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Brighton Zoning Board of Appeals 1/2/2020

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT  
2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JANUARY 2ND, 2020  
AT APPROXIMATELY 7:15 P.M.

January 2nd, 2020  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON  
JEANNE DALE  
DOUGLAS CLAPP  
KATHLEEN SCHMITT  
JUDY SCHWARTZ  
ANDREA TOMPKINS WRIGHT  
JENNIFER WATSON

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

REPORTED BY: RHODA COLLINS, Court Reporter  
FORBES COURT REPORTING SERVICES, LLC  
21 Woodcrest Drive  
Batavia, New York 14020

Brighton Zoning Board of Appeals 1/2/2020

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

6 Rick, was the meeting properly advertised?

7 MR. DiSTEFANO: Yes, Mr. Chairman, it was  
8 advertised in the Brighton-Pittsford Post of  
9 December 26, 2019.

10 CHAIRPERSON MIETZ: Will you please call the  
11 roll?

12 MR. DiSTEFANO: Please let the record show all  
13 members are present.

14 CHAIRPERSON MIETZ: Then we have two sets of  
15 minutes, we have November which we'll do first, and we have  
16 December. November, any corrections?

17 MS. SCHWARTZ: Yes. On Page 19, Line 23, the  
18 first word is revised.

19 On Page 24, Line 17, the middle word is  
20 addition.

21 On Page 32, Line 9, insert the word for after  
22 first, first for.

23 On Page 33, Line 11, a third of the way the  
24 word is aesthetics.

25 Page 35, Line 24, in the middle of the

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1  
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3 sentence the word is retention.

4 Page 36, Line 16, the first word is preserved.

5 Page 37, Line 11, it should be 2.2 acres not  
6 .22.

7 On Page 42, Line 24, the second word should be  
8 whose, W-H-O-S-E.

9 Page 48, Line 3, the first word is lived.

10 Page 54, Line 5, I would say delete the word  
11 and, and put than.

12 Page 69, Line 17, I think the word after  
13 structure should be in the residential, and within.

14 My last one is Page 73, Line 9, delete the  
15 word is. That's all I have.

16 CHAIRPERSON MIETZ: Anything else on November?  
17 Motion?

18 MS. TOMPKINS WRIGHT: I'll moved to approve  
19 the November minutes with changes as amended.

20 (Second by Ms. Schwartz.)

21 (Mr. Clapp, yes; Ms. Schwartz, yes;  
22 Ms. Tompkins Wright, yes; Ms. Dale, yes; Mr. Mietz, yes;  
23 Ms. Watson, yes; Ms. Schmitt, yes.)

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

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CHAIRPERSON MIETZ: Okay, then we have December minutes, not the shortest meeting on record but close.

MS. SCHWARTZ: On Page 10, delete the word B-A-S-S in Line 4.

CHAIRPERSON MIETZ: How about another motion?

MS. TOMPKINS WRIGHT: I move to approve the December minutes as amended.

(Second by Ms. Schwartz.)

(Mr. Clapp, yes; Ms. Schwartz, yes; Ms. Tompkins Wright, yes; Ms. Dale, yes; Mr. Mietz, yes; Ms. Watson, yes; Ms. Schmitt, yes.)

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

CHAIRPERSON MIETZ: Whenever you are ready, Rick.

APPLICATION 1A-01-20

1A-01-20 Application of Sharon Bidwell-Cerone and James Cerone, owners of property located at 2960 East Avenue, for an Area Variance from Section 205-2B to allow a fence gate (with frame) to be 8 ft. in height in lieu of the maximum 6.5 ft. allowed by code. All as described on application and plans on file.

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3 HEINRICH FISCHER: Good evening, my name is  
4 Heinrich Fischer, I'm a landscape architect, I reside at  
5 Ayrault Road in Perinton. I've been primarily responsible  
6 for the site design and implementation on the site. The  
7 request this evening is a variance for the height or the  
8 frame and gate for some deer fencing. Typical industry  
9 standards for deer fencing is seven foot in height which  
10 exceeds the Town Code.

11 So deer fencing, it closes the property,  
12 primarily is around six feet in height but due to the way the  
13 product is manufactured we do have one access gate and that  
14 framing exceeds the height from existing grade right now,  
15 it's just under eight feet in height. The total gate width  
16 is three feet, with the frame it's about four feet. So  
17 you're looking at a portion of the fencing that is literally  
18 four feet in length.

19 We purposely tried to locate the fencing  
20 almost perpendicular to the side of the home, so as it faces  
21 the property to the west and north. The Ludwig property, the  
22 only thing they could possibly ever see is the end of this  
23 gate as opposed to looking at the elevation of it.

24 Due to the heavy landscape work that is  
25 existing on their site, additional plantings they put on, the

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3 location towards the back of the Cerone home, literally  
4 cannot see this fencing from East Avenue and I don't believe  
5 that the neighboring property has any view of this gate or  
6 fence at all.

7 I do have some photographs, it's a packet.  
8 The first photograph in this is from the manufacturer. The  
9 other photographs are ones I took on the site when we had our  
10 last snow storm showing the fence. One of the issues on the  
11 whole situation is the first floor elevation of the home due  
12 to Town Code and the elevation of the property, we had to  
13 build some stone walls in order to contain the storm drainage  
14 within their site so it does not spill on the neighboring  
15 properties, and that would be one reason the fence or that  
16 gate structure might be a little bit tall.

17 We do have to raise grade underneath the  
18 existing gate by about six inches, so the ultimate height on  
19 the frame for this gate will not exceed 7'6." We are looking  
20 for that 12-inch relief strictly on the gate and the frame.

21 CHAIRPERSON MIETZ: Okay, sounds pretty clear.  
22 Are there any questions for this gentleman about this gate?

23 MS. TOMPKINS WRIGHT: Do any of the neighbors  
24 have any issues?

25 HEINRICH FISCHER: We've not heard anything.

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3 The permit and notification was up and we had no response  
4 from anyone.

5 CHAIRPERSON MIETZ: Any other questions? All  
6 set, thank you very much.

7 Is there anyone in the audience that would  
8 like to speak regarding this application? There being none,  
9 then the Public Hearing is closed.

10 APPLICATION 1A-02-20

11 1A-02-20 Application of Vitalize Medical,  
12 PLLC, lessee, and 2900 Monroe Ave., LLC, owner of property  
13 located at 2900 Monroe Avenue, for an Area Variance from  
14 Section 205-12 allowing for 102 on-site parking spaces in  
15 lieu of the code required 114 parking spaces necessary for  
16 the establishment of a medical use on said property. All as  
17 described on application and plans on file.

18 ALAN RAINBOW: Good evening and happy new  
19 year. My name is Alan Rainbow and I work for Baldwin Real  
20 Estate and we lease and manage the shopping center on the  
21 corner of Clover and Monroe Avenue, the Clover Commons. We  
22 have the opportunity to lease and a long standing vacant  
23 space within the shopping center, formerly the Park Avenue  
24 Bike Store, with a rather upscale medical use, classified as  
25 medical use, it's a medical spa for enhancement services

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3 only. There's no medical treatment there, but hair  
4 restoration, Botox, erectile dysfunction, those types of  
5 services.

6                   And we've moved to lease with this company,  
7 but due to the medical designation we are challenged as far  
8 as the number of parking spaces within the shopping center.  
9 So that's why I'm here seeking a variance because right now  
10 according to the formulas that are established we are some 12  
11 to 14 parking spaces short of the requirement.

12                   What I have done to investigate this matter  
13 further to see just exactly how legitimate the concerns may  
14 be, as I have been for the last 30 days, taking a poll and  
15 account of the available parking at random times through the  
16 business day. On average I am finding that we have about 45  
17 available spaces at any time within the shopping center. So  
18 it's our hope that the Board will recognize the fact that we  
19 will have tight, but sufficient parking to proceed with this  
20 lease and to have the Vitalized Medical Spa move into the  
21 shopping center.

22                   MS. SCHWARTZ: A couple questions for you, how  
23 many employees do you have?

24                   ALAN RAINBOW: Well, I work for the management  
25 company for the shopping center, but the tenant plans to



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3 engage six to eight technicians at any point in time working  
4 within facility.

5 MS. SCHWARTZ: Do you know what the maximum  
6 number of customers/clients will be at any one time?

7 ALAN RAINBOW: They're a specialized service,  
8 so it's more or less a one-to-one, one-on-one type of  
9 service.

10 MS. SCHWARTZ: Approximately eight. Is there  
11 a waiting room?

12 ALAN RAINBOW: For scheduled appointments,  
13 yes. So we anticipate at peak times they may have up to 20  
14 people within the facility at any point in time.

15 MS. SCHWARTZ: And what do they consider peak  
16 times?

17 ALAN RAINBOW: They vary, but they're open  
18 normal business hours 9:00 to 5:00, Monday through Friday.  
19 They're not open on the evenings or weekends.

20 MS. SCHWARTZ: So you don't know the length of  
21 time for a short appointment versus a long appointment?

22 ALAN RAINBOW: It's my understanding that it  
23 depends on the service being provided.

24 MS. SCHWARTZ: It's hard to decide when we  
25 don't really have the information to know exactly the nature

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3 of the business, whether the parking will suffice or not. So  
4 are they moving from another location? Are they in business  
5 right now.

6 ALAN RAINBOW: They are.

7 MS. SCHWARTZ: Why are they moving?

8 ALAN RAINBOW: They are in a much smaller  
9 facility on Westfall Road. They're in about 1,500 square  
10 feet so they're expanding the scope of their services and  
11 obviously to provide additional types of products and  
12 customer service.

13 MS. SCHWARTZ: So even though they're coming  
14 to more space you don't think they're anticipating hiring  
15 anymore people, employees, and therefore needing more  
16 parking, really?

17 ALAN RAINBOW: The way their space has been  
18 configured there are specialized rooms depending on the  
19 treatment that you're receiving. So there's also four people  
20 that are going there for weight management, there might be a  
21 one-on-one, treadmill set up, or an exercise room within the  
22 facility. But again, it's not a fitness center it's  
23 one-on-one to help people with their person training, if you  
24 will, for weight loss primarily.

25 MS. TOMPKINS WRIGHT: Do you anticipate if

## 1 Brighton Zoning Board of Appeals 1/2/2020

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3 this were more in line with like a beauty spa, like a nail  
4 salon or something that deals with one per 300 square feet  
5 versus one for 150 which is medical use, do you anticipate  
6 that the demand for parking will be similar to those types of  
7 retail services versus a true medical use?

8 ALAN RAINBOW: I do. From my understanding of  
9 the business I think it is more, although designated as a  
10 medical, I believe it is closer to a true retail-type  
11 operation. But I know actually some of their floor space is  
12 actually dedicated to exercise clothing and products that you  
13 wouldn't normally see in a medical facility.

14 MR. CLAPP: Is there an additional vacancy in  
15 that lot now or would they --

16 ALAN RAINBOW: This would bring it to  
17 100 percent occupancy in the building.

18 MR. CLAPP: Is it just so the whole former  
19 Park Avenue Bike Shop they'd be getting?

20 ALAN RAINBOW: That is correct. There's a  
21 basement area within the Park Avenue Bike Shop that is not  
22 part of the leasable space. It's a lower ceiling, it's  
23 unfinished, the sprinkler system and mechanicals and such are  
24 down in the basement.

25 MR. DiSTEFANO: Going back to your previous

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3 statement, do you know about approximately how much of the  
4 square footage would be designated for the retail area?

5 ALAN RAINBOW: For the clothing and products  
6 for sale, I believe they designated about 800 square feet  
7 within the facility.

8 MS. TOMPKINS WRIGHT: What's the total square  
9 footage of the former bike shop?

10 ALAN RAINBOW: Around 6,700, depending on how  
11 you measure it.

12 CHAIRPERSON MIETZ: So they're going from 15  
13 to 6,700, and you said they're not expending their services?

14 ALAN RAINBOW: Yes, they are and no, not --  
15 they're expanding their services, they will be bringing  
16 additional staff members. They currently don't have that  
17 type of staffing in their 1,500 square foot facility.

18 CHAIRPERSON MIETZ: So they are going to ramp  
19 up to eight, is your understanding?

20 ALAN RAINBOW: They are, to cover the  
21 additional services.

22 CHAIRPERSON MIETZ: Does that include  
23 administrative people or retail sales people? It's going to  
24 be eight people period?

25 ALAN RAINBOW: That's what they're telling me,

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3 yes.

4 MS. TOMPKINS WRIGHT: My understanding of  
5 these types of uses is they don't have a separate retail  
6 person, they usually have --

7 CHAIRPERSON MIETZ: Receptionist?

8 MS. SCHWARTZ: Or the person you're working  
9 with.

10 CHAIRPERSON MIETZ: I've never been.

11 MS. TOMPKINS WRIGHT: You should try it  
12 sometime. A lot of them, they're a sort of jack of all  
13 trades to provide services and then also sell products.

14 CHAIRPERSON MIETZ: So it's feasible to use in  
15 the 6,700 square feet.

16 MR. DiSTEFANO: I guess that would.

17 Is there anybody here representing the client?

18 ALAN RAINBOW: No, I am.

19 MR. DiSTEFANO: They did not have a  
20 representative for the business itself so we could get a  
21 little better understanding of how they work their business?

22 ALAN RAINBOW: No, other than the brochures I  
23 assembled and submitted with the application, there's no one  
24 here from the clinic.

25 MS. SCHWARTZ: You are saying you're going to

## Brighton Zoning Board of Appeals 1/2/2020

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3 go up to eight employees? How many do they have now?

4 ALAN RAINBOW: I believe they are probably  
5 about three to four regular at any point in time within the  
6 facility, the 1,500-square-foot facility.

7 MS. SCHWARTZ: They're going to go beyond the  
8 eight?

9 ALAN RAINBOW: They are telling me eight is  
10 the maximum amount of employees.

11 MS. SCHWARTZ: That includes the receptionist  
12 person in addition to the --

13 ALAN RAINBOW: I believe they have a waiting  
14 area and there's an individual that will meet you and bring  
15 you to your spa, to your location for your treatment.

16 MS. WATSON: Can you tell me about alternative  
17 means of transportation? Do you know if there's a bus stop  
18 nearby or bike racks on the property?

19 ALAN RAINBOW: There's definitely not a bus  
20 stop on the parcel and I didn't pay attention to where the  
21 closest one would be.

22 MS. TOMPKINS WRIGHT: There's one across the  
23 street at the gas station.

24 CHAIRPERSON MIETZ: On the other side of  
25 Clover Street?

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3 MS. TOMPKINS WRIGHT: Yes. There's one by  
4 Wendy's and I think another --

5 CHAIRPERSON MIETZ: They don't put them that  
6 close.

7 MS. TOMPKINS WRIGHT: I know you don't have it  
8 today, but do you know if your tenants prepared a floor plan  
9 for the site of what they're going to do in the space? That  
10 might help us get a better understanding of how they are  
11 going to use the site and what the parking load might be.

12 ALAN RAINBOW: I have a conceptual drawing, it  
13 may have changed since the original draft, but something I  
14 could certainly circulate for review. We just feel this is  
15 an opportunity as a landlord to bring an upscale service to  
16 an upscale community. It will complement the existing shops  
17 and serves very nicely. Again, the concern rightfully so is  
18 the actual parking demand.

19 MS. DALE: As the property management did you  
20 ever have any issues with the parking when the bike shop was  
21 there? This property has been 100 percent occupied  
22 previously when the bike shop was there, correct?

23 ALAN RAINBOW: That was three years ago next  
24 month, but we didn't manage the property back then, so I  
25 don't have working knowledge of this. We only took over the

1 Brighton Zoning Board of Appeals 1/2/2020

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3 property management services a year ago due to a death in the  
4 ownership's family and it has gone into an estate. So we  
5 were brought in to manage the lease and to help the family  
6 out. And unfortunately, I don't have a rendering with me of  
7 the space plan. It's certainly something I can get my hands  
8 on easily.

9 MS. WATSON: Can you talk a little bit about  
10 snow removal? What's the plan for snow and will that take  
11 any spaces away?

12 ALAN RAINBOW: Well, if we get into a  
13 situation where we are in a pinch for parking, we are  
14 prepared to have the snow loaded and carted off the facility.  
15 We do have relatively limited green space behind the shopping  
16 center. That's a concern and something we budget for.

17 MS. SCHMITT: And I have a question. My  
18 experience in going to that particular shopping center  
19 there's usually about 20 vacant spaces in the back. People  
20 tend go in the front. In your experience as the landlord  
21 that there's usually people that tend not to park behind the  
22 facility?

23 ALAN RAINBOW: With full occupancy, we  
24 certainly encourage the merchants to have their employees  
25 park behind the facility right now, because parking is not



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3 extremely tight. I think they take advantage of the  
4 opportunity to park out front and around their store  
5 entrances, so that would be something we would have to  
6 closely manage. But yes, I agree with you. The vast number  
7 of the available spots that I have been counting through the  
8 last 30 days I would say two-thirds are in the back.

9 MS. SCHWARTZ: And roughly can you ballpark  
10 how many are in the back area?

11 CHAIRPERSON MIETZ: It's on the plan.

12 MS. SCHWARTZ: I'm sorry.

13 ALAN RAINBOW: My daily counts, and this is  
14 interesting too, because of the fact that my counts have been  
15 all taken during the month of December. With our clothing  
16 shops and beauty salons and such, I would expect that  
17 December was probably going to be the peak demand month for  
18 parking and that's the month that I actually had been taking  
19 this data. And again, on average we have had 50, almost 57  
20 occupied spaces and 45 available spaces, random points in  
21 time throughout the day. That's just a blended average.

22 MR. DiSTEFANO: Alan, do you have that  
23 information available to the Board?

24 ALAN RAINBOW: My summary?

25 MR. DiSTEFANO: Yes. Did you make copies?

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3 ALAN RAINBOW: I have ten copies. I submitted  
4 one up until the point in time when I submitted the  
5 application, so I've updated that through this morning.

6 MS. SCHWARTZ: I have a couple questions on  
7 your parking count. On the 4th of December you have 728.  
8 I'm not sure if it's a.m. or p.m., as you didn't mark it.

9 ALAN RAINBOW: On the revised form it will say  
10 a.m.

11 MS. SCHWARTZ: Because the restaurant is  
12 opened in the evening and I don't know how late this started.

13 ALAN RAINBOW: I didn't focus too much --  
14 there's only five times on here that either fall on the  
15 weekend or after, typically, I was focusing on Vitalize hours  
16 and impact hours between 8:00 and 6:00 a.m. Their operating  
17 hours are 9:00 to 5:00, but I expanded them, the search time.

18 MR. DiSTEFANO: Is that just Monday through  
19 Friday they're open?

20 ALAN RAINBOW: Correct, not weekends or  
21 holidays.

22 MS. DALE: I think Monday through Friday 9:00  
23 to 5:00, to stay Saturday 8:00 to 6:00?

24 MS. SCHWARTZ: No, but if they come in earlier  
25 and stay later, not Saturdays.

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3 ALAN RAINBOW: Correct. They are not open on  
4 the weekend or holidays.

5 MS. WATSON: So to sum up, you're 12 spaces  
6 shy of what the code requires and you're seeing an average of  
7 45 spaces vacant.

8 ALAN RAINBOW: Correct. At random points in  
9 time, on random days.

10 MS. SCHWARTZ: I am concerned about your  
11 mornings looking at the 4th of December, because that peak  
12 time at Starbucks you are up to 881 count and the  
13 available -- oh, I'm sorry.

14 ALAN RAINBOW: That's available. And you're  
15 right, the vast majority of the occupied spaces are down at  
16 the Starbucks end for sure.

17 MS. SCHWARTZ: Okay.

18 MS. TOMPKINS WRIGHT: A greater concern I  
19 think is the noon hour, where you are seeing availability  
20 drop into the 20s and relatively consistently in the high  
21 20s, low 30s, at that peak time.

22 MS. DALE: But that's double the amount over  
23 when --

24 MR. DiSTEFANO: Based on 1- to 150. I believe  
25 their testimony is that we won't get to that 1-, 150 need.

1 Brighton Zoning Board of Appeals 1/2/2020

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3 ALAN RAINBOW: I could certainly never  
4 envision 45 individuals or 45 vehicles utilizing the Vitalize  
5 location.

6 MR. DiSTEFANO: I think one thing the Board  
7 needs to be concerned about is if we grant the variance, we  
8 have to be very specific on our granting it. Because  
9 Vitalize could move out and there's still a parking variance.  
10 A pediatrician could move in and then we will be up against  
11 parking.

12 ALAN RAINBOW: Understood, makes perfect  
13 sense.

14 MR. CLAPP: When Park Avenue was there the  
15 whole place would occasionally be full spaces. A couple  
16 times I had trouble parking, but a couple times in a period  
17 of a couple years.

18 CHAIRPERSON MIETZ: We can discuss it.

19 ALAN RAINBOW: The one other change from a use  
20 such as that, is Vitalize wouldn't be receiving large  
21 deliveries or they won't have tractor trailers coming up the  
22 drive lane and such.

23 MR. CLAPP: So Starbucks.

24 MR. DOLLINGER: I just have an issue in mind.  
25 The business practice, what they're doing and the number of

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3 employees and the square footage of the building, like you  
4 were saying we have to see a layout. It seem to me it's  
5 almost a 7,000 square feet building and that's a lot of  
6 space. And eight employees, that's almost an employee for --

7 CHAIRPERSON MIETZ: I'm not sure what they're  
8 really using. What are they really using all the space for?  
9 If you have treatment rooms supported by that many employees,  
10 treatment rooms are generally 10 by 12.

11 ALAN RAINBOW: Well, it is my understanding  
12 this is going to be well appointed because this is higher  
13 end, discretionary-type services and that they are going to  
14 dress up very nicely. I've seen the construction budget  
15 numbers and they are quite a bit higher than you might  
16 anticipate. So just because of the finishes -- and I do know  
17 too, they are also going to have an area, an open floor space  
18 where they're going to have a treadmill and places to stretch  
19 and that type of place.

20 MS. DALE: Do they have a locker room?

21 ALAN RAINBOW: I don't believe so.

22 CHAIRPERSON MIETZ: Do we have other  
23 questions? One of the things you can see we are having  
24 trouble here with is obviously somebody from that company  
25 probably should have been with you. You can't be an expert

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3 on their business, so that's not -- but I think we have to be  
4 comfortable and understand clearly what this space is going  
5 to be used for and then we could make some judgments, so we  
6 can discuss it further. But is there any other specific  
7 questions for him?

8 ALAN RAINBOW: Again, I'd be more than happy  
9 to acquire a prospective floor plan for the user and bring  
10 that to the office tomorrow.

11 CHAIRPERSON MIETZ: Let us discuss it and we  
12 can see where we go. Would like to fairly judge it.

13 ALAN RAINBOW: Understood. Thank you very  
14 much.

15 CHAIRPERSON MIETZ: Is there anyone in the  
16 audience that would like to speak regarding this application?  
17 There being none, then the Public Hearing is closed.

18 APPLICATION 1A-03-20

19 1A-03-20 Application of Mark Bayer, Bayer  
20 Landscape Architecture, agent, and Michael Gioja, owner of  
21 property located at 264 Allens Creek Road, for 1) an Area  
22 Variance from Section 203-2.1B(3) to allow for a second  
23 detached garage where only one is allowed by code; and 2) an  
24 Area Variance from Section 207-6A(1) to allow said garage to  
25 be 21 ft. in height in lieu of the maximum 16 ft. allowed by

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3 code. All as described on application and plans on file.

## 4 APPLICATION 1A-04-20

5 1A-04-20 Application of Mark Bayer, Bayer  
6 Landscape Architecture, agent, and Michael Gioja, owner of  
7 property located at 264 Allens Creek Road, for 1) an Area  
8 Variance from Section 203-2.1B(2) to allow a pool house with  
9 an attached pergola to be 626 sf (340 sf pool house, 286 sf  
10 pergola) in size in lieu of the maximum 250 sf allowed by  
11 code; and 2) an Area Variance from Section 207-6A(1) to allow  
12 said pool house to be 21 in height in lieu of the maximum  
13 16 ft. allowed by code. All as described on application and  
14 plans on file.

## 15 APPLICATION 1A-05-20

16 1A-05-20 Application of Mark Bayer, Bayer  
17 Landscape Architecture, agent, and Michael Gioja, owner of  
18 property located at 264 Allens Creek Road, for an Area  
19 Variance from Section 207-2B to allow a rear yard wall to be  
20 7.5 ft. in height (4.5 ft high wall topped with 3 ft.  
21 guardrail) in lieu of the maximum 6.5 ft. allowed by code.  
22 All as described on application and plans on file.

23 MARK BAYER: Good evening, my name is Mark  
24 Bayer of Bayer Landscape Architecture. Here with me is Jim  
25 Fahy from Fahy Design Associates, he's an architect on the

## Brighton Zoning Board of Appeals 1/2/2020

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3 project, and Mike Gioja is the owner in the back. We really  
4 appreciate you coming out the day after New Years. I know  
5 it's probably not the best night, but we've got a really nice  
6 project to talk about and wanted to run through it quickly.

7           The Giojas purchased the property a couple  
8 years ago in 2018, and they have been busy doing a lot of  
9 interior building renovations. And recently we have been  
10 working with them for, I don't know, four to six months and  
11 kind of now focusing on the site and the outside of the  
12 property. It's a wonderful, a little bit over two acre  
13 property, a 2.43 acre site. It is at 264 Allens Creek, it  
14 backs to Allens Creek and gorgeous, middle to late 30s French  
15 provincial stunning home and stunning property.

16           So we have been working with them to try to be  
17 very sensitive to the improvements. The improvements are  
18 going to -- although we're not going to talk about all of  
19 them tonight, basically we're going to rehabilitate the  
20 terraces, we're going to be reworking some of the driveway  
21 parking and guest arrival and walks and so on.

22           And the reason we are here tonight we are also  
23 proposing to do a two-car garage, detached, second detached  
24 garage. And also proposing -- this is the detached garage  
25 here. The existing garage, the existing home, we are also



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3 proposing to do this pool area which is -- it's somewhat  
4 remote from the main house. It's off to the one side of the  
5 property. And as part of that pool house, because of its  
6 distance from the main house there's a proposed cabana.

7           And the reason we are here tonight is for  
8 those elements including this vanishing edge wall on the  
9 pool. This is a little over four-foot wall, and we are  
10 discussing for safety reasons to have that guardrail on  
11 there. The guardrail with the pool taken over the allowed  
12 height.

13           I want to start with the detached garage and  
14 we can talk about that, and it's located adjacent to the  
15 existing garage. This is really far off the street. Allens  
16 Creek is out here, it's well back off the street. The house  
17 is difficult to see from the street with the hedges all  
18 around it.

19           Code allows only one detached structure. We  
20 are asking for a second, two-car structure. Rationale is  
21 simple, they have need to store a couple of additional cars  
22 and they need storage for their outdoor furnishings, yard  
23 equipment and so on. The existing garage is not super large  
24 and there's very little basement storage in the house because  
25 much of it is finished on the lower level. So there's a need

## Brighton Zoning Board of Appeals 1/2/2020

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3 by the owner to have additional space.

4           The actual size of the two-car garage is under  
5 the allowed area, it's under 600 square feet. The variance  
6 requests are for the second garage structure and the height.  
7 And the height is strictly driven by a very strong desire to,  
8 you know, pay close attention to the character of these  
9 significant buildings. The French provincial style, as Jim  
10 can elaborate, has very steep roof pitches and gives it its  
11 character. We're doing everything with these buildings to  
12 give the new garage a new cabana to basically mimic and  
13 capture that character of the buildings.

14           So even though this is a standard garage size  
15 of 24 by 24, given the 12, 12 pitches on the roof, you get up  
16 to 21 feet maximum height when code allows 16. So that  
17 height is dictated by a strong desire, I think an obligation  
18 almost on a property of this nature to match the roof pitch.

19           So given where it is, you know, it is a couple  
20 hundred feet off the road, it's tucked into what will be a  
21 garage court effect, garage doors turn internal into the  
22 property creating kind of a secluded private garage court not  
23 visible from the street, nicely concealed from adjacent  
24 property by the heavy plantings. The property is heavily  
25 planted. And, you know, completely in context and scale with

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3 this property, this site, this neighborhood on two point,  
4 almost a two-and-a-half-acre site, it fits very, very  
5 comfortably.

6 So that's essentially the nature of the  
7 proposed garage. Again, no impact on neighbors, no impact on  
8 the environment, just a way to make the house more  
9 serviceable, having enough storage so we don't have to have  
10 cars outside of the buildings. They can be tucked in, all  
11 the furnishings can go in. That's the rationale.

12 So the second street --

13 CHAIRPERSON MIETZ: Let's take questions for  
14 each one individually before you move on. It's hard for  
15 people to remember everything.

16 MARK BAYER: Okay, yes, absolutely.

17 CHAIRPERSON MIETZ: Questions?

18 MS. TOMPKINS WRIGHT: Can you go through the  
19 planning process of why you decided to do a second garage  
20 instead of expanding the first garage larger? Why you  
21 decided to put it where it is kind of on that side lot pushed  
22 close to the center of the property?

23 MARK BAYER: Sure. So one of the objectives  
24 is there's a lot of things going on, there's a lot of good  
25 reasons for that. The current drive is quite narrow. You

## Brighton Zoning Board of Appeals 1/2/2020

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3 come up from Allens Creek and you go under a porte-cochere,  
4 turning around in here is nearly impossible. It's really  
5 difficult, especially the cars in there, which now there is.  
6 There's no place to put other cars and we felt keeping the  
7 scale of this structure down creating an edge here. So the  
8 doors would go in this way, creates an enclosed garage court.

9 So it's in a way, it's a way coming from the  
10 street you're not seeing any garage doors. You're seeing a  
11 structure where it finishes one edge of this court space. It  
12 allows for easy access in and out. It's not another  
13 challenging turnaround, because this garage is extremely  
14 challenging to turn into and back out of, by this  
15 configuration this movement's very easy.

16 It has another reason and because of the  
17 difficulty of the turnaround and no space for guests to park  
18 conveniently, Allens Creek is quite a distance away, it's a  
19 little bit inconvenient. There's no sidewalks, there's  
20 nothing, so their guests will be coming in here, they will be  
21 able to park here. This will also function as a way for the  
22 owners to be able to loop back out, and it's so functionally,  
23 aesthetically, like breaking down a building mass. One of  
24 the things we did not want to do is get the garage mass  
25 starting to equate to the house mass. So breaking it down,

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3 having it a subtle feature, it really creates this very, very  
4 nice and charming, kind of typical of a French provincial  
5 property, the setting really works.

6 And we are working, it's not part of the  
7 variance application but we're working with sight walls and  
8 other features on the property to create this very private,  
9 very remote kind of feel that will leave it in a position  
10 where it's not impacting anything outside of the site. So  
11 there's a lot of thinking that went into that.

12 CHAIRPERSON MIETZ: Follow up?

13 MS. TOMPKINS WRIGHT: Well, it's nine and a  
14 half feet, I think the setback, what's the setback?

15 MR. DiSTEFANO: Five feet.

16 MARK BAYER: It's under 600 square feet in  
17 size, so it's under the two car. So it's not overly scaled  
18 in any stretch. And again, the roof height is three feet  
19 under the existing roof height on this structure, so it's  
20 actually lower than that.

21 MS. TOMPKINS WRIGHT: And this is purely  
22 storage? There will be electrical, but no plumbing?

23 MARK BAYER: No, this is purely storage for  
24 their other cars and to have room in the -- because the roof  
25 pitches, one advantage is they do have storage up above. So

## Brighton Zoning Board of Appeals 1/2/2020

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3 that's why we didn't make the building any bigger because we  
4 wanted to utilize that roof and put pool storage, furniture,  
5 can go up.

6 CHAIRPERSON MIETZ: Could you tell me for the  
7 record exactly how many cars are going to be stored on the  
8 property between the two garages?

9 MARK BAYER: Two here, two there, three total.

10 CHAIRPERSON MIETZ: Okay.

11 MARK BAYER: We have ample space for all the  
12 yard equipment and all of that stuff too.

13 CHAIRPERSON MIETZ: Any other questions about  
14 the garage height, the size of the garage, or use,  
15 justification for the garage? Any questions?

16 Okay, let's move on.

17 MARK BAYER: Okay. So the next item on the  
18 docket is the cabana structure. Now, the main house is here,  
19 the pool is off to what would be the west edge of the  
20 property, that's by design. That is very important on a  
21 property of this significance, in my mind is one of the grand  
22 features of this site is this massive lawn that kind of gives  
23 the house the breathing room it needs. One of the things we  
24 did not want to do is put the pool area right smack where  
25 perhaps the most obvious spot for a lot of people would be.

## Brighton Zoning Board of Appeals 1/2/2020

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3 And working with the Giojas we decided clearly we did not  
4 want to interrupt this gorgeous historic view of Allens  
5 Creek. We came up with a way to sight the pool off to the  
6 side, and in doing that because it's a little bit more remote  
7 from the main house, we included a pool cabana.

8 The cabana, two things about it, it is because  
9 of the pergola is attached that counts as part of, the way  
10 Brighton reads, the area of the building when it's attached  
11 like that, it counts. And although the pool cabana building  
12 is, bear with me, it's 340 square feet, the structure, this  
13 adds another 286 square feet to get the shade structure.  
14 It's completely open air, it's just simply to provide  
15 protection, and that gets us up to that 626 square feet.

16 Again, the area of that cabana at 340 square  
17 feet is not really large. I know allowed is 250, but there's  
18 a bathroom and a little sitting area within this open  
19 structure and a place to have a drink and get out of the sun.  
20 And again, being more remote they're going to go out there  
21 for the afternoon. And just, when guests come in, the way  
22 the structure is in the summer months, the guest parking,  
23 they simply walk right back to the pool cabana and would not  
24 have to go into the main house. It just works well with  
25 their program. And again, the area of the structure, don't

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3 look at it like 626 square feet because 286 square feet are  
4 just a shade structure.

5           Again, stylistically done in the French  
6 provincial style, picking up on the roof lines, the brick  
7 materials, all of the character of the main house  
8 appropriated into this structure as well. And the height,  
9 one of the things you need to know about the height is, it is  
10 at 21 feet maximum. But that's measured on, we are measuring  
11 that in the worst case scenario which is on the low side of  
12 the site. So grade drops from this end down the back of the  
13 building to create the pool enclosure. That pool enclosure  
14 wall is four feet, four and a half feet below grade.

15           This is where we measured the building at 21,  
16 which is this low corner. Grade goes up, comes back around,  
17 you're three or four feet less height on the pool deck side  
18 and the opposite side of the building. So that's the worst  
19 case scenario. Again, in the scale of this property, in the  
20 scale of this pool area, and in context with the other  
21 buildings, it's, you know, it's perfectly suited.

22           And it will, again, have no -- given it's very  
23 remote location, having buffering everywhere, garage  
24 structures are blocking it from the street, heavy planting  
25 down at this end of the site, it's not visible outside of the



## Brighton Zoning Board of Appeals 1/2/2020

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3 property.

4 MR. DiSTEFANO: Mark, is that four-foot height  
5 pool area all the way around?

6 MARK BAYER: Basically, no. The grade, so  
7 what's happening is we're grading down from here to achieve  
8 the four-foot height. So and the rationale for that is  
9 you're sitting here, you have sort of an unencumbered view  
10 out over the property. And so it comes down to four feet at  
11 this corner and then it is a little more than four feet.

12 MR. DiSTEFANO: And it mimics that on the --

13 MARK BAYER: It comes back around at that  
14 height, comes over to this corner then starts going up.

15 MR. DiSTEFANO: Okay.

16 MARK BAYER: That's how it works. So again, I  
17 think given its location given its context in the French  
18 provincial setting that it's in, that height, scale-wise  
19 everything about it has been carefully studied by Jim and  
20 myself and we're absolutely confident it's appropriate.

21 MR. DiSTEFANO: So one other question, so you  
22 were saying the height is three to four feet lower if you are  
23 to measure on the pool deck side. Do you know what that  
24 number is?

25 JIM FAHY: It's 16 feet.

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3 MR. DiSTEFANO: It meets code at the pool deck  
4 side, so the backside or the northern side it said 21, but on  
5 the deck itself is 16 feet.

6 JIM FAHY: I think we got it at 160 and three  
7 eighths --

8 CHAIRPERSON MIETZ: Hold on, Jim, you're going  
9 to have to come up and introduce yourself.

10 JIM FAHY: Jim Fahy from Fahy Design  
11 Associates. Rick, it's actually, I think it's 16 feet, zero  
12 and three eights inches on the pool deck side. And the  
13 reason -- and Mark is exactly right, it's only four feet or  
14 slightly over that around the other side. Why are we asking  
15 for 21 feet on this structure? Because we are still in final  
16 design of that structure. Mark is in final design site  
17 creating so we're working a few inches on the building and  
18 the grading side. But I think as we sit right now we will be  
19 under 21 feet as it's drawn right now.

20 MARK BAYER: Brighton code, correct me, Rick,  
21 you don't measure average grade.

22 MR. DiSTEFANO: Not from -- we were going to  
23 look at the highest point for an accessory structure. But my  
24 question would be to the both of you, if this Board were to  
25 say it cannot be higher than 16 plus or minus feet from the

## Brighton Zoning Board of Appeals 1/2/2020

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3 pool deck and no greater than 21 feet from any other point,  
4 would that cause an issue?

5 MARK BAYER: I would say we would have to be a  
6 little bit cautious, but we are close. We know --

7 MR. DiSTEFANO: Do you know what I'm saying?  
8 They grant the variance for 21 feet and now all of a sudden  
9 it's 21 feet above the pool deck.

10 JIM FAHY: Well, it couldn't be with this  
11 design. I hear what you're saying, but that could never  
12 happen.

13 MARK BAYER: I would say you could word it  
14 21 feet above that, what is it, it would be the northwest  
15 corner of the pool house. That's automatically the lowest  
16 point and the deck has got to be four feet above that so  
17 we're going to be in that 16- to 17-foot range.

18 JIM FAHY: If you use 17 feet from the pool  
19 deck that would give us the four feet height that Mark needs  
20 for the pool guard. I can guarantee you we would have no  
21 problem meeting that number.

22 MARK BAYER: But it automatically guarantees  
23 it because at 21 if you say no greater than 21 feet at that  
24 northwest corner, it automatically -- to get my grade I can't  
25 make it work if you say that.

## Brighton Zoning Board of Appeals 1/2/2020

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JIM FAHY: At less than four feet.

MARK BAYER: At 21 feet I can't make it work any other way.

CHAIRPERSON MIETZ: Are you finished with this section?

MARK BAYER: I could talk about it more if you want me to.

CHAIRPERSON MIETZ: I was going to see if there's questions.

MARK BAYER: I think you have the gist of it.

MS. SCHWARTZ: So what will the total utilities be in the cabana?

MARK BAYER: There's going to be a restroom and an outdoor shower, and there is going to be a very minimal kind of kitchenette with a fridge and it's modest.

MS. SCHWARTZ: Is there going to be electricity?

MARK BAYER: Yes.

CHAIRPERSON MIETZ: It's not going to be used in the off season?

MARK BAYER: No, it's designed as a cabana.

CHAIRPERSON MIETZ: That's fine, just wanted to be sure. Any other questions on this part of the

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3 application? We will move on to the third one.

4 MARK BAYER: The third one is pretty straight  
5 forward and it kind of relates to what we were just talking  
6 about. And it's really just a precaution if it is determined  
7 we need to put a guardrail on this, which, you know, we are  
8 going to plant this. And the way Brighton code reads is the  
9 maximum wall and fence heights in Brighton in rear yards and  
10 side yards is 6'6."

11 We have approximately at the highest point  
12 wall will be, say, 4'6." And then we are, you know, looking  
13 hard at putting a guardrail as an extra safety precaution and  
14 that would be 36 inches. And with that combination it puts  
15 us over the threshold, but the wall itself, like I said, is  
16 only 4'6" max and the three foot of cable rail just as a  
17 finish.

18 And again, given the scale of the property  
19 given the context its sitting in, you'll hardly read the  
20 cable rail, just because it's so fine. So you really look at  
21 a 4'6" wall primarily. And, you know, again, where it's  
22 located in this stretch of the property it's really not  
23 visible from the outside. It's in the backyard behind the  
24 garages and the property's extremely heavily planted. It's  
25 really a nonissue. And it's kind of one of the funny code

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3 things that the way it has to be interpreted this is counted  
4 as part of this height, essentially. It is a combination.

5 MS. TOMPKINS WRIGHT: Just so it's clear for  
6 the record though, this is caused by the elevation of the  
7 property. Were this flat property you wouldn't need a wall  
8 to add that additional height.

9 MARK BAYER: Well, what it is, is the property  
10 falls towards the creek, we're taking advantage of that by  
11 being able to do the vanishing edge pool. This end of the  
12 pool is high, a grade is high, this is low. We are able to  
13 create the vanishing edge pool by letting grade fall along  
14 the edge of the pool. We get to an elevation of four, four  
15 and a half feet here, that serves as the barrier from the  
16 outside, so we don't have to have a fence then because this  
17 is the barrier. And then, but that's four feet off the  
18 ground and that's why we need the wall because grade is  
19 falling, we're holding grade level and it's serves to hold  
20 that end of the pool up.

21 MS. TOMPKINS WRIGHT: But if you are standing  
22 next to the pool you won't be -- there will be no wall,  
23 essentially?

24 MARK BAYER: When you are standing up top,  
25 there will be no wall here, it's at grade.

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3 MR. DiSTEFANO: But you don't need anything  
4 because you're not protecting the pool from the inside,  
5 you're protecting the pool from the outside. That cable  
6 wouldn't even be necessary but they want it for their own  
7 safety so they don't fall off the edge of the wall.

8 MS. TOMPKINS WRIGHT: My thought though is  
9 just that, from the outside it appears higher than it does  
10 outside of the wall than inside, because of the elevation.  
11 That's where the extra height is coming from.

12 MARK BAYER: Just imagine this is -- and the  
13 pool is level, but the site on the outside it falls. So when  
14 you are down here you get the four feet of wall up and here  
15 it is the same as there.

16 MR. DiSTEFANO: So what kind of barrier are  
17 you going to use on the level portion of the pool?

18 MARK BAYER: There is right at this point this  
19 wall is at four feet and we're running fence in through the  
20 hedging all the way around. There's a brick wall you can  
21 kind of see it here.

22 MR. DiSTEFANO: Yes.

23 MARK BAYER: You see the fence and there's a  
24 gate, and then there's a brick wall that is four feet, goes  
25 over to that other entrance.

1 Brighton Zoning Board of Appeals 1/2/2020

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3 MR. DiSTEFANO: So you're max height of  
4 fencing and walls is going to be four feet on the level  
5 portion.

6 MARK BAYER: Yes.

7 MR. DiSTEFANO: I just have a curiosity  
8 question. On the infinity portion of the pool does that  
9 retain water or is it just basically going and pumping right  
10 back through?

11 MARK BAYER: So what happens is --

12 MR. DiSTEFANO: I'm just wondering, does that  
13 need to be enclosed?

14 MARK BAYER: No. There's no surface to walk  
15 on here.

16 MR. DiSTEFANO: I mean on the retaining --  
17 that portion.

18 MARK BAYER: That will be 21 inches of water.

19 MR. DiSTEFANO: So you will keep it under --

20 MARK BAYER: It's got to be under two feet.  
21 We make them 21 so the skimmer gets clog or whatever, it's  
22 never over 24.

23 MR. DiSTEFANO: Okay.

24 MR. DOLLINGER: Do you have to dramatically  
25 modify the grade of the backyard to make this all fit



Brighton Zoning Board of Appeals 1/2/2020

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3 together or is the rest of the backyard pretty much left at  
4 the current grade?

5 MARK BAYER: It requires a little grading, of  
6 course, but the backyard is falling and we're just kind of  
7 taking advantage --

8 MR. DOLLINGER: You're just using it. So the  
9 rest of the grade pretty much stays as it is.

10 MARK BAYER: Yes, but there's always minor  
11 grading.

12 CHAIRPERSON MIETZ: Are there any other  
13 questions about this portion? Okay. I think we are all set,  
14 thank you.

15 Is there anyone in the audience that would  
16 like to speak regarding this application? Yes, sir.

17 TONY PERALTA: Happy New Year. My name is  
18 Tony Peralta, I live at 2000 Clover Street adjacent to this  
19 property at the creek. The property is gorgeous. I have  
20 lived in Brighton since 1988 in this location, and my  
21 property is back over here. The people that lived there  
22 previously, multiple people, Mike and his family have only  
23 been there a few years but they did not do the improvements  
24 that Mike is doing. I mean, the property in the last two  
25 years is just, like, blossomed. It's gorgeous. And he's

## Brighton Zoning Board of Appeals 1/2/2020

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3 cleaned up dead trees, he's got a beautiful property manager  
4 or management company. They just do a gorgeous job. I can't  
5 wait to see this because the house itself years ago before  
6 all the shrubs were up at Allens Creek, it's just a gorgeous  
7 house, that beautiful piece of architecture. And now it's  
8 going to be even more improved, so that's just an asset to  
9 Brighton. I just wholeheartedly can't wait for them to  
10 finish it. Good job, guys.

11 CHAIRPERSON MIETZ: Thank you. Is there  
12 anyone else in the audience that would like to speak  
13 regarding this application? There being none, then the  
14 Public Hearing is closed.

15 \* \* \*

Brighton Zoning Board of Appeals 1/2/2020

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK ON JANUARY 2ND, 2020 AT APPROXIMATELY 8:18 P.M.

January 2nd, 2020  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON  
DOUGLAS CLAPP  
JEANNE DALE  
KATHLEEN SCHMITT  
JUDY SCHWARTZ  
ANDREA TOMPKINS WRIGHT  
JENNIFER WATSON

DAVID DOLLINGER, ESQ.  
Town Attorney

RICK DiSTEFANO  
Secretary

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

REPORTED BY: RHODA COLLINS, Court Reporter  
FORBES COURT REPORTING SERVICES, LLC  
21 Woodcrest Drive  
Batavia, New York 14020

## Brighton Zoning Board of Appeals 1/2/2020

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3 APPLICATION 1A-01-20

4 1A-01-20 Application of Sharon Bidwell-Cerone  
5 and James Cerone, owners of property located at 2960 East  
6 Avenue, for an Area Variance from Section 205-2B to allow a  
7 fence gate (with frame) to be 8 ft. in height in lieu of the  
8 maximum 6.5 ft. allowed by code. All as described on  
9 application and plans on file.

10 Motion made by Ms. Schmitt to approve  
11 Application 1A-01-20 based on the following findings and  
12 facts.

13 **FINDINGS AND FACTS:**

- 14 1. The variance request is for a gate and surrounding frame  
15 that is eight feet in height rather than the six and a half  
16 feet allowed by code.
- 17 2. The variance request is a result of the design of the  
18 overall fence which requires a frame to surround the gate for  
19 both utility and safety. The additional height also is  
20 required to allow pedestrian height clearance through the  
21 gate in its frame.
- 22 3. The proposed placement of the gate will not be easily  
23 visible from East Avenue or the surrounding properties, as it  
24 will be placed on the side rear of the house with extensive  
25 landscaping near it. This landscaping will help conceal much

## Brighton Zoning Board of Appeals 1/2/2020

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3 of the gate.

4 4. The granting of this variance for the height of the gate  
5 would not appear to result in any substantial detriment to  
6 nearby properties or otherwise adversely affect the character  
7 of the neighborhood. Moreover, there's no evidence that  
8 there will be a negative impact on the health, safety, and  
9 welfare of the neighborhood.

10 **CONDITIONS:**

11 1. The variance applies only to the gate as described in the  
12 application and testimony provided and will not apply to the  
13 overall fencing height or future projects.

14 (Second by Ms. Tompkins Wright.)

15 (Mr. Clapp, yes; Ms. Schwartz, yes; Ms. Dale,  
16 yes; Mr. Mietz, yes; Ms. Watson, yes; Ms. Tompkins Wright,  
17 yes; Ms. Schmitt, yes.)

18 (Upon roll call, motion to approve with  
19 conditions carries.)  
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## Brighton Zoning Board of Appeals 1/2/2020

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3 APPLICATION 1A-02-20

4 1A-02-20 Application of Vitalize Medical,  
5 PLLC, lessee, and 2900 Monroe Ave., LLC, owner of property  
6 located at 2900 Monroe Avenue, for an Area Variance from  
7 Section 205-12 allowing for 102 on-site parking spaces in  
8 lieu of the code required 114 parking spaces necessary for  
9 the establishment of a medical use on said property. All as  
10 described on application and plans on file.

11 Motion made by Ms. Schwartz to table  
12 Application 1A-02-20 for more information regarding a more  
13 complete explanation of the operation of the business,  
14 accurate number of employees, peak hours of business, and a  
15 detailed floor plan.

16 (Second by Ms. Tompkins Wright.)

17 (Mr. Clapp, yes; Ms. Dale, yes; Ms. Schmitt,  
18 yes; Ms. Watson, yes; Mr. Mietz, yes; Ms. Tompkins Wright,  
19 yes; Ms. Schwartz, yes.)

20 (Upon roll call, motion to table and leave the  
21 Public Hearing open.)  
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## Brighton Zoning Board of Appeals 1/2/2020

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3 APPLICATION 1A-03-20

4 1A-03-20 Application of Mark Bayer, Bayer  
5 Landscape Architecture, agent, and Michael Gioja, owner of  
6 property located at 264 Aliens Creek Road, for 1) an Area  
7 Variance from Section 203-2.1B(3) to allow for a second  
8 detached garage where only one is allowed by code; and 2) an  
9 Area Variance from Section 207-6A(1) to allow said garage to  
10 be 21 ft. in height in lieu of the maximum 16 ft. allowed by  
11 code. All as described on application and plans on file.

12 Motion made by Ms. Tompkins Wright to approve  
13 Application 1A-03-20 based on the following findings and  
14 facts.

15 **FINDINGS AND FACTS:**

16 1. The granting of the requested variance will not produce  
17 an undesirable change in the character of the neighborhood or  
18 be a detriment to nearby properties. This property is  
19 approximately 2.43 acres and considerably larger than any of  
20 its closest neighboring properties which reasonably  
21 accommodates larger and additional structures. Further, the  
22 planned location of the second detached garage is not close  
23 to any of the homes on neighboring properties and is shielded  
24 by heavy plantings and trees from any passers by.

25 2. The requested variance is not substantial given that the

## Brighton Zoning Board of Appeals 1/2/2020

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3 proposed height is in line with the height of the current  
4 garage and home and that the second building is in keeping  
5 with the scale of the home and the size of the property.

6 Further, the garage is placed almost twice as far as required  
7 by code from the side lot line.

8 3. The benefits sought by the applicant cannot reasonably be  
9 achieved by any other method. The applicant testified that  
10 additional storage is necessary and the most appropriate  
11 design for that additional storage is a second garage in the  
12 location depicted and of a height that looks harmonious with  
13 the other structures on the lot.

14 4. There is no evidence that the proposed variance will have  
15 an adverse effect or impact on the physical or environmental  
16 conditions on the neighborhood or district.

17 **CONDITIONS:**

18 1. The variance granted herein applies only to the  
19 additional garage described in and in the location as  
20 depicted on the application and in the testimony given.

21 2. All necessary building permits must be obtained.

22 (Second by Ms. Schwartz.)

23 (Ms. Dale, yes; Ms. Watson, yes; Mr. Mietz,  
24 yes; Ms. Schmitt, yes; Mr. Clapp, yes; Ms. Schwartz, yes;  
25 Ms. Tomkins Wright, yes.)



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

## Brighton Zoning Board of Appeals 1/2/2020

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3 APPLICATION 1A-04-20

4 1A-04-20 Application of Mark Bayer, Bayer  
5 Landscape Architecture, agent, and Michael Gioja, owner of  
6 property located at 264 Allens Creek Road, for 1) an Area  
7 Variance from Section 203-2.1B(2) to allow a pool house with  
8 an attached pergola to be 626 sf (340 sf pool house, 286 sf  
9 pergola) in size in lieu of the maximum 250 sf allowed by  
10 code; and 2) an Area Variance from Section 207-6A(1) to allow  
11 said pool house to be 21 in height in lieu of the maximum  
12 16 ft. allowed by code. All as described on application and  
13 plans on file.

14 Motion made by Ms. Watson to approve  
15 Application 1A-04-20 based on the following findings and  
16 facts.

17 **FINDINGS AND FACTS:**

18 1. The requested variance exceeds the maximum square footage  
19 allowed by code by 376 square feet, 286 feet of which is  
20 comprised of an open air pergola. The proposed pool cabana  
21 and pergola have been carefully scaled in keeping with the  
22 significant size of the existing home and proportioned to fit  
23 comfortably on this large property. A smaller structure  
24 would look under scaled in this context.

25 2. The requested variance exceeds the maximum height allowed

## Brighton Zoning Board of Appeals 1/2/2020

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3 by code by five feet, and is only achieved at the northwest  
4 corner of the structure. The height of the structure is  
5 closer to meeting code from the pool deck side.

6 3. No unacceptable change in the character of the  
7 neighborhood and no substantial detriment to nearby  
8 properties is expected to result in the approval of this  
9 variance. The new structure will not be visible from the  
10 road or adjacent properties and it will be set to the rear of  
11 the proposed garage and buffered with heavy plantings.

12 4. The health, safety, and welfare of the community will not  
13 be adversely effected by the approval of this variance  
14 request. The proposed pool cabana and pergola will provide  
15 shelter and basic conveniences in close proximity to the  
16 pool.

17 **CONDITIONS:**

18 1. This variance will apply only to the open air structure  
19 as described in the application and testimony given. In  
20 particular it will not apply to projects considered in the  
21 future that are not in the present application as per plans  
22 submitted.

23 2. All necessary building permits shall be obtained.

24 (Second by Ms. Schwartz.)

25 (Mr. Clapp, yes; Ms. Tompkins Wright, yes;

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Ms. Dale, yes; Mr. Mietz, yes; Ms. Schmitt, yes;  
Ms. Schwartz, yes; Ms. Watson, yes.)

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

## Brighton Zoning Board of Appeals 1/2/2020

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3 APPLICATION 1A-05-20

4 1A-05-20 Application of Mark Bayer, Bayer  
5 Landscape Architecture, agent, and Michael Gioja, owner of  
6 property located at 264 Allens Creek Road, for an Area  
7 Variance from Section 207-2B to allow a rear yard wall to be  
8 7.5 ft. in height (4.5 ft high wall topped with 3 ft.  
9 guardrail) in lieu of the maximum 6.5 ft. allowed by code.  
10 All as described on application and plans on file.

11 Motion made by Mr. Clapp to approve  
12 Application 1A-05-20 based on the following findings and  
13 facts.

14 **FINDINGS AND FACTS:**

- 15 1. The variance will not result in a substantial change to  
16 the character of the neighborhood as the wall and railing  
17 will not be visible from the road or neighboring properties.  
18 2. The variance cannot be resolved in another manner not  
19 requiring a variance as the retaining wall serves as the  
20 required barrier enclosing the pool. However, the grade of  
21 the pool and the landscaping is even with the top of that  
22 wall. The cable railing which is not required by code is  
23 necessary to provide reasonable safety for users of the pool.  
24 3. The proposed railing will not have an adverse effect or  
25 impact on the physical or environmental conditions of the

## Brighton Zoning Board of Appeals 1/2/2020

neighborhood and as the proposed cable railing will not be visible from outside of the property and will have no impact on the physical or environmental conditions of the neighborhood.

**CONDITIONS:**

1. The variance applies only to this application and plans submitted and testimony given.

2. All necessary permits shall be obtained.

(Second by Ms. Watson.)

(Ms. Dale, yes; Ms. Tompkins Wright, yes; Ms. Schwartz, yes; Mr. Mietz, yes; Ms. Schmitt, yes; Ms. Watson, yes; Mr. Clapp, yes.)

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

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REPORTER CERTIFICATE

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

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated this 29th day of January, 2020.

At Rochester, New York

  
Rhoda Collins