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MARCH 5th, 2025
at approximately 7:00 p.m.
2300 Elmwood Avenue
Rochester, New York 14618

10 PRESENT:

11 DENNIS MIETZ, Chairperson

12 MATTHEW D'AUGUSTINE)
13 HEATHER MCKAY-DRURY)
14 EDWARD F. PREMO, II) BOARD MEMBERS
JUDY SCHWARTZ)
ANDREA TOMPKINS WRIGHT)

15 LAUREN BARON, ESQ.
16 Town Attorney

17 RICK DiSTEFANO
18 Senior Planner

19 NOT PRESENT:
KATHLEEN SCHMITT

20

21

22 REPORTED BY: Rhoda Collins, Court Reporter
23 FORBES COURT REPORTING SERVICES, LLC
24 21 Woodcrest Drive
Batavia, New York 14020

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3 CHAIRPERSON MIETZ: Good evening. I'd like to
4 call to order the March meeting of the Zoning Board of
5 Appeals.

6

Bick, was the meeting properly advertised?

7

MR. DiSTEFANO: Yes, Mr. Chairman, it was advertised in the Daily Record edition of February 27, 2025.

9

CHAIRPERSON MIETZ: Will you please call the roll?

11

11 MR. DiSTEFANO: Please let the record show Ms.
12 Schmitt is not present.

13

CHAIRPERSON MIETZ: Anything you would like to bring to our attention?

15

15 MR. DiSTEFANO: A couple things in your
16 folder. I don't know if anyone has any questions regarding
17 the applications.

18

CHAIRPERSON MIETZ: Okay. We have one postponement.

20

MR. DiSTEFANO: Yes. If anybody is in the audience for 2A-06-25, that has to do with 2369 East Avenue, that has been postponed to the April 2nd meeting.

23

CHAIRPERSON MIETZ: Okay.

24

Any other questions? All set?

25

Okay. Let's go to the first application.

MR. DiSTEFANO: The minutes.

CHAIRPERSON MIETZ: Oh, I'm sorry.

Okay. Minutes, any comments on the minutes?

MS. SCHWARTZ: None. They were great.

MR. DiSTEFANO: Okay. Motion to approve.

MR. D'AUGUSTINE: Motion to approve.

MS. TOMPKINS WRIGHT: Second.

MR. DiSTEFANO: The motion is to approve.

Mr. Premo?

MR. PREMO: These are the January 2nd? Yes, I abstain.

MR. DiSTEFANO: Ms. Schwartz?

MS. SCHWARTZ: Yes.

MR. DiSTEFANO: Ms. Tompkins Wright?

MS. TOMPKINS WRIGHT: Yes.

MR. DiSTEFANO: Mr. D'Augustine?

MR. D'AUGUSTINE: Yes.

MR. DiSTEFANO: Mr. Mietz?

CHAIRPERSON MIETZ: Yes.

MR. DiSTEFANO: Ms. McKay-Drury?

MS. MCKAY-DRURY: Yes.

MR. DiSTEFANO: Minutes are approved.

Ready?

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CHAIRPERSON MIETZ: Yes.

4

APPLICATION 3A-01-25

5 3A-01-25 Application of Kirk Wright, Sign and
6 Lighting Services LLC, agent, and CRE JV Mixed Five NY 4
7 (Citizens Bank), owner of property located at 2000 Monroe
8 Avenue, for a Sign Variance from Section 207-32 to allow for
9 the installation of a freestanding sign where not allowed by
10 code. All as described on application and plans on file.

11 KIRK WRIGHT: Good evening. Kirk Wright, Sign
12 and Lighting Services, 530 State Route 104, Ontario, New
13 York. I have Steve Skello from Citizens Bank here with me
14 this evening.

15 We are looking for, to add a freestanding,
16 small monument sign in front of the bank. There is some
17 challenges with the property due to brush, bushes and trees
18 as you approach from the one direction. Approaching from the
19 other direction, they actually have a large tree in front of
20 their own property that obstructs the building, so that makes
21 it difficult to see that they are back there.

22 The sign is a routed aluminum sign. The
23 Citizens portion would illuminate, it would not be a big
24 green beacon by any means.

25 And, they are just obviously trying to direct

3 the customers, make sure that, you know, no one is panic
4 braking in the last moment when they realize they are about
5 to pass the bank.

6 There is a 24-hour ATM at this property, so
7 they would like to leave the sign illuminated, 24 hours, dusk
8 to dawn.

9 And it's a business area. There's a lot of
10 signage in the area. We don't feel it would have any adverse
11 effect to the neighborhood.

12 MR. D'AUGUSTINE: In terms of the foliage that
13 is surrounding Buckman Creek, was anyone in contact with the
14 town in terms of maintaining that or trimming it back or
15 anything of that nature?

16 STEVE SKELLO: I would have to get back to you
17 on that.

18 CHAIRPERSON MIETZ: Excuse me, sir, name and
19 address?

20 STEVE SKELLO: Steve Skello, 2000, the
21 business address on Monroe Avenue. As far as the tree on our
22 property, we wanted to keep the tree. We certainly do not
23 want to -- we will trim it back, whatever is healthy for the
24 tree. We don't want the tree to come.

25 I would have to see what contact with the town

3 on the other side of the property. This branch also has a
4 live drive up, a manned drive up, so we have a lot of our
5 other branches that are in plazas that don't have that
6 facility. We have some people that go to this branch
7 specifically because of that and they aren't necessarily
8 always familiar with the area.

10 There is new construction on the corner that
11 is kind of even causing a little bit more harder, making it
harder for some customers to see.

13 MR. D'AUGUSTINE: Do you have a sense of, you
know, customers making comments or?

15 STEVE SKELLO: We have had that. We have
16 several thousand households that use this branch at one time
or another throughout the year. We have had, you know,
17 customers saying that it has been challenging to find. We
18 are spending quite a bit of money to reface the whole branch
19 and help that as well.

CHAIRPERSON MIETZ: Okay. Other questions?

22 MS. SCHWARTZ: You are saying that the sign
has to be six feet high?

24 KIRK WRIGHT: In the Citizens Bank signage
portfolio, that's the smallest one that they have. So,
25 that's the one that we've gone with.

3 MS. SCHWARTZ: Well, six feet is quite tall.
4 It's not that commercial of an area, truly, truly. Okay?
5 And as far as speed is concerned, I don't think people should
6 be missing it because there's a school right there, and the
7 administration building is right there and you are coming up
8 to a light, so. You know, if you are coming from Pittsford
9 and likewise, if you are coming from the city there are
10 crossing guards all over early in the morning and things
11 settle down after 10:00 in the morning.

12 But, I am just concerned about the size. I
13 think it's going to hit people in the face and I just thought
14 something could be smaller really.

15 CHAIRPERSON MIETZ: Okay. Other questions?

16 MR. DiSTEFANO: A couple questions. So, how
17 long has it been a Citizens branch there?

18 STEVE SKELLO: I have been with the company 23
19 years and it's been that long. Or Charter One before that,
20 and during that acquisition it became a Citizens Bank.

21 MR. DiSTEFANO: And how long do you think it's
22 been a bank in general?

23 STEVE SKELLO: I couldn't tell you that, at
24 least 25 years.

25 CHAIRPERSON MIETZ: I think it's been a bank

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3 9:00 to 4:00, we are 9:00 to 5:00 on Friday and 9:00 to 12:00
4 on Saturday.

5 MS. TOMPKINS WRIGHT: Okay. So what is the
6 purpose of illumination if it's not --

7 STEVE SKELLO: Well, at certain times of the
8 year -- it's not a real bright illumination. We have this
9 sign at many of our branchs. It's really a dull light more
10 than anything.

11 KIRK WRIGHT: The ATM is 24 hours.

12 MS. TOMPKINS WRIGHT: Okay.

13 MR. DiSTEFANO: One other thing, can -- we
14 don't have a site map here so it is hard to tell what your
15 distance off the front property line is. You know, you do
16 have Elmwood Avenue right of way, you are on the opposite
17 side of the sidewalk a little bit, can you give me any idea
18 of how much you are off that front property line?

19 KIRK WRIGHT: We would move it back as far as
20 needed.

21 MR. DiSTEFANO: Yeah. It doesn't really give
22 me a, how far back are you from the front property line
23 question.

24 KIRK WRIGHT: 15 feet?

25 MR. DiSTEFANO: From the front property line or

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CHAIRPERSON MIETZ: Yes.

KIRK WRIGHT: They have a similar sign there.

5 MR. DiSTEFANO: CVS has a similar sign,
6 however, that was done under a totally different process than
7 a variance. They went through incentive zoning and the Town
8 Board granted them the incentive of a freestanding sign for
9 certain amenities as part of the redevelopment of that
10 project from when it was a hotel, a not very nice hotel. And
11 CVS came in, bought the property, cleaned the property, built
12 the CVS. And for that, the town was very grateful. And part
13 of the incentive zoning, that was one of the amenities, that
14 was one of the incentives granted to the CVS from the town.
15 So, hard to compare the two on that one.

CHAIRPERSON MIETZ: Okay.

17 MS. SCHWARTZ: I have one more question. I
18 don't recall what the wording is on your two signs at the
19 driveway. Can you describe what the wording is?

20 CHAIRPERSON MIETZ: At the where, Judy? Speak
21 into the mic.

22 MS. SCHWARTZ: On your little signs in the
23 driveway, what is the wording on there?

24 KIRK WRIGHT: Enter and exit, I thought.

25 MS. SCHWARTZ: Okay.

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3 SERGE TSVASMAN: Okay. So, the Henrys would
4 like to remain in their house that they have been in for over
5 20 years now. They need to do some renovations and an
6 addition to have a first floor living situation so they can
7 continue to be in that home for the next 20 years or so.

8 So that involved a first floor master, taking
9 down the existing garage and rebuilding it. The minimum
10 increase for that garage and a mudroom/laundry room were
11 considered. The outcome is a need to be in that setback
12 about a foot and a half. So, we are increasing the overall
13 width of the house by 3'2" approximately.

14

15 SERGE TSVASMAN: Visually, it appears the
16 adjacent neighbor's house is closer to the property line than
17 what we were even requesting, so I wanted to make that a
18 consideration for the Board as well. They're also on board
19 and are aware of the project and have no issues with this
20 increase into that setback by a foot and a half.

21

22 familiar with the neighborhood as far as other similar types
23 of construction, additions?

24

25 typically done new homes on that street already, and

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3 typically there's already a setback issue, a nonconforming
4 existing situation. So, in this case we are actually
5 creating a situation which wasn't there. Which, I think is,
6 you know, a kind of a unicorn in that neighborhood. But the
7 increase I think is minimal, so hopefully the Board will
8 approve that.

9 CHAIRPERSON MIETZ: And did you look at any
10 other alternatives that would minimize it further that made
11 sense with or didn't make sense?

12 SERGE TSVASMAN: For the design it made the
13 most sense to kind of maintain the location of the existing
14 kitchen and to maintain existing circulation in the house.
15 So, the thought was originally to set everything back further
16 in the backyard, which I think wouldn't have worked well and
17 wouldn't have connected the new master suite to the living of
18 everyday day life in the home. So, that was the
19 consideration.

20 So, there is also a 50-foot setback at the
21 front that allows us to make this move, which I think will
22 improve the house. We did present to the ARB a week ago and
23 they have no issues there.

24 CHAIRPERSON MIETZ: Okay. Other questions?

25 MR. PREMO: I assume the size of the garage is

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3 Associates, agent, and the University of Rochester, owner of
4 property located at 250 East River Road, for renewal of a
5 Temporary and Revocable Use Permit (7A-06-23) pursuant to
6 Section 219-4 to allow a new mobile PET/CT scanner (trailer)
7 to be on site until April 30, 2026. All as described an
8 application and plans on file.

9 JOSHUA SAXTON: My name is Joshua Saxton,
10 project manager at Passero Associates 242 West Main Street in
11 Rochester, New York.

12 KIRK SIMPSON: Kirk Simpson, University of
13 Rochester, 250 East River Road.

14 JOSHUA SAXTON: And this is Jack Savage, also
15 from Passero Associates, same address.

22 Just to give a little history on the pad and
23 the whole trailer. Back in 2020, obviously during the height
24 of COVID, the MRI trailer was actually installed at that same
25 location. It required a special use permit for it, mainly to

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3 meet the needs of the MRI, or trailer needs that the
4 University has at the facility.

5 You know, every couple years that van kind of
6 dwindled and there wasn't really a need for that MRI, so kind
7 of utilizing that same space. That's when a PET/CT scanner
8 was installed in 2022 in a temporary trailer.

9 The University has come back for extensions,
10 meaning 2023, which is set to expire in July of this year.
11 And we are basically applying for another temporary
12 application to put in a new PET/CT scanner, mainly to get it
13 over the finish line of, in a year having, you know, a
14 permanent facility for this installed at the hospital and
15 also an imaging center at the same location, but in the
16 building.

17 I guess, the need for it is, is there, you
18 know, not similar to the original MRI trailer, the need for
19 these PET scans have only gone up year over year, 2022 to
20 2024 it went up over 50 percent, and that trend is not going
21 down. They're finding new uses for this technology and just
22 the demands keeping to increase. So it's not keeping it just
23 to keep it there, it's the demand for it.

24 You know, I would also say, keeping it on
25 site, having this temporary trailer wasn't ever the end goal

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3 and it's not, you know, financially, you know, a good option
4 to keep going forward renting the trailer. You know, it's
5 rented, it's not owned, so that is a lot of money that is
6 being spent on this. It's not like it's, you know, a money
7 printer that they want to keep there. It is something they
8 want to move away from to get a permanent solution that not
9 only, you know, benefits people using it because that will be
10 inside, and more accessible, but also better benefit the
11 community based on those demands they are constantly seeing
12 for it.

13 So, we did, looking into it, try to look at
14 other options that maybe wouldn't require this. And one
15 thing was seeing if there was a way to make the existing
16 trailer a permanent structure so that we wouldn't need this
17 variance or the temporary use permit.

18 You know, but in talking with the State and
19 kind of going through those options. It wasn't really found
20 that, you know, a trailer can be modified in the way the
21 State would approve that variance. So, we weren't pursuing
22 other options to, you know, not have it -- or have it, but
23 have it be in code per se.

24 So, that was kind of one of the options we
25 went through, you know, wasn't necessarily feasible to get

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3 something there in the short time frame from now, to when the
4 permanent solution is going to be there to warrant, have
5 something installed that will meet it.

6 So, that is kind of why we are here. To get
7 one of those temporary permits, similar to what was there
8 before, but it is a new trailer, the one there is ten years
9 old. The newer trailer is more efficient and kind of just to
10 bridge the gap from now in the year when those facilities are
11 up and running. That, you know, maintaining that service to
12 the community that the data shows only going up and really
13 beneficial.

14 It is tucked in the corner, it's not right out
15 in front. It is kind of in the campus area of the imaging
16 facility already. And, yeah, I don't know if there's
17 anything else you want to add?

18 KIRK SIMPSON: I do want to add, we did look
19 at trying to meet the requirements of the State and
20 everything. That would require purchasing basically a
21 double-wide trailer that does meet all those requirements.
22 So, it actually would have been a worse alternative,
23 essentially to go that route.

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23 to have that done at the end of this. Either way, we are
4 committed to making it work and to be off site at that time.
5 So, we are in process on that final solution to do that.

6 Thank you.

7 JOSHUA SAXTON: We are here to answer any
8 questions.

9 CHAIRPERSON MIETZ: Questions, anyone?

10 So, obviously we can't roll dice here, but,
11 you know, is the solution going to be within the existing
12 building or are you requiring construction?

13 KIRK SIMPSON: It will be within --

14 CHAIRPERSON MIETZ: Well, it's just
15 modification of the existing space.16 KIRK SIMPSON: Yes. It is all going along
17 well and we are committed. We will actually take down, the
18 power we will decommission that entire area. If we're
19 allowed to, we will keep the pad and, you know, put a pergola
20 or something over it nice for amenities or if we want to
21 decommission it, so it's -- we can't come back --22 CHAIRPERSON MIETZ: I understand. It is not a
23 cost effective way. Okay.

24 Any other questions?

25 MS. BARON: I had a couple questions for

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3 clarification purposes. So, the old trailer is being
4 removing to make room for the new trailer, correct?

5

JOSHUA SAXTON: Yes.

6

7 what is the time line that you are asking for the approval
8 from? Are you asking for it from July 2025 to April 2026 or
9 are you -- because I wrote down March 30, 2025, through
10 June 30, 2026. So, I wanted to clarify the dates you are
11 asking for.

12

13 the priority for that.

14

15 the final solution puts us roughly into the May/June time
16 frame. So, the June time frame would definitely be ideal.

17

18 advertised it was April 30th.

19

20 thought, in the application. I was seeing a couple dates.

21

22 date of April 30, 2026. I was going to ask a question,
23 basically what Lauren was saying, so construction hasn't
24 started yet?

25

KIRK SIMPSON: Or design. We are working with

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the architect.

4

MR. DiSTEFANO: We are basically a year and a couple months out.

6

KIRK SIMPSON: We are anticipating a year from now. We are about part way through design, so we are in pretty good shape.

9

MR. DiSTEFANO: Let me ask a different question: When do you feel you will start construction?

11

KIRK SIMPSON: We expect about four/five

12

months of design and then we will go right into construction. We are going to prepurchase many things. The site was built for the MRI for imaging equipment, so we do -- it was constructed for that, so it's a less invasive construction process.

17

MR. DiSTEFANO: You feel a seven-month construction --

19

KIRK SIMPSON: It's tight. That's why at the end of the day we will commit to whatever is agreed to here and not come back.

22

MR. DiSTEFANO: I guess that's kind of where I'm going at. I mean, we're not, you know, if you need to give yourself a month or two, is this giving, June, giving yourself a month or two?

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panicking.

4

CHAIRPERSON MIETZ: Yeah. It's just, you know, again, managing is a project, you have to have a date and that's what you're going to do.

7

So, as long as you can fit it within that window, because they have to come back again, it is less work. Okay. So you would wish to amend it to August 30,

10

11

KIRK SIMPSON: Yes, thank you.

12

MS. MCKAY-DRURY: 31st.

13

CHAIRPERSON MIETZ: That's right, correct.

14

Thank you.

15

Any other questions?

16

Thank you.

17

APPLICATION OF 3A-04-25

18

3A-04-25 Application of Betsy Brugg, Woods
Oviatt Gilman LLP, agent, and 3108 East Avenue LLC, owner of
property located at 3108 East Avenue, for a Use Variance from
Section 203-44 to allow a gas station with convenience store
to be located in a BE-1 Office and Office Park District where
not allowed by code. All as described on application
and plans on file.

25

APPLICATION 3A-05-25

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3 Application of Betsy Brugg, Woods Oviatt
4 Gilman LLP, agent, and 3108 East Avenue LLC, owner of
5 property located at 3108 East Avenue, for Area Variances from
6 Section 205-18 to 1) allow parking of vehicles to within 2
7 ft. of a side lot line (north) where a 10 ft. Setback is
8 required by code, and 2) to allow paved areas / drive aisles
9 up to the front lot line where a 20 ft. Setback is required
0 by code. All as described on application and plans on file.

11 APPLICATION 3A-06-25

12 3A-06-25 Application of Betsy Brugg, Woods
13 Oviatt Gilman LLP, agent, and 3108 East Avenue LLC, owner of
14 property located at 3108 East Avenue, for an Area Variance
15 from Section 207-6B to allow an accessory structure (gas pump
16 canopy) to be located in a front yard in lieu of the rear
17 yard as required by code. All as described on application
18 and plans on file.

19 MS. BRUGG: Good evening. Nice to be here.

20 My name is Betsy Brugg from Woods, Oviatt, Gilman.

25 So, we are here tonight to request re-approval

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3 of variances granted in November of 2022. At that time PEMM
4 was co-applicant on the application, had been working on this
5 project continuously since that time. They had entered into
6 a contingent contract to acquire the property for the
7 development of a Quickee's station and convenience store.

8 The contract was contingent obviously on the
9 securing of the municipal approvals and various governmental
10 approvals required to develop/redevelop the site.

11 The Zoning Board granted the use variance and
12 several area variances for the property. It took a few
13 months until they were able to secure site plan approval.
14 That didn't come until May of 2023, during that time they
15 also had gone through the Historic Preservation Commission as
16 you might recall. There was a lot of work that went into the
17 design of the building, the redevelopment of the site, the
18 canopy design and so forth.

19 After they secured all their approvals, they
20 had to go through the postapproval steps that are required
21 working with the getting permits from the New York State
22 Department of Transportation, the Department of Health. I
23 think they had some challenges with RG&E.

24 So, again, this takes more time. The code has
25 a pretty limited time period for securing a building permit

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3 before approvals expire. During that time they were also
4 working on the development of their other location over at
5 12 Corners.

6 And while they're working on this process they
7 also have to deal with contract issues and now they need to
8 request an extension of their contract that they've already
9 gone so far through this process securing approvals, they
10 needed to negotiate to extend the time period to complete the
11 approval process.

12 All of that goes on, at the same time Lou
13 Terrignoli who was with the company a long time kind of took
14 this project through the approval process, left the company,
15 took a different job. Now they didn't have the same person
16 running the project and inadvertently through the process the
17 year period runs out, so that brings us to the need for
18 re-approvals for the project.

19 Absolutely nothing about the project has
20 changed at all. It's the same project that you saw back in
21 2022, 2023. I think they started with Historic Preservation
22 Commission in January and I think they were -- I don't think
23 there was a change, but a discrepancy or clarification
24 required regarding, I think, was it the windows? Just kind
25 of the window work, work around the windows and that was

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3 clarified. That's really the only thing I can identify that
4 has changed.

5 In the meantime, they acquired the property,
6 they're getting ready to move forward, they have been working
7 diligently on this project, but we do need to secure
8 re-approval of the use variance, the area variances, site
9 plan approval and go through the whole process. That is
10 what is required by the Town Code, so we are going through
11 that process.

12 I am prepared to go through each of the
13 variances separately, I will start that and if you want more
14 detail I am happy to give you more. I don't know. There's a
15 lot of material, so you actually do have everything in your
16 record. I tried to give you not only the original
17 submission, but there were a lot of questions and issues that
18 came up.

19 I think the canopy was reduced in size during
20 the review process. There were some design issues, traffic
21 information was requested, lighting was modified. All of
22 those things kind of came up because this Board really worked
23 this application package pretty much in detail back when you
24 first saw it.

25 So, I tried to give you all of the

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3 documentation that supported how you arrived at your final
4 point of granting approval for the project. So, I have
5 resubmitted a packet of stuff. If you want more stuff, I
6 have plenty more I can offer you. I have the traffic study,
7 lighting, I think there was some history of prior approvals
8 on the property, things like that.

9 So, with that, I guess I'll kind of summarize
10 what we submitted. So, we requested a use variance based on
11 the hardship of the property. This is not an instance of a
12 property owner who comes in saying, oh, I want to open a
13 business in my neighborhood, so I'm going to buy the house
14 next door. And then, they buy property that can't be used
15 for what they want to use it for, and they find themselves
16 having a self-imposed hardship and have to come in for a
17 variance.

18 This applicant has been in this from the
19 beginning, they entered into a extension contract and they
20 kind of went through the entire approval process. And, in
21 fact, the expiration is just, they couldn't work fast enough
22 to meet the one year period that is attached to the approval.

23 Just to remind you a little bit about the
24 property. It is very unique. It's a non-conforming lot and
25 is, I believe, less than half the size of lots required by

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3 code. It has non-conforming, pre-existing non-conforming
4 conditions with the -- there's no green space in the front.
5 The lot coverage is non-conforming setback, pavement is
6 non-conforming. Those are existing conditions.

7 We did -- the property is also a landmark.
8 So, the property needs to be repurposed. It is very, very
9 costly to renovate the building for any kind of committed use
10 and we gave you a financial analysis.

11 The cost of renovating property has only gone
12 up since we were here a few years ago. It definitely has not
13 gone down. The market for office property has not changed.
14 If anything, I would suspect it's probably more vacant space
15 in the market than there used to be.

16 But, we're happy to answer any questions about
17 any of the financial hardship. That essentially hasn't
18 changed. And again, as I proposed the first time, that
19 hardship runs with the property. It's not personal to
20 anybody, any particular property owner. Anybody who owns
21 this property is going to have to deal with those issues
22 related to the landmark.

23 I would also remind the Board that other
24 proposals came in before them. There was somebody who came
25 in and wanted to put an addition on the building and the

1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

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3 Historic Preservation Commission rejected that. So, we
4 really are a use that is willing and able to use, repurpose
5 this former gas station site. So, that's kind of a summary
6 of the property itself.

7

8 I would also note, there is no current storm
9 water management on the site. So, one of the other benefits
10 is to comply with the storm water management regulations that
11 exist today that didn't exist when this site was developed
12 back in the 1920s, if I recall.

13

14 So, we requested a use variance, you have the
15 documentation that you made the findings of fact. At the
16 time of the decision you issued a SEQRA determination,
17 findings on all of the variance environmental issues to be
18 considered at the time.

19

20 In addition to the use variance granted, the
21 variance to allow a canopy where one would not be allowed.
22 It had previously been a canopy on the site. We went through
23 a lot of historical minutes and documentation of previous
24 efforts to have a canopy on the site, previous existence of
25 canopy on the site, a previous approval for a canopy on the
site. And, the Board made findings of fact and granted
approval of the canopy.

I believe that you had, through that review

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3 process we had reduced and minimized the size of the canopy
4 and also made sure the design of the canopy conformed to
5 their requirements of the Historic Preservation Commission.

6 We also eliminated and made sure the lighting
7 was minimal with respect to anything that would come up from
8 the canopy.

9 There are some conditions. There are
10 conditions on the approval, I will get to those in a minute.

11 The other area variances pertain to the
12 pavement and the existing conditions. One is the setback of
13 the pavement and parking closer to the fire department. And,
14 the other is in the -- I get my directions wrong -- in the
15 corner of the property. I am happy to point those out on a
16 plan if you don't see them. They haven't changed.

17 If anything, the project is going to improve
18 the physical conditions of the property. We are going to
19 bring -- eliminate one of the non-conforming conditions where
20 the rear setback is also non-conforming. I forgot to mention
21 that. Obviously, we can't change any of the conditions that
22 relate to the existence of the building setback. The
23 building is where it is, that's not going to change.

24 And we are adding green space and bringing the
25 lot coverage within what code allows, which is currently

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3 noncompliant, so now it is up to code.

4

5 conditions on the approval. Limited the hours of operation,
6 addressed delivery hours. You know, we are basically asking
7 for re-approval with the same conditions. We are not asking
8 to change anything whatsoever.

9

10 if there's no change in the project, no change in the facts,
11 making a decision that would be contrary would simply be
12 arbitrary and capricious.

13

14 to meet the requirements for the variances, and we're happy
15 to give you more information or answer any questions that you
16 may have.

17

18 when did PEMM purchase the property?

19

20 MS. TOMPKINS WRIGHT: Okay, good.

21

22 the new owner 3108 East Avenue LLC is an affiliate of PEMM,
23 as you represented in your application. Can you speak a
24 little bit to their contractual requirements in terms of why
25 they needed to close when they did close the transaction?

1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

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3 Did they just run out of ability to extend that contract?

4

5 MS. BRUGG: Yeah. The contract, they were
6 running out of time to extend the contract and they had not
7 yet secured all the permits from Department of
8 Transportation, DOH and RG&E.

9

10 So, you have to go back to the property for
11 the seller, and then the seller is in the position to
12 negotiate with you. So, they had to go through a negotiation
13 to get an extension to be able to continue to move forward
14 and wrap up the process.

15

16 They didn't get site plan approval, until six
17 months after this Board granted approval, so if you realize
18 how quickly the time passes.

19

20 CHAIRPERSON MIETZ: Recently they went back to
21 the Historic Preservation Commission?

22

23 MS. BRUGG: Yes. And they were granted, is it
24 conditional approvals? Yes, they did approval from the
25 Historic Preservation Commission.

26

27 CHAIRPERSON MIETZ: Okay, very good.

28

29 Did you have something else, Lauren?

30

31 MS. BARON: Yes. Can you speak a little bit
32 more to the calculations? Why the numbers have not changed
33 since the application was submitted back in 2022 versus the

1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

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3 numbers you submitted now in terms of for support of the
4 economic hardship?

5 MS. BRUGG: So, if anything, the numbers --
6 they were a co-applicant on the application. So, the numbers
7 they had at the time of the application were a combination of
8 the actual losses of the property owner, as well as the costs
9 that would be incurred by anyone, whether it be property
10 owner or future property owner, anybody else, what is the
11 actual hardship of the property? What would it cost to
12 redevelop the property for a permitted use.

13 So, we provided construction estimates, we
14 professional opinions of a real estate broker, I believe
15 there were two opinions addressing essentially, that the cost
16 to renovate and improve the property to make it viable for
17 office use would exceed the market value based on the square
18 footage market price for office space. Whether for sale or
19 for rental, we gave you both.

20 I think everybody knows that the cost of
21 construction has increased. It is kind of like a fairly
22 commonly known fact these days. If you need actual
23 additional information on that, we could provide that but it
24 should be pretty easy to get.

25 Trying to think what else we provided. So, we

1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025
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3 talked a little bit about some of the challenges of the
4 property that contributed to that hardship in terms of the
5 marketability of a parcel of property for an office use on a
6 nonconforming lot next to a firehouse in an area that just is
7 not an office area and how medical use wouldn't go there
8 because it's not a medical office area, those types of
9 things. We provided that data as well.

10 If anything, the hardship has increased to the
11 extent that the factors that have delayed this project have
12 been out of the control of the particular applicant. They
13 have no control over how long the permitting process at the
14 various State and County agencies takes and, you know, they
15 unfortunately had to negotiate, renegotiate their contract
16 because it took everything longer than expected.

17 So, they actually had to pay a significant
18 amount of money to get the extension on the contract. And
19 they have also been paying all the carrying costs for the
20 property during this time. The seller passed on all the
21 carrying costs to them, so they have been paying all the
22 taxes and insurances and maintaining the property.

23 CHAIRPERSON MIETZ: Okay.

24 Are you good, Lauren?

25 MS. BARON: Yes.

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3 CHAIRPERSON MIETZ: Do you have any?

4

MR. DiSTEFANO: I'm good.

5

6 CHAIRPERSON MIETZ: Anybody over here? We are
7 pretty much looking at the same application. Spent a lot of
time on this, as you all know.

8

9 MS. BARON: One additional question, obviously
10 the new owner is affiliated with PEMM who previously applied.
11 Did they rely at all on that fact that this Board previously
approved the use variances?

12

13 MS. BRUGG: Oh, absolutely, yeah. They put a
14 lot into getting that far. They did all the work needed and
15 they certainly did not -- their intent and requirement of the
contract is, they secure all municipal approvals including
16 the use variance before acquiring the property.

17

CHAIRPERSON MIETZ: Okay, very good.

18

Anything else, Betsy?

19

20 MS. BRUGG: No. Happy to answer any questions
that come up.

21

CHAIRPERSON MIETZ: I think we are good.

22

Thank you.

23

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

25

Yes, sir.

BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

3 here, get out of our way, get out your rubber stamp to
4 approve it. I see more to your role than that. I see you
5 here to examine the application, to review the site, to
6 identify issues, to ask questions, address the concerns of
7 the residents, and then make a thoughtful decision.

13 CHAIRPERSON MIETZ: Yes.

14 JAMES WELLER: You have all read the
15 application from 2022 and reviewed it?

16 MR. DiSTEFANO: Yes, it is part of their
17 packet.

18 JAMES WELLER: Okay. The next big question is
19 that of the environmental impact. This site has a long, long
20 nasty history of pollution. You know the last operator,
21 Kelly Marts, attempted to remediate pollution some 20 years
22 ago by removing the leaky tanks and contaminated soil around
23 the tanks. That was a good start, although that was good
24 enough for a gas station, is it good enough for what you are
25 now proposing? What I don't know is has there been new

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3 pollution in the last 20 years since Kelly Mart started
4 operating?

5 More importantly, what has happened to the
6 pollution behind and underneath the building? For years the
7 gas station operators dumped waste oil into the floor drains
8 and in the service bays, which leached into the soil
9 underneath and behind the building. I am concerned that the
10 proposed use of a former service bay area to store and sell
11 food maybe a grossly contaminated area is inherently unsafe
12 and improper absent of showing there is no new contamination,
13 and the old contamination built up over 100 years of dumping
14 have been removed.

17 I would also inquire as to the condition of
18 the storm drain which had been on the site for many years.
19 That drain dumped directly into Allens Creek which is about
20 100 feet away. With customers pumping their own gas there
21 are more likely to be more spills. Has the service drainage
22 issue been addressed? Is the storm drain still there, that
23 still empties into the creek?

24 Few more things beg an explanation the
25 applicant, and now this is a little technical, so I'm going

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3 to a place I am not too sure of. The applicant I am told is
4 3108 East Avenue LLC. The applicant was formed under the
5 laws of the State of New York on October 24, 2017. The
6 records of the Secretary of State shows this entity was
7 dissolved, it doesn't legally exist on February 5, 2018.

BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

3 traffic into this already over congested area. The last
4 grocery store faced the question of increased traffic was the
5 Whole Foods on Monroe Avenue. The experts and town officials
6 tell us not to worry there will be no problem. Ask yourself,
7 does your recent experience mitigate the expert's conclusions
8 there would be little or no impact, or have you experienced a
9 problem with increased traffic on Monroe Avenue?

At best, cars seeking fuel and groceries during the morning and evening rush hours will be challenged by children waling to and from the school and in front of the station, school busses entering and leaving the nearby schoolyard, increase the fire trucks demanding right of way during the rush hours, and the traffic engineering which draws vehicles to this area as they enter Route 441 and 490. I think this is just a little bit more traffic, it will be a little too much traffic.

24 Now, I placed several issues before you and
25 they are important questions about real issues which impact

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3 our neighborhood and that part of the town. These issues
4 require well considered answers. My neighborhood and the
5 town deserve something better than what was requested of you
6 to rubber stamp. Thank you.

7

CHAIRPERSON MIETZ: Thank you.

8

9 Is there anyone else who would like to speak
regarding this application? The Public Hearing is closed.

10

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REPORTER CERTIFICATE

I, Rhoda Collins, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

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 20th day of April, 2025.

At Rochester, New York

Rhoda Collins
Rhoda Collins

1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025
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4 **BRIGHTON**

5 **ZONING BOARD OF APPEALS MEETING**

6 **DELIBERATIONS**

7
8 MARCH 5th, 2025
9 at approximately 8:07 **p.m.**
10 Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

11 PRESENT:

12 DENNIS MIETZ, Chairperson

13 MATTHEW D'AUGUSTINE)

14 HEATHER MCKAY-DRURY)

15 EDWARD F. PREMO, II) BOARD MEMBERS

16 JUDY SCHWARTZ)

17 ANDREA TOMPKINS WRIGHT)

18 LAUREN BARON, ESQ.

19 Town Attorney

20 RICK DiSTEFANO

21 Senior Planner

22 NOT PRESENT:

23 KATHLEEN SCHMITT

24
25 (The Board having considered the information
presented by the Applicant in each of the following cases and
having completed the required review pursuant to SEQRA, the
following decisions were made:)

26
27 REPORTED BY: Rhoda Collins, Court Reporter
28 FORBES COURT REPORTING SERVICES, LLC
29 21 Woodcrest Drive
30 Batavia, New York 14020

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3 | APPLICATION 3A-01-25

4

5 Lighting Services LLC, agent, and CRE JV Mixed Five New York
6 4 (Citizens Bank), owner of property located at 2000 Monroe
7 Avenue, for a Sign Variance from Section 207-32 to allow for
8 the installation of a freestanding sign where not allowed by
9 code. All as described on application and plans on file.

10

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FINDINGS AND FACTS:

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(Second by Ms. McKay-Drury)

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

6 (Upon roll call, motion to deny carries.)

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BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

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3 | APPLICATION 3A-02-25

4

5 Henry, owner of property located at 482 Antlers Drive, for an
6 Area Variance from Section 205-2 to allow the reconstruction
7 of an attached garage and construction of a building addition
8 to extend 1.5 ft. Into the 12.75 ft. Side setback required by
9 code. All as described on application
-0 and plans on file.

11

12 Application 3A-02-25 based on the following findings and
13 facts.

14

FINDINGS AND FACTS:

15

16 the applicant.

17

18 side setback.

CONDITIONS:

23 submitted and testimony given.
24 2. All necessary Architectural Review Board and building
25 permits shall be obtained.

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3

(Second by Mr. D'Augustine.)

4

5

6

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

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(Upon roll call, motion to approve with
conditions carries.)

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3 | APPLICATION 3A-03-25

4 3A-03-25 Application of Jack Savage, Passero
5 Associates, agent, and the University of Rochester, owner of
6 property located at 250 East River Road, for renewal of a
7 Temporary and Revocable Use Permit (7A-06-23) pursuant to
8 Section 219-4 to allow a new mobile PET/CT scanner (trailer)
9 to be on site until April 30, 2026. All as described an
10 application and plans on file.

11 (Ms. Tompkins-Wright left the room as she has recused herself
12 from this.)

13 Motion made by Ms. Schwartz to approve
14 Application 3A-03-25 based on the following findings and
15 facts.

16 FINDINGS AND FACTS:

- 17 1. This variance is for the renewal of a temporary and
- 18 revokable use permit that has been granted without incident
- 19 for many years, specifically since 2020.
- 20 2. Approval of the variance will allow the U of R to place a
- 21 new mobile PET/CT scanner trailer on the site until
- 22 August 31, 2026. It will be placed on the existing concrete
- 23 pad.
- 24 3. This trailer will house the medical equipment necessary
- 25 to continue providing medical services until a permanent

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3 facility is completed which will house updated technology.

4 4. There will be no adverse effect on the health, safety or
5 welfare of the community. This temporary revocable use
6 permit is the same as the one granted many times with no
7 changes to the request.

8 5. All conditions and safeguards previously required as a
9 part of the prior temporary revocable permit have been
10 complied with.

11 **CONDITIONS:**

12 1. This variance only applies to testimony presented and in
13 the written applicant.

14 2. All building and planning approvals must be obtained.

15 3. This variance is granted through August 31, 2026.

16 (Second by Ms. McKay-Drury.)

17 (Mr. Mietz, yes; Mr. D'Augustine, yes;
18 Mr. Premo, yes; Ms. McKay-Drury, yes; Ms. Schwartz, yes.)

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

21

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3 | APPLICATION OF 3A-04-25

4

3A-04-25 Application of Betsy Brugg, Woods

5

6 property located at 3108 East Avenue, for a Use Variance from
7 Section 203-44 to allow a gas station with convenience store
8 to be located in a BE-1 Office and Office Park District where
9 not allowed by code. All as described on application
-0 and plans on file.

11

APPLICATION 3A-05-25

12

13 Gilman, LLP, agent, and 3108 East Avenue, LLC, owner of

property located at 3108 East Avenue, for Area Variances from Section 205-18 to 1) allow parking of vehicles to within 2 ft. Of a side lot line (north) where a 10 ft. Setback is required by code, and 2) to allow paved areas / drive aisles up to the front lot line where a 20 ft. Setback is required by code. All as described on application and plans on file.

20

APPLICATION 3A-06-25

21

3A-06-25 Application of Betsy Brugg, Woods

22

Oviatt Gilman LLP, agent, and 3108 East Avenue LLC, owner of

23

property located at 3108 East Avenue, for an Area Variance from Section 207-6B to allow an accessory structure (gas pump canopy) to be located in a front yard in lieu of the rear

BRIGHTON ZONING BOARD OF APPEALS 03/05/2025

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3 yard as required by code. All as described on application
4 and plans on file.

5 (Mr. Premo left the room as he has recused himself from
6 this.)

7 Motion made by Ms. McKay-Drury to table and
8 reopen the Public Hearing with respect to Applications
9 3A-04-25, 3A-05-25, and 3A-06-25 for further information,
10 such as, but not limited to, and updated information
11 supporting the hardship criteria for the use variance, as
12 well as the environmental condition of the property, and also
13 what permits have been obtained to date.

14 (Second by Mr. D'Augustine.)

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

17 (Upon roll call, motion to table the
18 applications and leave the Public Hearing open is approved.)

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1 BRIGHTON ZONING BOARD OF APPEALS 03/05/2025
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5 REPORTER CERTIFICATE
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7

I, Rhoda Collins, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

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 20th day of April, 2025.

At Rochester, New York

Rhoda Collins
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Rhoda Collins