

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF  
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK  
3 On APRIL 6, 2016, COMMENCING AT APPROXIMATELY  
4 7:27 P.M.

5 April 6, 2016  
6 Brighton Town Hall  
7 2300 Elmwood Avenue  
8 Rochester, New York 14618

9 PRESENT:

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

16 DAVID DOLLINGER, ESQ.  
17 Town Attorney

18 RICK DISTEFANO  
19 Secretary

20  
21 Reported By: BRIANA L. JEFFORDS  
22 Edith Forbes Court Reporting  
23 21 Woodcrest Drive  
24 Batavia, New York 14020  
25

1                   CHAIRPERSON MIETZ: Okay. At this point I  
2 would like to call to session the April session of the  
3 Brighton Zoning Board of Appeals.

4                   Rick, was the meeting properly advertised?

5                   MR. DISTEFANO: Yes, Mr. Chairman. It was  
6 advertised in the Brighton-Pittsford Post on March  
7 31st, 2016.

8                   CHAIRPERSON MIETZ: Okay. Will you please  
9 call the roll.

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

12                  CHAIRPERSON MIETZ: Rick, whenever you're  
13 ready, call the first application.  
14 Application 2A-03-16. Application of Jack Siegrist  
15 architect, and James Cerone and Sharon Bidwell-Cerone,  
16 owners of property located on East Avenue (between  
17 2940 and 2980 East Avenue) known as Tax ID  
18 #138.05-1-70, for an Area Variance from Section 205-2  
19 to allow a single family house to be constructed with  
20 a 9 ft. side setback (north side) in lieu of the  
21 minimum 16.5 ft. required by code. All as described  
22 on application and plans on file.

23                  MR. PHILIPPONE: My name is James  
24 Philippone appearing on behalf of the applicant. When  
25 we were last before this Board, the Board adjourned

1 the matter to address two issues. The first issue is  
2 to discuss the claim or to address the claim that the  
3 tree line between the Cerone and the Ludwig house  
4 would be destroyed if this variance was granted. And  
5 there was substantial concern over the Board about  
6 whether this tree line would be decimated. How would  
7 it look? What would happen? To respond to that,  
8 we've hired an arborist, not a landscaper, not a  
9 landscape architect, an arborist. We wanted to give  
10 the Board the foremost expert in this field.

11 Doctor Ludwig is here with us today, and  
12 he is going to address for you what he found and how  
13 this construction would affect the tree line.

14 The second question was: How does this  
15 house fit in the neighborhood? Is this going to look  
16 like some house that was shorned into a small lot with  
17 a big house? What do the other houses in the  
18 neighborhood look like? What is the neighborhood  
19 really composed of? And is this some type of -- of  
20 dwelling that really should be built in this area?  
21 East Avenue is not a normal street. It is a great  
22 Street. It requires not 2,000 square foot ranches,  
23 but houses that have significant proportion.

24 There is, in my mind, only one real  
25 objection, and that's Mr. Ludwig, who is here again

1       tonight. Mr. Ludwig has had people whom he is  
2       associated with write letters, and I'm prepared to  
3       respond to those letters if the Board feels, after it  
4       hears our experts, any questions that are brought up  
5       that would adversely affect the granting of this  
6       application.

7                 Jack Siegrist is here. You asked him to  
8       show you how this house would look after it was built,  
9       and he's done that. He is here today. And he is  
10      going to discuss with you exactly what he did at the  
11      Board's request at our last meeting.

12                Mrs. Cerone is also here. Now, you may  
13      remember her. She is an impassioned lady, and this  
14      house is her dream. There have been many people who  
15      have said, "why can't you change this," and "why can't  
16      you change that," and "why don't you cut off this,"  
17      and "why can't you cut off that." Well, she went  
18      back, and she listened. And Rick and Mr. Siegrist  
19      after many hours and after Mr. and Mrs. Cerone and  
20      many thousands of dollars have made the changes that  
21      they could make before they brought this application  
22      before you today. If anyone on the Board feels that  
23      there could have been a modification in this house  
24      that would have been a solution to the way of life  
25      that this family projected itself, they're wrong.

1       Because they would have saved thousands of dollars to  
2       be able to make the modification and do it. This is  
3       an impassioned person.

4                       Mrs. Cerone is here, and she will tell you  
5       how she went house to house taking photographs to say  
6       this house is so many feet, this house is so many  
7       feet, this house is so many feet. I want you to  
8       remember that this is an application to vary the side  
9       lot line seven and a half feet where the distance to  
10      the next house is a hundred feet. Now, I ask you to  
11      consider how many homes do you see in this town, in  
12      the town of Brighton, that have a hundred feet between  
13      the two houses? They're asking for a  
14      seven-and-a-half-foot variance. Consider what these  
15      people have gone through to be -- to present to you  
16      what they have and the people, and the character, and  
17      the quality of the people that are being submitted. I  
18      would like to introduce Dr. Luley now to discuss with  
19      you the tree line.

20                     DR. LULEY: Members of the Board, thank  
21      you for your time. My name is Chris Luley. I am with  
22      Urban Forestry, LLC. We're full-time urban forestry  
23      consultants. I'm from South Bristol. I have a  
24      business partner, Andy Pleninger. He was a city  
25      forester for Rochester for 10 years during the

1 renovation. We worked for the Town of Brighton on a  
2 number of occasions, and they wanted me to  
3 successfully discuss the treeline. I'm a tree guy.  
4 So that's all we do. So if you have any questions  
5 about trees, I would be glad to answer them. They  
6 wanted me to address the impact on the tree line, and  
7 specifically, any individual trees that would be  
8 impacted. There's a large cherry in the backyard that  
9 would be removed. I showed some pictures in my  
10 letter. That's -- they are hazardous. I'm just going  
11 to -- these images weren't in my report, but these  
12 trees -- you can pass that down, if you would. Our  
13 trees close to the road will not be impacted at all.  
14 Okay. There is one tree that -- two trees that will  
15 be impacted. One is a 29-inch Norway maple. Are you  
16 familiar with Norway maples? Here is a close-up that  
17 was also not in my -- not in my letter. Norway maple,  
18 as you know, is an invasive species in New York State.  
19 In fact, it's a regulated species. It's so highly  
20 invasive that it's not recommended for planting in any  
21 town anymore.

22           The tree in question is primarily on the  
23 Cerone's property. It's leaning towards their  
24 property. In fact, about 75 percent of the trunk is  
25 on their property, and as the lean goes up, most of

1 the trunk is, in fact, on their property. It has a  
2 number of significant defects that I'm passing around.  
3 It has decay and a cavity and a seam where three stems  
4 come together in the lower trunk, and the tree, in the  
5 house footprint would be impacting the root zone of  
6 this Norway maple. The really only reasonable thing  
7 to do is to remove it. You know, having a large  
8 Norway maple that has a girdling root leaning towards  
9 a house -- a new house is just not a desirable  
10 situation. I'm all about tree preservation. I mean  
11 we do big tree preservation projects. If this tree  
12 was worth preserving, I would go out of my way to do  
13 that, but its got significant defects. It's an over  
14 mature tree. Norway maples are short lived in New  
15 York State. It's just not worth saving. In fact, I  
16 would put to you that the environment might be  
17 improved by elimination of that tree because of its  
18 invasive nature. I've worked in that East Avenue  
19 corridor a little bit, and Norway maple is a problem  
20 in the native woodlands. And there's a lot of that in  
21 that area. It crowds out all other trees, no wild  
22 flowers come in, and it has an impact on wildlife  
23 species. So it really is an undesirable tree in the  
24 urban environment. And that's really the only tree  
25 that's going to be impacted by the construction.

1                   There is a second tree within the  
2                   footprint. It's is a black cherry *Prunus serotina*,  
3                   and that's leaning the other way. It's about 10  
4                   percent on the Cerone's property. That tree can be  
5                   left. They can work from their side and probably --  
6                   it has a small crown. It's really not a very nice  
7                   tree. It has some pretty large dead branches in the  
8                   lower crown. They could -- it could be preserved. As  
9                   long as they work from the their side of the property,  
10                  then the damage to that should be pretty minimal.

11                  So kind of in summation, I know you have a  
12                  lot to listen to here. I can't see a material impact  
13                  on the treeline. And if -- that one picture that I  
14                  sent around, if you see there is all those Norway  
15                  maples -- all these Norway maples on this property  
16                  line were self-seeded. These were not planted trees.  
17                  If you can see the trees, the maples are like 3,  
18                  4 feet apart, and it's kind of classic that the maples  
19                  are shading out a nice native shagbark hickory. And  
20                  that's their big impact in urban environments is that  
21                  they impact our native species and they pop up  
22                  anywhere that you stop mowing or stop maintaining.  
23                  And you can see that's what's happened in this  
24                  treeline over time. So any questions?

25                  CHAIRPERSON MIETZ: Yes, sir? No? Okay.

1 DR. LULEY: Yeah, I think we're saving a  
2 lot of long-term maintenance by removing that tree.  
3 Thank you.

4 MR. PHILIPPONE: I'd like next to ask  
5 Mr. Siegrist to come up and tell you what he did based  
6 on the recommendations that you asked for the last  
7 time.

8 Mr. Siegrist, can you come up and tell the  
9 Board what you did?

10 MR. SIEGRIST: My name is Jack Siegrist.  
11 I am the architect for the project. I'd like to start  
12 -- does everybody have this in their packet? This was  
13 the best property overall imagine that we could get,  
14 and we got it through the town. The houses we are  
15 going to be talking about are the taped squares, the  
16 approximate size. Our block is the red block. This  
17 is East Avenue at the bottom of the photograph. I'm  
18 going from the right to the left.

19 We have the condominiums at 2990, I think  
20 it's 92, 96, I believe. The distance between the  
21 condos and our existing house is about 44, 45 feet.  
22 Again, we're just scaling on the property map. Then  
23 we have 2980. Then we have about 38 feet between --  
24 actually 35 feet between the existing house and our  
25 proposed house. We have 115 feet between our house

1 and Mr. Ludwig's house. We have 35 feet to the next  
2 house to the west of that which is split down the  
3 middle. I believe it's 16 feet on Mr. Ludwig's house  
4 and the rest is on the property next to it. Then we  
5 have the vacant lot which is a 100-foot lot, but there  
6 is a house that's 160 feet apart, and 2910, and then  
7 34 feet or 39 feet, I believe it is, between that  
8 house and the corner.

9 So that's what we were asked to give us a  
10 neighborhood feel. How far apart are the houses? So  
11 that's what that's about.

12 This is also a street scape that we put  
13 together. We had, as can you see, kind of a dark day.  
14 Google didn't do a good job for us, but this is our  
15 house here. These are the property lines that we're  
16 talking about. This is 110 feet across. From here,  
17 this would be 9 feet from the roof line and 11 feet to  
18 the house. From this over to Mr. Ludwig's house,  
19 which is-- you couldn't see the one story addition so  
20 I just taped it out so you can see it better. It's  
21 115 feet, I believe, and then there's Mr. Ludwig's  
22 house. And then there's 30 some feet between  
23 Mr. Ludwig's house and this house. And here's our  
24 house to the right of it, and then the condominiums to  
25 the right of that. And that was put together to

1 illustrate that.

2 And I don't know what else we need to talk  
3 about. That's what we were asked to do. If there is  
4 any other questions or anything you need?

5 CHAIRPERSON MIETZ: Questions about the  
6 sketch? Questions about that piece of information.

7 MR. DISTEFANO: I think just for  
8 clarification on the record, you stated the wall of  
9 the house would be 11 feet. The roof overhang is  
10 going to be --

11 MR. SIEGRIST: Nine feet; correct, which  
12 is different because once we encroach into -- our  
13 setback is 16 foot 6, we were allowed two feet of  
14 overhang just as because that's part of the house.  
15 Once we go down to 16 foot 4, we have to include  
16 what's to be overhang in the setback. That's why  
17 there's that two foot difference between the 9-foot  
18 roof overhang and 11-foot building.

19 MR. DISTEFANO: Yeah, and I think it's  
20 important that the Board realizes that 16 and a half  
21 includes two feet of roof overhang or that variance  
22 includes two feet of roof overhang.

23 MR. SIEGRIST: That's correct.

24 MS. SCHWARTZ: So the only thing you're  
25 showing us tonight is this detail, but other than

1 that, the plan is the same as it was the last time you  
2 were here.

3 MR. SIEGRIST: The plan is the same;  
4 correct.

5 MR. DOLLINGER: So you're suggesting that  
6 you could put the house right on the line at the 16  
7 and.

8 MR. DISTEFANO: 16.5-foot.

9 MR. DOLLINGER: And the setback in theory  
10 would be only 14 because you're not required to  
11 calculate that additional two feet unless you're out  
12 --

13 MR. DISTEFANO: Right. There is an  
14 exception in the code. Basically, if your house is  
15 meeting all the required setbacks, there are certain  
16 portions of that structure that can encroach into a  
17 required setback. So if the house was built right at  
18 -- the house wall, foundation wall was built right at  
19 the setback line, they would be allowed two feet of  
20 encroachment into that side setback. Therefore, it  
21 would be a 14.5 foot setback with that two -- foot  
22 encroachment.

23 MR. DOLLINGER: So really, although  
24 they're asking for six feet, they're really only  
25 moving the building 4 feet.

1                   MR. DISTEFANO: In essence the building is  
2 moving --

3                   MR. DOLLINGER: Is really the only way to  
4 describe it.

5                   MR. DISTEFANO: Well, I think that you ask  
6 the applicant that.

7                   MR. DOLLINGER: Right. So this building  
8 is -- the structure -- the underlying structure is  
9 four feet in from the 16-foot setback.

10                  MR. SIEGRIST: Okay. So 16 and a half is  
11 our setback.

12                  MR. DOLLINGER: Yep.

13                  MR. SIEGRIST: Our building is at 11 feet.  
14 So that's five and a half feet, and then that's seven  
15 and a half feet to the roof overhang.

16                  MR. DOLLINGER: So it is -- okay. All  
17 right. So in some ways you can look at it as  
18 five-and-a-half-foot setback.

19                  MR. DISTEFANO: That's a way of looking at  
20 the foundation wall. Strictly looking at --

21                  MR. DOLLINGER: Okay. Yeah.

22                  CHAIRPERSON MIETZ: Yeah.

23                  MR. SIEGRIST: Also, if we were allowed to  
24 build to the setbacks, we would be 16 and a half feet  
25 on both sides, but we would be much closer to our

1 existing house by four and a half, five feet to the  
2 right which would -- we talked about is the  
3 neighborhood and what gives it the most room. I mean  
4 this would give us more room without any impact on the  
5 right side of the house, and I would say negligentable  
6 on the left side of the house.

7 MR. DISTEFANO: And again more for us to  
8 remember everything that we saw two months ago. The  
9 house itself, if you didn't include the driveway and  
10 the ability of getting out of a side-loaded garage,  
11 the house could very well easily fit on the lot.

12 MR. SIEGRIST: That's correct.

13 MR. DISTEFANO: But it's the side-load  
14 garage that's forcing you to move the house one way or  
15 the other to pick up that ability for cars to get in  
16 and out of the garage; correct.

17 MR. SIEGRIST: That's correct.

18 CHAIRPERSON MIETZ: That is correct.

19 MR. SIEGRIST: That's correct.

20 MS. DALE: Did you draw plans for a  
21 front-loaded garage?

22 MR. SIEGRIST: Yes, we went over plans.  
23 We did all of that up to this stage.

24 CHAIRPERSON MIETZ: Yes, sorry, but it was  
25 a couple months.



1 pictures of many homes with many measurements. These  
2 photographs were taken by Mrs. Cerone. Does anyone --  
3 I will not ask her to come up and speak if you are  
4 satisfied and you understand the exhibit as presented  
5 before you.

6 Mrs. Cerone was given the task of going  
7 around the neighborhood and trying to determine how  
8 this house would fit in the neighborhood. Would -- is  
9 this house -- would it be -- would that five and a  
10 half feet that we are talking about so impact the  
11 neighborhood that it would cause a denial in your --  
12 in their request for this variance? Counsel has  
13 apparently made the point, which unfortunately I was  
14 not aware of, and I thank you counsel, that the  
15 request is really not seven and a half feet as I said.  
16 It's really five and a half feet.

17 It would seem to me that when we're  
18 talking about a home of this caliber, if I was going  
19 to look at that home and I wanted to buy it, I would  
20 want a side entry garage. I wouldn't want the two-car  
21 garage sitting in front of the house if I could help  
22 it. I would want a home that was impressive. I would  
23 want something that -- if I was going to spend this  
24 amount of money and live on East Avenue, I would want  
25 a home that looked like an East Avenue mansion.

1 Mansions, they are not uncommon on East Avenue.

2 There's a lot of them.

3 This home should not be denied because of  
4 five and a half feet where the next building is  
5 100 feet. I ask you to carefully consider what we  
6 have in front of you today. It's five and a half  
7 feet. Thank you. If anyone wishes to speak with Mrs.  
8 Cerone, she would be --

9 CHAIRPERSON MIETZ: Is there any question  
10 on the preparation of the photographs?

11 MS. LEIT: In terms of the actual lot  
12 where it's situated, is that lot part of the  
13 neighborhood association that you know of?

14 MR. PHILIPPONE: I don't believe so.

15 Mrs. Cerone, it is not, is it?

16 MS. BIDWELL-CERONE: No, it is not.

17 MS. LEIT: And are you aware whether any  
18 of the photographs --

19 CHAIRPERSON MIETZ: Are you going to ask  
20 more questions of Mrs. Cerone or no?

21 MS. LEIT: I guess she can answer the  
22 questions.

23 CHAIRPERSON MIETZ: Okay. She just needs  
24 to come up and be on the record. I can't have her  
25 sitting over there.

1                   MR. PHILIPPONE: Mrs. Cerone, would you  
2 come up and answer questions on this?

3                   CHAIRPERSON MIETZ: Just for the record,  
4 please state your name and address.

5                   MS. BIDWELL-CERONE: My name is Sharon  
6 Bidwell-Cerone, and this evening I believe my primary  
7 purpose is to address the comparability, the  
8 precedence, if you will, in terms of the type of  
9 setback that we have been talking about with our  
10 variance request.

11                   Months ago, we did a lot of research going  
12 through the public records, and we've in fact  
13 composed -- comprised a list of houses in the  
14 neighborhood now that had setbacks that were pretty  
15 small. Now, what I mean by the neighborhood? East  
16 Avenue, Parsons, Sandringham, Ambassador, Trevor Court  
17 area. Now, you may be asking yourself why  
18 Sandringham, Ambassador, and Trevor Court. I actually  
19 talked to the most popularly known real estate agent  
20 in that area about that neighborhood. That would be  
21 Jamie Columbus. And because my thoughts were, that is  
22 a pretty high-value neighborhood and that if setbacks  
23 prevailed there, perhaps that would be a key point to  
24 be made regarding the setbacks we were asking for on  
25 East Avenue. Ms. Columbus told me that that is the

1 highest valued neighborhood on average in Brighton.  
2 And that why? Well, one reason is that they have a  
3 neighborhood association, and they have a neighborhood  
4 feel that is not as present on East Avenue, and that  
5 she, as a real estate agent, would discount East  
6 Avenue and East Main Street by ten percent off the  
7 top. So hence, my thinking in terms of offering  
8 comparables in the Sandringham, Ambassador area is  
9 that it is a higher-valued area, and if they retain it  
10 appropriate there, then this would make sense to say  
11 appropriate on East Avenue.

12 In terms of East Avenue alone, as I have  
13 mentioned before, alone our current house is only  
14 8.5 feet to the property line. Right across the  
15 street from us at 2795, they are 11 feet from the  
16 property line. At 2801 East Avenue, they are 13 feet  
17 from the property line. Oodles of homes in the  
18 Sandringham and Ambassador area are very close  
19 together. We could have gathered reams if we went  
20 over to Georgia Court which is also part of the real  
21 estate neighborhood I was talking about.

22 MS. LEIT: Okay. But the main question  
23 that I had was that this has a separate neighborhood  
24 associate and this lot is not part of that  
25 neighborhood association?

1 MS. BIDWELL-CERONE: That is correct.

2 MS. LEIT: Okay. Thank you.

3 CHAIRPERSON MIETZ: All right.

4 MR. PHILIPPONE: Does the Board have any  
5 questions of me? I would be pleased to discuss any  
6 reservations the Board may have on granting this  
7 application. It is very important to Mr. and  
8 Mrs. Cerone. As you can understand, they have been --  
9 this has been a labor of love for them, thousands of  
10 dollars, a lot of heartache, and a lot of work. I ask  
11 you to please favorably consider their application.

12 CHAIRPERSON MIETZ: Thank you very much.  
13 Okay. So is there anyone in the audience that would  
14 like to speak regarding this application? Okay.  
15 Jerry.

16 MR. LUDWIG: Jerry Ludwig, 2940 East  
17 Avenue. Honorable chair, members of the Board, I  
18 would just like to make a few summary points here. I  
19 won't spend a lot of time. First of all, I think it's  
20 important that Dr. Ludwig and Ms. Rockwell have  
21 absolutely no objection to the Cerone's building a  
22 house on this lot. Providing, it meets the setback  
23 requirements. We do wish that the square footage also  
24 met the existing requirements, but we honor that that  
25 has been granted. And every architect that I've

1 talked to, and this certainly is not my first rodeo in  
2 this department either, agrees that certainly a house  
3 could be designed to fill in the lot. 2960 East  
4 Avenue abuts a designated Brighton landmark. The  
5 property at 2924 is also a designated landmark. With  
6 both of these landmarks and most of Brighton's  
7 landmarks, the designation applies to the entire  
8 property not just the house. And so I think that's an  
9 important consideration for you to make. Their plan,  
10 as presented, will encroach on the setbacks and near  
11 the designated landmark. And I'm not sure that that's  
12 a precedent that we should start with or consider.  
13 Photos comparing the setbacks of different properties  
14 are interesting, but keep in mind, please, that these  
15 properties were built years ago, in our case, almost a  
16 100 years ago. And rules then are not the same as  
17 rules now. In the case of Dr. Reed's house, he did  
18 get a variance to build his carriage house closer to  
19 the side, but that's basically a parking lot not  
20 another house.

21 Basically, and you've gotten letters of  
22 support from both sides. Basically, I think the  
23 argument for the setback boils down to two possible  
24 issues. One is that you all don't believe that a  
25 house, suitable house, could be built on the lot

1 without a variance. And I, given your experience, I  
2 doubt that's the case. Two, if you do believe that,  
3 and the members concur that the house could be built  
4 observing the setbacks, then why is the variance  
5 needed? Thank you. That's all I have to say.

6 CHAIRPERSON MIETZ: Thank you.

7 MR. KNAUF: Good evening. I am Alan Knauf  
8 attorney for Mr. Ludwig and Sarah Rockwell who, as you  
9 know, own the landmark house next door at 2940. And I  
10 apologize if I repeat some of the stuff I said two  
11 months ago because I don't totally remember what I  
12 said two months ago.

13 But I think the main -- or really the  
14 first problem here is the lot is too narrow. It does  
15 not meet code. This is not a conforming lot that even  
16 should not be built on without a variance. It's 125  
17 feet requirement. It's only 110 feet. And they say,  
18 well the side setback requirement is 15 percent or  
19 16.5 feet. Well, if that were a conforming lot, it  
20 actually would be more almost 19 feet would be the  
21 setback. So they're taking a nonconforming lot and  
22 want to build on it, which I don't think they can, and  
23 then they -- without a variance -- and then they're  
24 taking the percentage from the nonconforming. But I  
25 don't think they meet the standard for an area

1 variance.

2           Here, you know our main point is that  
3 trying to squeeze into this house in a manner that is  
4 not consistent with the layout. We did do a  
5 projection. This, you know, whether the picture here  
6 -- I don't know if this is a lot different. It's a  
7 little closer up, but we'll pass this around so you  
8 can see a projection that, basically, the house is  
9 right on top of the hedgerow. Now, they're esteemed  
10 expert said that the maple tree is worthless, and we  
11 have a bad tree there. Our landscape architect said  
12 that this -- the hedgerow was valuable. That it was a  
13 good thing. Maybe we can pick and choose particular  
14 trees and say they're bad trees, but it is a good  
15 thing. And the screen is something that our client  
16 values, and the setback isn't just from the structure.  
17 The setback is from the property. And again, the fact  
18 that my clients have a large setback is a good thing.  
19 And their neighbor shouldn't be able to borrow part of  
20 their setback because maybe they have a grander house  
21 and a larger setback. I did note in Bob Corby's  
22 report that was entered two months ago, this is part  
23 of the Golfside Acres' subdivision. I think this lot  
24 was re-subdivided. I think -- is every house -- is  
25 the layout of everything on East Avenue perfect? No,

1     it's not. So if we went back and looked at it, would  
2     you approve some of the things that are there today?  
3     Probably not, but we now have code that we're trying  
4     to enforce. There were restrictions of a 15 foot  
5     setback back in the -- from 1912 to 1937, and again,  
6     at some point this lot got re-subdivided to allow the  
7     smaller than you'd normally allow by code. As far as  
8     alternatives, they're saying, you know, it's like when  
9     you go to the restaurant and can say, can I have  
10    french fries instead of mashed potatoes, and they say  
11    you can't do that. Well, here they're saying this is  
12    the only house you can build on this site. I just  
13    don't believe it. And we had a couple of different  
14    submissions from architects saying why can't you put  
15    the garage in the back, maybe change where the master  
16    bedroom is, put it upstairs, and realign it. And I  
17    think most of these grander houses actually -- I  
18    didn't do a survey, but my impression is that they did  
19    have the garage in the back. They didn't have a walk  
20    -- a connected -- when you had a mansion, you had your  
21    carriage house in the back or your servants in the  
22    back, or whatever. You didn't necessarily have an  
23    adjoining garage and that's not an essential. And  
24    again, my clients are not saying you can't build on  
25    this lot, they're just saying don't squeeze it in on

1 top of their property.

2 The, you know, basically, we feel this is  
3 self-created. They are just building too big of a  
4 house for the lot. And so the question Mr. Philippone  
5 said well, they want to protect their or preserve  
6 their way of life. Well, the question for your  
7 variance is the land and the property. Is there  
8 deficiency? So I may want to live a grand lifestyle,  
9 but that's not the question for this Board. The  
10 question is: Is there a defect or problem with the  
11 land that doesn't allow you to build a house that  
12 fits? And here, I think, we haven't really seen any  
13 alternatives from the applicant. But the evidence  
14 from the architects we've submitted show all kinds of  
15 alternatives that -- that you could do, rotate the  
16 house, whatever. So we think this is a really bad  
17 precedent. And we ask you to deny the variance,  
18 protect East Avenue, and the historic homes there.  
19 Thank you.

20 CHAIRPERSON MIETZ: All right.

21 MR. PHILIPPONE: May I or not.

22 MR. KNAUF: Well, last time you said there  
23 was no rebuttal.

24 CHAIRPERSON MIETZ: The answer is 'B'.

25 MR. PHILIPPONE: Okay. Because I have an

1 answer.

2 CHAIRPERSON MIETZ: Is there anyone else  
3 in the audience that would like to speak regarding  
4 this application other than Mr. Philippone.

5 CHAIRPERSON MIETZ: Okay. Thank you very  
6 much. The public hearing is closed.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Application 4A-01-16. Application of Bell Atlantic  
2 Mobile of Rochester (d/b/a Verizon Wireless), lessee,  
3 and Linden Knoll, Inc., owner of property located at  
4 81 Linden Avenue, for an Area Variance from Section  
5 207-42C(1)(b) to allow for telecommunication support  
6 equipment to be located on the roof of a building  
7 where not allowed by code. All as described on  
8 application and plans on file.

9 MR. GEINER: Good evening. My name is Tom  
10 Geiner, attorney with Nixon and Peabody located at  
11 Clinton Square in Rochester. I'm here on behalf of  
12 Verizon Wireless. With me tonight are Jackie  
13 Bartolotta, who is with Tectonic Engineering  
14 Consultants for Verizon and behind her Peter Franz,  
15 who is a Verizon Wireless radio frequency engineer,  
16 and behind me and helping me is Nathan Vander Wal, who  
17 is an attorney with our firm who has worked with us on  
18 this application.

19 I had just handed out Exhibit N to the  
20 Board. I apologize for the late submission of that.  
21 I think really an oversight. It is in the  
22 application, it's referred to as a structural letter  
23 from an engineering firm regarding the structural  
24 capability of the roof to handle all that we would put  
25 on it. As Mr. DiStefano read out, we're here tonight

1 for an area variance to locate some of the Verizon  
2 Wireless radio equipment on the roof where under the  
3 ordinance it would be required to be inside. So we're  
4 asking for a variance from that. Because of the fact  
5 that we're even asking for the variance, we also  
6 submitted some detailed radio frequency proof  
7 principally located at Exhibit G. And there is also a  
8 slight selection analysis located at Exhibit H. And  
9 the reason why this facility is even being sought on  
10 this project. And I'll go over that in brief. And if  
11 you have questions of any more technical nature, if  
12 you have anything like that, Peter Franz is here to go  
13 into that further detail.

14 But, what I'd like to do briefly is give  
15 you some an idea of why we need -- why Verizon  
16 Wireless needs the site. I say "we" because I have  
17 been working with them for 31 years. It seems like a  
18 "we." But essentially, and if I can just approach the  
19 Board here. And this Board has seen Wireless  
20 applications before, so you're familiar with  
21 propagations and generally familiar with the  
22 technology. What I would say here, I mean, this is  
23 the location of the Friendly Home. By the way, the  
24 site is called Friendly Home because when Verizon  
25 actually looks -- starts looking at the site, it has

1 to pick the name. And it usually picks the name  
2 connected with the area location, gives that name to  
3 the FCC files, file us that. They don't necessarily  
4 get into distinctions between, for example, the  
5 Friendly Home and Linden Knoll. If they would have  
6 originally looked at that, they would have called that  
7 the Linden Knoll site. But now it's the Friendly  
8 Home. So basically, what you see and what you see  
9 normally in these are propagations. They're looking  
10 at signal strength, frequency, and coordinates or  
11 location, and a height. And once they plug all of  
12 that into their software, they can actually predict  
13 coverage. And in fact, that's what they've done here.  
14 Looking at what would be the existing picture right  
15 now, and you see coverage coming in large part from  
16 the Can of Worms and there are other sites offered  
17 here all putting some signal into the area. You see  
18 it's fairly smooth at the Can of Worms in terms of  
19 coverage and the Friendly Home area you see the white.  
20 The white would depict areas that actually don't have  
21 the required negative 95 DBM signal strength. So they  
22 have some strength there, but not to Verizon's  
23 standard of negative 95 DBM with their frequency of  
24 700 megahertz which is old UHF-TV, if you can go back  
25 that far, before cable. It's in that area of the

1 spectrum. Basically, with that the white areas are  
2 showing areas that do not meet that. In other words,  
3 they have signal strength that is weaker than negative  
4 95 DBM. And what you see if we build the site at  
5 Linden Knoll at that antenna in a center line height,  
6 I think, it's 80, 84 feet. You see that this area is  
7 largely covered and that the Friendly Home -- what  
8 we're calling the Friendly Home site -- would actually  
9 solve the problem that exists today.

10 I know you're familiar with the area  
11 Linden Avenue, 490, East Avenue golf course is across  
12 the street. And if I can turn to that, quickly, the  
13 search rate that's in Exhibit G. In other words, the  
14 site generally within these boundaries is going to  
15 cover or solve the problem, if you get to the right  
16 height, is in fact down here by the golf course.  
17 There's houses. There is right here is the Friendly  
18 Home itself. Right here is Linden Knoll. Here is the  
19 fire station next door. And you have Linden, East,  
20 and 490 here.

21 When Verizon went to put a site right in  
22 this area, the first thing they did -- they saw the  
23 Friendly Home. They saw that structurally, but they  
24 also looked at the fire station. And you'll see in  
25 Exhibit H, the fire station, there was an existing

1 tower there. From a cell tower standards, it would be  
2 considered, without derogating it, it would be a  
3 flimsy tower. As you may know, there are already two  
4 providers up locating their facilities on Linden  
5 Knoll. And the reason would be that the tower that's  
6 next door at fire station really doesn't suit wireless  
7 facilities. And the reason is, is they have much more  
8 of a load with fire station antennas, much more of a  
9 dynamic, much more of a torque with that type of 360  
10 degree facility sticking out on booms. It's really,  
11 that tower is assigned more for whip antennas, simple  
12 antennas that a fire station or an ambulance would  
13 use. It's not a three sector array that a Wireless  
14 company would use.

15 And so the Friendly Home's a two story  
16 building, too short for what Verizon Wireless needed.  
17 Linden Knoll then presents itself in that search  
18 range, that limited search range which is mostly the  
19 golf course, and of course, buildings presents itself  
20 as is alternative that works. In fact, they are the  
21 only alternative in that search range that Verizon  
22 Wireless would look at for something like this.

23 With that, as I said Exhibit N showing a  
24 stamped engineering drawing showing the structural  
25 stability and the opinion of the engineer that did

1 that. A lot of our application are really  
2 requirements of the ordinances that you typically see,  
3 the licenses, the removal letter, the letter from the  
4 lineman engineering regarding the compliance with FCC  
5 standards with respect to the broadcast, typical  
6 visual assessment form and addendum. No surprise  
7 given the approximate of Linden, 490, East Avenue that  
8 a lot of cars drive by this area. We also, in another  
9 exhibit, and in fact actually, can I -- we'll put this  
10 up. But I also have loose copies that the Board may  
11 want to see. But basically, this is the Linden Knoll.  
12 This right here is the equipment platform 11-foot by  
13 16-foot platform that -- by 6 feet -- excuse me --  
14 platform that Verizon is proposing. You can see it  
15 from this view from across 490. You cannot see it  
16 from Linden Avenue. And you can just barely see it  
17 here from -- actually, this is looking from East  
18 Avenue over this way looking west-ish. You can see it  
19 there. So, I mean, barely see it from there. I mean,  
20 I do have loose copies if you would like me to pass  
21 those around, but it's fairly -- it's a fairly  
22 unobtrusive site. There are other equipment cabinets  
23 up on the roof.

24 The plans show the antennas. They show  
25 the equipment platform and the cabling tray that would

1 go from the equipment platform on the roof to the  
2 different antennas. In other words, the cabling that  
3 connects the antennas to the equipment. The equipment  
4 then is connected in existing utilities to the  
5 landline system.

6 So in a nutshell, that's our application.  
7 Happy to answer questions or provide additional  
8 information.

9 CHAIRPERSON MIETZ: Just for the record,  
10 can you state why the plan has to go into the  
11 application part?

12 MR. GEINER: Yes, good point. The limited  
13 space inside, this was dictated by Linden Knoll that  
14 it had to be outside. They didn't have the space  
15 inside to house the equipment.

16 CHAIRPERSON MIETZ: Are there operational  
17 issues though if they had said there was space in the  
18 basement, for example, that you could put this stuff?

19 MR. GEINER: They didn't offer it, but had  
20 that been available, it all depends on where the rally  
21 would have been. We clearly have sites in the system  
22 where equipment cabinets are in the basements and then  
23 the antennas are on the roof. Here that was not  
24 possible. Otherwise, frankly, we would have preferred  
25 it just because there is less chance of the elements.

1 Not that there is a big chance, but less chance of the  
2 elements having the impact.

3 CHAIRPERSON MIETZ: Okay. All right. Are  
4 there other questions?

5 MR. DISTEFANO: Just a couple of things  
6 for the record.

7 CHAIRPERSON MIETZ: Sure. Yes.

8 MR. DISTEFANO: What's the height of  
9 platform, and then of the overall height of the  
10 cabinet that would be sitting on the platform from the  
11 roof base?

12 MR. GEINER: I think it's 10 feet.

13 MR. DISTEFANO: So the top of the cabinet  
14 is 10 feet above the roof?

15 CHAIRPERSON MIETZ: Lower roof because  
16 there are two roofs there.

17 MR. DISTEFANO: Oh, I'm sorry. Yeah. The  
18 roof it would be sitting on, how high is the top of  
19 the cabinet.

20 MR. GEINER: The whole thing looks -- I  
21 don't -- actually, they are not pulling out the  
22 elevation height, but looking at the scale, from the  
23 roof to the top of the cabinets probably 12 feet.

24 MR. DISTEFANO: How big is the cabinet  
25 itself? We've dealt with some ones that are much

1 shorter in height. It sounds like a very big cabinet  
2 because the platform itself is only going to be a  
3 couple feet off the roof for getting around for snow  
4 and everything else.

5 MR. GEINER: You are talking another seven  
6 and a half or eight feet for the cabinets.

7 MR. DISTEFANO: Itself.

8 MR. GEINER: And Verizon typically --  
9 you've seen these all over the place. Verizon  
10 typically has more equipment than other carriers. I'm  
11 not sure why. Peter might be able to answer that  
12 question. But if you recall, if we had a full  
13 shelter, it would be 12 by 40. The shelter would be.  
14 So being able to do an equipment platform and shrink  
15 the equipment has been really good, but Verizon, for  
16 whatever reason, always has larger equipment larger  
17 shelters than --

18 MR. DISTEFANO: And how many total  
19 cabinets?

20 MR. GEINER: Three.

21 MR. KNAUF: Peter?

22 MR. FRANZ: Yes. Peter Franz, Lyell  
23 Avenue, Rochester. Typically, Verizon tends to have  
24 more equipment, more cabinets, more shelter because we  
25 operate many frequencies. The XLT, XLTE, LTE, AWS,

1 PCS, and in legacy situations 850 CDMA, PCS, CPE, and  
2 the more technology, the more equipment, the more  
3 frequency, the more radios, you need controllers.

4 MR. GEINER: That's good. I'm going to  
5 translate some of that into English a little bit.

6 MR. FRANZ: Okay.

7 MR. GEINER: I mean, that was really good.  
8 Thank you. Let me put it this way, you're familiar  
9 with Sprint, AT&T, Teen Mobile. Typically, they would  
10 operate at 90 -- what you see them historically  
11 operate at is 1,900 megahertz. And that's one of the  
12 frequencies Peter was talking about. Verizon also  
13 operates at 700. And it's traditional, what used to  
14 be called cellular back in the old days was at 850,  
15 and then as Peter said the AWS at 2,100. So we're  
16 actually operating -- is it fair to say there are four  
17 frequencies? 7, 850, 1,900, 2,100.

18 And so basically, put it into other  
19 wireless companies, this is like the old Cell One, or  
20 Singular, and Verizon, or Rochester Teen Mobile, and  
21 Sprint, PCS at 1,900, and now 2,100 is an additional  
22 frequency. So most of the carriers don't operate at  
23 all of the those frequencies. That's what Peter is  
24 saying why more equipment is needed because Verizon is  
25 operating at all of these frequencies.

1                   MR. DISTEFANO: One other question. In  
2 many cases, we have seen back up emergency generators  
3 --

4                   MR. GEINER: Yes.

5                   MR. DISTEFANO: -- being installed as part  
6 of these new cell sites. Are you planning a generator  
7 on this site?

8                   MR. GEINER: Yes, and you can see it on  
9 the site plan. We have an application in front of the  
10 planning Board for the generator to go on the ground  
11 next to Linden Knoll's own generator. So it's in that  
12 same little area tucked away in the back of the  
13 building. And we will be in front of the planning  
14 Board on the 20th for that generator. Thank you.

15                   MR. DISTEFANO: Thank you.

16                   CHAIRPERSON MIETZ: Okay. Other questions  
17 for the applicant at this point? No. Okay. Thank  
18 you very much.

19                   MR. GEINER: Thank you very much.

20                   CHAIRPERSON MIETZ: Anyone in the audience  
21 that would like to speak regarding this application?

22                   Okay. The public hearing is closed.

23

24

25

## 1 C E R T I F I C A T I O N

2

3 STATE OF NEW YORK:  
4 COUNTY OF MONROE:5 I, BRIANA L. JEFFORDS, do hereby certify  
6 that I reported in machine shorthand the above-styled  
7 cause; and that the foregoing pages were typed by  
8 computer-assisted transcription under my personal  
9 supervision and constitute a true record of the  
10 testimony in this proceeding;11 I further certify that I am not an  
12 attorney or counsel of any parties, nor a relative or  
13 employee of any attorney or counsel connected with the  
14 action, nor financially interested in the action;15 WITNESS my hand in the town of Brighton,  
16 county of Monroe, state of New York.

17

18 Briana L. Jeffords  
19 BRIANA L. JEFFORDS  
20 Freelance Court Reporter and  
Notary Public No. 01JE6325111  
in and for Genesee County, New York

21

22

23

24

25

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF  
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK  
3 On April 6, 2016, COMMENCING AT APPROXIMATELY  
4 7:27 P.M.

5 April 6, 2016  
6 Brighton Town Hall  
7 2300 Elmwood Avenue  
8 Rochester, New York 14618

9 PRESENT:

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

16 DAVID DOLLINGER, ESQ.  
17 Town Attorney

18 RICK DISTEFANO  
19 Secretary

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

24 Reported By: BRIANA L. JEFFORDS  
25 Edith Forbes Court Reporting  
21 Woodcrest Drive  
Batavia, New York 14020

1 Application 4A-01-16.  
2 Application of Bell Atlantic Mobile of Rochester  
3 (d/b/a Verizon Wireless), lessee, and Linden Knoll,  
4 Inc., owner of the property located at 81 Linden  
5 Avenue, for an Area Variance from Section  
6 207-42C(1)(b) to allow for telecommunication support  
7 equipment to be located on the roof of a building  
8 where not allowed by code. All as described on  
9 application and plans on file.

10 Motion made by Mr. Mietz to approve

11 Application 4A-01-16

12 FINDINGS OF FACT:

13 1. The variance request is not substantial since  
14 it is the minimum relief required to support the  
15 rooftop wireless facility versus a new tower site  
16 alternative

17 2. No other location other than the rooftop is  
18 available to house the equipment and meet the needs of  
19 the applicant.

20 3. The majority of the equipment will be mounted  
21 on the lower roof area and well below the upper roof  
22 elevation.

23 4. The equipment area will be minimally visible  
24 from the street due to the base height of 68 feet and  
25 the elevation from Route 441 which is over 300 feet

1 from the building.

2 5. No negative effect on the character in the  
3 neighborhood will result from the approval of this  
4 variance since the area is commercial in nature and  
5 surrounded by Route 441 and 490 roadways.

6 CONDITIONS:

7 1. This variance granted applies only to the  
8 equipment depicted on the drawings submitted and the  
9 testimony given with the number being limited to three  
10 cabinets.

11 2. All necessary building permits shall be  
12 obtained.

13 (Seconded by Ms. Schwartz)

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

17 (Open roll call, motion to approve with  
18 conditions carries.)

19

20

21

22

23

24

25

1 Application 2A-03-16.

2 Application of Jack Siegrist architect, and  
3 James Cerone and Sharon Bidwell-Cerone, owners of  
4 property located on East Avenue (between 2940 and 2980  
5 East Avenue) known as Tax ID #138.05-1-70, for an Area  
6 Variance from Section 205-2 to allow a single family  
7 house to be constructed with a 9 foot side setback  
8 (north side) in lieu of the minimum 16.5 foot required  
9 by code. All as described on application and plans on  
10 file.

11 Motion made by Ms. Tompkins to approve

12 Application 2A-03-16.

13 FINDINGS OF FACT:

14 1. The impact of the requested setback is  
15 relative to the visual impact of the distances between  
16 the homes on this stretch of East Avenue. The  
17 depiction of the distances between the buildings on  
18 this stretch of East Avenue, hereinafter, designated  
19 the "distance photo" submitted by the architect for  
20 the applicant. Evidence is the disparate and varied  
21 distances between the homes in this part of East  
22 Avenue. This proposed residence within the requested  
23 setback would be 100 feet from the adjacent home to  
24 the west and 35 feet to the existing home on the east.  
25 The "distance photo," evidences one property in the

1 area that has 33-foot distance to the nearest house  
2 and a property with a distance of 44 feet between the  
3 residences. The "distance photo" also evidences the  
4 varied spacing between the homes in this stretch of  
5 East Avenue. The existence of similar spacing between  
6 the homes to the resulting spacing in applicants'  
7 proposed construction also supports that this variance  
8 is consistent with the spacing of the existing  
9 neighborhood and supports the Board's findings that  
10 the granting of the setback and the resulting  
11 placement of the home on the lot would not have an  
12 adverse impact on the neighborhood.

13 2. The variance is not substantial given the  
14 varied setbacks of the surrounding properties, and the  
15 large structure proposed, and the large structures on  
16 the surrounding properties. The overall mass of the  
17 proposed structure lessens the substantial nature of  
18 the requested variance. The factual support  
19 evidencing the insubstantial nature of the request is  
20 that despite the fact that the request is for seven  
21 and a half feet, that request includes the roof  
22 overhang of two feet. The requested variance is  
23 therefore allowing the wall of the structure to be  
24 only five and a half feet encroaching into the  
25 required setback.

1       3.       Given that the applicant has owned the lot for  
2 more than 35 years, the fact that the applicants' lot  
3 is nonconforming, and the code section determining  
4 permitted setbacks reduced the allowed setback in 2007  
5 provides substantial factual evidence that the  
6 applicants' request is not self-created.

7       4.       Applicant discussed plans and alternatives  
8 complying with the current code and testified that  
9 those plans did not provide their desired benefits.  
10 Given the proposed alternatives discussed and  
11 presented, the requested variance is the minimum  
12 variance necessary and adequate that meets the  
13 applicants' needs and at the same time preserves and  
14 protects the character of the neighborhood.  
15 Reviewing the evidence submitted and the testimony  
16 presented, the Zoning Board has taken into  
17 consideration the benefit to the applicant, if the  
18 variance is granted, as weighed against the detriment  
19 or lack thereof to the health, safety, and welfare of  
20 the neighborhood and community by such grant and finds  
21 that the granting of this variance is appropriate.

22       CONDITIONS:

23       1.       The treeline separating this property from the  
24 property to the west shall be preserved to the  
25 greatest extent possible. In particular, no tree

1 shall be removed from that treeline except the 29-inch  
2 Norway maple identified as tree number two in the  
3 February 12th, 2016, letter from Christopher J. Luley,  
4 L-U-L-E-Y.

5 2. This variance applies only to the structure as  
6 depicted in the plans submitted and the testimony  
7 given.

8 3. All necessary Planning Board approvals and  
9 Architectural Review Board approvals shall be  
10 obtained.

11 (Seconded by Ms. Corrado.)

12 (Ms. Schwartz, no; Ms. Dale, no;

13 Mr. Mietz, yes; Ms. Baker Leit, yes;

14 Ms. Corrado, yes; Ms. Tompkins Wright, yes.)

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

17

18

19

20

21

22

23

24

25

## 1 C E R T I F I C A T I O N

2

3 STATE OF NEW YORK:  
4 COUNTY OF MONROE:5 I, BRIANA L. JEFFORDS, do hereby certify  
6 that I reported in machine shorthand the above-styled  
7 cause; and that the foregoing pages were typed by  
8 computer-assisted transcription under my personal  
9 supervision and constitute a true record of the  
10 testimony in this proceeding;11 I further certify that I am not an  
12 attorney or counsel of any parties, nor a relative or  
13 employee of any attorney or counsel connected with the  
14 action, nor financially interested in the action;15 WITNESS my hand in the town of Brighton,  
16 county of Monroe, state of New York.

17

18 Briana L. Jeffords19 BRIANA L. JEFFORDS  
20 Freelance Court Reporter and  
Notary Public No. 01JE6325111  
in and for Genesee County, New York

21

22

23

24

25