

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS
AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on December
2nd, 2015, COMMENCING AT APPROXIMATELY 7:15 P.M.

December 2nd, 2015
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

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

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

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2 MR. MIETZ: I would like to now call to order
3 the December 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
8 November 26th, 2015.

9 MR. MIETZ: Okay. Can you call the roll?

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

12 MR. MIETZ: Okay. So we don't have minutes
13 this month, so I guess we're ready to begin.

14 So can you read the first application?
15 11A-11-15 Application of Signs Now of Rochester, agent,
16 and 1850 WRS, LLC, owner of property located at 1850
17 Winton Road South for Sign Variances from Section 207-
18 32B to 1) allow for business identification signage on
19 two building faces where signage on only one building
20 face is allowed by code, 2) allow the signs to be 30
21 ft. in height from grade in lieu of the maximum 20 ft.
22 allowed by code; and 3) a Sign Variance from Section
23 207-26D to allow the signs to be 100% logo where not
24 allowed by code. All as described on application and
25 plans on file. PARTS I & III - APPROVED WITH CONDITIONS

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2 AT THE NOVEMBER 4, 2015 MEETING, Part II - TABLED AT
3 THE NOVEMBER 4, 2015 MEETING - PUBLIC HEARING REMAINS
4 OPEN

5 MR. MIETZ: Okay.

6 MS. STRACEY: Good evening. First, again, we
7 just wanted to thank you for the --

8 MR. MIETZ: Can you just state your name and
9 --

10 MS. STRACEY: Oh, I'm sorry. Jackie Stracey,
11 Signs Now of Rochester and I have with me Jerry Swingle
12 of 1850 Winton Road.

13 Okay. So first I wanted to thank you for
14 approving variances one and three. We appreciate that
15 and also the ability to come in and answer your
16 concerns to the height issue.

17 We went back and took a closer look at that
18 for you. We did submit some documents for you as far
19 as the visibility. In explaining them to you the last
20 time you didn't really have visuals. So we've provided
21 those for you.

22 We did eliminate any thought about what could
23 be seen from 390 as described in the last meeting. You
24 felt that was really more marketing than visibility.
25 So we just focused on the North and South Winton

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2 visibility issues.

3 And then we also took a closer look at the
4 height. The sign itself would actually be at
5 twenty-nine feet instead of thirty. That's only a foot
6 I understand, but just to clarify. And also the
7 sixteen foot maximum height that is allowable would put
8 us into the windows of the second floor. So we're
9 actually unable to -- I'm sorry, the twenty foot
10 maximum height would only put us at sixteen feet
11 because of the window back there. So we kind of looked
12 at that as well just to clarify for you, you know, why
13 we were offering to - or why we were looking to put the
14 sign a little bit higher.

15 I believe that would answer any of the
16 questions and I'm open to answering any more.

17 MS. BAKER LEIT: I have just some questions
18 on the exact location you were taking the photos, just
19 so we have a frame of reference.

20 MS. STRACEY: Okay.

21 MS. BAKER LEIT: So for instance it looks
22 like the first photo was taken from the center of the
23 road and then --

24 MS. STRACEY: You're looking at the one
25 heading north and then --

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MS. BAKER LEIT: Yeah, heading south along --

MS. TRACEY: Yeah, I was out of my car so I was --

MS. BAKER LEIT: Okay. I just want to get a visual of where you were at.

MS. TRACEY: Yeah. So I was - I actually tried to stand right at the driver's position --

MS. BAKER LEIT: Okay.

MS. TRACEY: -- from the inside lane.

MS. BAKER LEIT: Right.

MS. TRACEY: I wasn't in the outside lane, but I was in the inside lane.

MS. BAKER LEIT: Uhm-hmm.

MS. TRACEY: So I was literally at the height if I was driving in my car. And I actually have an SUV, which is taller.

MS. BAKER LEIT: Okay.

MS. TRACEY: So I would think a shorter car might have a little less visibility as well.

MS. BAKER LEIT: Okay. And then there was sort of a similar vantage point, just a little further south, for the photo below that?

MS. TRACEY: On that one I actually parked the car off of the road and walked into the middle

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2 lanes there. So I was just right on the edge of the
3 double lane.

4 MS. BAKER LEIT: Okay.

5 MS. TRACEY: Again, feeling that I was at
6 about the right height that you would be driving at.

7 MS. BAKER LEIT: All right. And then on the
8 next two photos that are heading north, were you still
9 in your car at those points when you were taking these?

10 MS. TRACEY: On the heading north one?

11 MS. BAKER LEIT: Right.

12 MS. TRACEY: I was standing just outside of
13 the car.

14 MS. BAKER LEIT: Okay. At driver's level?

15 MS. TRACEY: Yes.

16 MS. BAKER LEIT: Okay.

17 MS. TRACEY: Because I was worried if I did
18 it through the windshield you wouldn't get a good view.
19 So I literally got right out and went from there.

20 MS. BAKER LEIT: Okay. Thank you.

21 MS. TRACEY: You're welcome.

22 MR. MIETZ: Okay. Are there any other
23 questions that anybody has?

24 I think you can see from the perspective.
25 It's a little harder to pick them up, but you can see

1
2 them there against those barriers.

3 Okay. All right.

4 MS. STRACEY: Anything else?

5 MR. MIETZ: Thank you very much.

6 MS. STRACEY: All right. We appreciate it.
7 Thank you.

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

11 There being none, this public hearing is
12 closed.

13 12A-01-15 Application of Richard Rowden, owner of
14 property located at 800 Corwin Road, for an Area
15 Variance from Section 203-2.1B(2) to allow a shed to be
16 located in a side yard in lieu of the rear yard as
17 required by code. All as described on application and
18 plans on file.

19 MR. MIETZ: Is there someone here for that
20 application?

21 Okay, sir?

22 MR. ROWDEN: I'm Rick Rowden, the owner of
23 the property.

24 I understand that you need a variance to put
25 a shed in my side yard. Probably the most practical

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2 place to put it. I wouldn't put it there if the
3 neighbors could see it let's say from their living room
4 window. It's approximately fifty feet from the
5 sidewalk. It's not visible when people actually drive
6 by.

7 My neighbor to the west, the shed is not
8 completely behind his house. My neighbor on the corner
9 of Park Road and Landing Road, the shed is not behind
10 his house at all.

11 I just think it's a practical place to put my
12 shed. I want to follow by the town's rules.

13 MS. SCHWARTZ: Would the wood pile stay or
14 are you going move it in any way?

15 MR. ROWDEN: I could move them or they can
16 stay, whatever the town wants.

17 MS. SCHWARTZ: So if you keep it along the
18 side where it is now --

19 MR. ROWDEN: Right.

20 MS. SCHWARTZ: -- as you get closer to the
21 back yard --

22 MR. ROWDEN: Right.

23 MS. SCHWARTZ: -- and then the shed would be
24 out from the wood pile?

25 MR. ROWDEN: Right.

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2 MS. SCHWARTZ: And roughly -- I can't
3 remember, but roughly how many feet would that be from
4 the house to where the side of the shed would be,
5 roughly?

6 MR. ROWDEN: Twenty to thirty feet,
7 twenty feet in.

8 MS. SCHWARTZ: Okay.

9 MR. MIETZ: Just for the record then, the
10 shed that you are planning to put up is ten by sixteen?

11 MR. ROWDEN: Correct.

12 MR. MIETZ: And the way it's depicted on the
13 photo it's a natural wood finish.

14 Is it going to be stained and painted?

15 MR. ROWDEN: Correct, a natural wood finish.

16 MR. MIETZ: Clear, just so it appears like it
17 does in the photo?

18 MR. ROWDEN: Right.

19 MR. MIETZ: Okay.

20 MS. TOMPKINS WRIGHT: The natural wood look?

21 MR. ROWDEN: Right.

22 MS. DALE: And the reason you're not putting
23 it in the backyard is you said there is the top of the
24 bank close the house?

25 MR. ROWDEN: Right. And it's just not a

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practical place to put it.

MS. DALE: Not practical because?

MR. ROWDEN: The space that's there. The backyard is actually -- there's a very little distance between the back of the house and the bank.

MS. DALE: Forgive me, I didn't go --

MR. ROWDEN: Yes, I understand to the -- towards the Park Road side I actually don't own. So I can't put the shed on --

MS. TOMPKINS WRIGHT: Can you repeat that? You don't --

MR. ROWDEN: My backyard looks big.

MS. TOMPKINS WRIGHT: Yeah.

MR. ROWDEN: But towards the Park Road side I only own twenty feet from my house and I can't put the shed out on that area that --

MS. BAKER LEIT: Just for the record, can you describe the slope of your backyard?

MR. ROWDEN: The backyard is level, but then there's the gully which is a pretty steep drop off. That's - I mean, I understand that when I talked earlier there was a little concern about being close to the I think you guys called it a steep bank.

MR. MIETZ: Right.

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2 MR. ROWDEN: But my house is close to a steep
3 bank. It's been there for sixty plus years and I
4 haven't had a problem. So --

5 MS. BAKER LEIT: So that placement of the
6 shed is due to the steep bank that's in your backyard?

7 MR. ROWDEN: Right.

8 MS. BAKER LEIT: Thank you.

9 MS. TOMPKINS WRIGHT: Can you -- real kick,
10 can you - if you want to come up and look real quick;
11 there's a - it looks like there's a space behind your
12 house that's not - that isn't to the top of the bank.

13 Is there a reason you couldn't put the shed
14 there?

15 MR. ROWDEN: You could - technically I guess
16 you could. Practically it's not --

17 MR. MIETZ: You would have to access it off
18 of --

19 MR. ROWDEN: Yeah, accessing it would be a
20 bit difficult.

21 MS. TOMPKINS WRIGHT: Okay.

22 MR. MIETZ: You know, looking at what the
23 potential alternatives would have been.

24 MS. TOMPKINS WRIGHT: Right.

25 MR. MIETZ: All right. Any other questions?

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Okay. Thank you very much.

MR. ROWDEN: 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.

12A-02-15 Application of Stephen DiGennaro II, owner of property located at 1309 Blossom Road, for a Use Variance from Section 203-9 to allow for a duplex house to be located in the RLB - Residential Low Density District where not permitted by code. All as described on application and plans on file.

MR. IANACONE: Good evening. My name and Sam Ianacone, I-a-n-a-c-o-n-e. I'm the attorney for Stephen DiGennaro. Steve will also speak.

Back some forty years ago, when I was a lawyer green behind the ears - or I mean green and wet behind the ears, my mentor told me when you address an administrative hearing be brief and don't waste their time. So hopefully I will adhere to that counsel.

As you know, what we are seeking is a use variance for a parcel situated at 1309 Blossom Road. And we do believe the relief being sought to be afforded to Stephen DiGennaro is such that there is no

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2 compelling general objection to its granting. And the
3 relief falls within the Otto standards, in that 1309
4 Blossom can not yield a reasonable return if it's only
5 used as a single-family residence. Number two, that
6 Steve's plight is due to unique circumstances. And
7 three, that the use to be authorized by the variance
8 will not alter the essential character of the
9 neighborhood.

10 Steve is going to speak to the dollars and
11 cents issues on the hardship and concerning a
12 reasonable return on his investment.

13 I would like to note though that since 1993
14 this property has been bifurcated into two separate
15 units, as you can see from the floor plan in your
16 application. And in reviewing and inspecting it going
17 forward it's inconceivable that it could be reconverted
18 to a single-family residence without great expense and
19 because of the configuration of it into two separate
20 units.

21 I would like to address the uniqueness issue
22 first. Since at least 1993 I believe it says in the
23 application this reflected as a duplex in the Brighton
24 Tax Office. It's been taxed as a two-family residence
25 since 1993. The estimates are that it's approximately

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2 three thousand five hundred dollars per year in
3 additional taxes to the Town of Brighton in taxing it
4 as a duplex.

5 When we purchased the property -- I
6 represented Steve. When we purchased the property we
7 did -- there was absolutely nothing in the due
8 diligence that we did that would have raised a red flag
9 that this was anything other than the duplex of
10 two-family. We did all our standard due diligence.
11 The title reflected it as a two-family. All the MLS
12 listings reflected it as a two-family. All of the tax
13 bills going back ten - fifteen years reflected it as a
14 two-family. And all the previous sales were
15 represented as and purchased as a two-family. And it
16 was conducted as a two-family since at least 1993 and
17 possibly before that.

18 So clearly this is not a self-created
19 hardship. Steve bought the property in good faith
20 believing it to be as represented, which was as a
21 two-family. And all normal indicia which would - we
22 would all normally expect for such acquisitions
23 supporting that belief. So we purchased it as
24 two-family.

25 We also believe that the variance granted

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2 would not alter the essential character of the
3 neighborhood. In the roughly three eighths of a mile
4 between Bobrich Drive heading easterly on Blossom Road,
5 on the south side of Blossom Road where this property
6 is located, we start with Bobrich - there's the Ellison
7 Park Apartments, which is hundreds of units on Bobrich
8 Drive and Blossom Road. They advertise a hundred
9 units, but they're studios to three-bedroom apartments.
10 Next to the Ellison Park Apartments is Brighton Manor
11 989 Blossom Road, which is an eighty-bed skilled
12 nursing and rehab facility. Next to that, at 1275
13 Blossom Road, is Blossom Village which is twenty-three
14 rent assisted units. It's a section 8-11 program for
15 disabled people, it's managed by the Urban League.
16 Next to that, again, continuing easterly is a duplex,
17 1289 Blossom Road - 1289 A and B. That's a multifamily
18 two bedroom, two bath, approximately seventeen hundred
19 square feet. Next to that, at 1297 Blossom Road, is
20 the only single-family residence on that stretch. The
21 -- that's a twelve hundred square foot house tucked
22 between 1289 and 1309, which is adjacent to it - that's
23 our property. 1309 is tucked into the corner of the
24 on-ramp of 590 north and the expressway circles around
25 into our backyard. So we are really kind of wedged in

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2 to that corner, bounded by the expressway on one side
3 and a single-family house on the other. The expressway
4 then continuing easterly is there and then on the other
5 side of the expressway is Mercy High School.

6 So I think that, you know, in looking at this
7 - when you look whether it would impact the essential
8 character of the neighborhood, basically it's all
9 rentals for virtually almost - well, it's three eighths
10 to a half a mile. It's been a duplex in its present
11 state for at least twenty years and I don't see, you
12 know, in researching it how any pattern could be set
13 for any future development which would alter the
14 essential character of the neighborhood. In deed, the
15 reality is really what we're looking for is recognition
16 of what existed for upwards of twenty years is in fact
17 okay to continue to exist in its present form, that is
18 as a duplex. And I reiterate, it would be
19 inconceivable - the cost would be prohibitive to try to
20 reconvert something that is not maintained as a duplex
21 for all those years into a single-family house.

22 Finally, I would note that the variance we
23 seek is the minimum necessary to grant relief from the
24 hardship. And the variance itself will be completely
25 neutral as to the character of the neighborhood and -

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2 as Otto discusses - the health, safety and welfare of
3 the community.

4 So with that said, if they're any questions
5 on my end I would be happy my to answer them, and if
6 not Steve can address the dollars and cents issue.

7 MS. SCHWARTZ: I just have one question: At
8 what stage was the front lawn paved, that big stretch
9 in the front yard?

10 Was this during your ownership or before?

11 MR. IANACONE: Before.

12 MS. SCHWARTZ: You inherited that?

13 MR. IANACONE: Yeah, we inherited that.

14 MS. DALE: Is the plan that Mr. DiGennaro is
15 going live in one of the units and rent the other one
16 or rent both of them?

17 MR. IANACONE: No. He purchased it as an
18 investment property. The purchase price was determined
19 based upon the rate of return that could be realized
20 from the property. But as he will address, it needed
21 extensive dollars in rehab - not rehab necessarily, but
22 improvements in order to get the rentals for the rate
23 of return that he was anticipating. And in fact, he
24 has since he's owned it he is upwards of eighty
25 thousand dollars - seventy-five thousand dollars of

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2 money into the project.

3 MR. DiSTEFANO: Has there ever been a
4 building code analysis done for the property in terms
5 of are they legal in regards to building code units?

6 MR. IANACONE: We did not, no.

7 You know, it's funny because you raise a
8 question, Rick, being when we called the tax office,
9 you know, typically when we do this it was reflected as
10 a two-family and for the life of me I've been trying
11 figure out how the tax office realized that it was a
12 two-family and yet it never translated into the
13 building department itself. You know, in Brighton -
14 Brighton is very meticulous about building codes or
15 building permits and everything. Whoever did the
16 conversion of that would have had to have gotten
17 permits, would have had to have -- you know, the
18 contractor would have had to come through the town.
19 Well, hopefully he would have.

20 MR. DiSTEFANO: And that's the issue and
21 that's kind of why we're here because that didn't
22 happen.

23 MR. IANACONE: Yeah, that's the problem.

24 MR. DiSTEFANO: And basically what transpired
25 is in '93 the town did it's first reval in over forty

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2 years. So in that reval we hired an outside consultant
3 who basically just went through and noted stuff, and it
4 was submitted and things went merrily along without
5 information being transferred down to the building and
6 planning department. So that's kind of how in '93 it
7 shows up as a two-family, but a search of the records
8 never shows any building permits. So that's where --
9 and, again, that's why we're here tonight because
10 obviously we have a conversion that never was properly
11 approved.

12 So the question is as this Board looks at
13 this tonight and says okay we'll give you the use
14 variance to allow for this, that doesn't kind of
15 release us from the fact that we have to make sure that
16 it's code compliant now. That's why the question is is
17 this code compliant and has your client, you know,
18 hired somebody to go in there and say yeah we're code
19 compliant, or maybe we're not code compliant and I have
20 to do A, B and C to be code compliant. And that's
21 something that this Board has to discuss because we're
22 looking at it as a new approved use variance. If we're
23 going to approve a double here we have to make sure
24 that it's a safe double.

25 MR. IANACONE: Well, we did hire an architect

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2 who prepared those plans and who did a cursory overview
3 of the code. We did not hire him specifically to
4 certify code compliance, but he's in the wings waiting
5 to do that if necessary.

6 MR. DiSTEFANO: Okay.

7 MR. IANACONE: And we do have -- this
8 property is under contract. The -- and that's how it
9 came up, as a matter of fact. The buyer is very
10 anxious to close a transaction, but very patient so
11 far. If we can obtain the use variance on the
12 condition that it is reviewed and determined to be code
13 compliant or that to the extent it's not that it will
14 be remedied promptly that would be a very helpful to us
15 as well.

16 MR. DOLLINGER: Rick, if you call up the Town
17 of Brighton and you ask if this is a two-family - a
18 legal two-family - what do they say?

19 MR. DiSTEFANO: It depends on who you're
20 talking to.

21 MR. DOLLINGER: That's why I always have my
22 client make the call.

23 MR. DiSTEFANO: Right. That's the problem is
24 you called the assessor's office and the assessor's
25 office is going to read off we have it classified as X.

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MR. IANACONE: That's who we called.

MR. DiSTEFANO: Right. And you know --

MS. TOMPKINS WRIGHT: But if they called the building or the planning department they would have said no.

MR. DiSTEFANO: And that's basically what happened after the fact. After this individual, Mr. DiGennaro, purchased it and went to sell it, the realtor -- I'm not sure who the realtor was representing the buyer or your client.

MR. IANACONE: I'm not either.

MR. DiSTEFANO: But the realtor called and said do we have a legal double here. And a search of our records revealed that no, you don't. There's no evidence at any point in time that this single-family home was legally converted into a double because it couldn't legally be converted without a variance.

MS. TOMPKINS WRIGHT: Yeah.

MR. DOLLINGER: Is there a difference --

MR. DiSTEFANO: And then building permits on top of it.

MR. DOLLINGER: Isn't there a difference -- is there a difference -- I thought there was different tax identification, 210 for a single-family and --

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2 MR. DiSTEFANO: You're right. Maybe 220 or
3 something like that.

4 MR. DOLLINGER: Does this have a designation
5 220 or 210.

6 MR. DiGENNARO: 220.

7 MR. DiSTEFANO: It does have a different tax
8 bracket.

9 MR. DOLLINGER: It does have a 220?

10 MR. DiSTEFANO: Right.

11 MR. IANACONE: To the point where calling --
12 there was nothing, nothing - and I've been doing this
13 work for forty years - there was nothing in the history
14 or of the record of the deal that would have prompted a
15 call to the building department on this. For every
16 transaction that had gone past - that had taken place
17 for the last twenty years each successive sale of the
18 property, and the listing in the county, and the title,
19 and the tax bills all reflected two-family. Why in the
20 world -- I mean no red flag. Had a red flag been
21 raised we would have been able to check it.

22 But the point is it's not a self-induced
23 hardship. You know, it's great to say in twenty twenty
24 well if you called then, you know, we would have told
25 you it wasn't. Well there was no reason to call. You

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2 know, there was no reason to call.

3 I will say this, if another client - Steve or
4 another client of mine - buys one in Brighton or
5 anywhere for that matter I will call. But, you know, a
6 twenty year history of multiple --

7 MR. DiSTEFANO: And this is a 220 listed on
8 the tax bill.

9 MR. DiGENNARO: That's correct.

10 MR. IANACONE: Yeah.

11 MR. DiGENNARO: There was a sale in 2002 and
12 it was listed as a 220 and then the sale in 2014 listed
13 as a 220.

14 MR. DiSTEFANO: Steve, can you just come up
15 and give us your name and address for the record.

16 MR. DiGENNARO: Stephen with p-h, DiGennaro.

17 If you go to the Monroe County tax printout,
18 if you go directly to the bottom - the sale history -
19 7/23 of 2002 it was purchased at eighty thousand five
20 hundred as a two-family residence, coded 220 by Stanley
21 Nash. There was a subsequent purchase on 11/25 of 2014
22 at a hundred and twenty-four thousand three hundred and
23 five, also as a two-family residence, also coded as a
24 220 by Daniel Christoff.

25 MR. DOLLINGER: Who is -- I didn't get where

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-- where were those from?

I didn't -- were those from --

MR. DiGENNARO: It was from the Monroe County Website. The Monroe County --

MR. IANACONE: It's a real property report.

MR. DOLLINGER: Oh, it is listed. Okay.

MR. DiGENNARO: Yeah.

MR. DOLLINGER: That's what I wanted to see. Okay. Thank you, got it.

MR. DiGENNARO: And that's where that came from.

MR. DOLLINGER: Oh, I see you're doing the owner. See, I couldn't figure that out. Got it.

MR. MIETZ: So for the record, how long have you owned the property?

MR. DiGENNARO: I've owned it for approximately eight months.

MR. MIETZ: Okay. And you have spent money on it?

MR. DiGENNARO: Yes, a significant amount of money.

MR. MIETZ: Okay.

MR. IANACONE: Why don't you address the dollar and cents issue?

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2 MR. MIETZ: If you could kind of summarize
3 the kind of work that you've done there?

4 MR. DiGENNARO: Okay. We basically - the
5 renovations were nothing structural. We did not change
6 the structure of walls, nor flooring. They were
7 cosmetic and, you know, we called -- they were light
8 fixtures, granite counter tops.

9 And we had it up for sale for approximately
10 not even thirty days and got an offer. I rented out
11 both sides prior to putting it up for sale. Got an
12 offer of one ninety-seven nine. As you know the place
13 is assessed at one twenty-five. I did a hypothetical
14 based on the current property taxes, which are
15 approximately fifty-six hundred dollars, and estimated
16 that under the sale under contract that they would be
17 raised to approximately just under nine thousand
18 dollars, which would be significant increase in the tax
19 revenue.

20 And, you know, I think it's -- you know, it's
21 in the best interest -- if I have to de-convert it;
22 number one, excluding the de-conversion it would be a
23 significant hardship for me because the comparables for
24 a single-family unit don't warrant a one ninety-eight
25 price tag on a duplex - or on a single-family in that

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2 area. So at best I would be able to get one thirty,
3 which means I would take approximately a fifty thousand
4 dollar hit. If I had to de-convert that would also be
5 a significant hit, which would be - you know, I can
6 only imagine, but on the conservative side it would be
7 a minimum of twenty-five thousand and, you know, that's
8 a significant hardship for me, a seventy-five thousand
9 dollar hit.

10 It's just had there not been any other
11 duplexes in close proximity with similar structures,
12 had there not been any prior sales, you know, that
13 would have sent red flags up. You know, and this --
14 you know, you can say hindsight is twenty twenty, but
15 given the circumstances, you know, I think we are
16 sitting here in a totally different situation.

17 MS. DALE: And the closest neighbors in the
18 single-family home --

19 MR. DiGENNARO: 1289 Blossom Road.

20 Oh, in the single-family?

21 MS. DALE: Have they ever --

22 MR. DiGENNARO: In the single-family, that
23 1290 --

24 MR. IANACONE: 1297.

25 MS. DALE: Yeah, I just didn't know if --

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MR. DiGENNARO: 1297.

MS. DALE: -- they've ever expressed any sort of concern?

MR. DiGENNARO: No concern whatsoever.

1289 is a duplex which is on the opposite side.

MS. DALE: Right. So they're sort of the in the middle of the --

MR. DiGENNARO: Yeah, they're in the middle of the two and we border right up against the 590 expressway.

MS. DALE: Yeah.

MR. DiGENNARO: So there's nobody on the other side and we've gotten no push back whatsoever.

MS. DALE: You might not know this, but before - I think you stated, but before you purchased the house there were two different families, in it was --

MR. DiGENNARO: Correct.

MS. DALE: -- there were people living there and --

MR. DiGENNARO: Yeah, correct.

MS. CORRADO: And did I understand you said it's currently rented and occupied?

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MR. DiGENNARO: That's correct, yes.

MS. TOMPKINS WRIGHT: I have some numbers on the income expense statement that you filled out.

MR. DiGENNARO: Uhm-hmm.

MS. TOMPKINS WRIGHT: I don't -- I guess I'm just confused on the numbers.

It says you spent seventy-eight thousand per year in repairs?

MR. DiGENNARO: Not per year. That was just to -- there were a lot of violations on the property and the expenses were a combination of; number one, as you know when you have that many violations you can't go to a bank to finance the property, so it was financed through private money. So that along with the renovations that were done.

Those were one-time non-recurring expenses.

MS. TOMPKINS WRIGHT: Right. Part of what we have to do is find that this property can't make a reasonable rate of return based on the numbers that are submitted.

MR. DiGENNARO: Uhm-hmm.

MS. TOMPKINS WRIGHT: And, you know, what you've submitted, I mean, I think it's probably right that you can't make a reasonable rate of return based

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2 on what you're selling the property and what rents
3 would be. But it's hard to make any kind of
4 determination because I don't know what your actual
5 annual expenses are on average as opposed to what you
6 spent last year in construction.

7 MR. DiGENNARO: Uhm-hmm.

8 MS. TOMPKINS WRIGHT: I think on your total
9 investment, you know, I'm confused because on the top
10 half you listed that you've paid fourteen thousand
11 dollars in interest on your mortgage --

12 MR. DiGENNARO: Uhm-hmm.

13 MS. TOMPKINS WRIGHT: -- last year.

14 MR. DiGENNARO: Uhm-hmm.

15 MS. TOMPKINS WRIGHT: But you didn't -- I'm
16 guessing that's an average of what you expect to spend
17 this year?

18 MR. DiGENNARO: No. No, because once all the
19 violations are brought up to code then you can go to a
20 bank and refinance out from private money and get a
21 mortgage through the bank.

22 Prior to having the violations taken care of,
23 you have to go to private money first and have the
24 violations taken care of. At that point go to a bank
25 and then refinance out, pay off the private money and

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then -- the term used is a bridge loan.

MS. TOMPKINS WRIGHT: Right. So your total cash investment wasn't a hundred and seventy-five because you took out a mortgage?

I guess that's why I feel like these numbers - it's hard to make a determination based on them because I don't think that it's accurate.

I think you probably have a case, but you know what I mean?

MR. DiGENNARO: What --

MS. TOMPKINS WRIGHT: Like I'm looking at your down payment, the cash that you've spent on the house above what your mortgage was - was ninety-two thousand that you spent cash for the property. And then --

MR. DiGENNARO: Which line are you looking at?

MS. TOMPKINS WRIGHT: Total investment, it's two thirds of the way down on this income statement.

MR. DiGENNARO: No, I believe that was the purchase price was the ninety-two thousand. I don't see ninety-two thousand on --

MS. TOMPKINS WRIGHT: Am I -- I'm looking at this(indicating).

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2 MR. DiSTEFANO: On the total investment
3 portion of the expense you have ninety-two thousand
4 under down payment.

5 MR. DiGENNARO: Okay. All right. Down
6 payment ninety-two thousand seven thirteen cash above
7 mortgage. That was the actual purchase price of the
8 duplex - of the house I should say.

9 MS. TOMPKINS WRIGHT: So it wasn't the down
10 -- I guess that's what confuses --

11 MR. DiGENNARO: No. That was --

12 MS. TOMPKINS WRIGHT: I don't know what the
13 real numbers are.

14 MR. DiGENNARO: That was not the down
15 payment, that was the partial -- that was partially the
16 amount of the money that was borrowed privately. That
17 was encompassed in the total amount of the mortgage,
18 which I paid interest on. So the private money was
19 used for the purchase price and for any renovations
20 that needed to be done.

21 MS. TOMPKINS WRIGHT: Okay. I just -- so
22 what was your total cash investment not including your
23 mortgage?

24 MR. DiGENNARO: The one seventy-four nine
25 ninety-two, which is the sum of one, two and three on

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the financial.

MS. TOMPKINS WRIGHT: Not including the mortgage, so what you spent of your own money over and above what any private money or, you know, mortgage you got from the bank --

MR. DiGENNARO: Uhm-hmm.

MS. TOMPKINS WRIGHT: -- plus --

MR. DiGENNARO: There was no mortgage from the bank.

MS. TOMPKINS WRIGHT: There wasn't a mortgage from a private lender?

MR. DiGENNARO: From a private lender, but no bank.

MR. DOLLINGER: I don't understand what you're talking about.

MR. DiSTEFANO: I know what she is saying.

MS. TOMPKINS WRIGHT: I want to be able to do the math to show what the rate of return is.

MR. DiSTEFANO: Right. Basically what she's saying is you borrowed -- did you borrow a hundred and seventy-four thousand nine hundred and ninety-two dollars?

MR. DiGENNARO: Borrowed from a private individual.

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2 MR. DiSTEFANO: So out of your cash pocket
3 you are paying interest on that hundred and --

4 MR. DiGENNARO: That's correct. Interest
5 only mortgage, because a bank won't finance the
6 property --

7 MR. DiSTEFANO: So zero out of his pocket
8 except for the interest that he's paying for towards
9 that hundred and seventy-four.

10 MR. DiGENNARO: And the money from the
11 proceeds of the sale will be used to pay the lender.

12 MR. DiSTEFANO: The balance --

13 MR. DiGENNARO: Yes --

14 MR. DiSTEFANO: -- off that hundred and
15 seventy-four.

16 MR. DiGENNARO: Correct. So if you -- to
17 answer your question if you take the ninety-two
18 thousand seven thirteen that you referenced and
19 subtract that from the one seventy-four nine
20 ninety-two, basically excluding any real estate costs
21 and everything, the rate of return would be
22 6.31 percent. And that was prior to an additional
23 fifteen hundred dollars in architectural fees,
24 additional attorney fees. So the rate of rate of
25 return after everything is said and done would probably

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2 be a break even. And if this was a single-family it
3 would probably be close to a fifty thousand dollar hit.

4 MR. DiSTEFANO: Yeah, it's a little hard to
5 use this in his case because he's not using it. And
6 correct me if I'm wrong, he is not going to reap any of
7 the rental benefit out of it.

8 You're basically a guy that went in there and
9 bought it, renovated it, got it rented out and selling
10 it?

11 MR. DiGENNARO: Correct.

12 MR. DiSTEFANO: Basically flipping it. So he
13 is not going to incur any of that rental fee. Which if
14 it was a long-term investment then he would have to
15 include all that rental fee for the rate of return.

16 MR. MIETZ: And all the other --

17 MR. DiSTEFANO: So this form might not be the
18 best --

19 MR. MIETZ: Right.

20 MR. DiSTEFANO: -- form for him to show his
21 outlay and his possible profit.

22 MR. DOLLINGER: The other thing is this type
23 of financial - this type of transaction, you know,
24 really what he's got into it is the difference between
25 --

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2 MR. DiSTEFANO: Hundred and seventy-four
3 thousand.

4 MR. DOLLINGER: -- less his purchase price.
5 Which really even though he borrowed it, the way that
6 this deal is working is you're borrowing - it's cash.
7 You're paying twelve percent for the money. I mean,
8 it's like putting cash into the deal it's just you're
9 getting the cash from somewhere else.

10 MR. DiSTEFANO: Right.

11 MR. DOLLINGER: So he really has in the deal
12 everything above the purchase price as cash investment
13 because it cost a ton of money to get that money. You
14 know, so --

15 MR. DiGENNARO: Yeah, anytime you're going
16 outside --

17 MR. DOLLINGER: The question really in some
18 ways -- if you go into it I think in good faith - I'm
19 just extrapolating - you know, the question is: What
20 kind of return do you need to get on that hundred and
21 eighty thousand dollars and make the whole thing work
22 and can you do that as a single-family in this
23 location?

24 That's just one way of looking at it.

25 MR. DiSTEFANO: Right, which is just one

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2 aspect of it.

3 MR. DOLLINGER: It's one way to look at it.

4 MR. DiSTEFANO: It's one way to look at it
5 and then one aspect of the use variance. I mean, there
6 are other aspects of the use variance that we need to
7 look at. This is one aspect. This is a big aspect,
8 but it's just one aspect.

9 MS. BAKER LEIT: All right. Did we get
10 testimony on how much you think it would be worth as a
11 single-family?

12 Did you say --

13 MR. DiGENNARO: Yeah, as a single-family I
14 ran comps for single-family units within a six month
15 and within a mile radius of the actual property and
16 there - I mean, at best one thirty-five and --

17 MS. BAKER LEIT: What was the median?

18 I mean, you're saying that is one
19 thirty-five. Is that something --

20 MR. DiGENNARO: Yeah, the median was lower.
21 It was closer to one twenty-five, closer to the
22 assessed value of the house. You know, and with the
23 expenses that -- if it was a single-family,
24 hypothetically speaking, at a purchase price of one
25 ninety-seven nine the monthly expenses approximately

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2 with an increase of taxes from fifty-six hundred to
3 approximately eighty-nine hundred annually would be
4 eighteen forty a month. And that area does not warrant
5 any rents above eighteen hundred a month. I pulled
6 comps from other rental areas and it would be hard to
7 drive rent of twenty-one hundred. And it wouldn't be a
8 significant investment for an investor to make three
9 hundred a month because just if one thing goes bad I
10 mean that's it for the year, there goes everything.

11 MR. MIETZ: All right. So are we clear?

12 MR. DiSTEFANO: Just - I know I asked your
13 attorney this, but I just want you to be able to
14 address the code compliance - state code compliance -
15 for a two rental.

16 You haven't done any - your architects
17 haven't gone through and done a full code analysis on
18 it, but you understand that it could be required as
19 part of the --

20 MR. DiGENNARO: Absolutely. Yeah, he's just
21 waiting for us to, you know, whatever you want us to
22 do. You know, he's just waiting for me to call him and
23 say, you know, you need to do a code compliance to make
24 sure everything is, you know, up to what Brighton Town
25 Board Zoning Department requires. And he's ready to go

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ahead and to move forward with that.

MR. IANACONE: Well, Rick, he did do a preliminary.

MR. DiSTEFANO: Okay. Great.

MR. DOLLINGER: Where there -- did you see any significant impediments?

MR. IANACONE: No, he did not, but and he said, again --

MR. DOLLINGER: Right. I know what you're talking --

MR. IANACONE: Okay. But we did have him do the first --

MR. DiSTEFANO: Yeah, I mean as simple as smoke detectors and carbon monoxide detectors to --

MR. IANACONE: Right.

MR. DiSTEFANO: -- to, you know, proper separation and egress --

MR. DiGENNARO: Those we have, but he has not formally done a --

MR. IANACONE: But he did look at those.

MR. DiGENNARO: Yeah, but he did look at those.

MR. IANACONE: And the separation between the units.

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MR. DiSTEFANO: Okay.

MR. MIETZ: Okay. Are we set?

Okay. Thank you very much.

MR. DiGENNARO: Thank you very much for your
time.

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

There being none, the public hearing is
closed.

* * *

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

2 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS
3 AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK on December
2nd, 2015, COMMENCING AT APPROXIMATELY 7:15 P.M.

4 December 2nd, 2015
5 Brighton Town Hall
2300 Elmwood Avenue
6 Rochester, New York 14618

7
8 PRESENT:

9 DENNIS MIETZ, CHAIRMAN
10 CHRISTINE CORRADO
JEANNE DALE
11 JUDY SCHWARTZ
ANDREA TOMPKINS WRIGHT
CANDICE BAKER LEIT, ESQ.

12
13 DAVID DOLLINGER, ESQ.
Town Attorney

14
15 RICK DiSTEFANO
Secretary

16
17
18
19 (The Board having considered the information presented
20 by the Applicant in each of the following cases and
having completed the required review pursuant to SEQRA,
21 the following decisions were made:)

22
23
24 Reported by: CHAD L. SMITH, Court Reporter
EDITH E. FORBES COURT REPORTING SERVICE
25 21 Woodcrest Drive
Batavia, New York 14020

2 APPLICATION 11A-11-15

3 11A-11-15 Application of Signs Now of
4 Rochester, agent, and 1850 WRS, LLC, owner of property
5 located at 1850 Winton Road South for Sign Variances
6 from Section 207-32B to 1) allow for business
7 identification signage on two building faces where
8 signage on only one building face is allowed by code,
9 2) allow the signs to be 30 ft. in height from grade in
10 lieu of the maximum 20 ft. allowed by code; and 3) a
11 Sign Variance from Section 207-26D to allow the signs
12 to be 100% logo where not allowed by code. All as
13 described on application and plans on file. PARTS I &
14 III - APPROVED WITH CONDITIONS AT THE NOVEMBER 4, 2015
15 MEETING, Part II - TABLED AT THE NOVEMBER 4, 2015
16 MEETING - PUBLIC HEARING REMAINS OPEN

17 Motion made by Ms. Baker Leit to approve
18 Application 11A-11-15.

19 **FINDINGS OF FACT:**

20 1. The requested variance is the minimum variance
21 possible to read the business sign on the building in a
22 manner that is clearly visible to vehicles to North and
23 South Winton Avenue.

24 2. No other alternative can alleviate the difficulty
25 and produce the desired result since the twenty foot

2 maximum height would disrupt the second floor windows.

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

6 4. The alleged hardship is not self-created by the
7 applicant.

8 5. The health, safety and welfare of the community
9 will not be adversely affected by the approval of this
10 variance request.

11 **CONDITIONS:**

12 1. This variance will apply only to the signage that
13 was described in the application and testimony given.

14 (Seconded by Ms. Corrado.)

15 (Ms. Schwartz, yes; Ms. Tompkins Wright, yes;
16 Ms. Dale, yes; Mr. Mietz, yes; Ms. Corrado, yes; Ms.
17 Baker Leit, yes.)

18 (Upon roll call, motion to approve with
19 conditions carries.)
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2 APPLICATION 12A-01-15

3 12A-01-15 Application of Richard Rowden, owner
4 of property located at 800 Corwin Road, for an Area
5 Variance from Section 203-2.1B(2) to allow a shed to be
6 located in a side yard in lieu of the rear yard as
7 required by code. All as described on application and
8 plans on file.

9 Motion made by Ms. Schwartz to approve
10 Application 12A-01-15.

11 **FINDINGS OF FACT:**

- 12 1. There is a steep slope in the rear yard that
13 prevents locating the shed according to the code.
14 2. There is limited rear yard.
15 3. The rear yard to the north also slopes, so the
16 placement of the requested shed would not be feasible.
17 4. The shed being of wood construction will be
18 compatible with the natural surroundings.
19 5. The shed will not be in view of the neighbors'
20 windows.

21 **CONDITIONS:**

- 22 1. Bushes/landscaping will be placed in front of the
23 shed to shield it from view from the street, as
24 described in application.
25 2. All building and planning department approvals must

2 be obtained.

3 3. This variance only applies to the location of the
4 shed as described in the application and testimony
5 presented.

6 (Seconded by Ms. Tompkins Wright.)

7 (Ms. Corrado, yes; Ms. Baker Leit, yes; Mr.
8 Mietz, yes; Ms. Dale, yes; Ms. Tompkins Wright, yes;
9 Ms. Schwartz, yes.)

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

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2 APPLICATION 12A-02-15

3 12A-02-15 Application of Stephen DiGennaro II,
4 owner of property located at 1309 Blossom Road, for a
5 Use Variance from Section 203-9 to allow for a duplex
6 house to be located in the RLB - Residential Low
7 Density District where not permitted by code. All as
8 described on application and plans on file.

9 Motion made by Ms. Tompkins Wright to approve
10 Application 12A-02-15.

11 **FINDINGS OF FACT:**

12 1. The property is incapable of earning a reasonable
13 return on the initial investment if used in any of the
14 allowed uses of the district. The applicant testified
15 that the cost of converting this house back to a
16 single-family home together with the significant loss
17 of value between the applicable purchase price of a
18 duplex and the applicable purchase price of a
19 single-family home would result in the applicant not
20 being able to recoup the majority of his investment in
21 the property.

22 2. The property is being affected by unique or at
23 least highly uncommon circumstances. This property was
24 used and taxed as a two-family residence since at least
25 1993. The applicant bought the home in good faith as a

2 two-family residence after a significant amount of
3 reasonable due diligence without any indication that it
4 was a non-conforming use.

5 3. The variance if granted will not alter the
6 essential character of the neighborhood. The property
7 is not located in a single-family neighborhood or along
8 a single-family street. It is on the same road and
9 about three eighths of a mile of two apartment
10 complexes, other multi-family homes, a school, assisted
11 living facility and a church and is bordered on the one
12 side by 590.

13 4. The hardship was not self-created. The property
14 was previously converted to a duplex by a prior owner
15 and sold to the applicant without knowledge that use as
16 a duplex was a violation of the zoning code.

17 **CONDITIONS:**

18 1. The applicant shall provide to the building
19 department a certification from a New York State
20 licensed architect that the duplex is New York State
21 code compliant.

22 2. This approval only applies to the duplex's floor
23 plan in the configuration depicted in the plans, and
24 the property shall be limited to two units.

25 (Seconded by Ms. Baker Leit.)

2 (Ms. Schwartz, yes; Ms. Dale, yes; Mr. Mietz,
3 yes; Ms. Corrado, yes; Ms. Baker Leit, yes; Ms.
4 Tompkins Wright, yes.)

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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

	above [7] 30/14 31/6 32/5 35/12 37/5 40/6 49/6	applicable [2] 46/17 46/18
'93 [2] 18/25 19/6	above-entitled [2] 40/6 49/6	applicant [7] 41/19 43/7 46/14 46/19 46/25 47/15 47/18
1	absolutely [2] 14/7 37/20	application [28] 2/14 2/15 2/24 7/10 7/13 7/17 7/20 12/5 12/8 12/13 13/16 13/23 39/8 42/2 42/3 42/13 42/18 43/13 44/2 44/3 44/7 44/10 44/24 45/4 46/2 46/3 46/8 46/10
100 [2] 2/23 42/12	access [1] 11/17	applies [2] 45/3 47/22
11 [1] 15/14	accessing [1] 11/19	apply [1] 43/12
11/25 [1] 23/21	according [1] 44/13	appreciate [2] 3/14 7/6
11A-11-15 [4] 2/15 42/2 42/3 42/18	accurate [3] 30/8 40/8 49/8	approval [3] 43/4 43/9 47/22
1275 [1] 15/12	acquisitions [1] 14/22	approvals [1] 44/25
1289 [5] 15/17 15/17 15/22 26/19 27/6	actual [3] 29/4 31/7 36/15	approve [6] 19/23 42/17 43/18 44/9 45/10 46/9
1290 [1] 26/23	actually [8] 4/4 4/9 5/7 5/16 5/24 8/5 10/5 10/9	approved [4] 2/25 19/11 19/22 42/14
1297 [3] 15/19 26/24 27/2	additional [3] 14/3 33/22 33/24	approving [1] 3/14
12A-01-15 [4] 7/13 44/2 44/3 44/10	address [7] 12/19 13/21 17/6 17/20 23/15 24/24 37/14	approximately [12] 1/3 8/4 13/25 15/18 24/18 25/9 25/15 25/17 26/3 36/25 37/3 41/3
12A-02-15 [4] 12/8 46/2 46/3 46/10	adhere [1] 12/21	architect [2] 19/25 47/20
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14020 [2] 1/25 41/25	administrative [1] 12/20	architectural [1] 33/23
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15 [12] 2/15 7/13 12/8 42/2 42/3 42/18 44/2 44/3 44/10 46/2 46/3 46/10	advertise [1] 15/8	area [5] 7/14 10/17 26/2 37/4 44/4
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1993 [5] 13/13 13/22 13/25 14/16 46/25	affected [2] 43/9 46/22	around [1] 15/24
2	afforded [1] 12/25	as [62]
2.1B [2] 7/15 44/5	after [4] 21/8 21/8 33/25 47/2	ask [1] 20/17
20 [2] 2/21 42/10	again [5] 3/6 6/5 15/16 19/9 38/9	asked [1] 37/12
2002 [2] 23/11 23/19	against [2] 7/2 27/11	aspect [5] 36/2 36/5 36/7 36/7 36/8
2014 [2] 23/12 23/21	agent [2] 2/15 42/4	aspects [1] 36/6
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