

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS
AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on February
4th, 2015, COMMENCING AT APPROXIMATELY 7:15 P.M.

February 4th, 2015
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRMAN
JEANNE DALE
CANDICE BAKER LEIT, ESQ.
MORREY GOLDMAN
JUDY SCHWARTZ
ANDREA TOMPKINS WRIGHT

RICK DiSTEFANO
Secretary

NOT PRESENT:

CHRISTINE CORRADO
DAVID DOLLINGER, ESQ.

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

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2 MR. MIETZ: I would like to call to order the
3 February 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 January
8 29th, 2015.

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

10 MR. DiSTEFANO: Please let the record show
11 that Ms. Corrado is not present.

12 MR. MIETZ: Okay. I guess we'll take a quick
13 look at the minutes.

14 Any issues with the minutes?

15 Yes, Judy?

16 MS. SCHWARTZ: Just very little.

17 Page 43, line 10, the word after Evandale
18 should be Evans, E-v-a-n-s.

19 And on page 45, line 8, the third word should
20 be patronize.

21 And that's all I really have.

22 MR. MIETZ: Okay. Anything else from
23 anybody?

24 In that case can I have a motion to approve?

25 (Motion made by Ms. Baker Leit to approve the

1
2 January amended minutes.)

3 (Seconded by Mr. Goldman.)

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

6 MR. MIETZ: Rick, would you like to read the
7 first application?

8 1A-04-15 Application of Yolickity Brighton, LLC,
9 lessee, and 2600 Elmwood, LLC, owner of property
10 located at 2600 Elmwood Avenue, for 1) an Area Variance
11 from Section 203-64B(4)(h) to allow a front yard dining
12 area to abut a residential district where not allowed
13 by code; and 2) an Area Variance from Section 205-7 to
14 allow impervious coverage to increase from 72.4% to 73
15 % where a maximum 65% impervious coverage is allowed by
16 code. All as described on application and plans on
17 file. TABLED AT THE JANUARY 7, 2015 MEETING - PUBLIC
18 HEARING REMAINS OPEN

19 MR. CRAB: Hello. My name is John Crab. I'm
20 one of the owners of Yolickity Frozen Yogurt.

21 Welcome to the new members.

22 Just to catch I guess the new members up to
23 speed a little bit about where we are and where we've
24 come from: We started this process back last April.
25 After a few meetings we were denied without prejudice,

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2 and we were granted a temporary and revocable license
3 to have a small patio out front of our store in the
4 existing patio space so we could see what impact, if
5 any, it would have on the neighbors.

6 After that short time - that was revoked
7 obviously on November 1st and we're happy to report
8 that there was no negative impact on the neighborhood.
9 In fact, Tony, our nextdoor neighbor signed off on a
10 letter stating that he liked the plan that we had in
11 place.

12 The reason for the patio in the first place
13 is we have a major safety problem. So I'm going to
14 pass out some pictures just to the new Board members to
15 take a look. The other Board members have already seen
16 these.

17 So what you will notice there is I took some
18 pictures, some of the times some of the people were
19 unsuspecting that we were taking pictures of them,
20 other times they saw we were taking pictures of them,
21 but you could see there are kids sitting on the curb
22 with their feet dangling in parking spaces literally
23 one foot away from where a car is pulling up. So it is
24 a major safety problem. We quickly saw that,
25 recognized that and said we have to do something about

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2 that. There are a lot families that come to our store
3 - we're a very family oriented place - and with them
4 small children. So that's why we really needed to act
5 and do this patio. So that's the real reason, for
6 preventing a terrible accident that we feel is, you
7 know, waiting to happen.

8 So last meeting we had the project up on the
9 board for approval. We had several members from the
10 community come out on an eight degree, snowy night to
11 voice their opinions and their support for the plans.
12 You know, the Conservation Board has approved the
13 plans. But the Board asked for a couple of things to
14 happen and really they were looking for, as we
15 understood it, the existing patio that we were
16 proposing to be moved further away from the neighbor,
17 to use the existing space, and if possible there was a
18 tree that I think Judy had asked, you know, if we could
19 save that tree.

20 So we're happy to report here we are now with
21 our new design and I believe we actually came up with a
22 great design. I really like this design even better
23 than the one that we had for a couple of reasons. The
24 new design moves the patio fourteen feet further away
25 from the neighbor. It's using the existing area that

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2 was a requirement. In that existing area it's all
3 concrete right now. We're actually going to rip up the
4 concrete and turn it into pavers - nice brick pavers.
5 Also, right here(indicating) is all concrete going to
6 the concrete sidewalk. We are now going to rip up this
7 concrete and make that also pavers. Again, we feel
8 that is beautifying the neighborhood.

9 There are forty-three new plantings that will
10 be going in. The difference from this plan to the last
11 plan is all the plantings are in front of the fence.
12 In the old plan that we had here the plantings were on
13 the inside of the fence. So by moving them to the
14 outside, again, we think we're helping the neighborhood
15 so as you're driving by you're going to see the
16 plantings and not so much of the fence. So that's also
17 another change.

18 We were unable to save the tree. I do have a
19 note from the landscape architect stating why. So I'll
20 pass that -- and his opinion why that tree won't be
21 saved.

22 So I promise you that we tried, but in his
23 professional opinion --

24 MR. DiSTEFANO: John --

25 MR. CRAB: Yes?

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2 MR. DiSTEFANO: I'm sorry, maybe I cut you
3 off real quick.

4 I was going to say do you want to summarize
5 the letter for the record?

6 MR. CRAB: Yes. So basically when he looked
7 at the grade of the building he said we need to change
8 the grade of the building. It's tilted in towards the
9 building which is causing some water issues. So we
10 need to raise the grade. Based on all the work that
11 we're going to be doing between the patio and raising
12 the grade he felt the root system would be heavily
13 damaged and cause that tree to, you know, eventually
14 die anyway. So he just didn't feel that it was really
15 salvageable for that tree.

16 Having said that, there's forty-three new
17 plantings including three trees that are of the smaller
18 variety, but we're keeping those even though the patio
19 is now fourteen feet further away from the neighbor -
20 the neighbor who signed off on the original plan. But
21 we are keeping these trees right here(indicating) which
22 grow eight to ten feet. So we're just doing that
23 mainly to help Tony out because he's of course happy
24 with the first plan, but he said that this is even
25 better for him because it's farther away. But we're

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2 going to keep those trees because he had asked for
3 those trees originally so it would block the view from
4 his property.

5 So based on the facts that the neighbors
6 don't oppose the project, the community has come out
7 and said that they support this project, we believe
8 that we're building a safe place for the community,
9 it's a beautiful addition to the neighborhood, there is
10 forty-three new plantings, we're ripping up concrete
11 which nobody thinks is pretty and putting in pavers,
12 we're not losing anymore green space than was already
13 there, we're hopeful that you guys will approve this
14 patio tonight.

15 Are there any questions on the new existing
16 -- yes?

17 MS. SCHWARTZ: It looks to me as if your
18 paver section is larger because it's rounder, where as
19 the current sidewalk is smaller; is that a correct
20 assumption?

21 MR. CRAB: Yes. So the existing space -- the
22 existing space right here(indicating) is all concrete
23 currently, and then right about here(indicating) is all
24 currently concrete.

25 MS. SCHWARTZ: Right.

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2 MR. CRAB: So then this part(indicating) has
3 been added. But this is the existing space right about
4 through here(indicating) is all existing, and then of
5 course this is all existing as well(indicating).

6 MR. MIETZ: So you're saying in comparison to
7 the last plan or to what's there today?

8 MS. SCHWARTZ: What's there now, what they're
9 showing.

10 MR. MIETZ: So it's slightly larger?

11 MS. SCHWARTZ: Slightly larger?

12 MR. CRAB: Yeah.

13 MS. SCHWARTZ: And then do I look and see
14 that you're adding grass on the right side of the
15 pavers - the green over there?

16 MR. CRAB: (Indicating)

17 MS. SCHWARTZ: No, on the one with the
18 pavers.

19 MR. MIETZ: That's the old plan.

20 MR. CRAB: This is the new plan(indicating).
21 Are you talking about the new plan or the old
22 plan?

23 MS. SCHWARTZ: Well, this is your new
24 one(indicating)?

25 MR. MIETZ: This is the new one(indicating).

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MS. SCHWARTZ: All right. Okay.
Did you really, seriously because this is my concern --

MR. CRAB: Yeah.

MS. SCHWARTZ: Did you really consider putting up an attractive chain fence, whatever you want?

There are yellow posts in the parking lot now.

Just inside of those, on the concrete, did you really ever consider putting a decorative fence, nobody would ever cross it, go into it or whatever, I mean, cars would see it, children wouldn't be able to knock it down because I imagine you would secure it?

Because every other outside eating area in Brighton has the same issue as this one. This is not unique. They all abut parking and no one else has ever come in and asked for this. They all present a similar risk, if you will, but no one has ever come and asked for this. I'm a little concerned -- and they are in more of a commercial area than this is.

I'm really concerned that this is creeping commercialism. And what Tony said is fine, but his property will depreciate in value.

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2 Would anybody want to live nextdoor to an
3 outside eating area?

4 I don't think so, really.

5 So how seriously did you consider trying to
6 do it in the existing?

7 Because I went back again and I counted how
8 many tables you could possibly get out there. You
9 could really serve a nice number. And it's unrealistic
10 to think that your customers all expect to have a place
11 to sit outside and eat. Nobody can afford that.
12 You've got eating inside. But to say, "Oh, yeah, I
13 wanted to sit outside," that's unrealistic.

14 How hard did you consider that option of
15 using your existing space?

16 MR. CRAB: Well, I think that this new plan
17 is using the existing space. We have made it slightly
18 larger, but we are using the existing space. And this
19 right here(indicating) is an existing fence to block
20 these cars. But unlike other stores, there's not --
21 there might be other stores that have outdoor seating,
22 but it's rare to find a car pulling directly up with a
23 table in its path and the only thing to separate, you
24 know, where you're saying this little fence --

25 MS. SCHWARTZ: Or a spike, you know.

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2 MR. CRAB: Yeah. I mean, there's a fence now
3 that will significantly slow a car down if somebody
4 missteps.

5 But, I mean, case in point, my daughter has a
6 classmate in the Victor schools and he was in a
7 wheelchair for six months. How that happened was he
8 was walking in front of a car, where a car was pulling
9 up to Papa Jacks - an ice cream place, very popular -
10 the lady mistakenly hit the gas pedal instead of the
11 brake and crushed him. Luckily he was walking, he
12 wasn't sitting down or he would be dead. So he was
13 crushed by that. And they had a huge parking barrier,
14 if you will, but that's really not going to stop a ton
15 of a car.

16 So this fence will help. It won't
17 necessarily -- you know, am I going to put my kid there
18 as a car pulls up? I don't know if I'm going to sit
19 there. But there are other tables here and this fence
20 will significantly help, but it's not going to stop a
21 car if somebody hits the gas.

22 So we did -- I mean, we are using the
23 existing patio more than was ever in the first plan.
24 The first plan didn't even have it, so --

25 MS. SCHWARTZ: And how many tables are there

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2 to accommodate out there?

3 MR. CRAB: This would be twenty seats. So
4 ten tables. Maybe less tables, but twenty seats. The
5 seats would come out of the existing ninety-nine seats.
6 So it wouldn't be ninety-nine plus twenty. We have a
7 ninety-nine seat capacity. We would take twenty,
8 again, just when the weather is nice and they would be
9 out there for the patio.

10 So you're right, it doesn't accommodate
11 everybody, but it would be impossible to do that.

12 MS. SCHWARTZ: So there would be no usage of
13 your lawn at all?

14 MR. CRAB: No.

15 MS. SCHWARTZ: It stops at the pavers?

16 MR. CRAB: Absolutely. And there's a fence
17 so -- well, I mean they could sit there, but we didn't
18 have that problem -- once we put those tables out I
19 didn't see anyone sitting on the lawn. I don't think
20 they will. I think you're going to walk out and see a
21 designated area and when -- so before, when we didn't
22 have that and we saw people on the curb we would say
23 please don't sit there and they would, you know, kind
24 of look at us and say, "Well, put a table out here."
25 You know, kind of come back to us and say, "Are you

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2 guys not thinking?" And we would say, "Well, we are
3 working on that." So now when we have a designated
4 area I can say can you please sit, you know, in the
5 patio area, if we do see that happening.

6 MR. MIETZ: The seating area hours, would
7 they coincide with the actual operation?

8 MR. CRAB: Not exactly because --

9 MR. MIETZ: Can you be a little more
10 specific?

11 MR. CRAB: -- we're not going to have lights
12 out there.

13 MR. MIETZ: Right.

14 MR. CRAB: That was a condition before. So
15 we're not going to have lights, so when the sun goes
16 down that's going to be dark out there and those people
17 are going to be, you know, be coming in. There's also
18 not going to be music out there. So, you know, we know
19 we have neighbors, so we're not going to have outdoor
20 speakers and we're not going to have lights coming off
21 the building to light it up. So it's condition when
22 the sun is down it's dark out there.

23 MR. DiSTEFANO: And just for everybody's
24 remembrance, they still need conditional use permit
25 approval and site plan modification from the Planning

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2 Board. So the Planning Board will look at the music
3 aspect and hours of operation. I mean, we certainly
4 can add our feelings and conditions on that, but they
5 still have to go through that conditional use permit
6 process with the Planning Board.

7 MR. MIETZ: All right. So just to make it
8 clear then, you'll be responsible to shut it down then
9 per se, when it's dark so we won't have people out
10 there beyond that, because the store is open until what
11 time?

12 MR. CRAB: Well, in the summertime it's open
13 until ten o'clock.

14 MR. MIETZ: Okay. And obviously it's
15 certainly dark before that.

16 MR. CRAB: Yes.

17 MR. GOLDMAN: I have a question for Rick:
18 Last year there was a tent - booth like device - put up
19 at the end there for a few days, I don't remember them
20 coming in and --

21 MR. DiSTEFANO: That was not permitted. It
22 was not part of any of the outdoor dining applications.
23 It was done without any approvals. I think the
24 property owner became aware of it and acted on it
25 fairly quickly because they weren't even asked about

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2 it. I'll leave it at that.

3 MR. GOLDMAN: So if they want something they
4 would have to --

5 MR. DiSTEFANO: I would say it has nothing to
6 do with the current applicant.

7 MR. GOLDMAN: Okay.

8 MR. CRAB: Yeah, we knew nothing about that.

9 MR. MIETZ: All right. Do we have any other
10 questions or comments from any of the Board members
11 about this application?

12 MS. SCHWARTZ: One question.

13 MR. DiSTEFANO: Go ahead.

14 MS. SCHWARTZ: If we were to set a closing
15 time for outdoor eating you would be agreeable?

16 Because there is ongoing light coming from
17 inside if you're open until ten, people could still sit
18 out there, and you're going to clean up afterwards and
19 people can still sit out there and have light.

20 But if we said a certain time would you agree
21 with that?

22 MR. CRAB: Yeah. I mean, I would definitely,
23 you know -- I think it's going to have to be a little
24 bit of a variable because, you know, June is the - June
25 21st has got the most daylight and by August, you know,

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2 by 8:00 it's dark.

3 So I think, you know, if we could kind of
4 make that a scale, a moving scale?

5 MS. SCHWARTZ: I just wanted to --

6 MR. CRAB: Yeah, there really is only one
7 window that would - that's right here(indicating).
8 Here's a window here(indicating) and then the next
9 window is here(indicating). So there's not that much
10 light out there. I mean I've been out there before,
11 but we certainly say, you know, by 9:30 we're kicking
12 people out. We can put signs up and also come up and
13 say, "I'm sorry, the patio is closed."

14 MR. MIETZ: Okay. We'll discuss that.

15 MR. DiSTEFANO: I have a question for the
16 engineer.

17 Could you just state your name?

18 MR. TOMLINSON: Matt Tomlinson, for Marathon
19 Engineering.

20 MR. DiSTEFANO: The plan that was originally
21 presented requested a 73% coverage requirement.

22 Is the new plan less than what was the
23 original approval - the revised plan I'll call it?

24 MR. TOMLINSON: It's almost exactly the same
25 over the scale of the entire project. We are

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2 significantly reducing the amount of concrete out there
3 because of the additional pavers. We were reducing
4 quite a bit of concrete with the original plan out of
5 this area right here(indicating) around where the flag
6 pole is. There is some additional concrete there that
7 we're taking out as part of the mitigation for the
8 expanded patio. So that remained in under this main,
9 so even though it looks like a much smaller footprint
10 it's very similar to that.

11 MR. DiSTEFANO: So the 73% is still the
12 number that you're looking to the Board for?

13 MR. TOMLINSON: It is. Obviously there's a
14 benefit to using pavers, it's more permeable so the
15 water goes through it instead of running off of it. So
16 it is greener, but technically it's still impervious.
17 So that's why we kept the numbers the way they are.

18 MR. MIETZ: Okay. Any other questions then?

19 Okay. Thank you again for going through it
20 and making some changes. And we will discuss it
21 further.

22 MR. CRAB: Okay. Thank you.

23 MR. MIETZ: Okay. Is there anyone in the
24 audience that would like to speak?

25 Yes?

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2 MS. VALLEY: Hi. I'm Matisha Valley. I live
3 at 15 Buckland Avenue.

4 And, you know, I think my -- I'm happy to see
5 my concerns are also reiterated. They're mainly a
6 safety concern. I have three children, two eight year
7 olds and a five year old. And we go every - almost
8 every week there in the summertime with our neighbors.
9 And it's part of why we moved to Brighton, to have the
10 walking ability. And it's such a nice -- it's nice to
11 have two new options in that space that was empty for
12 so long.

13 And I like the patio idea. My kids tend to
14 loiter. There's like two stoops or two, I don't know,
15 two leveled areas there and they just tend to loiter
16 there when we want to eat outside. And I try to keep
17 them away from it, you know, and we do the best we can.

18 And I just get concerned too when I'm driving
19 through that area, like Aja noodle, that I'm going to
20 hit somebody. I don't know. That's my concern. It's
21 already been stated.

22 Thank you very much for your time.

23 MR. MIETZ: Thank you.

24 Is there anyone else in the audience that
25 would like to speak?

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Yes, sir?

MR. MINER: Hello. My name is it Allen Miner. I live at 115 Viennawood Drive.

And I'm not so much concerned about safety because I'm sixty-five years old and I still have my vision, although I don't know for how much longer. I have been a long time Brighton resident and so I go back long enough to remember when it was the Post Office and then the Bagel Bin. It was just a delightful place when it was the Bagel Bin. It was a place to get together, you know, and enjoy with neighbors and so on.

You know, and then when they went out of business it became, you know, just an empty space and arguably over time an eyesore, one could even argue. And I think anybody that's really been in that space since the current transformation would agree that it's really a pleasant place to be. And so, you know, when I go in there, you know, I enjoy being on the inside and I think to myself, you know, the people that are in there -- there's nothing that would make me think if they're wanting to beautify the outside my guess is they're probably going to do a pretty good job with that because they really did a pretty nice job with the

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2 inside, you know. So with that being said, you know, I
3 think it's, you know, an opportunity to in a very small
4 way to beautify the area.

5 So I just thank you for your time.

6 MR. MIETZ: Okay. Thank you.

7 Yes, sir?

8 MR. ARTELLO: My name is Marcos Artello. I
9 live on Kateland Trail. My wife actually owns a
10 business on Metro Park in Brighton as well.

11 I have two lovely seven year-old twin girls,
12 who we frequent Yolickity quite a bit, especially in
13 the summertime. And the only place the kids want to be
14 in the summertime is outside eating ice cream.

15 So for us to come outside and -- you know, it
16 does feel unsafe as a parent. You know, before I had
17 kids I probably would have never noticed, but as a
18 parent seeing having little kids who themselves at age
19 seven can recognize safety concerns when they see, you
20 know, two and three year olds who maybe aren't so aware
21 of their surroundings stepping dangerously close to the
22 curb. And I think, you know, it's a real safety
23 concern and I wanted to make sure that I came out
24 tonight to voice that.

25 MR. MIETZ: Okay. Very good. Thank you very

1
2 much.

3 Anyone else in the audience that would like
4 to speak regarding this application?

5 If not, the public hearing is closed.

6 2A-01-15 Application of David Perlman, owner of
7 property located at 59 Stoneham Drive, for 1) an Area
8 Variance from Sections 203-2.1B(3) and 203-9A(4) to
9 allow a detached garage to be located in a front yard
10 in lieu of a side yard or rear yard as required by
11 code; and 2) an Area Variance from Section 207-6A(1) to
12 allow said garage to be 22 ft. 3 inches in height (17
13 ft. 9 inches in height at the front) in lieu of the
14 maximum 16 ft. in height allowed by code. All as
15 described on application and plans on file.

16 MR. PERLMAN: My name is David Perlman. I
17 have lived at 59 Stoneham Drive since February of 1966.
18 I've gotten used to it.

19 And when we bought this house what we loved
20 about it was it was at the end of a dead-end street and
21 you could make believe that you were out in the
22 country, which would be wonderful. And we actually
23 bought additional land from our neighbor about forty
24 years ago so that we will have even more woods and more
25 seclusion. And a its been a wonderful place to be.

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2 Eventually, however, you have to take into
3 consideration that you're getting older. Not pleasant,
4 but it happens. And one problem with our house is that
5 it has no bathroom and no bedroom on the ground floor.
6 I stop to think about that. That means that it's quite
7 possible that we might not be able to live in that
8 house as long as we would like to.

9 So we had to figure out what to do about that
10 and for a while my wife and I confronted the
11 possibility of selling the house and buying a condo and
12 we looked into that. We had some friends who lived at
13 Sagamore on East and we looked at that. And the more I
14 looked the more depressed I got.

15 And we had some new friends that came to
16 visit us and they looked at our house where we have a
17 beautiful sunroom which used to be a screened-porch and
18 they said, "Why do you want to move? You're crazy.
19 Why don't you just convert the garage into a bedroom?"
20 I never thought of that before. So I took some
21 measurements and I found that the garage that's built
22 into the house is exactly the same size as the bedroom
23 upstairs. Which amazed me, it's like it was made to be
24 that way. And so what we did is just shifted gears
25 completely and decided that we would look into that.

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2 And then I found out all of the people who had to
3 approve that before we did it, it made me very nervous.

4 So what I figured is a picture is worth a
5 thousand words -- though I'm an electrical engineer, I
6 helped found a couple of companies and taught at RIT
7 for nineteen years, I'm pretty good with a computer.
8 I'm one of the founders of the Image City Photography
9 Gallery. So what I did, figuring a picture is worth a
10 thousand words, I did a rendering in the computer of
11 what this garage that we want to build would look like.
12 And I will pass that around to you.

13 And on the back of that piece of paper is
14 signatures from my neighbors who I conned into signing.
15 I wanted my neighbors to see this picture so they could
16 visualize what they were going to see. And that was
17 very important to me. I've lived in this neighborhood
18 a long, long time. It's a big, big part of my life.
19 And I honestly said to myself if I lived across the
20 street from where we want to do this garage and I like
21 what I see, and I can honestly say that we tried very,
22 very hard to make the garage we're going to add be very
23 much in tune with the house.

24 In that image that you're looking at that's
25 passed around what I've done is I've actually cloned

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2 the front of the house and duplicated it, and the
3 garage is going to look exactly like the front of the
4 house. Same windows, same bricks, same wood, same
5 everything. And it's certainly not going to be a big
6 garage. We have a -- the garage that we have now is
7 rather small. In fact, if you're not careful you'll
8 knock the mirrors off the car. And when I get older
9 I'm not going to be able to shovel, so I needed room
10 for a snowblower. I haven't got room for that either.
11 So what we're trying to do is they call it aging in
12 place, that's the politically correct word, and we
13 would like to stay in our house and this would permit
14 us to do it.

15 The house is surrounded by woods. It's also
16 at the edge of what was - what is a ravine. I think
17 they glaciated it. The ground has been carved with big
18 claws almost. And so there's very little room around
19 the house to do much. Fortunately the extra piece of
20 land that we bought about thirty years ago has enough
21 flat area on it so that we can put something there.
22 And we've done everything we can to keep trees. I love
23 trees. We once had a real Elm tree in front of the
24 house. We spent hundreds of dollars to try to keep it
25 alive.

1
2 There's one big tree that's right where this
3 garage is going to be going and I swear I did not
4 poison it. It's been attacked by insects. It has a
5 big hole in it. There's a photograph of it I think in
6 the papers you're looking at there, that I held a ruler
7 and it's something like seventeen inches deep and that
8 tree is going to die. I never knew that Norway Maples
9 were considered weed trees or something or invasive
10 species, but this one is. It's a Norway Maple and
11 that's the one major tree that has to come out.

12 And other than that I think that we are
13 really, really going to keep that property looking as
14 beautiful as we can.

15 MR. MIETZ: Okay. Mr. Burrows, did you want
16 to point anything else out?

17 MR. BURROWS: Right. Mr. Perlman asked me to
18 help him.

19 MR. DiSTEFANO: Dave, can you state your
20 name?

21 MR. BURROWS: I'm David Burrows, architect
22 for David Perlman.

23 MR. DiSTEFANO: Thank you.

24 MR. BURROWS: Mr. Perlman asked me to kind of
25 fine tune the position of the garage. We got a

1
2 surveyor to do the topographic survey and locate the
3 trees exactly. And we took the dimensions of the
4 garage and we positioned it on a site so they would
5 clear all the good trees and have as little impact on
6 the topography as possible.

7 But it does cross the technical front yard
8 setback. So one of the reasons -- one of the variances
9 we are requesting is a front yard setback where we are
10 constructing an accessory structure in a front yard
11 where it's only permitted in a side yard or rear yard.

12 The other variance we are requesting is for
13 the height. We are requesting a height of 17.9 to the
14 peak, were sixteen feet is required as the maximum
15 allowed. The reason for the request is to maintain the
16 pitch of the garage to match that of the house because
17 of the twelve twelve roof pitch, which forces the
18 height. We're only exceeding the maximum allowable by
19 one foot nine.

20 MR. DiSTEFANO: Just for clarification,
21 that's from the front of the garage. The twenty-two is
22 from the rear of the garage. You might want to just
23 explain that.

24 MR. BURROWS: Sure. Because the land slopes
25 from the front to the back it will increase from

1
2 seventeen foot nine in the front to maybe six feet more
3 than that. I don't know if I have the dimensions on
4 the drawings, but --

5 MR. MIETZ: Twenty-two three.

6 MR. BURROWS: Okay. So they're not on the
7 set I'm looking at, but they are on yours. But that's
8 just because the topography slopes down. So we're
9 trying to minimize the visual impact of the garage on
10 the site by making it resemble the house by pushing it
11 back as far as we can without losing trees and without
12 changing the grade. And we're just hoping that this
13 will be an acceptable solution. And we will match the
14 brick and the siding of the original house so that it
15 appears that it was always part of the property.

16 MR. MIETZ: Okay. Questions?

17 MS. SCHWARTZ: Just a question: David, will
18 the width of it still be the same as your one car
19 garage where you store, where it drops down or --

20 MR. PERLMAN: No, it will be a little bit
21 wider. How many feet wider -- the inside of my garage
22 is I think about eleven feet in width. The outside
23 dimensions of this will be seventeen feet.

24 MS. SCHWARTZ: Okay.

25 MR. PERLMAN: And the reason for that is if I

1
2 need room to store a snowblower, which I don't have
3 now -- I'm anticipating -- see, the town plow dumps a
4 lot of snow in front of our house and there's going to
5 come a time when I'm not going to want to shovel that
6 snow. So I need space to store those types of things.
7 It's not a two-car garage.

8 MS. SCHWARTZ: Okay.

9 MS. TOMPKINS WRIGHT: Is this photo from the
10 street line?

11 MR. PERLMAN: Yes. When I photographed it
12 there was piles of leaves and snow there. The street
13 widens because it's the end of -- it's a circle.

14 MR. GOLDMAN: So your testimony tonight
15 changes your application in which you say the proposed
16 garage site will not require removal of trees, it will
17 in fact require removal of one tree?

18 MR. PERLMAN: It is one tree, a sick tree
19 that is going to die anyway.

20 MR. BURROWS: Right. And I might want to add
21 something: This is as Rick describes his coordinator
22 review, we need to go in two weeks before the Planning
23 Board because of the steep slope condition. We would
24 have had to go before the Planning Board for tree
25 removal if we were removing any trees except for this

1
2 one, which has been declared by a tree surgeon to be
3 diseased and a liability to the house. We had Richard
4 Smith of Arbor Tree Service come and inspect it.

5 MS. DALE: The existing driveway, will that
6 be pulled out and replaced with grass?

7 MR. PERLMAN: Yes, the existing driveway will
8 be pulled out and become lawn. And it will probably be
9 a narrow flagstone path just so that the mailman can
10 get to the mailbox - mail woman too.

11 MR. MIETZ: Any other questions?

12 Rick, anything?

13 Okay. Thank you, gentlemen.

14 MR. PERLMAN: Thank you.

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

17 There being none, the public hearing is
18 closed.

19 2A-02-15 Application of David Burrows, architect, and
20 Selvakumar and Miraba Chockalingam, owners of property
21 located at 50 Indian Spring Lane, for an extension of
22 approved area variances (3A-04-14 - front setback and
23 maximum livable floor area) pursuant to Section 219-5F.
24 All as described on application and plans on file.

25 MR. MIETZ: Are you going to handle this one,

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David?

MR. DiSTEFANO: You have two on this,
remember?

MR. BURROWS: Sorry about that, yes. David
Burrows still, representing Miraba Chockalingam.

This is a renewal of a variance that was
requested - that was approved unanimously a year ago
presented by Paul Miner, the architect at the time. It
is for an area variance to permit forty-four twenty-two
square feet where a number less than that was the
maximum allowable.

And there's been no change in the design.
We're following the design that was presented a year
ago. It's just time has passed and they've asked me to
continue on with the project.

MR. MIETZ: So you're taking over as the
architect of record?

MR. BURROWS: Yes.

MR. MIETZ: Okay. And what is their plan to
- if this was approved, to move forward in the spring
or --

MR. BURROWS: I'm sorry, what did you mean by
that?

MS. SCHWARTZ: When do they start?

1
2 MR. DiSTEFANO: How quickly are they going to
3 move the project forward?

4 MS. SCHWARTZ: Yeah.

5 MR. BURROWS: As soon as I can finish the
6 drawings they'll start.

7 MR. MIETZ: Okay. So the plan is --

8 MR. BURROWS: It's still going. There's -- I
9 don't know if I need to explain why they aren't using
10 the other architect, but --

11 MR. MIETZ: Not necessary.

12 MR. BURROWS: Okay.

13 MR. DiSTEFANO: But you said basically issues
14 related to the variance.

15 Whether there's other issues related to the
16 drawings themselves, nothing is changing?

17 MR. BURROWS: Nothing is changing. We're
18 following the program that was approved a year ago.

19 MR. MIETZ: Okay.

20 MS. SCHWARTZ: All square footage is all the
21 same?

22 MR. BURROWS: Correct, the square footage is
23 the same.

24 MR. MIETZ: So your expectation is that they
25 would move forward and this building sees - we don't

1
2 need an exact date?

3 MR. BURROWS: True. Right.

4 MR. MIETZ: Okay.

5 MR. BURROWS: They will be in the ground this
6 summer.

7 MS. SCHWARTZ: All right.

8 MR. MIETZ: Okay. Any questions?

9 Thank you.

10 MR. BURROWS: Thank you. Sorry, I spaced
11 out, I got a drink.

12 MR. MIETZ: Is there anyone in the audience
13 that would like to speak regarding this application?

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

16 2A-03-15 Application of Lifetime Healthcare BCBS
17 lessee, and MedAmerica Insurance Company of New York,
18 owner of property located at 70 Metro Park, for a Sign
19 Variance from Section 207-32B(1) to allow a sign on a
20 second building face where not allowed by code. All as
21 described on application and plans on file.

22 MR. BEADLING: Hello. My name is Mike
23 Beadling, I'm representing Lifetime Healthcare.

24 Yeah, we're -- we had -- we - under Lifetime
25 Healthcare we have two subsidiaries that are now in

1
2 that building, MedAmerica and Lifetime Healthcare EBS.
3 So we recently relocated that group into part of the
4 building and they require some signage.

5 Now, we stayed within the variance - or I'm
6 sorry, within the parameters of a hundred and fifty
7 square feet of signage, but the additional sign will
8 point in a different direction. So the current sign is
9 facing east and the sign that we're requesting to put
10 up is facing south. So that's the variance request.

11 MR. GOLDMAN: So you're putting these signs
12 up to indicate the two businesses, not necessarily for
13 people coming down the street from the other direction?

14 If they come in from Henrietta Road here --

15 MR. BEADLING: Uhm-hum.

16 MR. GOLDMAN: -- directly --

17 MR. BEADLING: The way --

18 MR. GOLDMAN: -- they'll see both signs?

19 MR. BEADLING: They'll see both signs, that's
20 correct.

21 MR. GOLDMAN: Coming from the other direction
22 they won't see anything?

23 MR. BEADLING: They won't see anything,
24 right, from the business park.

25 MR. MIETZ: Did you look at any other

1
2 alternatives of sharing some signage here versus two
3 separate?

4 MR. BEADLING: Well, yeah. We would have to
5 take down the existing sign and rebuild that existing
6 sign to show two. But they felt like they needed to be
7 very distinct in the signs for both types of customers
8 coming in so they didn't get confused. So they felt
9 like two signs would be a better approach for
10 customers.

11 MR. DiSTEFANO: Are there separate entrances
12 for the two businesses?

13 MR. BEADLING: Same entrance.

14 MR. DiSTEFANO: Same entrance.

15 MR. MIETZ: What is the relationship -- I
16 guess you said the parent or whatever that is --

17 MR. BEADLING: Yeah.

18 MR. MIETZ: -- owns both of these entities,
19 right?

20 MR. BEADLING: Right.

21 MR. MIETZ: Okay. So can you describe what
22 both of them do?

23 MR. BEADLING: Both of them are -- one of
24 them is more on the benefit side - customer
25 service/benefits, and the other one is more on the

1
2 insurance side. So the company that just recently
3 moved in sees more customers. They'd see more people
4 come in with questions or payments versus the other
5 insurance side is more back end work.

6 MR. MIETZ: Okay. So that would be which
7 company?

8 Just for the record, the new company is?

9 MR. BEADLING: LBS Lifetime Benefits.

10 MR. MIETZ: All right. And what -- the
11 existing business - the original business --

12 MR. BEADLING: Right.

13 MR. MIETZ: -- it sees customers as well?

14 MR. DiSTEFANO: It sees customers as well,
15 but very few.

16 MR. MIETZ: Okay.

17 MS. SCHWARTZ: Do you see any confusion with
18 two big, big, big signs but only one entryway for
19 customers?

20 MR. BEADLING: No.

21 MS. SCHWARTZ: Do you have a setup like this
22 any other place?

23 MR. BEADLING: Not that I know of.

24 MR. MIETZ: Okay. Any other questions?

25 Thank you very much.

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MR. BEADLING: Thank you.

MR. MIETZ: Is there anyone in the audience that would like to speak regarding this application?

There being none, the public hearing is closed.

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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

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS
AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on February
4th, 2015, COMMENCING AT APPROXIMATELY 7:15 P.M.

February 4th, 2015
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRMAN
JEANNE DALE
CANDICE BAKER LEIT, ESQ.
MORREY GOLDMAN
JUDY SCHWARTZ
ANDREA TOMPKINS WRIGHT

RICK DiSTEFANO
Secretary

NOT PRESENT:

CHRISTINE CORRADO
DAVID DOLLINGER, ESQ.

(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 APPLICATION 1A-04-15

2 1A-04-15 Application of Yolickity Brighton,
3 LLC, lessee, and 2600 Elmwood, LLC, owner of property
4 located at 2600 Elmwood Avenue, for 1) an Area Variance
5 from Section 203-64B(4)(h) to allow a front yard dining
6 area to abut a residential district where not allowed
7 by code; and 2) an Area Variance from Section 205-7 to
8 allow impervious coverage to increase from 72.4% to 73
9 % where a maximum 65% impervious coverage is allowed by
10 code. All as described on application and plans on
11 file. TABLED AT THE JANUARY 7, 2015 MEETING - PUBLIC
12 HEARING REMAINS OPEN
13

14 Motion made by Mr. Mietz to approve
15 Application 1A-04-15.

16 **FINDINGS OF FACT:**

- 17 1. While the proposed outdoor seating area is adjacent
18 to a residential district, significant effort was made
19 by the applicants to mitigate the appearance and
20 potential conflicts with a residential use nearby.
- 21 2. Significant landscaping and the design to place the
22 seating area as far east as possible, closer to the
23 parking area and less to the center of the property,
24 does minimize this variance request.
- 25 3. The outdoor seating was utilized previously and the

1
2 expansion to twenty seats will assist with keeping
3 patrons away from the parking area and along the curb
4 areas and will increase the safety and welfare of the
5 adjacent commercial district.

6 4. No negative impact from the approval of this
7 variance is expected since there are conditions to be
8 placed on the use of the area, and the slight coverage
9 increase will be mitigated by the additional
10 landscaping improvements added to the site, and the
11 addition of pavers which will minimize the stormwater
12 runoff from this area.

13 **CONDITIONS:**

14 1. This approval is based on the revised plan
15 submitted and testimony given. Plantings shall be
16 installed per the plan and at a minimum, screen the
17 proposed patio area to no less degree than is depicted
18 in the plans as submitted.

19 2. All necessary Planning Board approvals and building
20 permits shall be obtained.

21 3. There shall be no more than twenty outdoor seats
22 and no more than a total of ninety-nine seats for the
23 entire facility at any one time.

24 (Seconded by Ms. Baker Leit.)

25 (Mr. Goldman, yes; Ms. Schwartz, no; Ms.

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Tompkins Wright, yes; Ms. Dale, yes; Ms. Baker Leit,
yes; Mr. Mietz, yes.)

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

1
2 APPLICATION 2A-01-15

3 2A-01-15 Application of David Perlman, owner of
4 property located at 59 Stoneham Drive, for 1) an Area
5 Variance from Sections 203-2.1B(3) and 203-9A(4) to
6 allow a detached garage to be located in a front yard
7 in lieu of a side yard or rear yard as required by
8 code; and 2) an Area Variance from Section 207-6A(1) to
9 allow said garage to be 22 ft. 3 inches in height (17
10 ft. 9 inches in height at the front) in lieu of the
11 maximum 16 ft. in height allowed by code. All as
12 described on application and plans on file.

13 Motion made by Mr. Goldman to approve
14 Application 2A-01-15.

15 **FINDINGS OF FACT:**

- 16 1. The property has a severe slope in the rear
17 preventing the erection of a garage without excessive
18 fill.
- 19 2. While the area chosen for a detached garage is in
20 the front yard, it would appear to be in the side yard
21 as viewed from the street.
- 22 3. The height of the garage is based on the roof pitch
23 and the minimum overhead door clearance and due to the
24 slope to the rear of the garage, which increases the
25 height required.

4. The materials and general design of the garage will match those of the house.

5. No unacceptable change in the character of the neighborhood is expected to result from the approval of this variance.

CONDITIONS:

1. This variance applies only to the garage as shown on plans submitted and to the testimony provided to the Board at the meeting of February 4th, 2015.

2. All necessary Planning Board approvals shall be obtained.

3. All necessary building permits shall be obtained.

(Seconded by Ms. Schwartz.)

(Ms. Dale, yes; Mr. Mietz, yes; Ms. Tompkins Wright, yes; Ms. Baker Leit, yes; Ms. Schwartz, yes; Mr. Goldman, yes.)

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

1
2 APPLICATION 2A-02-15

3 2A-02-15 Application of David Burrows,
4 architect, and Selvakumar and Miraba Chockalingam,
5 owners of property located at 50 Indian Spring Lane,
6 for an extension of approved area variances (3A-04-14 -
7 front setback and maximum livable floor area) pursuant
8 to Section 219-5F. All as described on application and
9 plans on file.

10 Motion made by Ms. Schwartz to approve
11 Application 2A-02-15.

12 **FINDINGS OF FACT:**

13 1. All previous findings of fact apply.

14 **CONDITIONS:**

15 1. All previous conditions shall apply.

16 (Seconded by Mr. Goldman.)

17 (Ms. Tompkins Wright, yes; Ms. Dale, yes; Mr.
18 Mietz, yes; Ms. Baker Leit, yes; Mr. Goldman, yes; Ms.
19 Schwartz, yes.)

20 (Upon roll call, motion to approve with
21 conditions carries.)
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1
2 APPLICATION 2A-03-15

3 2A-03-15 Application of Lifetime Healthcare
4 BCBS, lessee, and MedAmerica Insurance Company of New
5 York, owner of property located at 70 Metro Park, for a
6 Sign Variance from Section 207-32B(1) to allow a sign
7 on a second building face where not allowed by code.
8 All as described on application and plans on file.

9 Motion made by Ms. Baker Leit to table
10 Application 2A-03-15 until the March 4th meeting and
11 leave the public hearing open for: 1) Alternative
12 designs including photo simulations of existing and
13 proposed sign layouts 2) Additional information related
14 to the hardship from the configuration of the building
15 and the tenant space layout creates

16 (Seconded by Ms. Tompkins Wright.)

17 (Mr. Goldman, yes; Ms. Schwartz, yes; Ms. Dale,
18 yes; Mr. Mietz, yes; Ms. Tompkins Wright, yes; Ms.
19 Baker Leit, yes.)

20 (Upon roll call, motion to table Application
21 2A-03-15 and keep the public hearing open 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

1	about [16] 3/23 4/25 8/23 9/3 9/21 15/25 16/8 16/11 20/5 22/20 22/23 23/6 23/9 25/20 28/22 31/5 above [2] 38/6 47/6 above-entitled [2] 38/6 47/6 Absolutely [1] 13/16 about [3] 3/12 10/18 40/7 acceptable [1] 28/13 accessory [1] 27/10 accident [1] 5/6 accommodate [2] 13/2 13/10 accurate [2] 38/8 47/8 across [1] 24/19 act [1] 5/4 acted [1] 15/24 actual [1] 14/7 actually [5] 5/21 6/3 21/9 22/22 24/25 add [3] 15/4 24/22 29/20 added [2] 9/3 41/10 adding [1] 9/14 addition [2] 8/9 41/11 additional [6] 18/3 18/6 22/23 34/7 41/9 46/13 adjacent [2] 40/17 41/5 advertised [2] 2/5 2/7 afford [1] 11/11 after [3] 2/17 3/25 4/6 afterwards [1] 16/18 again [5] 6/7 6/14 11/7 13/8 18/19 age [1] 21/18 aging [1] 25/11 ago [5] 22/24 25/20 31/8 31/15 32/18 agree [2] 16/20 20/18 agreeable [1] 16/15 ahead [1] 16/13 Aja [1] 19/19 alive [1] 25/25 all [35] 2/21 3/16 6/2 6/5 6/11 7/10 8/22 8/23 9/4 9/5 10/2 10/18 10/19 11/10 13/13 15/7 16/9 22/14 24/2 27/5 30/24 32/20 32/20 33/7 33/20 36/10 40/11 41/19 43/11 44/11 44/13 45/8 45/13 45/15 46/8 Allen [1] 20/3 allow [10] 3/11 3/14 22/9 22/12 33/19 40/6 40/9 43/6 43/9 46/6 allowable [2] 27/18 31/12 allowed [9] 3/12 3/15 22/14 27/15 33/20 40/7 40/10 43/11 46/7 almost [3] 17/24 19/7 25/18 along [1] 41/3 already [3] 4/15 8/12 19/21 also [7] 6/5 6/7 6/16 14/17 17/12 19/5 25/15 Alternative [1] 46/11 alternatives [1] 35/2 although [1] 20/7 always [1] 28/15 am [1] 12/17 amazed [1] 23/23 amended [1] 3/2 amount [1] 18/2 ANDREA [2] 1/11 39/11 another [1] 6/17 anticipating [1] 29/3 any [16] 2/14 4/5 8/15 15/22 15/23 16/9 16/10 18/18 29/25 30/11 33/8 34/25 36/17 36/22 36/24 41/23 anybody [3] 2/23 11/2 20/17 anymore [1] 8/12 anyone [7] 13/19 18/23 19/24 22/3 30/15 33/12 37/3 anything [5] 2/22 26/16 30/12 34/22	34/23 anyway [2] 7/14 29/19 APPEALS [3] 1/2 2/4 39/2 appear [1] 43/20 appearance [1] 40/19 appears [1] 28/15 applicant [2] 16/6 39/19 applicants [1] 40/19 application [32] 3/7 3/8 3/16 16/11 22/4 22/6 22/15 29/15 30/16 30/19 30/24 33/13 33/16 33/21 37/4 40/2 40/3 40/11 40/15 43/2 43/3 43/12 43/14 45/2 45/3 45/8 45/11 46/2 46/3 46/8 46/10 46/20 applications [1] 15/22 applies [1] 44/8 apply [2] 45/13 45/15 approach [1] 35/9 approval [6] 5/9 14/25 17/23 41/6 41/14 44/5 approvals [3] 15/23 41/19 44/11 approve [11] 2/24 2/25 3/4 8/13 24/3 40/14 42/4 43/13 44/18 45/10 45/20 approved [6] 5/12 30/22 31/8 31/21 32/18 45/6 APPROXIMATELY [2] 1/3 39/3 April [1] 3/24 Arbor [1] 30/4 architect [7] 6/19 26/21 30/19 31/9 31/18 32/10 45/4 are [36] 3/23 4/21 5/2 5/20 6/6 6/9 6/11 7/17 7/21 8/15 9/21 10/9 10/21 11/18 12/19 12/22 12/25 13/25 14/2 14/17 17/25 18/17 19/5 20/21 26/12 27/9 27/9 27/12 27/13 28/7 30/25 32/2 33/25 35/11 35/23 41/7 area [36] 3/10 3/12 3/13 5/25 6/2 10/16 10/22 11/3 13/21 14/4 14/5 14/6 18/5 19/19 21/4 22/7 22/11 25/21 30/22 30/23 31/10 40/5 40/7 40/8 40/17 40/22 40/23 41/3 41/8 41/12 41/17 43/4 43/8 43/19 45/6 45/7 areas [2] 19/15 41/4 aren't [2] 21/20 32/9 arguably [1] 20/16 argue [1] 20/16 around [4] 18/5 24/12 24/25 25/18 Artello [1] 21/8 as [43] 3/16 5/14 6/15 8/17 8/18 9/5 10/17 12/18 18/7 21/10 21/16 21/17 22/10 22/14 23/8 23/8 23/22 26/13 26/14 27/5 27/6 27/14 28/11 28/11 28/18 29/21 30/24 31/17 32/5 32/5 33/20 36/13 36/14 40/11 40/22 40/22 41/18 43/7 43/11 43/21 44/8 45/8 46/8 asked [9] 5/13 5/18 8/2 10/19 10/20 15/25 26/17 26/24 31/15 aspect [1] 15/3 assist [1] 41/2 assumption [1] 8/20 attacked [1] 26/4 attractive [1] 10/7 audience [6] 18/24 19/24 22/3 30/15 33/12 37/3 August [1] 16/25 AVENUE [7] 1/2 1/5 3/10 19/3 39/2 39/5 40/5 aware [2] 15/24 21/20 away [7] 4/23 5/16 5/24 7/19 7/25 19/17 41/3
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