- when it originally was  
9 approved through the use variance and through the  
10 Planning Board that that area was a -- yeah, a nice  
11 little sit-down area. People walk up, get their ice  
12 cream, sit out, enjoy their ice cream on the little  
13 patio area.

14 I don't think it was ever proposed as part  
15 of the conditional use permit for an outdoor use  
16 variance, for outdoor dining, to have restaurant  
17 seating in that portion of the outdoor area.

18 I think the restaurant seating was basically  
19 all in the existing outdoor area to the south and that  
20 this area was, you know, an ice cream parlor type of  
21 setup.

22 MR. GEER: I think it was recommended that  
23 we -- well, we've used it for the restaurant. I've  
24 never -- what you're saying right now, I never --

25 MR. DiSTEFANO: Well, I think -- I



1 believe -- I'm pretty sure the intent was that that  
2 area was not going to be part of the restaurant.

3 I mean, people end up sitting there  
4 possibly. But it really was developed for the ice  
5 cream place, for the ice cream operation, the ice  
6 cream window.

7 So I'm having a little --

8 MR. GEER: Well, with our 7 to 2 hours that  
9 we're open currently, I mean, it was -- there is no  
10 ice cream times.

11 MR. DiSTEFANO: Again, that's -- that's  
12 different than how it was presented to us when the use  
13 variance was granted three years ago, whatever that  
14 time frame was. I mean, hours might change and that's  
15 your business model.

16 But you got to understand that when it was  
17 presented to us, it was presented that this is an ice  
18 cream area that people come over early evening late  
19 afternoon -- early evening, whatever, get ice cream.  
20 It's something that we offer.

21 But the restaurant itself would have the  
22 existing outdoor dining area, which was fine. And  
23 that was granted as part of the use variance.

24 And this Board has been granting the tent  
25 for that area for the last few years. So --

1 MS. McKAY-DRURY: Was there a variance  
2 granted after with respect to the north section that  
3 we're talking about?

4 MR. DiSTEFANO: There was a use variance  
5 granted for this facility, for the entire facility,  
6 which also allowed them to use the existing outdoor  
7 dining area. Because it used to be under pre-existing  
8 nonconformance. Then it sat vacant for more than a  
9 year. So it lost its nonconformance.

10 So then John came back. Required a use  
11 variance. Got the use variance. This Board approved  
12 that use variance and also approved an outdoor dining  
13 facility alongside it.

14 As plans progressed, he added an ice cream  
15 area and a little patio area in front of the ice  
16 cream. And it was never the intent that that would  
17 become part of the restaurant seating because you had  
18 your other outdoor dining facility as part of the  
19 restaurant. This would be just kind of an ice cream  
20 shop as, you know, another use of the property.

21 MS. SCHMITT: You're saying it's -- now  
22 people can eat outside, does a waitress come to the  
23 table or do you get your food as a takeout and sit  
24 outside?

25 MR. GEER: Both. Both.

1 But, Rick, what you're saying, this is  
2 honestly the first time I'm --

3 MR. DiSTEFANO: And, you know, like I  
4 said -- all I'm saying is that if people get a to-go  
5 order and walk out and sit where there are some  
6 outdoor tables, we can't really stop that.

7 But to say that this becomes another section  
8 of the restaurant is hard for this Board to say, oh,  
9 go ahead and do it because that was never part of that  
10 approval process.

11 CHAIRPERSON MEITZ: There's parking issues.  
12 There's a lot of other things. People stay a lot  
13 longer sitting there eating dinner -- well, not  
14 dinner -- lunch or breakfast than they would eating an  
15 ice cream cone. So, you know, there's mitigating  
16 issues with that that we'll have to sort through.

17 But I appreciate your honesty in that you're  
18 saying you are going to have waitress service there.  
19 You want it to really be now an extension of the  
20 restaurant.

21 MR. GEER: Well, we were just --

22 CHAIRPERSON MIETZ: So now you may have to  
23 change with the hours being different.

24 MR. GEER: We were just using any tables  
25 that we could sit people. That's where we sat them.

1 So in other words, if we had two tables on that patio,  
2 then we have, you know, four on the other patio, we  
3 just always sat them.

4 So I mean, it's essential for us to use all  
5 the seating capacity that we're allowed, you know,  
6 to -- you know to obviously keep the restaurant  
7 functioning and keeping it open.

8 CHAIRPERSON MIETZ: Rick, I guess we can  
9 discuss it further, but I don't remember if we put a  
10 maximum on the exterior seating. I just don't  
11 remember that.

12 MS. MCKAY-DRURY: If the needs change, I  
13 mean --

14 MS. TOMPKINS-WRIGHT: We'd have to do a  
15 parking analysis.

16 CHAIRPERSON MIETZ: There's other issues,  
17 Heather. We'll discuss them.

18 MR. GEER: We're not changing or adding any  
19 seating or anything like that. We're just looking for  
20 some shade, some coverage, some wind blockage, to keep  
21 our stuff there so when we come in the next day,  
22 everything's not gone. That's basically what we need,  
23 the help with that.

24 CHAIRPERSON MIETZ: I appreciate what you're  
25 asking for.

1 Is there any other questions from the Board?

2 Okay, John. Thanks.

3 Is there anyone in the audience that would  
4 like to speak regarding this application?

5 Okay. There being none then the public  
6 hearing's closed.

7 **Application 3A-08-24**

8 Application of Richard Hunt, architect, and  
9 Michael Gestetner, owner of property located at 213  
10 Warrington Drive, for an Area Variance from Section  
11 209-10 to allow livable floor area to be 3,146 square  
12 feet, after construction of an addition, in lieu of  
13 the maximum 2,846 square feet allowed by code. All as  
14 described on application and plans on file.

15 CHAIRPERSON PRICE: Do we have anyone to  
16 speak on this application? 213 Warrington? Okay.

17 We can hold it I guess until the end of the  
18 meeting, if you'd like.

19 MR. DiSTEFANO: The other public hearings  
20 are closed so --

21 CHAIRPERSON MIETZ: We'll hold it. Okay.  
22 All right. Let's move on then.

23 MS. BARON: Sorry. For the record, are you  
24 holding this one open to the next time to give the  
25 applicant an opportunity --

1 CHAIRPERSON MEITZ: Usually we give one  
2 pass, yes.

3 (There was a pause in the proceedings.)

4 (Application 3A-08-24 was heard later during  
5 deliberations.)

6 CHAIRPERSON MEITZ: Okay. So we're going  
7 back to the original agenda.

8 MR. HUNT: Good evening, everyone. Thank  
9 you for hearing our application after being a little  
10 out of order here and late, but better late than  
11 never.

12 I'm here with the homeowner for 213 --

13 CHAIRPERSON MIETZ: Sir, your name and  
14 address.

15 MR. HUNT: Richard Hunt. I'm the architect.

16 CHAIRPERSON MIETZ: Address, please.

17 MR. HUNT: My business address?

18 CHAIRPERSON MIETZ: That's fine.

19 MR. HUNT: 45 Coral Way in Brighton.

20 CHAIRPERSON MIETZ: Okay. And then whoever  
21 you're introducing.

22 MR. HUNT: This is Mike Gestetner, the  
23 homeowner.

24 CHAIRPERSON MIETZ: If he speaks, just come  
25 to the podium and do that.

1 MR. HUNT: Yeah. Okay. Let's see. I  
2 brought a few drawings to make things a little more  
3 clear for everyone. I believe they are going to be  
4 the same drawings that you have.

5 If I step over here, can you still hear?

6 CHAIRPERSON MIETZ: As long as you speak  
7 loud. Our court reporter really needs to hear you.

8 MR. HUNT: Okay. I guess you guys have this  
9 drawing -- two drawings.

10 This is the existing house. The house was  
11 originally built with a extended little porch on the  
12 back. And that has been by previous owners kind of a  
13 winterized and heated space. This was an addition.  
14 And it created kind of this really weird gap here  
15 between the two bump-outs. So that's one thing we  
16 want to solve.

17 Here below we have the proposed plan. We've  
18 got kind of in-filling this area down below and adding  
19 a full second story directly over this area. Yeah.

20 So the back I believe is significantly  
21 improved aesthetically. The front of the house is  
22 around the other side. So this is all -- this work is  
23 really not visible from the road.

24 So specifically what we're asking for -- as  
25 Rick just mentioned, we're asking for a -- basically a

1 square footage variance. The maximum allowable --  
2 I'll go right to that -- livable floor area allowed by  
3 Brighton formula is 2846 square feet. And we would  
4 like to get that up to 3146. So it's about 10.5  
5 percent over the maximum allowed.

6 I can give you further breakdown of the  
7 square footage, how that's arrived at, but basically,  
8 we're asking for about 300 square feet more than what  
9 is allowed by the zoning code.

10 And I guess the big question is why is that  
11 justified in this case? Why would we need to vary  
12 from the Code?

13 It's not a huge house to begin with. Mr.  
14 Gestetner has a wife and three kids and a wife who  
15 works from home. So they need five rooms already  
16 right off the bat if each kid's going to have their  
17 own space.

18 And -- and Mike can speak to this as well --  
19 in his Jewish faith, they host families periodically,  
20 which is fairly common in Brighton I guess. And they  
21 would like to have a place for maybe some guests to  
22 stay from time to time. So at that point we are up to  
23 six rooms.

24 And I'll show you with the drawings how we  
25 got from one place to the next. The existing



1 first-floor plan right here, all the action's  
2 happening back here. This is the front of the house.  
3 This is the back.

4 We're filling in this area. There's a  
5 little bit of remodeling going on the first floor.  
6 That's probably not a concern here tonight.

7 This is the existing second floor. We have  
8 one, two, three bedrooms. And this is the area down  
9 below that we're going to build up on.

10 All right. And here we have the proposed  
11 first and second-floor plans. Again, the first floor  
12 plan, not something we're really concerned with  
13 tonight. But the second floor, we've got the three  
14 original bedrooms at the same place and the three  
15 across the back. And it works out pretty nicely in  
16 this case. Each -- there's good aspects to the rooms.  
17 A nice big hallway.

18 We do add a bathroom. So now we have a  
19 master with bathroom, a common hallway bathroom mainly  
20 to serve these three rooms, and they have this  
21 bathroom up front, which will serve these two  
22 bedrooms.

23 And in terms of light, ventilation and  
24 windows, everything works out nicely. We don't really  
25 take away anything. We just -- I mean, this -- yeah.

1 This room here lost a window and we're adding a window  
2 there. But all three rooms in the back have windows.

3 So it's a fairly nice plan. It will suit  
4 Mr. Gestetner and his goals for his family here in  
5 Brighton very well. And we're hoping to get the 300  
6 square feet approved. I think that's about it.

7 CHAIRPERSON MIETZ: Okay. Question. What  
8 is the neighborhood like as far as other structures  
9 that -- did you do any research as it relates to the  
10 direct neighborhood as far as -- one of the things we  
11 like to do is understand if the house is going over  
12 the footage requirement, then what is the neighborhood  
13 like.

14 MR. HUNT: I haven't personally found homes  
15 in the area that have exceeded the square footage, but  
16 Mike believes he has seen some nearby.

17 Is that true?

18 MR. GESTETNER: Yes.

19 MR. HUNT: I suppose we could find some  
20 documents.

21 CHAIRPERSON MIETZ: It's just so you  
22 understand the Code that that's one of the important  
23 things that we would want to make sure that if we  
24 approve something like this that it's not dwarfing  
25 other things in the neighborhood or out of character

1 with the rest of the houses in the neighborhood.

2 So other questions? Anybody?

3 MS. TOMPKINS-WRIGHT: Has the homeowner  
4 discussed this with the property owners behind that  
5 would be most affected by the view?

6 MR. HUNT: Yeah. Side to side, he actually  
7 owns the property to -- as you're facing the front of  
8 the house, he owns the property to the left. It's  
9 kind of a dilapidated rental property. He hopes to  
10 work on that, improve that over time.

11 The property to the right, we have a letter  
12 of approval. And the property to the right would  
13 probably be most impacted because it's closest to  
14 that. The houses are super far apart.

15 The one in the rear --

16 MR. DiSTEFANO: Just for the record, I do  
17 have a letter from Phil and Jessie Baker, 211  
18 Warrington Drive, basically saying they have no issue  
19 with the variance as proposed.

20 MR. HUNT: Yeah. But the one in the back, I  
21 don't believe Mike has talked to them.

22 CHAIRPERSON MIETZ: Okay.

23 MR. GESTETNER: Can I speak to the one in  
24 the back?

25 MR. HUNT: Absolutely.

1 CHAIRPERSON MIETZ: Sure, sure, sure. Name  
2 and address.

3 MR. GESTETNER: Mike Gestetner, 213  
4 Warrington Drive.

5 So the house behind us, we have tall cedars  
6 that border the back of the backyard. And that house  
7 has a very large side yard. So we can't see our  
8 houses from each other. So we didn't feel -- we don't  
9 have any issues with them, but we didn't feel we  
10 needed a letter of support.

11 CHAIRPERSON MEITZ: Okay. So I guess, only  
12 other question would be were there any other  
13 alternatives to meet this requirement that the  
14 homeowner has that you did look at? Other options to  
15 do that would --

16 MR. GESTETNER: We did look at dividing some  
17 of the existing bedrooms. And we even considered for  
18 a moment doing something like a master on the first  
19 floor.

20 But it didn't really work out real well.  
21 Things got way too choppy and it made proportions, bad  
22 rooms. And it probably would have devalued the house  
23 a little bit if we made bad plans. So we looked at  
24 them.

25 CHAIRPERSON MIETZ: Okay. All right.

1 MR. PREMO: Mr. Hunt, just so I'm sure I  
2 understand the drawings, the ultimate peak of that  
3 roof, the highest point of the roof, will actually  
4 remain the same. This addition will be slightly  
5 below.

6 MR. HUNT: Yeah. It will be -- I haven't  
7 done final construction drawings because there's a lot  
8 of work. We thought between the floor plans and the  
9 sketches we would be okay.

10 But, yeah. I mean, we're going to keep  
11 these -- that's why it's broken up into various parts  
12 so we don't have one massive roof. That would have  
13 been easier. But doing it this way, it kind of  
14 complements the foundation, utilizing all that and --  
15 yeah. Keeping the roof below.

16 MR. PREMO: So the maximum height -- the top  
17 roof line will remain the same?

18 MR. HUNT: Well, there's the existing  
19 maximum height of the existing building.

20 CHAIRPERSON MIETZ: It's not being changed.

21 MR. HUNT: We're going lower. Not changed.  
22 Yeah. Sorry.

23 CHAIRPERSON MIETZ: Okay. Any other  
24 questions for these gentlemen? Okay. Thank you very  
25 much.

1           Is there anyone in the audience who would  
2 like to speak regarding this application? Okay.  
3 There being none then this public hearing's closed.

4           (Public hearings concluded.)

5                   \*       \*       \*

\* \* \* \*

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 6th day of March, 2024  
at Brighton, New York.



---

Holly E. Castleman ACR,  
Official Court Reporter

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**BRIGHTON**  
**ZONING BOARD OF APPEALS**  
**MEETING**  
**DELIBERATIONS AND DECISIONS**

---

March 6, 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     **Application 3A-01-24**

2             Application of The Country Club of  
3     Rochester, owner of property located at 2935 East  
4     Avenue, for a Temporary and Revocable Use Permit  
5     pursuant to Section 219-4 to erect a tent and hold up  
6     to six (6) outdoor wedding/club special events during  
7     the year 2024. All as described in application and  
8     plans on file.

9             MS. MCKAY-DRURY: I move we approve  
10    application 3A-01-24 based on the following findings  
11    of fact.

12    **Findings of Fact:**

13    1. The applicant's country club is requesting a  
14    variance to allow erection of a tent to hold up to six  
15    outdoor events and weddings in the year 2024 located  
16    on the lower terrace between the clubhouse and the  
17    18th green.

18    2. The tents will be up for up to three days max per  
19    event to allow for setup and clean up before and after  
20    events, each event lasting no more than one day and  
21    concluding at 11 p.m.

22    3. Granting of the request will not itself result in  
23    an increase to a population density during events such  
24    as weddings, which the club routinely hosts and for  
25    which there's ample parking.

1 4. The request will not result in substantial change  
2 in character of surrounding properties since the tent  
3 is located on club grounds and is not visible from the  
4 road.

5 5. Granting of the request will not endanger the  
6 health, safety or general welfare of the community as  
7 the tent will be installed by a professional tent  
8 company.

9 **Conditions:**

10 1. The temporary and revocable use permit is granted  
11 per the application submitted and testimony given for  
12 the remainder of 2024 and up to six events.

13 2. All necessary permits shall be obtained from the  
14 fire marshal.

15 3. If temporary heating is requested, only approved  
16 portable forced air heating units shall be provided.  
17 Portable LP gas fire pedestal-type style heaters or  
18 propane appliances used under a temporary structure  
19 are strictly prohibited by the 2020 Fire Code of New  
20 York State and manufacture product lists.

21 MS. TOMPKINS-WRIGHT: Second.

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

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

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

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Ms. Schmitt, yes; Ms. Tompkins-Wright, yes;  
Ms. McKay-Drury, yes.)  
(Upon roll motion to approve with conditions  
carries.)

1     **Application 3A-02-24**

2             Application of Shelly Straton, agent, and  
3     The Park at Allens Creek, LLC, owner of property  
4     located at 100-160 Allens Creek Road, for a Temporary  
5     and Revocable Use Permit pursuant to Section 219-4  
6     allowing for a food truck to be on-site up to four (4)  
7     times per year for the years 2024 and 2025. All as  
8     described on application and plans on file.

9             CHAIRPERSON MIETZ: I move we approve  
10    application 3A-02-24 based on the following findings  
11    of fact.

12    **Findings of Fact:**

- 13    1. Food trucks are being provided as an amenity  
14    solely to the tenants of the office park.  
15    2. The food trucks will be placed near the rear of  
16    the subject property and not visible anywhere from the  
17    street.  
18    3. No other alternative can meet the needs of the  
19    applicant to provide a neighborhood atmosphere within  
20    the office park for the tenants to congregate.

21    **Conditions:**

- 22    1. This variance is subject to the drawings as  
23    submitted as to the location of the food truck and the  
24    testimony given.  
25    2. Trucks can visit no more than three hours on four

1 separate occasions in the years 2024 and 2025.

2 3. The owner shall be responsible for all trash  
3 removal on-site.

4 4. All trucks shall be currently licensed and  
5 complete 2024 safety inspection and be in full  
6 compliance with the Fire Code of New York State,  
7 Section 319.

8 MR. PREMO: Second.

9 MR. DiSTEFANO: Motion is to approve with  
10 conditions.

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

15 (Upon roll motion to approve with conditions  
16 carries.)

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1     **Application 3A-03-24**

2             Application of Talmudical Institute of  
3     Upstate New York, applicant, and TIUNY Holdings, Inc.,  
4     owner of property located at 1666 Winton Road South  
5     for 1) an Area Variance from Section 207-10D to allow  
6     a basketball court to be located in a front yard  
7     (Winton Road South) in lieu of the rear yard as  
8     required by code; and 2) an Area Variance from Section  
9     207-11 to allow an in-ground swimming pool to be  
10    located in a side yard in lieu of a rear yard as  
11    required by code. All as described on application and  
12    plans on file.

13            MR. PREMO: I move we approve application  
14    3A-03-24 based on the following findings of fact.

15    **Findings of Fact:**

16    1. The Planning Board of the Town of Brighton is duly  
17    designated lead agency. On February 21st, 2024,  
18    issued a negative declaration of environmental  
19    significance for the Talmudical Institute project and  
20    no further review is required or allowed pursuant to  
21    the State Environmental Quality Review Act.

22    2. The requested variances are the minimum variances  
23    necessary to address the benefit sought by the  
24    applicant. The outdoor basketball court and swimming  
25    pool are consistent with the use of the property for a

1 residential religious secondary school. The unique  
2 shape and size of the lot and existing building and  
3 proposed additions, once used as a school and as a  
4 recreation center, creates the conditions requiring  
5 the variances.

6 3. No other alternative can alleviate the difficulty  
7 and produce the desired result. Alternative locations  
8 were considered on the site but are unfeasible given  
9 the proposed uses, shape and size of the proposed  
10 buildings.

11 4. The variances in context are not substantial.

12 5. There's no unacceptable change to the neighborhood  
13 and no substantial adverse impact to neighboring  
14 properties is expected. The placement of the swimming  
15 pool and basketball courts use the existing and  
16 expanded buildings and lot shape to shield those uses  
17 from the existing single-family neighborhood. The  
18 large size of the lot, 20-plus acres, also shields the  
19 existing residential neighborhood.

20 6. The existing conditions created the hardship and  
21 was not self-created by the applicant.

22 7. The health, safety and welfare of the community  
23 will not be adversely affected by approval of the  
24 variances.

25 **Conditions:**

1 1. The variances are based on the application  
2 materials submitted and the testimony given and only  
3 authorizes the project described therein.

4 2. Subject to all building permits and inspections.

5 3. Subject to all Monroe County Department of Health  
6 approvals and regulations.

7 MS. TOMPKINS-WRIGHT: Second.

8 MR. DiSTEFANO: Motion to approve with  
9 conditions.

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

14 (Upon roll motion to approve with conditions  
15 carries.)

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1     **Application 3A-04-24**

2             Application of Matt VanVleck, agent, and  
3     Thomas Walsh, owner of property located at 1 Westland  
4     Avenue, for an Area Variance from Section 203-2.1B(6)  
5     and 203-9A(4) to allow a standby emergency generator to  
6     be located in a side yard in lieu of the rear yard  
7     behind the house as required by code. All as  
8     described on application and plans on file.

9             MS. SCHMITT: I move to approve application  
10    3A-04-24 based on the following findings of fact.

11    **Findings of Fact:**

12    1. The variance request is to allow a generator to be  
13    in the side yard in lieu of the rear yard as required  
14    by code.

15    2. The placement of the generator on the side of the  
16    house is necessitated by the multiple electric wires  
17    in the rear yard including the main utility lines and  
18    the solar panel and would require digging a trench  
19    across the backyard, which increases cost.

20    3. Granting the variance request will not result in a  
21    change in the character of the neighborhood or be a  
22    detriment to neighboring properties as the generator  
23    will be behind the den and shielded from passersby due  
24    to existing landscaping. Moreover, the generator will  
25    be more than 80 feet from the sidewalk and 70 feet or

1 more from the nearest neighbor.

2 4. The benefit sought by the applicant cannot  
3 reasonably be achieved with any other method or  
4 without this variance.

5 5. There's no evidence that there would be a negative  
6 impact on the health, safety and welfare of the  
7 neighborhood nor the environmental condition in the  
8 neighborhood.

9 **Conditions:**

10 1. The variance requested applies only to the  
11 generator described in and in the location depicted on  
12 the application and in the testimony given.

13 2. The homeowner shall maintain landscaping around  
14 the generator to further shield it from view.

15 3. All necessary building permits shall be obtained.

16 MS. SCHWARTZ: Second.

17 MR. DiSTEFANO: Motion to approve with  
18 conditions.

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

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

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1     **Application 3A-05-24**

2             Application of Blake Miller Group, agent,  
3     and Arin Olson, owner of property located at 226  
4     Meadow Drive, for an Area Variance from Section 207-2A  
5     to allow a front yard fence to be 4.5 feet in height  
6     in lieu of the maximum 3.5 feet allowed by code. All.  
7     As described on application and plans on file.

8             MS. SCHWARTZ: I move we approve application  
9     3A-05-06 based on the following findings of fact.

10    **Findings of Fact:**

11    1. This new 4-and-a-half-foot high fence is the  
12    minimum necessary and it's going to replace an  
13    existing 4-and-a-half-foot chain-link fence that is in  
14    disrepair.

15    2. This house is on a corner lot and would require a  
16    variance for almost any change to the house or  
17    property and the side yard abuts the Town  
18    right-of-way.

19             MR. DiSTEFANO: It's not a side yard though.  
20    It's a front yard. So I would say in the front  
21    yard -- in the front yard that abuts an unimproved  
22    right-of-way.

23             MS. SCHWARTZ: Did you get that?

24             CHAIRPERSON MEITZ: You've got to read that  
25    one back.

1 MS. SCHWARTZ: 3. There will be no adverse  
2 impact on the character of the neighborhood as this  
3 new fence will be a decorative design and enhance the  
4 property and hence the neighborhood.

5 Then I'll go to conditions.

6 MS. BARON: If you could just talk a little  
7 bit about whether the benefit could be achieved by  
8 some other method.

9 MS. SCHWARTZ: Pardon?

10 MS. BARON: Whether the benefit can be  
11 achieved by some other method. So based on your  
12 discussion --

13 MS. SCHWARTZ: But it's the minimum --

14 MS. BARON: It's the minimum necessary.  
15 They don't need --

16 MS. SCHWARTZ: I did say that in two, it's  
17 the minimum necessary to replace an existing -- you  
18 want two separate?

19 MS. BARON: They are separate criteria, but  
20 if you're saying the minimum necessary also supports  
21 the fact that --

22 MS. SCHWARTZ: So condition number 1 --

23 MR. DiSTEFANO: No.

24 MS. BARON: Sorry to interrupt. And also  
25 whether the related area variance is substantial.

1 MS. SCHWARTZ: Well, it's not. I mean --

2 MR. DiSTEFANO: Well, you got to make a  
3 finding.

4 MS. SCHWARTZ: Number 4, this variance is  
5 not substantial as it is within the height of code and  
6 because it's a corner lot.

7 MR. DiSTEFANO: No. Just say it's not  
8 substantial.

9 MS. SCHWARTZ: This variance is not  
10 substantial.

11 MR. DiSTEFANO: Because it's only one and a  
12 half feet higher.

13 MS. SCHWARTZ: It's only a foot higher than  
14 allowed by code.

15 **Findings of Fact as Amended:**

16 1. This new 4-and-a-half-foot high fence is the  
17 minimum necessary and it's going to replace an  
18 existing 4-and-a-half-foot chain-link fence that is in  
19 disrepair.

20 2. This house is on a corner lot and would require a  
21 variance for almost any change to the house or  
22 property and the front yard that abuts an unimproved  
23 right-of-way.

24 3. There will be no adverse impact on the character  
25 of the neighborhood as this new fence will be a

1 decorative design and enhance the property and hence  
2 the neighborhood.

3 4. This variance is not substantial because it's only  
4 one and a half feet higher.

5 **Conditions:**

6 1. This variance for new fence only applies to the  
7 testimony presented and written application and will  
8 remain an open design as presented in testimony.

9 2. This variance is for a 4-and-a-half-foot high  
10 fence as requested.

11 3. All necessary building permits must be obtained.

12 MR. D'AUGUSTINE: Second.

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

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

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

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1     **Application 3A-06-24**

2             Application of Colleen Cornell, agent, and  
3     Castle Office Group, LLC, owner of property located at  
4     180 Sawgrass Drive, for a Temporary and Revocable Use  
5     Permit Pursuant to Section 219-4 to allow for a food  
6     truck on-site once per week from May through September  
7     2024. All as described on application and plans on  
8     file.

9             MS. TOMPKINS-WRIGHT: I move to approve  
10    application 3A-06-24 based on the following findings  
11    of fact.

12    **Findings of Fact:**

13    1. The applicant's request for a revocable use permit  
14    to permit a food truck once per week in the summer  
15    months is temporary in nature and does not involve the  
16    erection or enlargement of any permanent structure.

17    2. The requested temporary use and time permitted for  
18    use is consistent with the uses in the area to provide  
19    a temporary amenity to the property staff.

20    3. Applicant has complied with all conditions  
21    previously imposed upon the applicant in prior years  
22    for the same and similar revocable use permit.

23    4. There is no evidence that the granting of this  
24    permit will negatively affect the health, safety and  
25    welfare of the community.

1     **Conditions:**

2     1. This temporary and revocable use permit is based  
3     on the documents submitted and the testimony provided.

4     2. The applicant will provide adequate trash and  
5     recycling containers for use by customers of the food  
6     truck who will be responsible for trash removal.

7     3. The food truck will only operate one time per week  
8     for three or four hours at a time.

9     4. The food truck onsite must be currently licensed  
10    and successfully completed the most up-to-date fire  
11    safety inspection by the City of Rochester Fire  
12    Department.

13           MR. D'AUGUSTINE: Second.

14           MR. DiSTEFANO: Motion to approve with  
15    conditions.

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

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



1     **Application 3A-07-24**

2             Application of Vanessa and John Geer, owners  
3     of property located at 2171 West Henrietta Road, for a  
4     Temporary and Revocable Use Permit pursuant to Section  
5     219-4 to erect a second tent (25' x 25') covering a  
6     front outdoor patio from April through December for  
7     years 2024 and 2025. All as described on application  
8     and plans on file.

9             MS. MCKAY-DRURY: I move we approve  
10    application 3A-07-24 based on the following findings  
11    of fact.

12    **Findings of Fact:**

13    1. The applicant is requesting a variance to allow  
14    for the erection of a second tent up to 25 by 25 feet  
15    covering a front outdoor patio from April through  
16    December for years 2024 and 2025.

17    2. The granting of the request will not result in an  
18    increase to the population density on this location.

19    3. The granting will not result in a substantial  
20    change in the character of the surrounding properties  
21    since there is already an existing tent located on  
22    this property.

23    4. The granting of the request will not endanger the  
24    health, safety or general welfare of the community as  
25    the tent will be installed by a professional tent

1 company.

2 **Conditions:**

3 1. The temporary and revocable use permit is granted  
4 only per the application submitted and testimony given  
5 for the years 2024 and 2025 and during relevant  
6 applicable months.

7 2. All necessary permits shall be obtained from the  
8 fire marshal.

9 3. If temporary heating is requested, only approved  
10 portable forced air heating units shall be provided.  
11 Portable LP gas fire pedestal style heaters or propane  
12 appliances used under a temporary structure are  
13 strictly prohibited by the 2020 Fire Code of New York  
14 State and the manufacturer product listing.

15 MS. BARON: So there's two potential  
16 additional conditions. One is that the area is not to  
17 be used for table dining service.

18 And second was whether you did want it going  
19 from April -- the application says April to November  
20 or December. Do you want to be more specific in terms  
21 of the months as a condition?

22 MS. MCKAY-DRURY: So condition 4 is that  
23 this tent is not to be used for table dining service.  
24 Condition 5 is that it will be up -- only from April  
25 until November 1st of each year.

1 MR. PREMO: Second.

2 MR. DiSTEFANO: Can I just -- one of your  
3 findings about the character of the neighborhood. So  
4 if I had two junk cars on my property and wanted a  
5 third junk car on the property, I wouldn't be changing  
6 the character of the neighborhood because -- because  
7 why?

8 CHAIRPERSON MIETZ: I don't think she said  
9 character of the neighborhood. I think she said  
10 something else.

11 MR. DiSTEFANO: No. She said character of  
12 the neighborhood.

13 MS. McKAY-DRURY: I don't think it would  
14 because of the fact that there is already a tent --

15 MR. DiSTEFANO: Already a tent on the  
16 property.

17 So it's not, you know -- I can't --  
18 character of the neighborhood is something we've  
19 already given them approval for.

20 MS. McKAY-DRURY: Yeah. I mean, I still  
21 believe that it doesn't substantially change the  
22 character of the neighborhood to add a second. Versus  
23 the question between no tent and one tent, I think  
24 that that's a bigger question and a bigger change to  
25 the neighborhood.

1 I mean, I guess, I would also think, you  
2 know, in this particular area, it's surrounded by a  
3 lot of pavement. It's in a large lot. And so I  
4 suppose I could add to that finding those factors.

5 MR. DiSTEFANO: Yeah. I mean, you want to  
6 make something where it's -- yeah. You might want to  
7 say it's a sizable lot because it is on a  
8 substantially large lot.

9 MS. McKAY-DRURY: So I would amend finding  
10 number 3 to say that it will not result in a  
11 substantial change in the character of the surrounding  
12 properties since the tent will be erected on a lot  
13 that is quite substantial in size in an area that is  
14 mostly paved and is next to a parking area and fairly  
15 close to the building itself.

16 MR. PREMO: I agree to those amendments.

17 **Findings of Fact as Amended:**

18 1. The applicant is requesting a variance to allow  
19 for the erection of a second tent up to 25 by 25 feet  
20 covering a front outdoor patio from August through  
21 November for years 2024 and 2025.

22 2. The granting of the request will not result in an  
23 increase to the population density on this location.

24 3. The granting of the request will not result in a  
25 substantial change in the character of the surrounding

1 properties since the tent will be erected on a lot  
2 that is quite substantial in size in an area that is  
3 mostly paved and is next to a parking area and fairly  
4 close to the building itself.

5 4. The granting of the request will not endanger the  
6 health, safety or general welfare of the community as  
7 the tent will be installed by a professional tent  
8 company.

9 **Conditions as Amended:**

10 1. The temporary and revocable use permit is granted  
11 only per the application submitted and testimony given  
12 for the years 2024 and 2025 and during relevant  
13 applicable months.

14 2. All necessary permits shall be obtained from the  
15 fire marshal.

16 3. If temporary heating is requested, only approved  
17 portable forced air heating units shall be provided.  
18 Portable LP gas fire pedestal style heaters or propane  
19 appliances used under a temporary structure are  
20 strictly prohibited by the 2020 Fire Code of New York  
21 State and the manufacturer product listing.

22 4. This tent is not to be used for table dining  
23 service.

24 5. It will be up only from April until November 1st  
25 of each year.

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

3                   (Ms. Schmitt, yes; Mr. Mietz, yes;  
4 Mr. D'Augustine, no; Ms. Tompkins-Wright, no;  
5 Ms. Schwartz, yes; Mr. Premo, yes;  
6 Ms. McKay-Drury, yes.)

7                   (Upon roll motion to approve with conditions  
8 carries.)  
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1     **Application 3A-08-24**

2             Application of Richard Hunt, architect, and  
3     Michael Gestetner, owner of property located at 213  
4     Warrington Drive, for an Area Variance from Section  
5     209-10 to allow livable floor area to be 3,146 square  
6     feet, after construction of an addition, in lieu of  
7     the maximum 2,846 square feet allowed by code. All as  
8     described on application and plans on file.

9             MS. McKAY-DRURY: I move we approve  
10    application 3A-08-24 based on the following findings  
11    of fact.

12    **Findings of Fact:**

13    1. The proposed variance will not substantially  
14    change the character of the neighborhood given that it  
15    will not be visible from the road or front of the  
16    house.

17             The architectural features such as two new  
18    gables have been added to make it appear aesthetically  
19    pleasing in the rear of the home and it utilizes two  
20    existing first-floor bump-outs as well as the  
21    pre-existing configuration of the home.

22    2. The difficulty necessitating the variance request  
23    cannot be solved in another manner not requiring a  
24    variance since the homeowner requires this number of  
25    bedrooms.

1           Taking space from the existing bedrooms or  
2           the first floor creating a first floor bedroom was  
3           considered but would have resulted in an undesirable  
4           layout for current and future owners.

5           3. The request to exceed the maximum allowable square  
6           footage by 300 square feet is not substantial.

7           4. The variance is the minimum necessary to grant the  
8           relief from the difficulty given the need for three  
9           new bedrooms for the growing family and their need to  
10          host guests from out of town.

11          5. The requested variance is not expected to have any  
12          negative impacts on the physical or environmental  
13          conditions because the watershed will not increase  
14          since only one small alley-like area will be built in  
15          on the first floor and there will be minimum  
16          disturbance to the ground.

17                 Additionally, the maximum height of the  
18          house will remain unchanged.

19          6. The difficulty is self-created given that the  
20          property was subject to the square footage requirement  
21          at the time of purchase. However, this factor is not  
22          dispositive.

23          **Conditions:**

24          1. The square footage allowance increase is limited  
25          to the application on file and testimony given.



1 2. All necessary building permits shall be obtained.

2 MS. BARON: One question. I might have  
3 misheard. I thought number 5 you said the word  
4 "watershed." I wasn't sure. Or did you say lot  
5 coverage?

6 MS. MCKAY-DRURY: It's what was in the  
7 application.

8 MR. DiSTEFANO: Why don't you change it.

9 MS. MCKAY-DRURY: Okay. So I would modify  
10 finding number 5 to indicate the requested variance is  
11 not expected to have a negative impact on the physical  
12 or environmental conditions because -- and replace the  
13 word watershed with lot coverage.

14 MR. D'AUGUSTINE: Second.

15 **Finding of Fact as Amended:**

16 5. The requested variance is not expected to have any  
17 negative impacts on the physical or environmental  
18 conditions because the lot coverage will not increase  
19 since only one small alley-like area will be built in  
20 on the first floor and there will be minimum  
21 disturbance to the ground.

22 Additionally, the maximum height of the  
23 house will remain unchanged.

24 MR. DiSTEFANO: Motion to approve with  
25 conditions.

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

5 (Upon roll motion to approve with conditions  
6 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. TABLED AT  
8     THE JANUARY 3, 2024 MEETING - PUBLIC HEARING CLOSED.

9             MS. BARON: Yeah. Some of my comments  
10     are -- I did want to save this for after the  
11     deliberations, but I just wanted to address a couple  
12     things at the beginning.

13            The Board received correspondence on  
14     February 14th from Harter, Secrest and Emery. And  
15     there was a reference in that letter to an alleged  
16     conflict of interest by two Board members, Board  
17     Member Tompkins-Wright and Board Member Premo.

18            And I just wanted to say for the record that  
19     there is no conflict for either board member that  
20     would require recusal from the consideration of this  
21     application, in voting on this application. So that's  
22     the first thing I wanted to say.

23            And then just the second thing for your  
24     consideration while you're deliberating, I know this  
25     came up at the last meeting, Board Member Schmitt

1 asked questions about enforcement, had concerns about  
2 just general enforcement of the preservation -- the  
3 Brighton Preservation Law.

4 The Historic Preservation Law does include  
5 an enforcement provision that allows, you know,  
6 typical enforcement actions such as fines and also  
7 potentially civil enforcement through a lawsuit,  
8 requesting injunctions. So there are enforcement  
9 mechanisms within the Code about -- you know, if the  
10 Historic Preservation Law is violated in any way, that  
11 could result in requiring the property owner to  
12 restore the property if the Town chooses to enforce  
13 the Historic Preservation Law against the property  
14 owner.

15 So I just wanted to say those two things for  
16 the Board's consideration before you start  
17 deliberating again on this application.

18 One more thing. Sorry. The Board has in  
19 front of it three draft resolutions that have been  
20 posted publicly for the public to view as well.

21 One is to grant the appeal, which would  
22 reverse the decision of the Historic Preservation  
23 Commission.

24 One is to deny the appeal, which would  
25 affirm the designation of the entire property as a

1 landmark.

2 And one is to essentially modify, which is  
3 to grant in part and deny in part. Granting --  
4 denying the appeal in regards to the landscaping on  
5 the property and granting in terms of the actual  
6 building on the property.

7 So if The Board has any questions about  
8 those options or resolutions, I'm happy to answer  
9 that.

10 MS. MCKAY-DRURY: I'd like to clarify that  
11 the subsequent correspondence, which we've all been  
12 provided, is part of the record.

13 MR. DiSTEFANO: Do you want her taking this  
14 down?

15 (There was a discussion off the record.)

16 MR. DiSTEFANO: So if she's going to  
17 transcribe this, try to not interrupt others, unlike a  
18 lot of our other discussions.

19 MS. MCKAY-DRURY: So the question is whether  
20 the subsequent correspondence we received made it in  
21 as part of the record.

22 MS. BARON: So the public hearing was closed  
23 at the last meeting. It is a Town of Brighton policy  
24 and it is on every single agenda at the top for any  
25 board to accept correspondence at any time. And the

1 Board takes that in.

2 This is kind of a question actually for the  
3 applicant. Mr. Tantillo I know is in the audience and  
4 maybe he wants to come up to the podium.

5 If Mr. Tantillo wants to respond to any of  
6 the correspondence that was received after the public  
7 hearing was closed, I think that we should give him  
8 that opportunity. But if he is fine and the property  
9 owner is fine with it being in the record without a  
10 response, then that -- we can, you know, consider  
11 that.

12 MR. TANTILLO: We were --

13 CHAIRPERSON MIETZ: Just for the record,  
14 name and address.

15 MR. TANTILLO: Jon Tantillo, 100 South  
16 Clinton Avenue.

17 CHAIRPERSON MEITZ: Thank you.

18 MR. TANTILLO: We were copied on the first  
19 and last letters, both of the ones from Harter  
20 Secrest. We received the first one. We did not  
21 receive the second one yet. It may be coming later.

22 So I don't -- I'm not really prepared to  
23 respond to any of them. I just saw them before the  
24 meeting.

25 From what I saw, I don't think much was very

1 new. I guess I object to -- the letter from the  
2 architect was offered as expert evidence that wasn't  
3 part of the public record before closing the public  
4 hearing.

5 The Bero Architecture was, I believe, the  
6 Town's consultant. So I don't think -- it wasn't even  
7 clear who the letter was offered on behalf of. It  
8 didn't say it was submitted in support of anyone's  
9 position. So I guess that one I would object to being  
10 taken as some un rebuttable expert testimony.

11 MS. BARON: So that's a question for the  
12 Board. If the Board is taking that letter from Bero  
13 Architecture and is using that as part of your  
14 consideration for your resolution, then I think that  
15 Mr. Tantillo should have an opportunity to potentially  
16 respond to that.

17 MR. DiSTEFANO: But remember that we did  
18 close the public hearing. We do have all the  
19 information from the Historic Preservation Commission,  
20 you know, supporting their reasoning behind  
21 designation.

22 MS. BARON: And I know we said this during  
23 the last meeting, but it wasn't on the record, with  
24 the property owner consenting to the extension on top  
25 of the 62-day limitation for a decision from this

1 Board.

2 MR. TANTILLO: Yes. Is that one for today  
3 or for a further one?

4 MS. BARON: It would be from the last  
5 meeting. So it would be until the April meeting.

6 MR. TANTILLO: Yeah. No objection. That's  
7 fine.

8 I assume there's no more questions back and  
9 forth because the hearing's closed, but if anyone has  
10 anything.

11 CHAIRPERSON MEITZ: Nope.

12 MR. TANTILLO: Thanks.

13 CHAIRPERSON MEITZ: Okay. Anything else,  
14 Lauren? Or do you want to go around and talk about  
15 this?

16 MS. BARON: I think you should go ahead and  
17 deliberate now.

18 CHAIRPERSON MIETZ: Okay. Very good. You  
19 want to start over with Mr. Matthew.

20 MS. SCHMITT: Dennis, can I -- I don't want  
21 to like jump in, but I had a big question last name.

22 I had a question last time why certain words  
23 were used and thinking they must have a meaning. In  
24 particular, I couldn't figure out why they used the  
25 words "identify."



1 CHAIRPERSON MIETZ: Who's "they" first?

2 MS. SCHMITT: It was myself. And Heather  
3 also raised the question saying what does it mean when  
4 it says identify or associated with historic  
5 personages? What does that mean?

6 MR. DiSTEFANO: In the code. It means how  
7 the Code is --

8 MS. SCHMITT: Right. It must mean  
9 something. What would that be as opposed to the home  
10 of a historic personage? Or just trying to figure  
11 that out.

12 So I went to look and saw that the Brighton  
13 test uses very similar language to the New York State  
14 language and to the National Register language.

15 In the National Register language, they use  
16 associated with the lives of persons significant in  
17 our past as opposed to identified with historic  
18 personages. So I view those as very similar.

19 New York State, again, who uses very similar  
20 language, refers you to the National Parks Service,  
21 who has a publication and under that publication has  
22 something called resources. And the resource section  
23 explains what it means to -- why the words  
24 "associated" or "identified" are there.

25 So there's a list of how you apply and then

1 the criteria for the evaluation of whether it  
2 qualifies. And it's pretty lengthy. But what I did  
3 is I made copies for everyone here. I'll just send  
4 them around. One is to show you the table of contents  
5 and then also this idea of how to identify properties.

6 So under the table of contents, you see that  
7 they break down each test into multiple factors to  
8 help the reviewer understand whether or not a property  
9 meets that test.

10 So for example, their criteria B, which is  
11 Brighton's test number 2, identified with a historic  
12 personage, they go on to explain some things that you  
13 must have. Some of them -- so for example, it lists  
14 the person must be significant. Two, it must be an  
15 association with the property.

16 It says, "Properties eligible under  
17 criterion B are usually those associated with a  
18 person's productive life reflecting the time period  
19 when he or she achieved significance."

20 It goes on to say -- explain that  
21 "properties that pre- or postdate an individual's  
22 significant accomplishment times are usually not  
23 eligible."

24 The third thing you need to do --

25 MS. MCKAY-DRURY: What page are you on?

1 MS. SCHMITT: Page 15 on the one that's  
2 called "How to Identify the Types of Significance of a  
3 Property." So I'm just looking at applying criteria  
4 B. And I'm at the middle column, "Association With  
5 the Property."

6 So again, the person must be significant.  
7 The second one is must be -- that "the association  
8 with the property needs to be during the time period  
9 reflecting when he or she achieved their  
10 significance."

11 And then third is you need to -- "each  
12 property associated with an important individual  
13 should be compared to other associated properties to  
14 identify the best -- to best represent the person's  
15 historic contributions. The best representatives  
16 usually are properties associated with the person's  
17 adult or productive life. Properties associated with  
18 the individual's formative or later years may also  
19 qualify if it can be demonstrated that the person's  
20 activities during this period were historically  
21 significant or if no properties from the person's  
22 productive years survived."

23 The other thing that I went to and I looked  
24 at, there was another pamphlet that the National Park  
25 Service puts out to further help people decide whether

1 or not to associate with a significant person.

2 There's one called "Guidelines for  
3 Evaluating and Documenting Properties Associated With  
4 Significant Persons." And in that it lists an example  
5 of when something would not be eligible. And it  
6 lists -- the question is -- it talks about a home of a  
7 significant scientist.

8 And it then goes on to say the house was  
9 built as a retirement home of the scientist. It was  
10 not during his or her productive years. So it would  
11 be considered ineligible.

12 It goes on to say, "Eligible properties  
13 generally are those associated with the productive  
14 life of the individual in the field in which she or he  
15 achieved significance. Association with an individual  
16 should have occurred during the period of time when  
17 the person was engaged in the activity for which she  
18 is considered to be significant. Birthplaces,  
19 childhood homes, schools attended as children and  
20 retirement homes are not associated with an  
21 individual's significant contributions, graves and  
22 cemeteries generally are not considered eligible for  
23 the Historic Register on the basis of association with  
24 that person."

25 "Some properties associated with a person's

1 formative years may qualify if it can be demonstrated  
2 that the individual's activities during this period  
3 had historical significance or were important in  
4 understanding his or her later achievements."

5 It then -- also within that are items just  
6 talking about significant architectural styles. And  
7 it goes on in the treatise to say that there are tests  
8 that need to be done to see if there is quality --  
9 they call them the seven qualities of integrity. And  
10 you need to identify the changes and threats to the  
11 integrity of the home because it must retain  
12 sufficient integrity to convey its significance.

13 So to some extent, I look at it and I think  
14 just looking -- when you just look at those four  
15 factors, it's not sufficient. You need to look at the  
16 underlying factors that go along with those  
17 provisions.

18 CHAIRPERSON MIETZ: Do you want to finish  
19 your thought so we can go around?

20 MS. SCHMITT: So my thought is, again, with  
21 regard to -- there was a discussion. And I know Matt  
22 felt very strongly that the son who lived in that  
23 house until he went to a boarding school was a person  
24 of historic scientific personage.

25 But according to how we need to look at what

1 the words "identified with," when you look at that  
2 "identified with," that home would not be identified  
3 with that historic personage during the time period  
4 that they created this significant historical or  
5 scientific event.

6 MS. McKAY-DRURY: May I, Kathy?

7 MS. SCHMITT: Yes.

8 MS. McKAY-DRURY: It did -- what you  
9 provided to us did indicate that childhood homes could  
10 if there's not an adult home associated with the  
11 individual, which I don't think we have evidence of  
12 that.

13 MS. SCHMITT: Correct.

14 MS. McKAY-DRURY: Okay.

15 CHAIRPERSON MIETZ: Okay. Go ahead.

16 MS. SCHMITT: So I looked at that. I also  
17 think that when you look at the architectural style, I  
18 think that we need to go back and think about some  
19 questions that Ed had raised about the multiple  
20 changes to the property and whether or not they were  
21 significant or sufficient that it no longer conveyed  
22 the integrity of that particular style.

23 There's also a pamphlet that talked about  
24 the work of the significant designer for the  
25 landscape. And I have to tell you that was so

1 complicated it made my head spin. Because clearly  
2 that designation needs to be done by a landscape  
3 architect to determine whether or not it meets the  
4 criteria of -- looking at whether or not that meets  
5 that criteria.

6 For example, it would talk about properties  
7 and landscape being designed by somebody like Frank  
8 Lloyd Wright, if there had been too many changes to it  
9 or it was no longer maintained in the way that the  
10 architect had planned on maintaining it, then it would  
11 not be able to be on the historic register, meaning  
12 that it isn't simply that a famous person, a famous  
13 architect, designed it. It was, did it -- I know that  
14 this says "is the work of a significant designer," but  
15 I'm not sure if that is sufficient when you look at  
16 the tests that are done by the National Register. So  
17 that one I think is a little iffy.

18 I couldn't make it through the pamphlet.  
19 It's literally 20, 30, 40 pages of very in-depth  
20 questions. But I certainly believe that with regard  
21 to identifying with historic personages and not having  
22 had enough information on the architectural style, all  
23 of the changes -- whether it still met that.

24 CHAIRPERSON MIETZ: Okay. All right.  
25 Let's --

1 MR. D'AUGUSTINE: Thanks for doing that  
2 research.

3 CHAIRPERSON MIETZ: Thanks a lot.

4 MS. TOMPKINS-WRIGHT: Based on your  
5 research, do you have an opinion on -- I know you  
6 mentioned the landscape architect, but do you have an  
7 opinion on whether or not the landscape architect's  
8 work, if it is relatively unchanged -- and I guess  
9 that's an argument -- would it fit into that criteria  
10 or should fit into that criteria?

11 MS. SCHMITT: It literally was talking about  
12 how much is still there. So it's not just that a  
13 famous person did it, but it's the quality of what was  
14 done and what the condition is now and what you're  
15 preserving.

16 So let's say -- for instance, there were  
17 pages on you have a beautiful mound and stone work  
18 down on the property, but it's no longer there or it's  
19 falling apart, then you would look at it and say I  
20 don't know if we're preserving it and that this is the  
21 best representative of this famous architect's work.

22 CHAIRPERSON MEITZ: All right.

23 MS. MCKAY-DRURY: I want to jump in here to  
24 ask for a little guidance. When I hear that, frankly  
25 as a lawyer, I'm assuming that that research is



1 persuasive authority and not binding on our  
2 interpretation of the Brighton Town Code, which does  
3 not incorporate by reference any of these state or  
4 national standards.

5 MS. BARON: Yes. So I was going to follow  
6 that up with saying while the resources are certainly  
7 helpful, they're not referenced as part of the  
8 Brighton Town Code criteria.

9 And the code criteria -- I know you were  
10 looking for meaning and guidance and that's why you  
11 went out to find that -- what other people might think  
12 and how it's similar criteria. But because that's not  
13 incorporated in Brighton criteria, it's not binding on  
14 this Board in terms of how to make your decision.

15 MS. TOMPKINS-WRIGHT: It can be part of why  
16 we made our decision, but we don't have to be bound by  
17 it.

18 MS. BARON: Sure.

19 CHAIRPERSON MIETZ: Okay. All right. So,  
20 Matt, let's go. What were your thoughts?

21 MR. D'AUGUSTINE: Yeah. I do think that  
22 Brighton Code has local considerations that supersede  
23 state and national.

24 And obviously, we discussed people like  
25 historic personages, you know -- it's a different

1 standard when we're talking about a local community  
2 rather than, you know, someone of national  
3 significance.

4 So I'm still in the -- likely to vote to  
5 deny the appeal.

6 MS. TOMPKINS-WRIGHT: And just to clarify,  
7 on the basis that it's associated with a historic  
8 personage.

9 MR. D'AUGUSTINE: One of them. I find the  
10 landscape architecture to be satisfying as well.

11 And I'm not convinced that the house has  
12 been changed to an extent that it sort of wipes out  
13 its -- you know, if we're going to say that, you know,  
14 Colonial Revival style 1930 is significant  
15 architecture -- we can debate about that -- but that  
16 the changes don't, in looking at it, seem to be doing  
17 something that wipes away the architectural  
18 significance of it.

19 CHAIRPERSON MIETZ: Judy.

20 MS. SCHWARTZ: Yes. I am in favor of  
21 denying the appeal because I feel -- I've gone back  
22 and looked at the notes from the Historic Preservation  
23 meeting in November. And John Page, who is a very  
24 reputable architect, I must say was very involved in  
25 the restorations of the Frank Lloyd Wright House on

1 East Boulevard. So he is a person of integrity.

2 But he talked about something you just said  
3 a little bit about the fact that we are looking at  
4 this as a community, not a state and not nationally.  
5 Okay? And I think that's very, very important.

6 And I won't go into everything. It's too  
7 much. But he says that the project, in terms of  
8 integrity and the architect, has a degree of local  
9 prominence and it's still important to him and so  
10 forth.

11 I did then go and look at the things that  
12 were said to us today and I just want to talk about  
13 one thing -- one thing now. And that's the seven  
14 members of our commission and you have to have one  
15 member who's a professional architect or a civil  
16 engineer licensed in New York, two members shall own a  
17 historic landmark within the Town.

18 Our commission has seven members, of course,  
19 an architect, a civil engineer, the executive director  
20 of the Landmark Society in Western New York, an  
21 attorney, a former building inspector/contractor and  
22 two preservation experts. Two members are also owners  
23 of designated landmarks in our town.

24 I think that says a lot. I think that these  
25 people have great integrity. I think they've looked

1 at this. And I know from -- they spent a great deal  
2 of time. And I feel that their research,  
3 their thinking, their deliberation, it's valuable and  
4 I do agree with what they said.

5 And we have said before, only one criteria  
6 is required. Okay? And their findings fulfilled all  
7 of them.

8 I wanted to say too that the building on the  
9 grounds was professionally designed and is important  
10 to the property's character. It's important to  
11 consider the property holistically as the site is made  
12 up of both architectural and landscape components  
13 where it's primarily a building to which the landscape  
14 is secondary.

15 Okay. In this case, the historic reasoning  
16 in question is not just the house. It is not just the  
17 landscape. It is both as a unified composition. So  
18 when -- I'm not going to go on. They wrote about the  
19 integrity of this. It's important.

20 But when they said last meeting that, okay,  
21 you can condition that we won't disturb the  
22 landscaping, come on. I mean, you can't -- well I  
23 don't want to think of it. You couldn't demolish a  
24 house and not interfere with the landscaping. It's  
25 just impossible.

1           And I would hate to have somebody come back  
2     to say oh, shucks. We're sorry. We tried, but we  
3     can't do it.

4           This goes together just as this was said and  
5     it was written by -- these reports were written by  
6     Kate Eggers Comeau. And so it goes together. It's  
7     not one or the other. It goes together.

8           So I am certainly in favor of denying the  
9     appeal and preserving it.

10           CHAIRPERSON MEITZ: All right. Andrea.

11           MS. TOMPKINS-WRIGHT: I can agree that  
12     there's probably -- there is a lower bar for local  
13     communities to determine what is historical versus a  
14     state versus a federal level.

15           I still think there has to be a  
16     reasonableness test to that bar. Saying the home is  
17     associated with a historical person based on who lived  
18     there, that feels like a bar that's just entirely too  
19     low to me.

20           Whether or not it is a really shining  
21     example of a specific type of architecture, given all  
22     the changes that have occurred, I don't -- I feel like  
23     that bar still isn't met.

24           I unfortunately was not here. I did read  
25     the full transcript, but was not able to see the plan

1     they showed that would preserve some of the more -- I  
2     want to be careful with just the term landscaping.  
3     It's not just plants but any other type of -- I don't  
4     know whether or not -- I guess, I am open to a  
5     potential approval of the appeal -- I'm sorry. Denial  
6     and approval of the appeal that protects portions of  
7     the landscaping as historic based on the design to the  
8     extent it has been and is still in its relatively  
9     original condition. But I cannot get to the point  
10    where I feel like the home itself should be designated  
11    as historical.

12             And I would also -- I can also get behind a  
13    full approval of the appeal that says the site is not  
14    historic at all.

15             CHAIRPERSON MEITZ: Okay. Do you need to  
16    say anything else or does that summarize your  
17    position?

18             MS. TOMPKINS-WRIGHT: No, I --

19             MS. SCHMITT: I'm going to only throw this  
20    out that within the context, there's a section called  
21    "Local, State and National Historic Context."

22             And it says "Historic contexts are found by  
23    a variety of geographic levels and scales. Regardless  
24    of this scale, the historic context establishes the  
25    framework from which decisions about the significance

1 of a related property can be made."

2 That's why it's used as a resource for the  
3 State and there's a lot of localities using it too  
4 saying you're going to use that same information.

5 I just feel strongly you have to have a bar.  
6 You can't just say this is a beautiful house, which it  
7 is, a famous person once lived there at some point but  
8 didn't do anything in it. That's not a sufficient  
9 bar. So I would deny it.

10 CHAIRPERSON MEITZ: What is your feeling  
11 about the landscaping? Would you entertain that as a  
12 discussion or --

13 MS. SCHMITT: I would entertain it as a  
14 discussion.

15 CHAIRPERSON MEITZ: Okay.

16 MR. D'AUGUSTINE: You mean to approve?

17 MS. SCHMITT: I'm sorry. I would approve  
18 the appeal. Thank you. Thank you.

19 CHAIRPERSON MEITZ: Okay. Ed.

20 MR. PREMO: Yes, I would also grant the  
21 appeal and set aside the designation certainly as to  
22 the house.

23 I note that our appeal is de novo as we've  
24 discussed. We're to exercise our own judgment based  
25 upon the language of the local law.

1           And the materials that I think Kathy has  
2       done a wonderful job of bringing to us to help us  
3       understand that language. I think the language that  
4       is used is very particular. The words such as  
5       "identify," "embodies," "significant designer," have  
6       meaning that we need to look at.

7           With respect to the issue of the  
8       architectural style of it and whether it has --  
9       embodies distinctive characteristics of the  
10      architectural style, I believe it does not. Some  
11      resources I looked at was the National Parks Service  
12      information, again, particularly concerning the  
13      category that's been identified as Colonial Revival.

14           I note significant elements, which are  
15      typically involved in Colonial Revival architecture,  
16      that is missing including pedimented windows,  
17      intersecting gable roofs and dormer windows,  
18      decorative fanlight windows and symmetrical  
19      double-hung windows, prominent wood columns, columns  
20      with porticoes and a pediment triangular structure  
21      over a porch or portico.

22           I believe those are significant elements.  
23      As has been noted, there has been multiple changes to  
24      the building. In fact, I don't really see how you  
25      look at it and say that it embodies the distinguishing



1 characteristics of an architectural style. At best to  
2 me, it's a collective or a mix-mash of various design  
3 elements and styles and does not embody them.

4 With respect to the criteria identified with  
5 the historic personage, I once again disagree with  
6 that conclusion. There's been kind of a shotgun  
7 approach. We've heard about everybody from Vacuum Oil  
8 to the Harley School to everyone else thrown out  
9 there.

10 The only one I think probably we had any  
11 worthy discussion of is Dr. Charles Bentley, who  
12 evidently lived at that place for a while as a child.  
13 Dr. Bentley's significant work was done at Columbia  
14 University and the University of Wisconsin and was not  
15 done here in Rochester, New York, in Brighton, New  
16 York. In fact, I note that even in the file where it  
17 says where he was born, it says Rochester. Doesn't  
18 even mention the Town of Brighton.

19 I would note that with respect to that  
20 issue, the test once again is identified with the  
21 historic personage. We have the testimony from  
22 Ms. Suzanne Spencer who lived in the house for 40  
23 years. When asked if anybody stopped by to look for  
24 the Bentley house, she in fact answered no.

25 In terms of a work of a significant

1 designer, I'm not going to dwell on it too much, but I  
2 think Herbert Williamson does not qualify as that. In  
3 the last meeting, Kathleen pointed out extensive  
4 research she had done to find information from him as  
5 a significant designer and it does not appear to be  
6 there.

7           Once again, with respect to the landscaping,  
8 we're talking about Fletcher Steele. He does appear  
9 to be a designer, although we have a lack of  
10 information about what elements of his design still  
11 remain there to be protected.

12           I would certainly be willing, mostly because  
13 I believe the applicant was willing to consider  
14 preserving features of the Steele design -- I think  
15 that could be worked out.

16           I would note that in some correspondence I  
17 believe there's been some information with the State.  
18 It's been stated that there has to be a protected zone  
19 200 feet -- 250 feet around this.

20           That is not what the ordinance says. In  
21 fact, the ordinance says in no case shall expansion  
22 include more than a 250-foot radius of land. To me  
23 when I read that, it means less than 250 feet.

24           And in fact, you could design a protection  
25 that I believe would allow the home to be demolished

1 and elements of the landscaping to be preserved.

2 If I were given my choice, I would like to  
3 work on that resolution number 3 and see if there's  
4 parts of the identification for the Fletcher Steele  
5 design we can do. But in lieu of that, I would move  
6 to grant the entirety of the appeal.

7 MS. McKAY-DRURY: First of all, I believe  
8 that the issue of the record and subsequent  
9 correspondence remains open and was indicated by our  
10 attorney that it is up to us if these subsequent  
11 materials can be included in the record. And I  
12 believe that they should be.

13 If in the matter -- in the interest of  
14 fairness, that would require giving the applicant some  
15 time to respond to this supplemental from Bero  
16 Architecture, I think I wouldn't have a problem with  
17 that. But for purposes of the record, I think that  
18 that's important that we be inclusionary rather than  
19 excluding information that could be helpful. So I  
20 want to touch upon that first before I dive into my  
21 whole spiel.

22 CHAIRPERSON MIETZ: Okay.

23 MS. McKAY-DRURY: So can we decide on that  
24 then?

25 MS. BARON: You don't have to decide on it

1 now. I think it will be dependent on --

2 CHAIRPERSON MIETZ: I think she's talking  
3 about the -- just the communications and  
4 Mr. Tantillo's ability to respond to that.

5 MS. BARON: Yeah. If that's what the Board  
6 wants to do, then -- in terms of including everything,  
7 then you shouldn't be voting tonight. It should be a  
8 vote at the next meeting.

9 CHAIRPERSON MIETZ: Okay. Does anyone  
10 object to getting the communications in and allowing  
11 Mr. Tantillo the ability to respond to them?

12 MS. TOMPKINS-WRIGHT: I'd like to note that  
13 given the holiday -- school holiday week after -- or  
14 during the Board meeting next month, I don't know if  
15 we'll have -- I don't know if we'll have a quorum. I  
16 don't know if we'll have a split vote. I want to  
17 point that out. We may not.

18 MS. SCHWARTZ: I find it uncomfortable that  
19 only one side would have a chance. I think  
20 that what -- I want -- my question is why wasn't  
21 someone from the Commission able to come and speak to  
22 us?

23 CHAIRPERSON MIETZ: The public hearing is  
24 closed.

25 MS. SCHWARTZ: Not tonight.

1 MR. DiSTEFANO: They did.

2 MS. SCHWARTZ: From our historic --

3 MR. DiSTEFANO: Our historian came and  
4 talked to the Board.

5 MS. SCHWARTZ: She's not a voting member.

6 MR. DiSTEFANO: But that's --

7 (Simultaneous conversation interrupted by the court  
8 reporter.)

9 MS. BARON: So I think I can answer that  
10 question. The record before you is what you're  
11 considering. In terms of what the Historic  
12 Preservation Commission considered is their record  
13 that was taken at their meeting and listed their  
14 resolution. So that's what this Board is tasked with  
15 considering.

16 And the applicant themselves was the Town  
17 historian. It was her application. So she was tasked  
18 with defending that application on the table.

19 MS. SCHWARTZ: But I do go back -- again, if  
20 Mr. Tantillo has the right, then I think both sides --  
21 I mean, why -- why does he have that right?

22 MS. BARON: So the additional correspondence  
23 that was submitted, it is in favor of denying the  
24 appeal. So it could be giving the property owner the  
25 opportunity to just respond to that correspondence.

1 It's not a tit-for-tat in terms of everybody  
2 responding. Then we are going back and forth forever  
3 and providing more information. It would just be  
4 solely for an opportunity for the property owner to  
5 respond to the additional correspondence that has been  
6 received after the public hearing was closed.

7 MS. McKAY-DRURY: My point is that the  
8 additional supplemental information that we received  
9 can be quite relevant to, especially, some of the  
10 additional legal analysis that we've heard Kathleen  
11 provide to us. And I believe that that should be part  
12 of the record.

13 And in order to include that in the record,  
14 I believe that we can afford the opportunity to  
15 respond so that there is a full and fair record should  
16 any appeal be taken.

17 CHAIRPERSON MIETZ: What do you think,  
18 Lauren?

19 MS. BARON: Yeah. I mean, I would agree  
20 with Heather. I think that the property owner should  
21 be provided -- if the Board wants to consider and  
22 include the Bero Architecture letter and additional  
23 letters that were received after the public hearing  
24 was closed, then the property owner should have an  
25 opportunity to respond.

1 MS. TOMPKINS-WRIGHT: May I ask a question?

2 MS. BARON: Yes.

3 MS. TOMPKINS WRIGHT: For those that believe  
4 this appeal should be granted, have you read the  
5 letter and the additional resources and do you think  
6 that will change your mind such that you need a  
7 response from the applicant?

8 MS. McKAY-DRURY: Because I'm thinking about  
9 appeal, I don't think that it matters.

10 MR. D'AUGUSTINE: You're saying it needs to  
11 be on the record for the record's sake, not that it's  
12 going to change anyone's mind.

13 MS. McKAY-DRURY: That's correct.

14 MR. PREMO: I guess to answer your question,  
15 I did review it. And in particular, it seemed to be  
16 very much focused in on Fletcher Steele.

17 MR. D'AUGUSTINE: Right.

18 MR. PREMO: The discussion, it almost, in my  
19 view, undercut the idea of Williamson's design being  
20 part of this at all. It would not change my mind to  
21 the extent that I wouldn't grant the appeal.

22 CHAIRPERSON MIETZ: Okay.

23 MS. SCHMITT: I guess, are -- mine is not  
24 for this case, but just generally, if you close a  
25 hearing and people want to submit evidence in after

1 that hearing and you don't have the opportunity to  
2 talk to that witness or question that witness or allow  
3 the other side to respond to that witness, but no one  
4 can question the architect either or at any future --  
5 I'm just -- not thinking about this one, but just  
6 generally. I'm trying to understand the idea of why  
7 after you close do you get to have this opportunity  
8 to -- it almost seems like a second bite at the apple.

9 MS. MCKAY-DRURY: Well, people can choose to  
10 write instead of appearing and we allow that. That's  
11 their --

12 MS. TOMPKINS-WRIGHT: But it's submitted  
13 before the public hearing is closed.

14 MS. MCKAY-DRURY: I believe that Lauren  
15 indicated that generally what we do -- our practice is  
16 that if it comes in, even if it's after, it's still a  
17 part.

18 MS. SCHWARTZ: And we did say that  
19 communications would be received.

20 MR. DiSTEFANO: Yes. Communications can be  
21 received and you can use them any way you feel fit.

22 But you don't need to re-open a public  
23 hearing. You don't need those communications to be  
24 addressed by anybody.

25 I mean, Lauren gave the applicant a chance



1 at addressing the Bero letter and I think more or less  
2 he declined, in fact, to do that.

3 So I don't understand why we're bringing  
4 these late -- you know, these communications that are  
5 received after the public hearing was closed are given  
6 such heavy consideration to open them up to the  
7 public.

8 MS. McKAY-DRURY: I think they're  
9 significant. I think especially with respect to the  
10 criterion for architectural style, I think that  
11 those -- that supplement is very significant.

12 MR. DiSTEFANO: But that's an opinion of a  
13 person. And you as the Board can read that letter and  
14 determine whether you feel that opinion is enough to  
15 sway your vote from a yes to a no or a no to a yes.

16 And I think if we wanted to vote on that  
17 request, we could vote on that request right now.

18 CHAIRPERSON MIETZ: Which request?

19 MR. DiSTEFANO: The request to open it up to  
20 a response.

21 And if we say, no, we're good how we are.  
22 We don't need a response, I don't think --

23 MS. BARON: I don't believe you need to vote  
24 to reopen the public hearing.

25 MR. DiSTEFANO: No. Not what I'm saying.

1 MS. BARON: Okay.

2 MS. MCKAY-DRURY: If the issue is that the  
3 Bero Architecture supplement is part of the record and  
4 it can be part of the reason why I vote the way I  
5 vote, then you're just saying that it doesn't sound  
6 like there's a need for further work or response by  
7 the applicant, especially if that's not impacting  
8 anyone else's decision, then that's fine.

9 I just wanted to clarify that my comments  
10 are going to include this Bero Architecture  
11 supplement.

12 MS. TOMPKINS-WRIGHT: I thought I heard you  
13 say something different, that if we're going to  
14 consider this as part of the record for a decision,  
15 then we should provide him with an opportunity to  
16 respond.

17 MS. BARON: Yes. So I think that if you're  
18 going to use that as -- you're going to rely on that  
19 to form the basis of your decision, then the property  
20 owner should have an opportunity to respond.

21 MS. TOMPKINS-WRIGHT: Can I clarify  
22 something? When you say "you," when "you" are going  
23 to use this as the basis of your decision, do you mean  
24 individual board members or do you mean the Board in  
25 the record?

1 MS. BARON: The Board as a whole.

2 And we can also ask Mr. Tantillo.

3 Mr. Tantillo, to clarify for the record, do you want  
4 an opportunity to respond to the Bero Architecture  
5 letter?

6 MR. TANTILLO: To Ms. Tompkins-Wright's  
7 point as to what -- whether or not this is something  
8 that needs to be addressed, if the Board does vote  
9 tonight to grant the appeal -- I know you mentioned  
10 the potential of there being an issue if there's an  
11 appeal of this appeal -- that would be essentially my  
12 claim to raise. I wouldn't have a claim to raise if  
13 you granted my appeal. So it wouldn't be relevant in  
14 that sense.

15 So if they're at a point tonight -- that  
16 would grant the appeal, there wouldn't be anyone that  
17 could challenge you guys not allowing me to put --

18 MS. MCKAY-DRURY: You're not the only one  
19 who could bring an Article 78.

20 MR. TANTILLO: Right. But I'm the only one  
21 who could raise that particular objection.

22 MS. BARON: Yeah. But he wouldn't have an  
23 opportunity to respond to --

24 MR. TANTILLO: Like I didn't get a chance to  
25 respond to it, but --

1 MS. MCKAY-DRURY: I'm just not sure -- okay.  
2 I'm just not sure that that would work. Because as  
3 soon as there's a reliance upon something that's in  
4 the record, then if he says I couldn't respond to  
5 it -- I mean, I guess you're saying essentially the  
6 response to that at that level would be you waived  
7 it --

8 MR. TANTILLO: Yeah. This is in the context  
9 of what something Ms. Tompkins-Wright said if the  
10 appeal was granted.

11 So if you guys think you have a decision in  
12 that way tonight, I would say we wouldn't need to keep  
13 the hearing going just for me to not object to that  
14 when the appeal is granted. I guess it depends on  
15 where the vote is going one way or another. So I kind  
16 of need to know beforehand.

17 MS. BARON: Does that make more sense?

18 MS. TOMPKINS-WRIGHT: Yes. I was just  
19 saying as long as we don't put it in our opinion,  
20 that's fine. I just want -- I was hearing people  
21 taking it differently.

22 MR. TANTILLO: I hate to phrase it like  
23 this, but it's an objection I might have if you guys  
24 denied the appeal, but it's an objection I wouldn't  
25 have if you granted the appeal.

1 CHAIRPERSON MIETZ: That's fair.

2 MS. BARON: Understood.

3 MR. TANTILLO: So I guess, if you got a feel  
4 for where you're going tonight and then just provide  
5 me the opportunity --

6 CHAIRPERSON MIETZ: Okay. Thanks,  
7 Mr. Tantillo. Okay. All right.

8 So Heather, you're going to finish, please.

9 MS. MCKAY-DRURY: I feel like I haven't -- I  
10 feel like I haven't gotten a straight answer for my  
11 request.

12 I'm imploring from my colleagues here on the  
13 Board that we agree that the Bero Architecture  
14 supplement is part of the record. That's all.

15 It may not influence you. It may influence  
16 you to think that you are more correct in deciding  
17 contrary to my vote, but --

18 MS. BARON: It was agreed by this Board that  
19 the subsequent correspondence are part of the agenda.  
20 It's part of the record for this meeting.

21 MS. MCKAY-DRURY: Also --

22 MS. SCHWARTZ: Also to me, it has extremely  
23 important information in it that supports the feelings  
24 of some of us. So I think it's important.

25 When Heather finishes, I just want to add

1 two other points.

2 CHAIRPERSON MIETZ: Yes. Thanks. Let's let  
3 her finish.

4 MS. SCHWARTZ: Yes. Because she's chomping  
5 at the bit.

6 MS. McKAY-DRURY: All right.

7 CHAIRPERSON MIETZ: Go ahead.

8 MS. McKAY-DRURY: So first, I have to  
9 apologize because you are all going to get really sick  
10 of hearing me talk right now.

11 MS. BARON: Before you start this --

12 Before you start, Holly, are you good?

13 (There was a discussion off the record.)

14 MS. McKAY-DRURY: So first of all, I want to  
15 start by noting that during the deliberation process  
16 previously, I flagged some inaccuracies that I see in  
17 the applicant's papers that I find extremely  
18 problematic. When I noted those previously we were  
19 not on the record. So that's why I'm boring you with  
20 them again.

21 The first is that there were indications  
22 made by the applicant that the garage was not original  
23 to the home. However, the materials provided by the  
24 historian demonstrated there were photographs dating  
25 back to the original design of the home that shows

1       that that was present.

2               There were also various entryway areas that  
3       were presented with pictures in the supplemental  
4       materials provided by the applicant that showed  
5       seemingly side-by-side pictures of what were -- claims  
6       to be the same area of the house.

7               Those -- once you look back and refer to the  
8       larger pictures of the home, it becomes clear that  
9       they were not being compared to the same exact area of  
10      the home.

11              I can only assume that those misstatements  
12      were honest errors made in haste rather than outright  
13      attempts to mislead us.

14              But the fact remains that the applicant is  
15      the one coming before this Board to upset the status  
16      quo. What I mean by status quo is they're asking us  
17      to reverse a decision by the historical committee,  
18      which, again, is made up of knowledgeable members who  
19      spent months making this decision and didn't do it  
20      lightly.

21              Now, there's been a lot of quibbling by this  
22      Board over what is historic enough, what is  
23      architecturally significant enough. And it sounds  
24      like there were more than one Google searches for  
25      Colonial Revival.

1 But instead of reinventing the wheel and  
2 essentially laypeople reinventing the wheel -- no  
3 offense to my colleagues -- but I would say that we're  
4 reinventing the wheel as laypeople given the limited  
5 time that we have to spend on this matter and the lack  
6 of a single architect sitting on this Board.

7 I would suggest that instead of reinventing  
8 the wheel, we should rely upon the full and thorough  
9 record that's before us, including the Bero  
10 Architecture firm's report, which is supplemented by  
11 the February 26th, 2024, letter from senior  
12 architecture historian Katie Eggers Comeau.

13 And I believe that that letter sums it up  
14 perfectly. Criterion 4 is satisfied here. There  
15 should be no further discussion. Even the applicant  
16 has conceded that the landscape design satisfies this  
17 criterion.

18 Fletcher Steele, nationally recognized. Not  
19 that someone has to be of national recognition to be  
20 of historical significance, but we'll talk a little  
21 bit more about that later.

22 This is only one of three intact Fletcher  
23 Steele projects within Brighton today. Done deal.  
24 The home is -- can be -- could be said to be part of  
25 the protected radius around that undisputed historic



1 landmark. And certainly, as Mr. Premo noted, it does  
2 not have to be included. However, it could be part --  
3 there could be a protected radius around all of those  
4 features to ensure its protection.

5 And as Ms. Schwartz noted, it would be  
6 impossible to destroy and take apart this entire home  
7 and not then ruin what is literally conceded to be a  
8 historic landmark.

9 The landscaping is married to the house.  
10 Fletcher Steele designed it that way. This is part of  
11 his genius. And as Ms. Comeau's February 26th, 2024,  
12 letter explains, Colonial Revival features of the  
13 house are, quote, "complemented and extended into the  
14 landscape by the colonial-style fencing and terrace  
15 balustrade designed by Steele."

16 Now, this was all pretty lost on the  
17 applicant and his landscaper who testified back in  
18 February. They were like it's not really there. We  
19 don't really see it.

20 But the prior owner confirmed that there are  
21 landscape features that she's improved over the years  
22 that go far beyond two easily severable gardens. They  
23 include plantings, trees, walls, terraces, a patio and  
24 fencing that goes all the way around the entire house.

25 According to the Bero Architecture original

1 report, quote, "The historic resource in question is  
2 not just the house, nor is it just the landscape. It  
3 is both as a unified composition."

4 Going back to Ms. Comeau's February 26th  
5 letter, the house and the landscape also meet  
6 criterion 3 as a coordinated colonial-revival style,  
7 early 20th-century suburban estate.

8 Now, Mr. Premo, this was one feature -- one  
9 aspect of the criterion that you expressed a lot of  
10 interest in and I commend you for looking closer at  
11 this question.

12 But here now in the Bero Architecture  
13 supplemental letter are those features that you were  
14 asking about. And it's not features that you or I as  
15 attorneys can just Google and find out about as if we  
16 have an architecture degree. They're listed here.

17 Quote, "It's massing and fenestration  
18 composition, garrisoned second story, finely detailed  
19 center entrance with multi-paneled door framed by  
20 pilasters and flanked by leaded-glass sidelights,  
21 12-over-12 and 8-over-8 double hung wood windows,  
22 louvered wood shutters with hinges and shutter dogs,  
23 broad clapboard siding with contrasting brick clad  
24 first story semi-elliptical arcaded side gable mass  
25 flanks by two chimneys." End quote.

1           And quote, "Two large gambrel roof side  
2 wings." End quote.

3           I don't purport to know what all of those  
4 are. But what we have is a senior architectural  
5 historian identifying those for us and explaining that  
6 those are directly out of a "Field Guide to American  
7 Houses," which is the widely accepted gold standard  
8 for residential architectural styles in historic -- in  
9 the historic preservation field.

10           Now, has the house been perfectly maintained  
11 in this style? Unfortunately, not necessarily before  
12 now. It has a green metal roof that the prior owner  
13 essentially apologized for before this Board, which is  
14 now famous amongst all of us. But that is temporary  
15 and cosmetic and easily reversible. As Ms. Comeau  
16 confirms, it's right here in her letter -- and,  
17 Ms. Schmitt, the materials that you found talk about  
18 integrity. And that term appears in Ms. Comeau's  
19 letters. She says this home has historic integrity as  
20 contrasted by its condition.

21           Now, like any good antique with some love  
22 and respect from a thoughtful owner who appreciates  
23 its charm, this historic home would be restored to its  
24 prior glory as a landmark within the Town of Brighton.

25           So that right there is two of the four

1 criteria met. And you only need one of them. And one  
2 of them has basically been conceded on the record by  
3 the applicant.

4 And I believe that this one fits all four  
5 frankly. Criterion 1 is met if it, quote, "possesses  
6 historic value as part of the cultural" -- and I  
7 inserted an ellipses there -- "architectural or social  
8 history of the locality."

9 Now, I omitted some words from that  
10 criterion, but I've not distorted the meaning. The  
11 historic value can be at the local level. It does not  
12 have to be on the national level.

13 For all the same reasons that I've already  
14 talked about, this one possesses historic value within  
15 our locality, the Town of Brighton. We should take  
16 pride in being the oldest suburb in Rochester.

17 As suburban sprawl spreads further and  
18 further outwards, causing environmental impacts that  
19 will reverberate for years to come, our proud little  
20 town continues to top charts for best places to live  
21 and highest home values.

22 With notable exceptions, the 1930s is  
23 Brighton's defining era. This home with its ties to  
24 an influential family in more areas than one and its  
25 Colonial Revival integrity embodies that time period.

1           Unfortunately, many buildings predating this  
2 home have already been destroyed, but that doesn't  
3 mean we should just keep deleting our history. This  
4 is what we have. And if we don't honor it, it will be  
5 forgotten entirely and we will no longer be  
6 recognizable as the proud oldest suburb in Rochester.

7           Criterion 2 is, I believe, also met being,  
8 quote, "identified with historic personages."

9           Now, Ms. Schmitt, you've ascribed and come  
10 up with research to help elaborate what the words  
11 "identified with" could possibly mean. And it's  
12 interesting because in thinking about this, I did some  
13 research too once you voiced that question.

14           The first thing I determined was there's  
15 literally no case law anywhere that says -- that  
16 indicates what "identified with" means when it's in a  
17 code like this.

18           But what I did do was I pulled out my dusty  
19 black law dictionary from law school and I looked up  
20 "identified." And that -- one of the -- the  
21 definition for that first one was really not helpful;  
22 to prove the identity of a person or thing.

23           But the second definition was to look upon  
24 as being associated with. And that's really  
25 interesting because actually that's associated with

1 the other terminology that you had come across too.

2 And I suppose we just took opposite things  
3 from it because to me it was significant that the  
4 terminology used -- by saying "identified with," it's  
5 not saying that someone famous has to have lived in  
6 the home for a certain amount of years or performed  
7 any particularly notable task there or hosted any  
8 particular event.

9 I don't think that "identified with" could  
10 be much broader. And it's intentionally much broader  
11 in cases such as this where this home has had many  
12 brushes with historic personages, including the  
13 philanthropic daughter, the enormously successful  
14 inventor, with ties to the Harley School and her  
15 world-famous son, whose scientific discoveries in  
16 Antarctica laid the groundwork for what we do now know  
17 about the growing climate crisis.

18 And the last thing I'm going to say just  
19 pertains to the present time, where we sit now looking  
20 at this application and wondering who prevails.  
21 Because no resolution is going to make everyone happy.  
22 And no one on this Board wants to harm anyone. And no  
23 one wants to see anyone stuck in a bad situation not  
24 of their own making.

25 But the reality is the applicant homeowner

1 seems to have some unclean hands here. He's at  
2 least -- he's apparently come in and testified he's at  
3 least started tearing the place apart exposing  
4 asbestos while waiting for the decision on the  
5 historic status.

6 As if we didn't already know how little  
7 regard he has for this proud old Town's history, he  
8 presented that fact as if it somehow weighed in favor  
9 of reversing the designation.

10 I would say quite the opposite. The  
11 situation he finds himself in is one of his own  
12 creation. It has utterly no bearing on whether the  
13 home is a historic landmark that this homeowner jumped  
14 the gun and started demolishing the home before the  
15 Town had made its decision. He did that at his own  
16 risk. And while no one wants him to incur further  
17 financial implications, our sympathies have no bearing  
18 on whether this home holds a historical significance.

19 The last thing I'll say is that it is my  
20 sincere hope that the homeowner can fix whatever  
21 damage has already occurred and either come to  
22 appreciate his Brighton home by lovingly restoring it,  
23 landscape and house together, or selling it to someone  
24 else who will.

25 MS. SCHMITT: I think you have to correct a

1       few things.

2               MS. SCHWARTZ: Could you speak up, please?

3               MS. SCHMITT: Sorry. I think Heather needs  
4       to correct a few things.

5               If I understood the homeowner correctly, he  
6       didn't start the process of demolition by his choice.  
7       He thought he was complying with what the Town asked  
8       him to do with regard to the next steps.

9               MS. MCKAY-DRURY: It's my understanding that  
10       in order to do the testing for asbestos one does not  
11       have to tear apart a house.

12              MS. SCHMITT: Well, I'm not an asbestos  
13       expert either. So I can't--

14              MS. MCKAY-DRURY: No. In my correspondence  
15       with Rick --

16              MS. SCHMITT: I don't think that's a fair --  
17       I don't think that's a fair statement of how he acted  
18       or what he did. I find that offensive that you would  
19       say that. And I don't know the man. I don't know  
20       anything about him. But I think what he was trying to  
21       say is I was trying to comply with this and this is  
22       what happened.

23              MS. MCKAY-DRURY: Okay. If that's, in fact,  
24       what it is, then, you know, I -- I don't mean any ill  
25       will. And I certainly don't mean to offend.



1 I just think while we're balancing equities  
2 and, you know, potentially -- I mean, certainly we're  
3 feeling -- I feel sympathy that he's in that position.

4 And my larger point is simply that none of  
5 that has any bearing on whether the home has  
6 historical significance.

7 MS. SCHMITT: I was speaking to the "unclean  
8 hands." I think that's a -- that will lead someone to  
9 think something quite different than what he was  
10 talking about.

11 The other thing that I would do is -- I  
12 don't think -- unless I took notes incorrectly, I  
13 don't think that the applicant agreed that Fletcher  
14 Steele was -- I think he was saying at best we could  
15 concede. There's a lot of hesitation, wiggle room,  
16 other comments.

17 MS. BARON: I will say that the record of  
18 the property owner's expert, who submitted her report,  
19 did indicate that Fletcher Steele was a nationally  
20 renowned architect. I don't think there's any dispute  
21 about that fact.

22 MS. SCHMITT: Right. Right. They said he  
23 could be considered. I don't think they said I  
24 concede or agree.

25 CHAIRPERSON MIETZ: Anything else?

1 MS. SCHMITT: No. But I guess my final  
2 thing, I would just say is just that the National  
3 Parks Service, which is the authority that the states  
4 and localities are to look to, specifically provided  
5 an example that said a scientist's childhood or  
6 retirement home is not -- does not meet that standard.

7 MS. TOMPKINS-WRIGHT: Can you clarify -- I  
8 think it's helpful. The record indicates that the  
9 expert conceded that the landscape architect was a  
10 historic figure.

11 MS. BARON: Yeah. Not a historic figure.  
12 This was something I was going to add on. As  
13 testified -- and I know Board Member Tompkins-Wright,  
14 you weren't at the last meeting, but basically the  
15 property owner did present a willingness to protect  
16 the landscape architecture because their expert  
17 themselves had identified Fletcher Steele as a  
18 nationally renowned architect and that the landscaping  
19 was deemed historical.

20 MS. TOMPKINS-WRIGHT: Just to clarify, the  
21 applicant didn't concede that it is historic -- that  
22 it should be a protected historic landmark. They just  
23 said that we recognize it is a significant designer  
24 and could be willing to protect it.

25 MS. BARON: I would --

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

3 MS. BARON: Only one of the criteria needs  
4 to be satisfied and I urge the Board members to  
5 consider that as an important fact because the  
6 applicant themselves, the property owner themselves,  
7 has identified Fletcher Steele as an architect and the  
8 landscaping was designed by him and are willingly  
9 offering to protect it. I would just say that is what  
10 the record shows.

11 MS. TOMPKINS-WRIGHT: Can I explore that for  
12 just a second? Do we feel like today we know which  
13 features we can specifically identify? I think it's  
14 going to be difficult to say if it's all grass.

15 MS. BARON: So currently it's not all grass.  
16 Currently, it's -- within the record all of the  
17 reports identify specific features such as fencing,  
18 gates, the walls that were constructed on the  
19 property. There's drawings in the record about what  
20 he did design. And if you look at the aerial view of  
21 the property, which is also in the record, you can see  
22 that it's still essentially -- those areas are on the  
23 property still and located there.

24 And the resolution, the draft resolution, as  
25 it's drafted would include -- and can certainly be

1 changed by the Board to your liking. But the  
2 condition as it's written is that if the property  
3 owner comes in for any other additional type of  
4 permitting, they would need to provide plans that  
5 would substantially protect the landscaping  
6 architecture as it is on the property.

7 MS. TOMPKINS-WRIGHT: So would you recommend  
8 that in our approval we actually specifically  
9 delineate which architectural features we're  
10 protecting or is it just blanket landscape  
11 architecture is protected?

12 MS. BARON: Right now I believe it says --  
13 my computer died -- something along the lines of  
14 landscape architecture features designed by Fletcher  
15 Steele as set forth in the record and plans would be  
16 subject to the staff approval regarding their  
17 sufficiency.

18 MS. TOMPKINS-WRIGHT: Okay.

19 CHAIRPERSON MIETZ: One other thing to  
20 clarify is that if, you know, the house were to remain  
21 and was designated, there's no responsibility of the  
22 owner to restore anything, change anything,  
23 rehabilitate it in any way. The only issue  
24 would be -- correct me if I'm wrong, Rick, is that if  
25 he made any further changes to that, he would have to

1       come in for a certificate of appropriateness. But  
2       there's no responsibility to change any of the details  
3       that are not harmonious with that original colonial  
4       design.

5               MR. DiSTEFANO: Correct.

6               CHAIRPERSON MIETZ: I just wanted to make  
7       that clear because Heather had stated that he could  
8       restore it back to its glory and all that, but there's  
9       no requirement to do that.

10              MR. DiSTEFANO: Correct.

11              MS. McKAY-DRURY: It was my wish for --

12              CHAIRPERSON MIETZ: Okay. No. I'm just  
13       clarifying. That's not a requirement.

14              MS. McKAY-DRURY: Thank you, Dennis.

15              CHAIRPERSON MIETZ: Okay.

16              MS. SCHWARTZ: Can I just --

17              MR. DiSTEFANO: Dennis, why don't you tell  
18       us where you are at.

19              CHAIRPERSON MIETZ: So, you know, the  
20       information given -- you know, I have sort of a  
21       similar approach and I had a real tough time with the  
22       building situation.

23              As a construction person, I don't feel that  
24       it's impossible or unlikely or anything like that,  
25       that if the landscaping was designated that it

1       couldn't be preserved and demolish the house.  
2       Somewhat more of a tricky operation. You could  
3       similarly think of taking a tree down that's 80 feet  
4       tall in your backyard without having it fall on your  
5       house. Okay? Professionals know how to do that. So  
6       if it was properly delineated, then it could be  
7       properly protected. So I don't think that's an issue  
8       for me.

9               I feel better about the landscaping than I  
10      do the house.

11             MS. MCKAY-DRURY: I just want to say that  
12      like what I'm trying to impress upon you is that  
13      Fletcher Steele's design incorporated the house.

14             MS. SCHWARTZ: Yes. That's right.

15             CHAIRPERSON MIETZ: No. I understand your  
16      point.

17             MS. MCKAY-DRURY: And so to protect only the  
18      landscaping design it just completely eviscerates the  
19      design of the landscape.

20             CHAIRPERSON MIETZ: If you consider the  
21      house as significant, yes, it would. Okay. All  
22      right.

23             MS. SCHWARTZ: First of all, I have to thank  
24      Heather. You really did a great job. I really  
25      appreciate what you did.

1 But I want to say I hope you think about the  
2 fact that we had seven of our town residents give  
3 really hard thought to this. They are professionals.  
4 They are far more than all of us put together. And to  
5 kind of not listen to them or -- I don't want to go as  
6 far as respect -- but not taking to heart what they  
7 said and the fact that we are not federal and we are  
8 not state level and our bar is not too low. It is our  
9 community.

10 And this is going to be quite different.  
11 It's not just going to be a house on this property.  
12 It's going to be very different. And to desecrate  
13 something that people -- it goes together. It's not  
14 the house and it's not the garden. It goes together.

15 And just as you said, Steele did design all  
16 of the landscaping for the house. So they go  
17 together. And to say let the house go, we've got the  
18 landscaping -- and the fact that it may not look  
19 great -- Comeau did say that it can be -- we shouldn't  
20 look at -- it has integrity. It's not the condition.  
21 And the same thing goes for the house.

22 She said even the roof, that can be changed.  
23 Like it was changed to Sue's green, it could go back  
24 to something that's appropriate.

25 So I just hope that between now and when we

1 do decide, you really think long and hard once this is  
2 done. It's going to change the character of that  
3 piece of property. And I for one would be -- would  
4 feel really bad if that was done.

5 We've had this happen before with decisions,  
6 but this is really very special. It really is. And  
7 think long and hard. I mean, so what someone isn't  
8 world-renowned. Okay? The architect. But the  
9 landscaping is. And they say they go together. They  
10 were designed to go together.

11 CHAIRPERSON MIETZ: Okay. We got that  
12 point. All right. So anybody else? Thoughts?  
13 Thoughts? Thoughts?

14 MS. BARON: I will additionally say speaking  
15 to Board Member Premo's point as well of 250 feet, the  
16 Board does have the option to create a 250-foot  
17 buffer. That is part of the Code.

18 So if the Board is inclined to designate  
19 only the landscaping and condition that on  
20 incorporating a 250-foot buffer, based on the site,  
21 how it weighs right now, that wouldn't necessarily  
22 include the house -- it would include the house.

23 MR. PREMO: As I read the Code it says it  
24 shall include more than 250 --

25 MS. BARON: Exactly.



1 MR. PREMO: -- which allows --

2 MS. BARON: The buffer is not required.

3 CHAIRPERSON MIETZ: All right. Okay. All  
4 right. So there's kind of a -- couple schools of  
5 thought here. There's the opportunity to -- we  
6 have -- we're going to allow Mr. Tantillo to respond  
7 here?

8 MR. PREMO: Well, I guess my thought, based  
9 upon discussion and where people seem to be, is that I  
10 would like to propose that we go forward with the  
11 third resolution that has been drafted and presented  
12 to us where we grant in essence the appeal with  
13 respect to the house but state that we will consider  
14 designation of the landscaping based upon plans to be  
15 drafted and that being at the direction of the Town's  
16 counsel. So that's at least my suggestion where we  
17 should go.

18 MS. TOMPKINS-WRIGHT: Lauren, do you mind  
19 speaking about -- because I have been on the Board for  
20 enough time and we have not had this happen where we  
21 voted on a resolution but not have findings of fact.

22 MS. BARON: So the findings of fact would  
23 be -- because I was unsure, frankly, how the Board  
24 would want to decide, I have -- no findings of fact  
25 were pre-drafted for your consideration. The Board

1 has the authority to pass a resolution directing the  
2 attorney to the Town to draft those findings of fact  
3 that go along with that resolution. And those  
4 findings of fact would be considered at the next  
5 meeting for adoption at that time.

6 MS. TOMPKINS-WRIGHT: Rick, do you know? I  
7 think it's perfectly legal for us to do, but do you  
8 know if Brighton's ever done it before?

9 MR. DiSTEFANO: We have never -- this Board  
10 has never done it like that before in my 30 years.

11 MR. PREMO: Dennis, I'd be happy to make the  
12 motion. Do you want me to read the resolution in?

13 MR. DiSTEFANO: Yup. Make a motion.

14 MR. PREMO: Whereas, on November 16th, 2023,  
15 the Town of Brighton Historic Preservation Commission  
16 designated the property at 125 Old Mill Road,  
17 Rochester, New York 14618, the property, as a landmark  
18 pursuant to the Historic Preservation Law of the Town  
19 of Brighton codified in chapter 224 of the Town of  
20 Brighton Code (the HPC resolution close); and

21 Whereas, on or about December 12th, 2024 --  
22 2023. Should it be 2023?

23 MR. DiSTEFANO: No. Which paragraph are  
24 you?

25 MR. PREMO: Yes.

1 MS. BARON: Yes. 2023.

2 MR. PREMO: Whereas, on December 12th, 2023,  
3 Jon Tantillo of Knauf Shaw LLP on behalf of the owners  
4 of the property, Nunzio and Mirella Salafia, the  
5 applicant, filed an appeal of the HPC resolution to  
6 the Town of Brighton Zoning Board of Appeals (the ZBA)  
7 seeking reversal of the designation of the property as  
8 a landmark (the appeal); and

9 Whereas, on January 3rd, 2024, and February  
10 7th, 2024, the ZBA held regular meetings, which were  
11 duly noticed and public as required by law; and

12 Whereas, on January 3rd, 2024, and February  
13 7th, 2024, the ZBA held a properly noticed public  
14 hearing with respect to the appeal and during the  
15 public hearing, all persons desiring to speak on the  
16 appeal were heard and such persons also submitted  
17 documents and other correspondence for consideration  
18 by the ZBA and all those materials were considered by  
19 the ZBA as part of the record for the appeal; and

20 Whereas, on February 7th, 2024, the ZBA  
21 closed the public hearing and commenced deliberations  
22 with respect to the appeal; and

23 Whereas, on March 6th, 2024, the ZBA held a  
24 regular meeting, which was duly noticed and published  
25 as required by law where the ZBA continued its

1 deliberations with respect to the appeal; and

2 Now, therefore, on the motion of Edward  
3 Premo and seconded, it is hereby;

4 Resolved, each of the whereas clauses in  
5 this resolution are incorporated by reference as  
6 specific findings of this resolution and shall have  
7 the same effect as the other findings herein; and  
8 shall be further --

9 And further resolved; in accordance with the  
10 records and proceedings that the ZBA hereby determines  
11 that the appeal granted in part and denied in part and  
12 that the designation of the property as a landmark is  
13 modified to designate only the landscape architecture  
14 on the property designed by Fletcher Steele as a  
15 landmark; and further

16 Resolved, that the granting of the appeal is  
17 on the conditions that the applicant seeks any  
18 additional demolition or building permits from the  
19 Town of Brighton for the property. Such permits shall  
20 provide total protection of the designated landscape  
21 architecture on the property and the applicant shall  
22 submit plans acceptable to the Town of Brighton staff  
23 and/or the Town of Brighton Planning Board to ensure  
24 sufficient protection of the landscape architecture on  
25 the property; and further

1           Resolved, the Town -- the attorney to the  
2 Town is directed to draft findings of fact in  
3 accordance with this resolution and the deliberations  
4 of the ZBA for the ZBA's consideration at its April 3,  
5 2024, meeting.

6           MS. SCHMITT: I'll second.

7           CHAIRPERSON MIETZ: Okay. Discussion?  
8 Rick, do you have any comment?

9           MR. DiSTEFANO: No, I have no comments.  
10 I -- well -- no.

11          MS. TOMPKINS-WRIGHT: He has comments.

12          MR. DiSTEFANO: No. It's --

13          CHAIRPERSON MIETZ: Concerns. Okay.  
14 We'll --

15          MR. DiSTEFANO: My concerns -- I think,  
16 Dennis, you're kind of aware of my concern is the  
17 ability for Town staff to make a determination on the  
18 limits of the landscaping features that are not to be  
19 disturbed as part of construction, as part of  
20 demolition, as part of the property going forward.

21          MS. McKAY-DRURY: I have written 250 feet  
22 around the landscaping.

23          MR. DiSTEFANO: But it's the same question.  
24 (Simultaneous conversation interrupted by the court  
25 reporter.)

1 MR. DiSTEFANO: It would be a little easier  
2 to enforce. You know, you would notice -- if someone  
3 were to do something without a building permit that  
4 affects the exterior of the house, people are going to  
5 notice. I mean, it's going to be pretty commonplace.

6 MS. TOMPKINS-WRIGHT: My comment is if we  
7 would have the same enforcement mechanism on the  
8 landscaping.

9 MR. DiSTEFANO: You still have the same  
10 enforcement on the landscaping. And to my knowledge,  
11 the Town has never at this point in time designated  
12 landscaping only as part of a historical process.

13 MS. BARON: But the Code does provide that  
14 it can be any structure feature of a property.

15 MR. DiSTEFANO: Which -- all I'm saying is  
16 that I don't have a model to go -- that's all I'm  
17 saying. I'm not saying you can't do it. I'm just  
18 saying we don't have a model to go on.

19 CHAIRPERSON MIETZ: So we got to separate  
20 between the design, meaning the layout of the  
21 landscaping, versus the conditions; right? So would  
22 it be reasonable to say that a drawing would be  
23 provided that would accurately depict the landscaping?  
24 Because again, you know, the condition of it a year  
25 from now, two years from now, is a little different.

1 MS. MCKAY-DRURY: It needs to be based on  
2 the record doesn't it?

3 MR. DiSTEFANO: Well, it needs to be based  
4 on the material that's already been submitted to us  
5 that show where these landscape features were.

6 And I don't think we can get into did they  
7 plant, you know, daffodils or did they plant tulips.  
8 It's going to be features in the feature area, not  
9 what you're -- not what you're actually planting were.

10 CHAIRPERSON MIETZ: I'm not talking about  
11 the planting. I'm talking about the -- a definition  
12 of the areas and what parts are included like the  
13 walls, the ornamental walls, and some of the other  
14 things that are part of Mr. Steele's design.

15 MS. MCKAY-DRURY: The record is what the  
16 record is. It can't be some third party that goes in  
17 now and tries to figure it out.

18 MR. DiSTEFANO: Well, I believe that in our  
19 appeal, in the process of that, we saw -- we've  
20 already seen a feature map.

21 MS. BARON: Yeah. There is documentation,  
22 if I recall, a map of Fletcher Steele's original  
23 design or just showing --

24 MR. DiSTEFANO: And whether or not this  
25 Board wants to send it back to the HPC for the HPC to

1 determine exactly where these landscape features would  
2 be located. We can send it back to the HPC. I  
3 mean -- and they can determine and they can discuss  
4 where these landscape features are and --

5 CHAIRPERSON MIETZ: What's included and  
6 what's not included.

7 MR. DiSTEFANO: What's included and what's  
8 not included.

9 MS. SCHMITT: Can I direct you to -- and I  
10 am just looking at the Town of Brighton cultural  
11 resource survey.

12 I thought on page 3 it has design landscape.  
13 And it -- then it goes through north yard, front yard,  
14 what used to be there, what's there now.

15 MS. BARON: Yeah. That's part of the  
16 evidence that we're speaking about. They identified --

17 MR. PREMO: That would be included in the  
18 findings.

19 MR. DiSTEFANO: Yeah.

20 CHAIRPERSON MIETZ: Well, as long as you  
21 feel -- again, Rick, I appreciate your concern about  
22 the enforcement and -- you know, so as long as you  
23 feel there's enough to work with there, then I think  
24 we're just looking at clarity, not adding things or  
25 creating more work or surveys or whatnot to make sure



1 that there's clarity as to what this means.

2 MR. DiSTEFANO: Right.

3 MS. BARON: So in terms of amending the  
4 resolution on the table, perhaps the last resolved  
5 paragraph could read the attorney to the Town is  
6 directed to draft findings of fact in accordance with  
7 this resolution and deliberations of the ZBA as well  
8 as the evidence in the record regarding the landscape  
9 architecture features on the property for the ZBA's  
10 consideration at its April 3rd, 2024, meeting.

11 Is that acceptable?

12 MR. PREMO: It's acceptable to me.

13 CHAIRPERSON MIETZ: Yeah. That's fine.

14 MR. DiSTEFANO: So in essence you're saying  
15 the applicant's preparing that?

16 MS. BARON: No. The findings of fact will  
17 include the details regarding which aspects of the  
18 landscape architecture have been identified as part of  
19 the record.

20 MR. DiSTEFANO: Can we modify it again and  
21 put "attorney and in conjunction with town staff"?

22 CHAIRPERSON MIETZ: Okay.

23 MS. TOMPKINS-WRIGHT: Can I make a third  
24 recommended change? I don't know if you'll have the  
25 same -- I don't know if you'll have the votes on April

1 3rd. So do we need to change the date to May?

2 MS. BARON: By votes do you mean not  
3 everybody will be present on April 3rd?

4 MS. TOMPKINS-WRIGHT: I will not be.

5 CHAIRPERSON MEITZ: Two people won't.

6 MS. BARON: Two people won't. Well, then I  
7 will have to ask the applicant to come back up and  
8 further extend the period from -- since we closed the  
9 public hearing at the February meeting, you have to  
10 make a decision within 62 days of the close of the  
11 public hearing or it's automatically denied.

12 So Mr. Tantillo, do you consent to further  
13 extension to the May meeting?

14 MR. TANTILLO: Yes. The applicant consents  
15 to that.

16 MR. PREMO: We're now going to amend the  
17 resolution review to the May 3rd --

18 MR. DiSTEFANO: And other amendments discussed.

19 MR. PREMO: Yes.

20 MR. DiSTEFANO: Okay. Who had the second?

21 MS. SCHMITT: I had the second.

22 MR. DiSTEFANO: You seconded. You're in  
23 agreement also?

24 MS. SCHMITT: Yes.

25 MR. DiSTEFANO: The motion is to grant in

1 part and deny in part the designation of the property  
2 as a landmark of the property at 125 Old Mill Road.

3 MS. MCKAY-DRURY: Sorry. This includes no  
4 protection around the landscape?

5 MR. DiSTEFANO: No, no, no. The  
6 resolution -- in part -- we're approving in part and  
7 we're denying --

8 MS. MCKAY-DRURY: I understand that. I'm  
9 saying the additional buffers that the Code provides  
10 for, is that to be decided by the Town attorney or has  
11 that been decided to be zero?

12 MR. DiSTEFANO: No. So it's no buffer.

13 MS. MCKAY-DRURY: No buffer.

14 MR. DiSTEFANO: Yes. The buffer is not  
15 mentioned in the resolution.

16 MS. SCHWARTZ: How do I indicate I don't  
17 want to approve?

18 MR. DiSTEFANO: You vote no.

19 (Ms. Schwartz, no; Ms. Tompkins-Wright, yes;

20 Mr. D'Augustine, no; Mr. Mietz, yes;

21 Ms. McKay-Drury, no; Ms. Schmitt, yes;

22 Mr. Premo, yes.)

23 (Upon roll motion carries.)

24 (Proceedings concluded at 10:35 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 6th day of March, 2024  
at Brighton, New York.



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Holly E. Castleman ACR,  
Official Court Reporter