

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS  
AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on June  
4th, 2014, COMMENCING AT APPROXIMATELY 7:15 P.M.

June 4th, 2014  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

JOHN CHOLETTE, CHAIRMAN  
CANDICE BAKER LEIT, ESQ.  
MORREY GOLDMAN  
CHRISTINE CORRADO  
JUDY SCHWARTZ  
DENNIS MIETZ  
DR. DAVID LAWRENCE

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

Reported by: CHAD L. SMITH, Court Reporter  
EDITH E. FORBES COURT REPORTING SERVICE  
21 Woodcrest Drive  
Batavia, New York 14020

1  
2 MR. CHOLETTE: I would like to now call to  
3 order to June session of the Brighton Zoning Board of  
4 Appeals.

5 Rick, was the meeting properly advertised?

6 MR. DiSTEFANO: Yes, Mr. Chairman. It was  
7 advertised in the Brighton Pittsford Post of May 29,  
8 2014.

9 MR. CHOLETTE: Will you please call the roll?

10 MR. DiSTEFANO: Please let the record show  
11 all members are present.

12 MR. CHOLETTE: Thank you.

13 We have the minutes from our May meeting.

14 Are there any additions or corrections?

15 MS. SCHWARTZ: On page 47, line 22, the name  
16 is Flaum, F-l-a-u-m, and it's the same on page 48, line  
17 2.

18 On page 49 and page 50 with regard to the boy  
19 scouts, Rick, this was your remark. It says if you  
20 took the area from the boy scouts d-e-m-i-s-i-n-g wall  
21 to the front of the building.

22 MR. DiSTEFANO: Demising wall, demising.

23 MS. SCHWARTZ: Demising wall?

24 Oh, all right. What does it mean?

25 MR. DiSTEFANO: A demising wall is basically

1  
2 if you have a large plaza, the interior wall that  
3 splits the tenant spaces.

4 MS. SCHWARTZ: Okay. Then that's correct, so  
5 just forget it.

6 On to page 74, under conditions, number 1, I  
7 believe it should be the most eastern existing curb,  
8 not western.

9 Is that right?

10 MR. DiSTEFANO: Which one was this, Judy?

11 MR. CHOLETTE: I'm sorry, this is page 74,  
12 which line?

13 MS. SCHWARTZ: Line 19, condition 1.

14 MR. CHOLETTE: Which application? Is this  
15 the application with the two curb cuts?

16 This is the two curb cuts on East Avenue  
17 where they were going to - they have a circular drive.

18 MR. DiSTEFANO: Right. And how does it read?

19 MS. SCHWARTZ: It says the most western  
20 existing curb shall be closed.

21 It's the eastern.

22 MR. CHOLETTE: It is.

23 MR. GOLDMAN: It's the western.

24 MR. DiSTEFANO: It's the western.

25 MR. GOLDMAN: The western one is towards

1  
2 Penfield Road. That's the one that's moving.

3 MS. SCHWARTZ: That's west(indicating)?

4 MR. DiSTEFANO: Yes.

5 MR. CHOLETTE: Yes.

6 MR. MIETZ: It's actually north.

7 MR. DiSTEFANO: It's actually northwest.

8 It's like towards the city.

9 MS. SCHWARTZ: All right.

10 MR. GOLDMAN: It's kind of more west than --

11 MS. SCHWARTZ: West is going downtown.

12 MR. GOLDMAN: Yes.

13 MR. DiSTEFANO: Yeah.

14 MS. SCHWARTZ: But this isn't.

15 MR. DiSTEFANO: Yeah, it's going downtown.

16 MS. SCHWARTZ: But they're closing that one  
17 and putting it --

18 MR. DiSTEFANO: No, they're closing that one  
19 and moving it further to the west.

20 MS. SCHWARTZ: Oh, I see.

21 MR. CHOLETTE: The east one --

22 MS. SCHWARTZ: Yeah, yeah, yeah. Okay.

23 MR. CHOLETTE: The circle then becomes  
24 bigger.

25 MS. SCHWARTZ: Yes.

1  
2 MR. DiSTEFANO: An interesting side comment  
3 regarding the application, I don't think the State is  
4 going to let them do it.

5 MS. SCHWARTZ: Really?

6 MR. CHOLETTE: Why?

7 MR. DiSTEFANO: The State doesn't want  
8 anymore - the State actually says we only want one curb  
9 cut there.

10 MS. SCHWARTZ: Okay. I'll try one more then.

11 On page 78, line 21, condition number 2 --  
12 I'm sorry, line 20, condition number 1, we don't have a  
13 year in there. We just say for a period from June 1st  
14 through October 31st.

15 Should we put a year in?

16 MR. DiSTEFANO: Sure.

17 MS. SCHWARTZ: And I think it was - let me  
18 see - six months, 2014?

19 MR. DiSTEFANO: 2014, yes, because it's June  
20 2014 to October 2014.

21 MS. SCHWARTZ: Okay. That's good.

22 MR. CHOLETTE: Thank you, Judy.

23 Are there any others?

24 Can I have a motion to approve the minutes as  
25 amended?

1  
2 (Motion made by Mr. Goldman to approve the  
3 May amended minutes.)

4 (Seconded by Ms. Baker Leit.)

5 (Upon roll call, motion to approve with  
6 corrections carries.)

7 MR. CHOLETTE: As indicated, application  
8 1A-02-14, which was held over from many previous  
9 meetings, is again being held over until at least the  
10 July meeting.

11 We will move into the applications, starting  
12 with 6A-01-14.

13 Rick, will you please read the first  
14 application?

15 6A-01-14 Application of Buckingham Properties, agent,  
16 and 2600 Elmwood LLC, owner of property located at 2600  
17 Elmwood Avenue, for 1) an Area Variance from Section  
18 203-64B(4)(h) to allow a front yard dining area abut a  
19 residential district where not allowed by code; and 2)  
20 an Area Variance from Section 205-7 to allow impervious  
21 coverage to increase from 72.4% to 73% where a maximum  
22 65 % impervious coverage is allowed by code. All as  
23 described on application and plans on file.

24 MR. SCHAAF: Good evening. My name is Eric  
25 Schaaf with Marathon Engineering and I'm representing

1 Buckingham Properties.

2  
3 With me tonight to answer questions should  
4 they come up Aaron Malbone from Buckingham Properties  
5 and Brian Mendler, the owner of Yolickity.

6 The site that we're talking about is the 1.4  
7 acre parcel that housed the former Bagel Bin building  
8 at 2600 Elmwood Avenue. We're now calling this place  
9 The Meeting Place. It is in the process of being  
10 converted into three retail restaurants; Yolickity,  
11 Sabra Grill and Bruegger's Bagels. It is located in  
12 the retail plaza.

13 And again, here(indicating) I have a colored  
14 rendering and I know my eyes are not that good anymore  
15 so I passed out an 11x17 so that you don't have to  
16 strain to see. But I believe we all know where the  
17 location is. It's located within the retail plaza  
18 there in the Twelve Corners area. We have residential  
19 properties to the west, commercial and residential  
20 across the street on Elmwood Avenue. The current  
21 zoning is BE-F, low intensity commercial district.

22 What we found is that outdoor dining is being  
23 requested by patrons of the three restaurants that I  
24 mentioned. So our proposed project we're proposing  
25 that five hundred and fifty-five square feet of patio.

1  
2 Now, this patio is going to be constructed with clay  
3 pavers with a sand filler. It will be very analogous  
4 to impervious pavement. They're also going to have  
5 outdoor seating for twenty patrons. There will be ten  
6 two-person tables, with complimentary landscaping  
7 including about eighty-two linear feet of forty-two  
8 inch high ornamental fencing - and a detail was  
9 provided of that fence.

10 Now, these tables are going to be relocated  
11 from the interior seating area when the outdoor seating  
12 area is in use. We all - I mean most of us anyways are  
13 natives or long time residents of Rochester - know that  
14 we cannot use an outdoor seating area twelve months of  
15 the year. So during the time that it is open we'll  
16 relocate those seats outside because patrons again have  
17 requested it and that's where they will enjoy their  
18 meals.

19 It's important to note there's no increase in  
20 the total seating area that's provided. At this time  
21 we have a total of ninety, which is less than the  
22 ninety-nine units that are allowed in this area.

23 We are here tonight respectfully requesting  
24 two variances from the Zoning Board. One is to allow  
25 this outdoor dining area in a front yard that abuts a

1  
2 residential district. The second piece of paper that I  
3 pointed out tonight is a letter from that neighbor whom  
4 we are abutting supporting this project.

5 The second variance is a minor change in an  
6 existing non-conforming condition, providing 27% green  
7 space versus the 27.6 green space currently provided.  
8 The effect of this variance, again, is mitigated by the  
9 fact that we have used the previously mentioned clay  
10 pavers. Again, you've got perforated type underneath  
11 it so it's very analogous to a permeable paver, but we  
12 didn't want to go down and try to meet those strict  
13 definitions. So, again, it's a minor impact there.

14 As I mentioned, the project is supported by  
15 the neighbor. A letter has been provided to the Board.  
16 We were before the Conservation Board, which had no  
17 comments and the Planning Board, which had very minimal  
18 comments and we've addressed those and provided a  
19 response letter back to the Town.

20 Hopefully you will grant us approval. Should  
21 that happen we are returning to the Planning Board on  
22 June 18th to hopefully obtain final approval from the  
23 Planning Board.

24 Again, we respectfully request that you grant  
25 approval to each of these variances.

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I would be happy to entertain any questions.

MS. SCHWARTZ: Sir, when did Sabra Grill open  
- officially open?

MR. SCHAAF: I will defer to Mr. Malbone of  
Buckingham.

MR. MALBONE: My name is Aaron Malbone,  
M-a-l-b-o-n-e.

They opened about three weeks ago.

MS. SCHWARTZ: Three weeks ago?

MR. MALBONE: Uhm-hum.

MS. SCHWARTZ: So what is that exact date?

MR. MALBONE: I'm not sure of the date they  
got their actual CMO. They did their own work in the  
space.

MS. SCHWARTZ: Well, they didn't really start  
in right away because if they had their CMO because of  
some rules with caution and so on. So I don't know  
getting the CMO was the same day that they literally  
started to serve customers.

It's really important that I know that date  
because of this letter that is signed.

MR. MALBONE: Okay. I don't have that date  
or the time --

MS. SCHWARTZ: Okay. The reason I say that

1  
2 is because this is really interesting. Mrs. Caiazza  
3 couldn't be here tonight because they have an  
4 unfortunate situation that keeps them from being here.  
5 But she did send me an email that is really quite  
6 different from this letter of approval. And I would  
7 like to share it.

8 MR. MALBONE: Sure.

9 MS. SCHWARTZ: It says, "The trash on the  
10 lawn of the home nextdoor to The Meeting Place has been  
11 consistently increasing on a daily basis.  
12 People/families have been sitting on the front lawn of  
13 this private house, eating purchases from The Meeting  
14 Place. The owner of the house heard voices while  
15 sitting in his family room two days ago. He looked out  
16 to see two women sitting on his car, parked behind his  
17 house, in front of his garage, eating falafel. The  
18 next thing he saw was Brighton Police walking down his  
19 driveway to these women who had called him. While they  
20 were eating at the restaurant they did not like the  
21 look that some man had given them and reported it to  
22 the police, which is now on record."

23 This to me is a little bit different than  
24 giving an outright approval.

25 That's why I wonder when he really signed

1  
2 this and were you open for business at the time?

3 UNKNOWN: They were absolutely open --

4 MR. DiSTEFANO: You have to --

5 MR. MENDLER: Oh, my name is Brian Mendler.  
6 I'm the owner of Yolickity. I live at 345 Column Road  
7 in Brighton.

8 Sabra Grill was absolutely open before this  
9 letter was signed, without question. Sabra Grill  
10 opened three and a half to four weeks ago. So -- and  
11 there's no question that they were already open by the  
12 time that happened.

13 And just so you know, you know, to address  
14 your concern, that's exactly why we need a patio. We  
15 need a patio because people are taking their food  
16 outside and they need a place to sit. They don't have  
17 anyplace to sit. They're going in their cars. They're  
18 sitting on the curb. It's not great for our town - the  
19 town that I live in - for people to be doing that.

20 And they're asking us, they're literally  
21 saying to us - you can come in our store, they are  
22 literally saying to us everyday, "Why don't you guys  
23 have chairs outside?" They're saying that and we're  
24 answering by saying we're not allowed. That's what  
25 we're saying because we're not.

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MS. SCHWARTZ: But that --

MR. MENDLER: So that's why we're asking for this.

MS. SCHWARTZ: My question is: Why aren't you at least sitting on the lawn in front of the restaurant instead of the person's next door.

MR. MENDLER: They are sitting on the lawn in front of the restaurant.

MS. SCHWARTZ: I have a --

MR. MENDLER: They are.

MS. SCHWARTZ: Okay. Rick, I have another question: When they were given their approvals, weren't we talking about the fact that trash was to be contained inside the building?

MR. DiSTEFANO: Well, I don't think the trash is your typical - they wouldn't have a dumpster on site. They would be using trash containers that were contained inside the building.

MS. SCHWARTZ: As I was on my way over, there were three dumpsters and six toters out in back and nothing is behind any doors or anything. They're right open. So I have some concerns.

MR. DiSTEFANO: Well, you have a representative from Buckingham right here. You can ask

1  
2 him regarding that.

3 MS. SCHWARTZ: Okay. Also I know that --

4 MR. CHOLETTE: Do you want to say something  
5 to --

6 MR. DiSTEFANO: Do you want him to answer  
7 that?

8 Aaron, why don't you answer that?

9 MS. SCHWARTZ: All right.

10 Yes, what about that?

11 MR. MALBONE: I was actually there yesterday  
12 myself and saw all that. And we're addressing that  
13 issue with the people that are maintaining the property  
14 for us.

15 MS. SCHWARTZ: What's Buckingham's part?  
16 Aren't you --

17 MR. MALBONE: Bruegger's Bagels is  
18 maintaining the property for us. They're cleaning the  
19 space and taking care of the garbage for us. We're  
20 paying them to do that service. So we're mitigating  
21 that issue with the garbage right now.

22 MR. MENDLER: And just so you know, we have  
23 instructed our employees to go outside and look for  
24 trash. No question every once in a while some, you  
25 know, a customer's spoon here or there gets missed.

1  
2 That being said, one of the duties of our managers when  
3 they come in in the morning is to walk the property. I  
4 mean, I live in this town and I want this to be the  
5 nicest building in the entire town, believe me. And we  
6 are crazy about cleanliness. We've been in there and  
7 we are constantly cleaning. There is no question that  
8 once in a while when it's a busy night something might  
9 get dropped and the wind might blow it. It's  
10 unfortunate and we're not - we don't want that to  
11 happen.

12 We want a clean space and to keep a clean  
13 area. We want this to be an extremely nice patio  
14 that's closed in with a fence so that everything is  
15 contained.

16 DR. LAWRENCE: What's the latest that any of  
17 the food establishments is open?

18 MR. MENDLER: We're open and Sabra is open.  
19 And then, as far as I know, Bruegger's is a couple  
20 months out.

21 DR. LAWRENCE: No, I meant open in the  
22 evening, I apologize. The hours?

23 MR. MENDLER: We close at ten o'clock.

24 DR. LAWRENCE: Now, will there be any  
25 illumination? Will people be able to be outside at ten

1  
2 o'clock?

3 MR. MALBONE: We plan on having the patio  
4 being from dusk till dawn. So there's no outside  
5 lighting on the building currently. There'll be no  
6 lighting around the building.

7 MR. MENDLER: Correct. We will, I mean,  
8 we'll close it down. We are extremely respectful of  
9 the neighbors. You can ask the people in Greece and in  
10 Webster where we also have outside seating areas.

11 They want it. They want to sit outside.  
12 There is only three months out of the year where they  
13 can sit outside. And they want to sit outside, they're  
14 asking for it. So, I mean --

15 MR. CHOLETTE: So the answer is about  
16 lighting --

17 MR. MALBONE: Yes.

18 MR. CHOLETTE: There is no lighting outside?

19 MR. MENDLER: We'll put some solar lights  
20 probably down below, but it will be closed when it's  
21 dark. It won't be --

22 MR. CHOLETTE: How will it be closed?

23 I mean, you're going to actually tell your  
24 customers --

25 MR. MALBONE: The patio is --

1  
2 MR. CHOLETTE: -- the patio is vacated at  
3 some time?

4 MR. MALBONE: The patio is surrounded by a  
5 gate.

6 MR. MENDLER: Fence.

7 MR. MALBONE: Or a fence. I'm sorry,  
8 fencing.

9 MR. MENDLER: Correct.

10 MR. CHOLETTE: I don't understand that.

11 I mean, you're saying somebody goes in there  
12 for ice cream at 9:30 and they decide to sit out there,  
13 you're going out there to tell your customers you have  
14 to leave this area?

15 MR. MENDLER: If that's what you guys want us  
16 to do, that's what we'll do. I mean, we just want to  
17 have --

18 MR. CHOLETTE: You said dawn to dusk?

19 MR. MENDLER: Yeah, that's our plan, correct.

20 MR. MALBONE: We certainly don't want anyone  
21 sitting out there getting hurt. We don't want to put  
22 any light on the building. So if someone is out there  
23 sitting in the dark or they're going out there after  
24 dark we will ask them to not sit in the patio, yes.

25 MR. DiSTEFANO: Is there a way that you can

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lock the patio area?

That fencing that you have around there, is there a gate that you can physically --

MR. MALBONE: We can put a gate on there. That was one of the --

DR. LAWRENCE: What about is there any music that will be piped outside?

MR. MENDLER: Nope.

MR. MALBONE: No.

MR. CHOLETTE: You have two other facilities, correct?

MR. MENDLER: Three.

MR. CHOLETTE: When you were in here in December -- since you've been in the business you say that you have outdoor seating in the other areas?

MR. MENDLER: Correct.

MR. CHOLETTE: You were specifically asked if you were going to have outdoor seating and the response was no, not at this time. Now, we haven't really had what you would consider summer --

MR. MENDLER: Right.

MR. CHOLETTE: -- at all in Rochester until the last couple of weeks.

MR. MENDLER: Right.

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2 MR. CHOLETTE: And yet you already are  
3 raising the situation that your customers are saying  
4 that you need to have this.

5 MR. MENDLER: Correct.

6 MR. CHOLETTE: It seems to me that you would  
7 have known this back in December based on your other  
8 businesses?

9 MR. MENDLER: I would have known what? I'm  
10 not --

11 MR. CHOLETTE: That you needed outdoor  
12 seating.

13 MR. MENDLER: I'm not sure what you're --

14 MR. CHOLETTE: I'm asking why in December did  
15 you --

16 MR. MENDLER: You said at that time.

17 MR. CHOLETTE: You said at that time and I  
18 feel that we were misled.

19 MR. MENDLER: Why?

20 MR. CHOLETTE: Because we asked you if you  
21 were going to have outdoor seating.

22 MR. MENDLER: At that time we were not. But  
23 since we opened multiple, multiple, multiple customers  
24 have asked us --

25 MR. CHOLETTE: That's fine. But you have

1  
2 three other facilities --

3 MR. MENDLER: So we're here asking --

4 MR. CHOLETTE: -- you have three other  
5 facilities that have outdoor seating, and your telling  
6 me you could not foresee in this location that you  
7 would need outdoor seating when you came in for your  
8 initial application?

9 MR. MALBONE: Can I speak to that?

10 I'm sorry.

11 When we set this we were not planning on  
12 having outdoor seating there. I mean, this is being  
13 led or pushed by the customers in the building.

14 MR. CHOLETTE: See my concern here is that I  
15 feel that this Board was misled in December when we  
16 approved your application, because we approved it with  
17 the thought that there would not be outdoor seating.

18 Now, it is certainly your prerogative to come  
19 in and apply for outdoor seating. I'm not denying  
20 that. But I am telling you in fairness that I am  
21 personally irritated that we were misled in December.

22 MR. MENDLER: Okay.

23 MR. CHOLETTE: And there's --

24 MR. MENDLER: What --

25 MR. CHOLETTE: I'm sorry, there's nothing you

1  
2 can say that will change my mind.

3 MR. MENDLER: That's fine.

4 But my question back - and this isn't as the  
5 owner of Yolickity, this is as a resident of this town:  
6 Is why --

7 MR. CHOLETTE: No, I'm sorry. You are here  
8 representing the owner of Yolickity.

9 MR. MENDLER: So I can't represent Brighton?

10 MR. CHOLETTE: No, you cannot --

11 MR. MENDLER: Okay. I wasn't sure how it  
12 works.

13 MR. CHOLETTE: -- because you have a vested  
14 interest.

15 MR. MALBONE: I'm sorry you feel that you  
16 were misled. That was not our intention.

17 MR. MENDLER: It was never our intention to  
18 mislead you. It really wasn't.

19 Our intention is to have the most beautiful  
20 building in the entire town. That is our intention.  
21 That's our goal. That is what we're trying to  
22 accomplish. We really are, I promise. We're trying to  
23 build a forty thousand dollar patio outside.

24 Why would people be against that?

25 I don't understand that. I truly don't

1  
2 understand that.

3 MS. BAKER LEIT: I think the question is:  
4 What was different about this location when you applied  
5 in December that at that time you chose not to --

6 MR. MENDLER: The customers are  
7 overwhelmingly asking for it right now.

8 MS. BAKER LEIT: No, no: Why was this  
9 project different than your other projects where you  
10 have outdoor seating?

11 MR. MENDLER: I'll tell you why, because this  
12 indoor space is enormous compared to our other ones.

13 MS. BAKER LEIT: Okay.

14 MR. MENDLER: Our Henrietta store is less  
15 than a thousand square feet, so we had to have outdoor  
16 seating because there's no room. Webster is like  
17 thirteen hundred square feet. This one is six thousand  
18 square feet. So we didn't think in order to be  
19 there we would have to have outdoor seating.

20 Honestly, we don't have to have it. But when  
21 multiple -- every night I'm trying to explain to my  
22 employees why we have chairs locked in a room and  
23 tables locked in a room that we can't bring outside  
24 when customers - residents of this town - customer,  
25 after customer, after customer are asking for it and we

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have to say no. And they don't understand.

So that's kind of the dilemma that we're in.

Do you know what I'm saying?

MS. SCHWARTZ: I have a question: You just said that the tables and the chairs would be taken from the existing area and put outside, there being extras, but you just said --

MR. MENDLER: We have them locked because --

MS. SCHWARTZ: -- extras to bring out there, so --

MR. MALBONE: We would not be taking actual furniture from the interior of the space. We have outdoor patio furniture. So when we take those twenty seats - the twenty seat patio furniture out --

MR. GOLDMAN: It's misleading.

MR. MENDLER: It's not misleading. Let me explain --

MR. GOLDMAN: But when you say --

MR. MENDLER: Can I explain --

MR. CHOLETTE: Wait a second.

MR. MENDLER: I can explain it.

MR. CHOLETTE: Let's let the --

MR. MENDLER: I can explain it.

MR. CHOLETTE: -- applicant answer the

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question.

MR. MENDLER: We have --

MR. MALBONE: Actually --

MR. MENDLER: I'm in there every day though.  
Just so you know.

MR. MALBONE: So we have outdoor patio furniture. When that furniture is out -- we currently are at seventy seats inside right now. So even with the twenty additional seats we plan on putting outside we're still beneath the ninety. But if we do get to the point where we have eighty seats or whatever it is inside, that indoor furniture will be out locked up in a tenant space or a storage space so that the outdoor furniture can go outside.

MR. MENDLER: Correct.

MS. SCHWARTZ: I have another question.

MR. MENDLER: I want to make sure that everybody understood what he said because it's not misleading.

MR. GOLDMAN: I have a further -- I've been trying to ask this question since the beginning: This furniture that you're going to be bringing outside - and it's lightweight I'm assuming - is the plan to leave it outside all summer, or every night that comes

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in?

MR. MENDLER: Every night we bring our outdoor furniture in at all of our stores?

MR. GOLDMAN: Every night?

MR. MENDLER: Every night.

MR. GOLDMAN: Okay. Thank you.

MR. MENDLER: Yup.

MS. SCHWARTZ: Could you explain what the surroundings are like at your other locations?

MR. MENDLER: What does that mean?

MR. MALBONE: Like the landscaping?

MS. SCHWARTZ: No, no, no. What kind of businesses --

MR. MALBONE: All right.

MS. SCHWARTZ: -- the adjacent properties, the abutting properties?

MR. MENDLER: Well, our Henrietta store is directly across the street from Target. So that's kind of in it's own world over there in the shopping plaza. Our Greece store is in a somewhat residential -- it's on Long Pond, right next door to Greece Athena High School. There's housing tracks behind our store and homes in front, across the street. And our Webster store is, like, right across from Webster Schroeder

1  
2 High School, off Hard Road between Starbucks and  
3 Subway.

4 Did I answer?

5 MR. MALBONE: Uhm-hum.

6 MR. CHOLETTE: Will you describe the fence  
7 that you plan to put up?

8 MR. MALBONE: Just a simple three and a half  
9 foot wrought iron looking fence.

10 I'm not sure if --

11 MR. CHOLETTE: Sort of like - I think I've  
12 seen these around McDonald's play areas. It's --

13 MR. MALBONE: Something like that, yes.  
14 Similar.

15 MR. CHOLETTE: So it will be totally  
16 transparent?

17 MR. MALBONE: Yes. Yup, it just has small  
18 spindles every four inches to meet code.

19 MR. CHOLETTE: Will you also run through the  
20 calculation that was done to talk about impervious  
21 coverage?

22 When I looked at it originally it looked like  
23 this was going to have a larger impact on impervious  
24 coverage.

25 So I would like to know what was included in

1  
2 that calculation?

3 MR. SCHAAF: The amount of the reduction that  
4 we're asking for if you do the percentages slightly  
5 larger than the five hundred and fifty-five square feet  
6 because we're also making some minor adjustments to the  
7 sidewalks. And we're asking for the variance of  
8 twenty-seven percent in order to ensure that we haven't  
9 -- I'm not sure whether it's exceeded or  
10 underestimated, whatever the right term is, so that  
11 we're fully covered. And that is why we came in with  
12 an even twenty-seven percent. But it is --

13 MR. CHOLETTE: That's the --

14 MR. SCHAAF: That is the five hundred and  
15 fifty-five square feet of the patio as outlined.  
16 That(indicating) is the additional impervious area.

17 MR. CHOLETTE: So you're losing that square  
18 footage.

19 And what are you using for the total square  
20 footage of land area?

21 So this is twenty-seven percent. I mean, the  
22 green area --

23 MR. SCHAAF: This(indicating) is a 1.4 acre  
24 parcel. So it would be of that percent.

25 MR. CHOLETTE: Is it everything that you show

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on the diagram?

MR. SCHAAF: It is everything within our parcel.

MR. CHOLETTE: So you're counting - as green, you're counting everything that is shown up there in green?

MR. SCHAAF: We're not counting this(indicating) because that's outside of our parcel.

MR. CHOLETTE: Okay.

MR. SCHAAF: Inside our tax parcel, it is this area here(indicating).

MR. CHOLETTE: Okay. So you're saying that we take --

MR. MALBONE: There's also land --

MR. SCHAAF: Behind it.

MR. MALBONE: -- behind the parking lot.

MR. CHOLETTE: I guess the thing that is hard for me to visualize when I'm looking through the numbers is that you're indicating that you're only losing 0.6 % green space. And yet when I ball-parked looking at what seems like the percentage of that area that's going to be the patio versus the other green space that's there, it looks like it would have to come out to be much larger than 0.6 % that you're losing.

1  
2 MR. SCHAAF: Let's see if I could do this  
3 right here for you.

4 MR. DiSTEFANO: Eric, I think the site  
5 includes that large green island.

6 MR. SCHAAF: It does.

7 MR. DiSTEFANO: And more off to the - a  
8 little bit more off to the -- if you look at this  
9 layout(indicating) --

10 MR. SCHAAF: You're showing that --

11 MR. DiSTEFANO: Yeah, all the green back in  
12 here(indicating) and all the green back in  
13 there(indicating) that island(indicating) and this  
14 island(indicating) --

15 MR. CHOLETTE: All the green back in where?

16 MR. DiSTEFANO: In the parking lot itself  
17 where that green island is right here(indicating).

18 MR. CHOLETTE: So you're counting all of  
19 those, all those?

20 THE WITNESS: Yeah, all of that(indicating),  
21 all of that(indicating) --

22 MR. CHOLETTE: So we're counting this area  
23 over here(indicating)?

24 MR. DiSTEFANO: -- some of that  
25 island(indicating), then all of the area in front and

1  
2 then along the side all the way back.

3 MR. CHOLETTE: Did you participate in this  
4 calculation, Rick?

5 MR. DiSTEFANO: No. No, this was done by the  
6 engineers.

7 MR. CHOLETTE: Our engineers?

8 THE WITNESS: No, the applicant's engineers.

9 MR. CHOLETTE: I would like to see that  
10 calculation.

11 MR. SCHAAF: We can provide that.

12 MR. CHOLETTE: I'm not asking for that  
13 instantaneously --

14 MR. SCHAAF: We can provide it --

15 MR. CHOLETTE: -- or inferring that if I  
16 don't see it by the time we vote maybe we'll need to  
17 postpone the vote.

18 My concern though is that - and I have this  
19 with other parcels that come in, it's not just this  
20 parcel - people talk about losing green space and the  
21 visual impact is much greater than the mathematical  
22 one. So when people look at this parcel, they're going  
23 from Elmwood, seeing the front of the building. And  
24 you are going to be losing at least a third of the  
25 front yard and I think you're going to lose one

1  
2 sizeable tree --

3 MR. SCHAAF: We're going to be losing --

4 MR. CHOLETTE: -- that is there. You've got  
5 three big trees there now. You're going to lose one of  
6 those big trees and you're going to lose about a third  
7 of the green area in the front yard.

8 And so my concern is that that visual impact  
9 - independent of the what the percent comes out when  
10 you do all the calculation - can be seen as quite  
11 significant, even if mathematically it looks like a  
12 small number.

13 MR. SCHAAF: And to that point is why we had  
14 our landscape architect design the foundation  
15 plannings. And this was reviewed extensively with the  
16 Conservation Board, who gave their concurrence, if you  
17 will, or approval to our plan, including the removal of  
18 that tree and replacement with the foundation planners.

19 This is designed to be extremely attractive  
20 from Elmwood Avenue. Right now, you drive by and you  
21 do have this expansive lawn with a couple of trees.  
22 Now, it's going to be an even moor attractive  
23 landscaped area that is going to be in front of a  
24 relatively small patio.

25 MR. CHOLETTE: I understand.

1  
2 My other problem is - to answer the owner's  
3 concern, how could anybody be against this because it's  
4 going to look so attractive - is that it does look  
5 attractive. Unfortunately, in my mind a residential  
6 area to have perhaps as many as twenty customers  
7 sitting out in a front yard in a residential area  
8 detracts from that being a residential area.

9 MR. MENDLER: It attracts?

10 MR. CHOLETTE: Detracts from it appearing as  
11 a residential area.

12 MR. SCHAAF: And that's where we've  
13 approached the neighbor that is most directly impacted  
14 and obtained the support. In addition, from a practical  
15 point of view, there is --

16 MR. CHOLETTE: Is that neighbor the owner of  
17 that house?

18 MS. SCHWARTZ: Yes.

19 MR. SCHAAF: I don't --

20 MR. MALBONE: Yes.

21 MS. CORRADO: I have a question: If part of  
22 the intent of putting the patio furniture out is to  
23 make a pretty clear suggestion that they should stay in  
24 that area and not cross into Mr. Caiazza's yard, would  
25 you be open to including signage that indicates private

1  
2 property next door and signage that asked patrons to  
3 stay within that area?

4 MR. MALBONE: Absolutely, yes.

5 MR. MENDLER: What -- we're basically willing  
6 to do whatever he would like us to do. To make it as  
7 good for him as we possibly can is our intention. We  
8 want to be good neighbors. That's our goal. I live  
9 here.

10 MS. SCHWARTZ: How much space do you have on  
11 the sidewalk in front of - for lack of a better word -  
12 the french doors, you know, as you're coming out  
13 towards Elmwood?

14 There is a sizable sidewalk there.

15 How much space is there and how many tables  
16 do you think will be put there, instead of taking out  
17 of the front lawn and the beautiful trees?

18 MR. MALBONE: We're not allowed to have any  
19 outdoor seating in that space.

20 There were tables out there and we were asked  
21 to move them.

22 MR. CHOLETTE: I don't think that's Judy  
23 question. I think Judy's question is: If you -  
24 instead of this proposal - came in with a much scaled  
25 back proposal saying what we want is room to put two or

1  
2 three tables out there on the sidewalk; would that be  
3 possible?

4 I know it's not what you want, but would that  
5 be possible?

6 MR. MALBONE: We would like to get the  
7 largest patio as possible, obviously.

8 MR. MENDLER: Yeah, it is possible. To  
9 answer your question, it is possible. No question.  
10 And it would be better than nothing for sure. At least  
11 our customers could have that, you know, and that would  
12 be good too.

13 MR. GOLDMAN: In the early days, when you  
14 first opened up and there were tables and chairs out  
15 there, how many were there?

16 MR. MENDLER: I don't know exactly, but I  
17 could tell you --

18 MR. MALBONE: More than two or less than --

19 MR. MENDLER: Oh, yeah. Probably six, I  
20 would say total tables. It was nice. It was good.  
21 That's why people are asking now, because originally  
22 when we first opened we did have a few out there. And  
23 we were told clearly we were not allowed to have them.  
24 So we took them right out. We're trying to play by the  
25 rules. We really are. And, you know, so we brought

1  
2 them in.

3 You know it's seventy-five degrees out and  
4 people are asking for them. They're sitting on the  
5 curb, which we don't want. We don't want that because  
6 cars are pulling right up, you know what I'm saying?

7 Cars are pulling right up to the curb and yet  
8 people are sitting, lined on the curb. So that's why  
9 we need something out there, just for the safety too of  
10 the customers that are coming. They're from all the  
11 businesses.

12 MS. SCHWARTZ: Rick, why were they called on  
13 having the tables out there?

14 MR. DiSTEFANO: Yes, they were in violation  
15 because they did not have approval for outdoor dining  
16 and they had to take them in.

17 MR. CHOLETTE: Okay. Anything else?

18 Fine. Thank you very much.

19 MR. MALBONE: Thank you guys. Have a nice  
20 night.

21 MR. CHOLETTE: Is there anyone in the  
22 audience that would like to speak with regard to this  
23 application?

24 There being none this part of the public  
25 hearing is closed.

1  
2 6A-02-14 Application of Christopher Costanza,  
3 architect, and The Harley School, owner of property  
4 located at 1981 Clover Street, for 1) an Area Variance  
5 from Section 203-2.1B(4) to allow a horticultural  
6 building to be 1,144 sf in size in lieu of the maximum  
7 336 sf allowed by code; and 2) an Area Variance from  
8 Section 203-2.1C(2)(a) to allow said horticultural  
9 building to be 54 ft. from a lot line in lieu of the  
10 minimum 100 ft. required by code. All as described on  
11 application and plans on file.

12 MS. BAKER LEIT: Rick, I'm just going to step  
13 out because I just got onto the Harley Board of  
14 Trustees.

15 MR. DiSTEFANO: Okay. Thank you.

16 MR. COSTANZA: Hello. My name is Chris  
17 Costanza. I'm an architect at 9x30 Design. Joining me  
18 tonight is Ward Ghory, Head of School, and Chris  
19 Hartman, who is faculty in charge of the agricultural  
20 curriculum at the school.

21 The program that we're talking about is a  
22 hoop house that is eleven hundred square feet and the  
23 picture is right here(indicating). It's a building  
24 that is associated with the school's agricultural  
25 curriculum and also with the school's food program.

1  
2 One of the goals of the school is to provide  
3 one hundred percent of the leafy greens in the  
4 cafeteria from their own gardens. The school just  
5 recently completed the Harley Commons that has a large  
6 greenhouse. And in the greenhouse space they're  
7 experimenting with vertical green walls to grow  
8 everything from basil and tomatoes and sugar snap peas.  
9 And the idea is to between the wintertime in the  
10 greenhouse and the springtime in the hoop house and the  
11 garden in the summer is to produce one hundred percent  
12 of the leafy greens for the cafeteria. There are five  
13 hundred students at the school. And, you know, the  
14 amount of the minimal size that they need to produce an  
15 adequate quantity of leafy greens and vegetables that  
16 would actually help offset the product that they have  
17 to purchase offsite, the eleven hundred square feet is  
18 not as big as they would probably want it, but it's a  
19 good size to get them close to where they need to be.

20 The two variances that we're asking for, one  
21 of them for the location of the greenhouse or the hoop  
22 house. The hoop house will be placed on a LRA  
23 district, a Residential A zoning district. A hoop  
24 house type structure is allowed to be five feet from  
25 the property line, but because the school is a special

1  
2 permitted conditional use inside the residential  
3 district then it kicks up to some more strict codes, in  
4 which case the hoop house would have to be a hundred  
5 feet from the property line.

6 The property line in question is - actually  
7 the closest property line is an abandoned railroad  
8 line, which I believe is a thirty/forty foot  
9 right-of-way. That could be seen on this picture  
10 here(indicating). You can see part of the tracks where  
11 the railroad used to be. So with the right-of-way with  
12 the railroad, the next closest property is a  
13 commercially zoned district. And that commercially  
14 zoned district are these office buildings  
15 here(indicating). The part of that commercial district  
16 that is closest to the railroad right-of-way is a road  
17 and beyond that is a parking lot. So the hoop house  
18 itself - the actual building - is almost two hundred  
19 feet or a hundred and fifty feet away from the next  
20 closest building, which is an office commercial use  
21 building.

22 The code is intended for the hundred feet to  
23 protect residential zoned property. Because the  
24 adjacent property that this is close to is not a  
25 residential zoned property, that is why we are asking

1  
2 for you to accept our plea for the variance for the  
3 fifty-four foot of distance between the corner of the  
4 hoop house and Harley's property line.

5 The second variance is for the square footage  
6 for the hoop house itself.

7 And the hoop house - the Harley's program for  
8 growing vegetables on site has just grown over the  
9 years. I think, you know, it started out as a very  
10 small program. Chris can probably speak more to how  
11 fast it has grown. But the kids and staff - there's  
12 been a real interest in learning how to take things  
13 from seeds to harvest. And it is something that the  
14 entire school is a part of, all the way up from the  
15 nursery classes up through upper school. As the  
16 program grew a little bit every year the garden would  
17 get a little bit bigger and now they have a greenhouse.  
18 And the hoop house would be a little bit bigger, you  
19 know, and become a seasonal and a more permanent  
20 structure to where it is today.

21 At some point it grew so fast and it was so  
22 popular, you know, that it was overlooked that there  
23 needed to be a permit to make the structure a legal  
24 structure. The code for residential districts says  
25 that an agricultural building can be a maximum of three

1  
2 hundred and thirty-six square feet. I'm not sure where  
3 that number came from. It seems kind of arbitrary to  
4 me, but I assume the intent of the code was to limit  
5 quarter-cultural buildings to something that is  
6 reasonable and is an appropriate scale with the typical  
7 residential lot. Now, most residential lots in the LRA  
8 districts are about a quarter to a half an acre. The  
9 Harley site is twenty-three acres. So the Harley site  
10 is approximately seventy-five times larger than the  
11 average residential lot and this hoop house is three  
12 times the size of what is allowed in the residential  
13 zoning.

14 Because of that we would like to have the  
15 variance for, the size because the eleven hundred  
16 square feet is a good enough size to actually produce a  
17 significant amount of seedlings that can then be  
18 transferred over to the adjacent garden and used in the  
19 cafeteria.

20 Are there any questions?

21 MR. CHOLETTE: Are there any questions?

22 MR. DiSTEFANO: Could you explain why - I  
23 understand your reasoning behind the right-of-way and  
24 then the office complex, but why is that space for the  
25 hoop house the best place for the hoop house?

1  
2 MR. COSTANZA: The location for the hoop  
3 house is in between two different existing structures  
4 already or garden structures that are being worked on.  
5 One of them is the existing garden. So part of the  
6 idea of the hoop house - that's where you start their  
7 seeds and once they get to be a certain size before  
8 maturity they get transplanted outdoors to then grow in  
9 the full sunlight.

10 The garden is pretty significant. I don't  
11 know what the exact size of it is, but it's -- do you  
12 have an idea?

13 UNKNOWN: A little over a quarter acre.

14 MR. COSTANZA: So it's a quarter acre garden  
15 and you want to have some sort of proximity to the  
16 garden. So the hoop house is situated within that  
17 garden site.

18 On the back side of the garden there is a  
19 stone wall, a dry-stack stone wall. And part of what  
20 the students are doing is they're taking the reclaimed  
21 stone and either stacking them into a wall along the  
22 property line in the back there or into terrace  
23 agricultural zones that could be grown for potatoes or  
24 plants. I have a picture here somewhere. You can see  
25 here(indicating)kids are actually building with the

1  
2 rock and the stones. They're building these raised-up  
3 terraces for growing different types of plants and  
4 flowers. Here's another picture(indicating)I'm showing  
5 close up of the stacked walk.

6 So this area that's right behind the garden  
7 and in between the garden and railroad right-of-way,  
8 that's the area where this stone wall. And it's almost  
9 like an outdoor laboratory for the students to try out  
10 different methods of composting, different mulching,  
11 different types of structures with dry-stacked stones.  
12 It's something that's been evolving over the years.  
13 It's been growing a little bit each year with the  
14 stones. Last year the stones were pretty neat in a  
15 pile and when the commons was complete the contractor  
16 was using some of the stones to go around the  
17 foundation of the building. And at that time --

18 MR. CHOLETTE: I'm going to interupt you.  
19 Although this may be very interesting, I think you've  
20 more than answered Rick's original question.

21 MR. COSTANZA: Okay.

22 DR. LAWRENCE: If there's excess produce do  
23 you plan to donate it or that's not likely?

24 MR. COSTANZA: I don't think it's likely.

25 UNKNOWN: We actually had a program --

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MR. CHOLETTE: We need your name.

MR. HARTMAN: My name is Chris Hartman,  
faculty at the Harley School.

And actually part of the service project  
that's been associated with our salad project as an  
attempt to grow all of our own greens, the fourth  
graders pick a certain percentage each year to weigh  
out as part of our harvest and actually donate it to  
the Brighton Soup Cupboard. That's been - actually as  
aspirational as our goals are we've struggled quite a  
bit to get the salad growing and to have that be much  
of a donation. But we've made a few different  
deliveries over there and we would hope to continue  
that.

DR. LAWRENCE: So it's not likely we'll see a  
stand, you know, stop by and --

MR. HARTMAN: Sadly, no. It turns out in our  
quarter acre garden we can do consistently about seven  
days of lunch before we've eaten through the whole  
thing and need to be replanting. So we've got a lot of  
work ahead of us still.

DR. LAWRENCE: It sounds like a fun project.

MR. CHOLETTE: Are there other questions?

Fine. Thank you very much.

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MR. HARTMAN: Thank you.

MR. CHOLETTE: Is there anyone in the audience that would like to speak with regard to this application?

There being none this part of the public hearing is closed.

6A-03-14 Application of Paula Grassl, owner of property located at 475 Newton Drive, for an Area Variance from Section 205-2 to allow a porch roof to extend 4 ft. into the existing 14.6 ft. front setback where a 40 ft. front setback is required by code. All as described on application and plans on file.

UNKNOWN: Good evening. I have a porch on the --

MR. DiSTEFANO: Can you just state your name for --

MS. GRASSL: Paula Grassl, 475 Newton Drive.

I have a porch in my instrument survey that's really just a slab of concrete in the front of my house and it's deteriorated - it's dilapidated, so it needs to be replaced.

So in replacing it my thoughts were a to add a roof over the top of it so that when guests come over they're covered from the elements of the winter and

1  
2 rain and so on and so forth.

3 So I don't know what else you need from me  
4 because I'm just a simple kind of resident and I didn't  
5 realize I would have to stand here before you. But I'm  
6 more than happy to answer any questions you may have.

7 DR. LAWRENCE: It's not going to be enclosed,  
8 it's simply a --

9 MS. GRASSL: It's a roof, yup.

10 DR. LAWRENCE: And are there other similar  
11 type structures in the neighborhood?

12 MS. GRASSL: Yeah, there are definitely  
13 similar structures. It's a very simple roof. It's in  
14 keeping with the neighborhood structures. I think in  
15 the application that I filled out I referenced a few  
16 properties that have a very similar roof. Nothing  
17 fancy, just a basic A frame with square pillars.

18 DR. LAWRENCE: I think if you look down the  
19 site line doesn't it still consist of the site line of  
20 the other homes in that area?

21 MS. GRASSL: I'm not exactly sure what you're  
22 asking me.

23 DR. LAWRENCE: You know the line with this  
24 slight addition you wouldn't be jetting out in --

25 MS. GRASSL: No. I mean, I already have iron

1  
2 rails within - on the porch. So it's basically those  
3 iron rails are going to go - two pillars on the front  
4 of the concrete. It's going to come up and it's going  
5 to be four foot out and keeping with the those rails  
6 that are currently there. And --

7 MR. CHOLETTE: How far out do you presently  
8 come including the step?

9 MS. GRASSL: It's four foot.

10 MR. CHOLETTE: So you're not really coming  
11 any closer than the --

12 MS. GRASSL: The porch - from the concrete,  
13 I'm not coming out any further from that.

14 DR. LAWRENCE: Is this a similar style roof  
15 to what's there now?

16 MS. GRASSL: Yeah. I don't know if you have  
17 the architectural sketches there?

18 MR. MIETZ: I think what he's asking is are  
19 the roofing materials going to be the same as the other  
20 one?

21 MS. GRASSL: Yes. I went to the  
22 Architectural Review Board and that's one of the  
23 stipulations of their approving of it, that the roof  
24 material be consistent with the current roof material,  
25 which that is going to need replacement.

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MR. MIETZ: Okay.

MS. CORRADO: And then the slab that's being replaced is going to be replaced in exactly the same footprint?

MS. GRASSL: Yeah. It's actually going to come in a little bit further because there were no footings on the current slab and it's actually been moving itself from the house. So they're going to put in some footings and keep it a little more solid and bring it in, I would say, probably two inches from where it currently is.

MS. CORRADO: Thank you.

MS. GRASSL: You're welcome.

MR. CHOLETTE: Any questions?

Fine. Thank you.

MS. GRASSL: Thank you. I appreciate your time.

MR. CHOLETTE: Is there anyone in the audience that would like to speak with regard to this application?

There being none this part of the public hearing is closed.

6A-04-14 Application of Charles Hetterich and Kathryn Smith-Hetterich, owners of property located at 241

1  
2 Mayflower Drive, for an Area Variance from Section  
3 203-2.1B(2) and 203-9A(4) to allow a pergola structure  
4 to be 2 ft. from a lot line in lieu of the minimum 5  
5 ft. required by code. All as described on application  
6 and plans on file.

7 MR. CHOLETTE: Good evening.

8 MS. SMITH-HETTERICH: Hi. I'm Kathryn  
9 Smith-Hetterich, 241 Mayflower Drive.

10 We're a corner lot. So it's actually the  
11 side yard that we're talking officially, but we  
12 consider it our backyard. It's a thirty foot by about  
13 sixteen foot, so it's a narrow area. We're going to be  
14 putting in a loose stone patio and we wanted to add a  
15 pergola.

16 There is an existing fence and we wanted the  
17 pergola to be up against the fence and then coming  
18 towards the house. Because that's a narrow area of  
19 about sixteen feet, if we have to come in five feet it  
20 would just leave it kind of in an awkward space between  
21 the pergola and the fence and it would be close to the  
22 house. So that would look funny and not give us much  
23 clearance on their side.

24 DR. LAWRENCE: So although it will go  
25 slightly above the fence, aren't you going to mitigate

1  
2 that by putting plantings - vines or something - so  
3 that you would hardly notice it?

4 MS. SMITH-HETTERICH: Yes. It would only be  
5 about eight feet, so, right, the idea is we would have  
6 some flowering vines or something draped over that.

7 MR. CHOLETTE: So you would have vines of  
8 some sort on --

9 MS. SMITH-HETTERICH: Yes.

10 MR. CHOLETTE: -- the pergola structure  
11 itself?

12 MS. SMITH-HETTERICH: Right.

13 MR. CHOLETTE: Although I went to your  
14 property, I don't recall the answer to this question.

15 The side of your house and then where the  
16 patio is going to extend to your neighbor's driveway,  
17 is that in line with the front of your neighbor's  
18 property on Terry Town or is his house set back a  
19 little bit?

20 MS. SMITH-HETTERICH: It's -- the pergola  
21 will not project beyond the front of the neighbor's  
22 house. It's the --

23 MR. CHOLETTE: No, I know it won't project  
24 past your house, but --

25 MS. SMITH-HETTERICH: No, not beyond the

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front of the neighbor's.

MR. CHOLETTE: So the front of the neighbor's house is in line with the side of your house?

MS. SMITH-HETTERICH: I'm trying to think how to answer this. So we - her driveway is on the other side of my fence. And her driveway goes along the side of her house.

MR. CHOLETTE: Right. I understand that.

MS. SMITH-HETTERICH: Yeah.

MR. CHOLETTE: When you look at the front of her house --

MS. SMITH-HETTERICH: Right.

MR. CHOLETTE: -- if you were to extend that to where your property is --

MS. SMITH-HETTERICH: Right.

MR. CHOLETTE: -- is that in line with the side of your house, or is it set back, or set forward?

MS. SMITH-HETTERICH: Our house is forward.

MR. CHOLETTE: Your house is a little forward than that?

MS. SMITH-HETTERICH: Yeah, but the pergola would not be forward of the --

MR. CHOLETTE: It wouldn't be any more forward than it is?

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MS. SMITH-HETTERICH: It wouldn't be forward.  
MR. DiSTEFANO: Per the code requirement, but because this is a side yard by definition and pergolas are not permitted in side yards accept if you're a corner lot. And if you are a corner lot you can put the pergola in the side or rear yard, provided the pergola does not extend on the front edge of the neighboring property. So she understands that has to be backed to that edge so that it's legal.

If she wants to move it forward, then she would be asking for that pergola moved forward beyond the front edge of the neighboring property.

DR. LAWRENCE: I spoke to your husband, but I thought I would ask you the question for the hearing: Did you speak to the neighbor about how they feel about this?

MS. SMITH-HETTERICH: We did and there is a letter in our application for support from the neighbor.

MR. CHOLETTE: Is the fence that you have that's running along their driveway --

MS. SMITH-HETTERICH: Uhm-hum.

MR. CHOLETTE: -- is that right on the property line?

1  
2 MS. SMITH-HETTERICH: Yes. It's well -- I'm  
3 sorry, it's not. It's about a foot in because there is  
4 a strip of grass along the other side of the fence  
5 between the fence and the driveway that we are  
6 responsible for. So -- we know that. So it's about a  
7 foot.

8 DR. LAWRENCE: And visually if you made it to  
9 code it's not going to have any change or impact on the  
10 neighbor other than it will give you a smaller pergola.  
11 So you would want something that's a little larger?

12 MS. SMITH-HETTERICH: Yes.

13 MR. DiSTEFANO: Actually, just for the  
14 record, it does measure according to the survey about  
15 1.8 feet from the fence - 1.8 feet from that  
16 neighboring property line.

17 MR. CHOLETTE: And so the edge of the pergola  
18 will now go right up to that fence, or displaced by  
19 about a foot, or what's that dimension?

20 MS. SMITH-HETTERICH: Yeah, it would be in  
21 about - and I'm not sure exactly -- it won't be tied to  
22 the fence. It will be independent of the fence. So it  
23 will be some distance in front of it, but not a lot. I  
24 would say a foot or less.

25 MR. CHOLETTE: And what's going to be holding

1  
2 up the structure?

3 I mean, pergolas can be lots of different  
4 things, so what are the pillars or the posts or  
5 whatever this --

6 MS. SMITH-HETTERICH: They would be  
7 pressure-treated lumber. I think he listed them as  
8 2x10 posts. The estimate that I have --

9 MR. CHOLETTE: Probably 4x4s up and 2x10s  
10 running.

11 MR. DiSTEFANO: Along the length wise - yeah,  
12 the cross ways. You set them on that so you've got a -  
13 and that provides the shade.

14 MR. CHOLETTE: I think we have the answer.

15 MS. SMITH-HETTERICH: Yeah.

16 MR. CHOLETTE: Is there a cross beam that  
17 comes parallel to the street also?

18 MS. SMITH-HETTERICH: Yes.

19 MR. CHOLETTE: See, I'm having trouble  
20 visualizing what this is actually going to look like  
21 when it's there. And to me this is quite important  
22 because in one way of looking at it it might look like  
23 it's not very visible at all, and as Dave says you're  
24 going to put the vines on it. But it's also possible  
25 that this is going to look like an extension of your

1  
2 house coming almost over to the property line. And so  
3 I'm trying to visualize - I see the fence and then, you  
4 know, as I look at it from the street what am I going  
5 to see? Am I going to see, you know, two 2x4s running  
6 at each corner? Is there going to be one in the  
7 center? Is it going to be a 2x10 running parallel to  
8 Terry Town?

9 MS. SMITH-HETTERICH: Yeah.

10 MR. CHOLETTE: Can you help me out here?

11 MS. SMITH-HETTERICH: It will be four posts.  
12 There will not a be a center. Four posts supporting  
13 it. The top - the rafters - are 2x8 and they are - I  
14 can't remember what he calls it, but they are curved so  
15 it has some style to it. They - I want to say fluty,  
16 but that's not what it's called, but they do kind of  
17 curve them. And then there are -- so you would see  
18 that sort of from the street - you would see that eight  
19 inch beam, and there's a series of those going across.  
20 And then there are also supporting rafters going to the  
21 other direction.

22 I should have brought you a picture.

23 MR. CHOLETTE: Okay. Thank you.

24 MS. SMITH-HETTERICH: Anything else?

25 MR. CHOLETTE: Any other questions?

1  
2 Okay. Fine. Thank you very much.

3 MS. SMITH-HETTERICH: Thank you very much for  
4 your time. I appreciate the site visits.

5 MR. CHOLETTE: Is there anyone in the  
6 audience who would like to speak with regard to this  
7 application?

8 There being none this part of public hearing  
9 is closed.

10 6A-05-14 Application of Dinesh Chawla, owner of  
11 property located at 1988 South Clinton Avenue for a Use  
12 Variance from Section 203-44 to allow a hair salon in a  
13 BE-1 Office District where not allowed by code. All as  
14 described on application and plans on file.

15 MR. GUPTA: I'm Brijen Gupta, representing  
16 the owner of the property.

17 This is a unit in a multi-unit office  
18 complex. It has been vacant for about eleven years.  
19 We have had great difficulty finding a tenant for it.  
20 And we are very pleased that Kim has decided to sign a  
21 lease with us. We are here for a use variance from  
22 office space - professional office space for a hair  
23 salon.

24 A few years ago an almost nextdoor neighbor  
25 having the same difficulty received a similar variance

1  
2 to start a facial salon. So it's not out of the  
3 ordinary.

4 MR. CHOLETTE: Is that business still there?

5 MR. GUPTA: That business is still there.

6 DR. LAWRENCE: What would the hours of this  
7 business be?

8 MR. GUPTA: Say again -- what are the hours  
9 of the business going to be?

10 This is Kim, the owner.

11 MR. CHOLETTE: Kim, can we have your name?

12 MS. TRAN: Kim Tran, T-r-a-n.

13 The hours will be from nine to seven.

14 DR. LAWRENCE: What days of the week will  
15 this be?

16 MS. TRAN: We are open seven days a week?

17 MR. GOLDMAN: Is it by appointment only or  
18 will you accept walk-ins?

19 MS. TRAN: I serve for our Brighton community  
20 for fourteen years, so my clients -- I have two hair  
21 stylists at one time. At one time we just serve two  
22 clients. So a lot of the work is by appointment.

23 MR. GOLDMAN: By appointment only?

24 MS. TRAN: Yeah.

25 MR. GOLDMAN: And according to the floor

1  
2 plan, you only have two positions?

3 MS. TRAN: Yeah, just two, myself and one  
4 more hair stylist. So my clients know us very well, so  
5 if they stop by and see I'm busy they go and do their  
6 thing in the plaza. So they come back. And I work by  
7 appointment.

8 MR. GOLDMAN: Thank you.

9 MR. GUPTA: She is moving approximately a  
10 hundred and fifty feet from the plaza to this property.

11 MS. CORRADO: I have a question about  
12 products used and ventilation. Now, some hair  
13 processes can be full of fumes.

14 Will the ventilation in this space be  
15 adequate so that the other tenants in the building are  
16 not affected by that?

17 MR. GUPTA: You're talking about parking?

18 MS. CORRADO: No, the hair processes like  
19 perms and hair colors --

20 MR. MIETZ: The chemicals.

21 MS. CORRADO: -- chemical smells could be  
22 strong.

23 Will the ventilation --

24 MR. GUPTA: I don't think so because the  
25 business is regulated by law and she had a proper

1  
2 license for whatever she uses.

3 And it's difficult to give an opinion on --

4 MS. CORRADO: What I'm asking --

5 DR. LAWRENCE: In your existing place?

6 MS. TRAN: I am a cosmetologist, so I follow  
7 strictly MSD and OSHA guidelines in fourteen years.

8 MS. CORRADO: And I trust that you do  
9 certainly.

10 What I'm asking is if ventilation in this  
11 site is adequate to ensure that the other tenants in  
12 the building will not have any of the smells from the  
13 properly used chemicals impacting their businesses?

14 MS. TRAN: I see that they have the  
15 ventilation, yeah. And by the thing that I just do one  
16 or two at the time, so I don't think it will create  
17 anything for about that. And I see they have  
18 ventilation.

19 MS. CORRADO: And in this location is the  
20 heating and cooling system integrated to the other  
21 units or is it self-contained?

22 MR. GUPTA: Self-contained?

23 MS. CORRADO: Thank you.

24 MR. GOLDMAN: I have a question about  
25 signage.

1  
2           The signage of this new location or new use  
3 will be consistent with the rest of the units there,  
4 right?

5           MS. TRAN: Yeah, it will be for whatever the  
6 landlord will allow me.

7           MR. GOLDMAN: If I drive along I'll see the  
8 overhead sign and some kind of words on the window,  
9 right?

10          MS. TRAN: Yeah, exactly the same way the  
11 landlord and the same building will allow me to do.

12          MR. GOLDMAN: Right. Thank you.

13          MR. CHOLETTE: I think in your application  
14 you mentioned this, I'm not sure you if you did  
15 verbally, I'm going to ask you again: What do you feel  
16 is unique about this particular business foot space  
17 relative to the other spaces there or elsewhere in  
18 Brighton that makes it so difficult to lease?

19          MR. GUPTA: Well, it is at the lower level.  
20 It is not visible from Clinton Avenue. The size is  
21 very small - it's only a thousand square feet - and  
22 most of the doctors and dentists and attorneys that we  
23 have talked to want more than the thousand square feet.  
24 It is at the end of the southeast corner of the plaza,  
25 almost opposite the Dollar General. So it is not very

1  
2 attractive to high-demanding professionals.

3 MR. CHOLETTE: Right.

4 MR. GUPTA: So that has been a problem. It  
5 has not only been a problem with Dr. Chawla's property,  
6 but other properties also. And they had to after  
7 absorbing two or three years of vacancy they had to  
8 come to you and petition you for variance. There are  
9 other units lower level, again, facing Tops which are  
10 vacant or are likely to be vacant and they have had  
11 difficulty finding a proper tenant. And so --

12 MR. CHOLETTE: Okay. So it's sort of you've  
13 got the size problem and also the fact that because of  
14 the location --

15 MR. GUPTA: That is correct.

16 MR. CHOLETTE: -- the interior is facing out  
17 to the plaza itself.

18 MR. GUPTA: Exactly.

19 MR. CHOLETTE: You're saying it would be more  
20 suitable to have something that is similar to what's in  
21 the plaza rather than what's similar to what's in the  
22 upstairs units that face Clinton Avenue?

23 MR. GUPTA: Exactly.

24 MR. CHOLETTE: Okay. Thank you.

25 MR. GUPTA: Thank you.

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MR. CHOLETTE: Any other questions?

The other tenants - the medical tenants - did they have difficulty with being leased for this store?

MR. GUPTA: No. I have notified -- I was not aware of that. But there are - Kim has had arranged some people who have signed petitions.

MR. CHOLETTE: And these people - these signatures, the addresses are all over - from everywhere.

Who are these people that signed this?

MR. PULOSI: My name is Michael Pulosi. I'm an attorney for Kim Tran.

And the addresses are of people who either have businesses who are there - although they may live in Pittsford or Henrietta or whatever - or they work in the vicinity.

MR. CHOLETTE: So you would say these are the most relevant people --

MR. PULOSI: Yes, I would.

MR. CHOLETTE: -- to answer the question that I posed?

MR. PULOSI: Yes.

MR. CHOLETTE: Thank you.

MR. GOLDMAN: So I note here, just thumbing

1  
2 through here, that one of the signees is Aja Noodle.  
3 Aja Noodle isn't close by.

4 MR. PULOSI: I'm sorry?

5 MR. GOLDMAN: I just note. Forgive me.

6 MR. CHOLETTE: Do you want to ask as a  
7 question or are you letting it go?

8 MR. GOLDMAN: There's nothing to ask. And  
9 the issue is as you correctly pointed out these are  
10 from all over the place. The explanation is that these  
11 people have some connection directly with the plaza.

12 My position is that just looking at one of  
13 those, that person does not have a direct connection  
14 with the plaza and I thought that your statement may  
15 have not been a direct answer to what I just saw there  
16 the one minute that I looked at it. As our chairman  
17 has pointed out, the addresses are from all over. Your  
18 explanation was even though they live someplace else --

19 MR. PULOSI: Yes, that's what we were told by  
20 the people that went around soliciting the petitions --

21 MR. GOLDMAN: Thank you.

22 MR. PULOSI: -- that they had contact. We  
23 have relied on that.

24 DR. LAWRENCE: By the signatories of the  
25 adjacent properties.

1  
2 MS. TRAN: This is eighty percent from the  
3 residents around in the Brighton and twenty of them -  
4 twenty percent of them work in the Brighton Town. And  
5 they have tried to give the support that I obliged to  
6 move over official beauty. So they try to give support  
7 that they love to go to me - to get the variance.

8 MR. CHOLETTE: Okay. I think we understand.

9 So let me go back and try to ask this again:  
10 This whole complex, is this owned by somebody -  
11 Buckingham Properties or who owns this whole thing with  
12 all the medical buildings and all of these units?

13 MR. GUPTA: There are I believe one, two,  
14 three, four owners. There are fifteen units upstairs  
15 and fifteen units downstairs. There is an  
16 ophthalmologist, there is dentists mostly, there is a  
17 podiatrist. They are upstairs.

18 MR. CHOLETTE: Okay. Given the fact that  
19 there are four different owners, you are one of these  
20 four?

21 MR. GUPTA: That is correct.

22 MR. CHOLETTE: The other three owners, have  
23 you had conversations with them as to what your plans  
24 are for this particular unit in your part of this  
25 building complex?

1  
2 MR. GUPTA: Yes. I personally did not, but  
3 Dr. Chawla did. I personally had conversations with  
4 Dr. Lamar, who owns a large number of units and did he  
5 not see any objection to it. He himself has seven  
6 hundred square foot area of it available for the last  
7 two years - last four years and has been unsuccessful  
8 renting it out to a professional.

9 MR. CHOLETTE: Okay.

10 MR. GUPTA: There is also Dr.  
11 Camella(phenetic) downstairs. He has vacancies there.  
12 Dr. Chawla has a unit which has fallen vacant there.  
13 And we are soliciting applications from doctors and  
14 dentists, but so far no luck about it.

15 MR. DiSTEFANO: Are all vacancies on the  
16 lower level?

17 MR. GUPTA: Huh?

18 MR. DiSTEFANO: Are all the vacancies on the  
19 lower level or are there vacancies on the --

20 MR. GUPTA: All the vacancies are on the  
21 lower level except one which fell vacant a couple of  
22 months ago.

23 MR. DiSTEFANO: So that hasn't really been  
24 marketed - the upstairs hasn't been marketed heavily at  
25 this point in time?

1  
2 MR. GUPTA: That is correct. That was two  
3 dentists upstairs and downstairs there.

4 MR. DiSTEFANO: Oh, so they had both the up  
5 and down?

6 MR. GUPTA: Exactly.

7 MR. DiSTEFANO: One practice that had an  
8 upstairs/downstairs?

9 MR. GUPTA: Exactly.

10 MR. DiSTEFANO: That whole unit became  
11 vacant, upstairs and downstairs?

12 MR. GUPTA: That is correct, exactly.

13 MR. CHOLETTE: Rick, would all of the owners  
14 of this building have been notified about this variance  
15 request?

16 MR. DiSTEFANO: I know I notified a number of  
17 units in this particular building. It's basically  
18 split into two buildings. I think I notified everybody  
19 within this building. Now, whether all the owners got  
20 notified about this - they should have gotten notified  
21 if they had a unit in this building. If they all only  
22 had units in the northern building they wouldn't have  
23 been notified.

24 MR. CHOLETTE: All right. We will give you a  
25 chance. You want to speak with regard to this, I'm

1  
2 sure. We'll give you an opportunity when we're done  
3 here.

4 Are there any other questions for the  
5 applicant?

6 Thank you.

7 Is there anyone in the audience that would  
8 like to speak with regard to this application?

9 MR. CHAWLA: My name is Dinesh Chawla.

10 You had asked a question about the neighbors  
11 being informed. The neighbor is Dr.  
12 Karminiak(phenetic) and he himself made reference to it  
13 years ago. So he had asked for a variance and was  
14 granted and permission to have that business. So he  
15 himself is an owner and is aware of this.

16 MR. CHOLETTE: Okay. Fine. Thank you.

17 Is there anyone else that would like to speak  
18 with regard to this application?

19 MS. CROXTON: My name is Carla Croxton.

20 I'm a customer of Kim's. She has a very  
21 cheerful and helpful personality. She's happy to be in  
22 America where she can fulfill her dream to work hard  
23 and make a life for herself and a her children. Kim is  
24 loved by all of her customers. She offers a service at  
25 a reasonable price which is particularly valuable to

1  
2 those on a fixed income. They have come to rely on  
3 her.

4 Kim is a role model not just for the aspiring  
5 immigrant, she's an example to all of us because of her  
6 most honorable character. She's an asset to our  
7 community. She doesn't just serve her customers, she's  
8 an employer of at least two workers as we well.

9 Kim must find a way to continue her practice  
10 as of July 1<sup>st</sup> or her regular customers will have to  
11 go elsewhere. This will be a devastating blow that  
12 would be difficult to overcome. Even if she were to  
13 find a reasonable solution, recapturing her loyal  
14 customers would be difficult.

15 I ask that the Town of Brighton do all that  
16 they can to support and encourage such a remarkable  
17 woman and an outstanding member of our community and  
18 loyal citizen of our country.

19 DR. LAWRENCE: Thank you very much.

20 MR. CHOLETTE: Thank you.

21 MR. KOST: Hi. My name is Frank Kost. I  
22 live at 100 Parkwood Avenue in Brighton and have lived  
23 there since 1993.

24 Shortly after moving to Brighton from  
25 Henrietta I looked for a place to have my hair cut and

1  
2 I found what was then called Fantastic Sam's and  
3 started going there. Kim then became the owner of that  
4 store - of that franchise - about fourteen years ago.  
5 So when she became the owner she became the owner of  
6 the store that I went to. So I was going there just  
7 because of proximity.

8 And so over those years I got to know Kim. I  
9 got to know about her - a lot of conversation and  
10 everything and started to really be amazed at what she  
11 had been through in her life. The fact that she came  
12 from Vietnam originally and was a boat person, ended up  
13 in Norway for twenty years. But she always wanted to  
14 come to the United States. She came here and then  
15 built this businesses.

16 And I was so interested and amazed at her  
17 story that I did a book -- I'm a professor at RIT and I  
18 do photography and I did a book about Kim's business  
19 called Hair and Us. And I thought you might appreciate  
20 seeing it.

21 But I think from my by perspective, I bicycle  
22 or walk over to Kim's place. It's a local gathering  
23 place. It's a place where people - everybody really  
24 knows everybody like an old barber shop that you  
25 remember from the movies or whatever. And now that she

1  
2 is not able to stay in her current location at Tops  
3 Plaza this opportunity came up. So I'm here just to  
4 say she's a wonderful person and a wonderful asset to  
5 the community and we want Kim to stay. And if she has  
6 to move far away from where she is, the fact is that  
7 locality, that proximity to where we all go - which is  
8 Tops Plaza - is going to be lost.

9 So I brought this just so that you could look  
10 at it and see. Her story is in here. I'm not pitching  
11 - I'm not trying to sell a book, but I thought you  
12 would appreciate it. And also here's a book about -  
13 we're right here(indicating) in this book. This is a  
14 book about Brighton and the surrounding areas around  
15 our house. So, you know, my interest is in the local  
16 community and the health of the local community and I  
17 see Kim as a pillar of our local culture.

18 So thank you.

19 DR. LAWRENCE: Thank you.

20 It sounds like we're lucky to have you.

21 MS. KOST: My name is Patty Kost. I'm  
22 Frank's wife.

23 And Frank always got his hair cut at that  
24 place and finally after several years I started having  
25 my hair cut there. And it's just very, very easy to

1  
2 walk over there or to drive over there. And because  
3 Kim, as Mrs. Croxton said, is a role model. She really  
4 is a very cheerful person. And I really for one do not  
5 want to lose my hair stylist, especially because it's  
6 so reasonable and so reasonably priced and she just  
7 makes me happy. So I hope she is allowed to move into  
8 this place.

9 Thank you.

10 MR. CHOLETTE: Fine. Thank you.

11 MR. KRONENBERG: My name is John Kronenberg.  
12 I reside in Brighton. I'm a real-estate agent. I'm  
13 not Kim's best customer obviously.

14 I just very briefly would like to say that  
15 Kim's life story is really fascinating. She is a  
16 blessing. We have a treasure in Brighton. From  
17 Vietnam horrors as a boat person to become a productive  
18 Brighton business woman, a pillar of the community.  
19 Kim represents what we want all immigrants to become.  
20 She's a role model. If there was a best practices  
21 metric that we could set up for what an immigrant  
22 should be Kim Tran would be it. I urge you to support  
23 this application.

24 Thank you.

25 MR. CHOLETTE: Thank you.

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Any other endorsements out there?

Yes?

MR. PULOSI: One other request, and that would be if the application be granted, that she be allowed to put up temporary signage. And I realize that's supposed to be an additional ad-on to the application --

MR. DiSTEFANO: What the code would allow would be temporary signage in the window, up to fifty percent of the window area, like as a temporary sign until --

MR. PULOSI: No problem.

MR. DiSTEFANO: There's also another process. You can get a temporary banner once you go through the sign review process, which we can talk about in the office.

MR. PULOSI: Thank you.

MR. CHOLETTE: Is there anyone else that would like to make a comment?

Then this part of public hearing is closed.

And thank you for saving this book until the 250th anniversary. It will be extremely interesting.

Thank you all for coming in.

6A-06-14 Application of Scott Ryan, owner of property

1  
2 located at 90 Holloway Road, for an Area Variance from  
3 Section 207-6A(2) to allow an addition to an existing  
4 detached garage be 4 ft. from a lot line in lieu of the  
5 minimum 5 ft. as required by code. All as described on  
6 application and plans on file.

7 MR. RYAN: Good evening. My name is Scott  
8 Ryan. My address is 90 Holloway Road, Rochester.

9 Do I start to speak?

10 MR. CHOLETTE: Yes.

11 MR. RYAN: The reason for the application is  
12 that I'm basically in what was my five year house for  
13 like eighteen years. I continue to gather items and  
14 objects and things of whatnot. So I had decided to  
15 build an extension to the garage.

16 My contractor, who told me that he checked  
17 with Brighton and everything, was all set because it  
18 was attached to the garage that I have now. So I  
19 apologize. I brought this to the town's attention as I  
20 found out from the existing contractor that I have now.  
21 He told me about it. I came to the town. There was  
22 nobody complaining or no violation, just when I found  
23 out I stopped.

24 It's been in a position of not having been  
25 worked on for the exception of cutting the shingles

1  
2 that were hanging over because I couldn't stand it any  
3 longer for a couple of months probably. I'm just  
4 waiting hopefully for the go-ahead.

5 What I'm asking for is the existing garage  
6 that I have right now, which is to code, is five feet  
7 from my property line in the back of it only, and as  
8 the garage continues on with the line of it the zoning  
9 law - whatever the law is, changes to a four feet. So  
10 what I have right here - so when I continue to go to  
11 the very back end of my garage I go from five feet no  
12 problem, to oops, you have to be within five feet,  
13 you're four feet now.

14 So I apologize for not having done this in  
15 the correct order. That's where I'm at right now and  
16 I'm hoping that the Board would see fit to allow me to  
17 keep that and to ask for that variance.

18 DR. LAWRENCE: You have thought - when I  
19 spoke with you, you had thought that your general  
20 contractor had taken care of all this?

21 MR. RYAN: Yeah, I did. I got stories that I  
22 could tell you about the original contractor and the  
23 money that I've lost.

24 DR. LAWRENCE: The exterior wall and the  
25 roofing will be finished so it will really blend in to

1  
2 the garage.

3 The closest neighbor that would be impacted  
4 would be the rear neighbor which is quite a distance  
5 away, correct?

6 MR. RYAN: Correct. And as I looked at the  
7 plans myself this evening there seems to be some very  
8 interesting questions that have been posed from the  
9 Board of different matters.

10 I would note that the only person that would  
11 actually have any interest or concern potentially would  
12 be the person in the back. I asked him and I didn't -  
13 I apologize, I didn't ask him for a signature, but he  
14 said, "Yeah, whatever. I'm fine with that." And  
15 honestly, as I were to imagine and look at it, as you  
16 can see from the plan the only difference is he would  
17 be seeing the back of that instead of the top of my  
18 house. I mean, it's not in any way I think impacting  
19 his view of the beauty of the community.

20 DR. LAWRENCE: Does he have to have anything  
21 special at the rear of the garage because of the  
22 proximity of the lot line?

23 MR. DiSTEFANO: There may be a building code  
24 issue that he would need to address as part of the  
25 building permit review.

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DR. LAWRENCE: So that's where we add --

MR. DiSTEFANO: Yeah, that's basically get all of your necessary permits and part of that permitting process we'll make sure that it's meeting all of the required building codes.

MR. RYAN: And I have that permit already to go, but I have to wait and see if I get this and then I'm going to file that application.

But I forgot to answer the question, it will be painted to match the color of the rest of the garage. My intention is use either plastic siding that will match it or wood, so that it won't detract from the looks of it, and try to match it as close as I can.

MR. CHOLETTE: Okay. Any other questions?

Fine. Thank you very much.

MR. RYAN: Thank you.

MR. CHOLETTE: If there is nobody to comment on this we will close this part of the public hearing and take a very short recess.

\* \* \*

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS  
AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on June  
4th, 2014, COMMENCING AT APPROXIMATELY 7:15 P.M.

June 4th, 2014  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

JOHN CHOLETTE, CHAIRMAN  
CANDICE BAKER LEIT, ESQ.  
MORREY GOLDMAN  
CHRISTINE CORRADO  
JUDY SCHWARTZ  
DENNIS MIETZ  
DR. DAVID LAWRENCE

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

(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:)

Reported by: CHAD L. SMITH, Court Reporter  
EDITH E. FORBES COURT REPORTING SERVICE  
21 Woodcrest Drive  
Batavia, New York 14020

1  
2 APPLICATION 6A-01-14

3 6A-01-14 Application of Buckingham Properties,  
4 agent, and 2600 Elmwood LLC, owner of property located  
5 at 2600 Elmwood Avenue, for 1) an Area Variance from  
6 Section 203-64B(4)(h) to allow a front yard dining area  
7 abut a residential district where not allowed by code;  
8 and 2) an Area Variance from Section 205-7 to allow  
9 impervious coverage to increase from 72.4% to 73% where  
10 a maximum 65 % impervious coverage is allowed by code.  
11 All as described on application and plans on file.

12 Motion made by Mr. Cholette to table  
13 Application 6A-01-14.

14 (Seconded by Ms. Baker Leit.)

15 (Ms. Corrado, yes; Mr. Mietz, yes; Mr.  
16 Cholette, yes; Dr. Lawrence, yes; Ms. Schwartz, yes;  
17 Mr. Goldman, yes; Ms. Baker Leit, yes.)

18 (Upon roll call, motion to table Application  
19 6A-01-14 carries.)  
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2 APPLICATION 6A-02-14

3 6A-02-14 Application of Christopher Costanza,  
4 architect, and The Harley School, owner of property  
5 located at 1981 Clover Street, for 1) an Area Variance  
6 from Section 203-2.1B(4) to allow a horticultural  
7 building to be 1,144 sf in size in lieu of the maximum  
8 336 sf allowed by code; and 2) an Area Variance from  
9 Section 203-2.1C(2)(a) to allow said horticultural  
10 building to be 54 ft. from a lot line in lieu of the  
11 minimum 100 ft. required by code. All as described on  
12 application and plans on file.

13 Motion made by Mr. Cholette to approve  
14 Application 6A-02-14.

15 **FINDINGS OF FACT:**

16 1. Although the deviations from the code appear quite  
17 large, the requested variance is not substantial due to  
18 the size of the parcel in question being over  
19 twenty-three acres. This means that the relative size  
20 of the accessory building as compared to the size of  
21 the parcel and of the school itself is relatively  
22 small. This makes the accessory building fit well in  
23 scale to the surroundings.

24 2. The setback of only fifty-four feet from the lot  
25 line also is not substantial given that this lot line

1  
2 is in back of the school property and is well removed  
3 from nearby structures. Its closest property is an  
4 abandoned, deconditioned railroad thirty foot  
5 right-of-way and a parking lot for an office building.

6 3. No other alternative can alleviate the difficulty  
7 and produce the desired result. A smaller size  
8 building is insufficient for the need and other  
9 locations on the parcel are much less suitable.

10 4. No unacceptable change to the character of the  
11 neighborhood will result from the approval of this  
12 variance. The accessory building is well removed from  
13 any nearby buildings and noticeable from any common  
14 streets.

15 **CONDITIONS:**

16 1. This variance will only apply to the horticultural  
17 building as described in the application and in  
18 testimony.

19 2. All necessary building permits shall be obtained.

20 (Seconded by Ms. Schwartz.)

21 (Ms. Corrado, yes; Ms. Baker Leit, abstain;  
22 Mr. Mietz, yes; Dr. Lawrence, yes; Mr. Goldman, yes;  
23 Ms. Schwartz, yes; Mr. Cholette, yes.)

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

1  
2 APPLICATION 6A-03-14

3 6A-03-14 Application of Paula Grassl, owner of  
4 property located at 475 Newton Drive, for an Area  
5 Variance from Section 205-2 to allow a porch roof to  
6 extend 4 ft. into the existing 14.6 ft. front setback  
7 where a 40 ft. front setback is required by code. All  
8 as described on application and plans on file.

9 Motion made by Ms. Corrado to approve  
10 Application 6A-03-14.

11 **FINDINGS OF FACT:**

- 12 1. The requested variance is not substantial.  
13 2. It is in keeping with the character of the  
14 neighborhood.  
15 3. The addition of the roof overhang will ensure  
16 greater protection and maintenance of the new slab and  
17 porch.

18 **CONDITIONS:**

- 19 1. The roof shall not extend beyond what was described  
20 in plans submitted and testimony given.  
21 2. The overhang porch shall not be enclosed.  
22 3. All necessary permits shall be obtained.

23 (Seconded by Ms. Schwartz.)

24 (Mr. Mietz, yes; Ms. Baker Leit, yes; Dr.  
25 Lawrence, yes; Mr. Cholette, yes; Mr. Goldman, yes; Ms.

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Schwartz, yes; Ms. Corrado, yes.)

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

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2 APPLICATION 6A-04-14

3 6A-04-14 Application of Charles Hetterich and  
4 Kathryn Smith-Hetterich, owners of property located at  
5 241 Mayflower Drive, for an Area Variance from Section  
6 203-2.1B(2) and 203-9A(4) to allow a pergola structure  
7 to be 2 ft. from a lot line in lieu of the minimum 5  
8 ft. required by code. All as described on application  
9 and plans on file.

10 Motion made by Mr. Cholette to approve  
11 Application 6A-04-14.

12 **FINDINGS OF FACT:**

13 1. The requested variance is not substantial since the  
14 pergola by nature is an open structure and will have  
15 relatively little impact on the adjacent property.

16 2. No other alternative can relieve the difficulty and  
17 produce the desired result. In fact, the only other  
18 alternative that is apparent would be to move the  
19 pergola directly closer to the house, which would then  
20 allow the applicant not to require a variance, but  
21 would, in fact, make the pergola look more like a  
22 structure attached to the house and perhaps cause a  
23 greater visual impact.

24 3. No unacceptable change in the character of the  
25 neighborhood and no substantial detriment to nearby

1  
2 properties is expected to result from the approval of  
3 this variance. Because the way in which the pergola is  
4 designed, its open structure and the fact that  
5 vegetation will be incorporated in the design so it  
6 will appear mainly as a patio area.

7 **CONDITIONS:**

8 1. This variance will apply only to the pergola which  
9 was described in the application and in testimony.

10 2. All necessary building permits shall be obtained.

11 (Seconded by Ms. Schwartz.)

12 (Mr. Goldman, yes; Dr. Lawrence, yes; Mr.  
13 Mietz, yes; Ms. Baker Leit, yes; Ms. Corrado, yes; Ms.  
14 Schwartz, yes; Mr. Cholette, yes.)

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

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2 APPLICATION 6A-05-14

3 6A-05-14 Application of Dinesh Chawla, owner of  
4 property located at 1988 South Clinton Avenue for a Use  
5 Variance from Section 203-44 to allow a hair salon in a  
6 BE-1 Office District where not allowed by code. All as  
7 described on application and plans on file.

8 Motion made by Mr. Goldman to approve  
9 Application 6A-05-14.

10 **FINDINGS OF FACT:**

- 11 1. The owner has been unable to lease 1988 South  
12 Clinton Avenue since 2003, roughly eleven years.
- 13 2. Due to the size - one thousand ten square feet -  
14 and the location entrance from the Tops side of the  
15 building unit, it has been difficult to attract  
16 tenants.
- 17 3. The requested variance will not alter the essential  
18 use of the neighborhood and place an additional burden  
19 on parking because the operation is by appointment only  
20 and the fact that it is adjacent to the Tops Plaza,  
21 which permits this type of activity.

22 **CONDITIONS:**

- 23 1. The use variance is limited to a beauty salon run  
24 by appointment only, as described in the application  
25 and testimony.

1  
2 2. The use variance only applies to the one thousand  
3 and ten square feet as described in testimony and as  
4 shown in the plans submitted.

5 3. All signage is to be consistent with existing  
6 locations.

7 4. All necessary approvals and permits from the Town  
8 of Brighton shall be obtained.

9 (Seconded by Ms. Baker Leit.)

10 (Mr. Cholette, yes; Dr. Lawrence, yes; Ms.  
11 Schwartz, yes; Mr. Mietz, yes; Ms. Corrado, yes; Ms.  
12 Baler Leit, yes; Mr. Goldman, yes.)

13 (Upon roll call, motion to approve with  
14 conditions carries.)  
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2 APPLICATION 6A-06-14

3 6A-06-14 Application of Scott Ryan, owner of  
4 property located at 90 Holloway Road, for an Area  
5 Variance from Section 207-6A(2) to allow an addition to  
6 an existing detached garage be 4 ft. from a lot line in  
7 lieu of the minimum 5 ft. as required by code. All as  
8 described on application and plans on file.

9 Motion made by Dr. Lawrence to approve  
10 Application 6A-06-14.

11 **FINDINGS OF FACT:**

- 12 1. The requested variance is not substantial as it is  
13 only one foot closer to the lot line that is required  
14 by code.
- 15 2. The garage addition is a substantial distance from  
16 the closest property which could possibly be visually  
17 impacted by the addition.
- 18 3. No unacceptable change in the character of the  
19 neighborhood and no detriment to nearby properties is  
20 expected to result from the approval of this variance.
- 21 4. The health, safety and welfare of the community  
22 will not be adversely affected by the approval of this  
23 variance.

24 **CONDITIONS:**

- 25 1. This variance will only apply to the structure that

1  
2 was described in the application and testimony.

3 2. The siding on the new addition shall match as close  
4 as possible to the existing garage.

5 3. All necessary town approvals will be obtained prior  
6 to completion of the proposed addition.

7 (Seconded by Mr. Goldman.)

8 (Ms. Corrado, yes; Ms. Baker Leit, yes; Mr.  
9 Mietz, yes; Mr. Cholette, yes; Ms. Schwartz, yes; Mr.  
10 Goldman, yes; Dr. Lawrence, yes.)

11 (Upon roll call, motion to approve with  
12 conditions carries.)  
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REPORTER CERTIFICATE

I, Chad L. Smith, 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

At Rochester, New York

---

Chad L. Smith

<b>0</b>	<b>6</b>	adjustments [1] 27/6 adversely [1] 86/22 advertised [2] 2/5 2/7 affected [2] 57/16 86/22 after [6] 17/23 22/25 22/25 60/6 67/24 69/24 again [11] 6/9 7/13 8/16 9/8 9/10 9/13 9/24 56/8 59/15 60/9 63/9 against [3] 21/24 32/3 48/17 agent [3] 6/15 70/12 77/4 ago [8] 10/9 10/10 11/15 12/10 55/24 64/22 66/13 68/4
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1,144 [2] 36/6 78/7 1.4 [2] 7/6 27/23 1.8 [2] 52/15 52/15 100 [3] 36/10 67/22 78/11 11x17 [1] 7/15 14 [27] 6/8 6/12 6/15 36/2 44/8 47/24 55/10 71/25 77/2 77/3 77/13 77/19 78/2 78/3 78/14 80/2 80/3 80/10 82/2 82/3 82/11 84/2 84/3 84/9 86/2 86/3 86/10 14.6 [2] 44/11 80/6 14020 [2] 1/24 76/25 14618 [2] 1/5 76/5 18th [1] 9/22 19 [1] 3/13 1981 [2] 36/4 78/5 1988 [3] 55/11 84/4 84/11 1993 [1] 67/23 1A-02-14 [1] 6/8 1st [2] 5/13 67/10	<b>9</b>	
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31st [1] 5/14 336 [2] 36/7 78/8 345 [1] 12/6	Aaron [3] 7/4 10/7 14/8 abandoned [2] 38/7 79/4 able [2] 15/25 69/2 about [43] 7/6 8/7 10/9 13/14 14/10 15/6 16/15 18/7 22/4 26/20 30/20 31/6 36/21 40/8 43/19 48/12 48/19 49/5 51/16 51/16 52/3 52/6 52/14 52/19 52/21 55/18 57/11 57/17 58/17 58/24 59/16 64/14 65/14 65/20 66/10 68/4 68/9 68/18 69/12 69/14 71/16 72/21 73/22 above [2] 48/25 88/6 above-entitled [1] 88/6 absolutely [3] 12/3 12/8 33/4 absorbing [1] 60/7 abstain [1] 79/21 abut [2] 6/18 77/7 abuts [1] 8/25 abutting [2] 9/4 25/17 accept [3] 39/2 51/5 56/18 accessory [3] 78/20 78/22 79/12 accomplish [1] 21/22 according [2] 52/14 56/25 accurate [1] 88/8 acre [6] 7/7 27/23 40/8 41/13 41/14 43/19 acres [2] 40/9 78/19 across [5] 7/20 25/19 25/24 25/25 54/19 activity [1] 84/21 actual [3] 10/14 23/12 38/18 actually [20] 4/6 4/7 5/8 14/11 16/23 24/4 37/16 38/6 40/16 41/25 42/25 43/5 43/9 43/10 47/6 47/8 48/10 52/13 53/20 74/11 ad [1] 71/7 ad-on [1] 71/7 add [3] 44/23 48/14 75/2 addition [9] 32/14 45/24 72/3 80/15 86/5 86/15 86/17 87/3 87/6 additional [4] 24/10 27/16 71/7 84/18 additions [1] 2/14 address [3] 12/13 72/8 74/24 addressed [1] 9/18 addresses [3] 61/9 61/14 62/17 addressing [1] 14/12 adequate [3] 37/15 57/15 58/11 adjacent [6] 25/16 38/24 40/18 62/25 82/15 84/20	
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<b>5</b>	<b>7</b>	
50 [1] 2/18 54 [2] 36/9 78/10	<b>7</b>	

**A**  
APPEALS [3] 1/2 2/4 76/2  
appear [2] 78/16 83/6  
appearing [1] 32/10  
applicant [4] 23/25 66/5 76/19 82/20  
applicant's [1] 30/8  
application [62] 3/14 3/15 5/3 6/7 6/14  
6/15 6/23 20/8 20/16 35/23 36/2 36/11  
44/5 44/8 44/13 45/15 47/21 47/24 48/5  
51/19 55/7 55/10 55/14 59/13 66/8 66/18  
70/23 71/5 71/8 71/25 72/6 72/11 75/9  
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78/12 78/14 79/17 80/2 80/3 80/8 80/10  
82/2 82/3 82/8 82/11 83/9 84/2 84/3 84/7  
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applications [2] 6/11 64/13  
applied [1] 22/4  
applies [1] 85/2  
apply [4] 20/19 79/16 83/8 86/25  
appointment [6] 56/17 56/22 56/23 57/7  
84/19 84/24  
appreciate [4] 47/17 55/4 68/19 69/12  
approached [1] 32/13  
appropriate [1] 40/6  
approval [11] 9/20 9/22 9/25 11/6 11/24  
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approvals [3] 13/13 85/7 87/5  
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