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

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

PRESENT:

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

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

Reported by:    CHAD L. SMITH, Court Reporter
EDITH E. FORBES COURT REPORTING SERVICE
21 Woodcrest Drive
Batavia, New York 14020
MR. CHOLETTE: I would like to now call to order to June session of the Brighton Zoning Board of Appeals.

Rick, was the meeting properly advertised?

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

MR. CHOLETTE: Will you please call the roll?

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

MR. CHOLETTE: Thank you.

We have the minutes from our May meeting. Are there any additions or corrections?

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

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

MR. DiSTEFANO: Demising wall, demising.

MS. SCHWARTZ: Demising wall?

Oh, all right. What does it mean?

MR. DiSTEFANO: A demising wall is basically
if you have a large plaza, the interior wall that
splits the tenant spaces.

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

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

Is that right?

MR. DISTEFANO: Which one was this, Judy?

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

MS. SCHWARTZ: Line 19, condition 1.

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

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

MR. DISTEFANO: Right. And how does it read?

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

It's the eastern.

MR. CHOLETTE: It is.

MR. GOLDMAN: It's the western.

MR. DISTEFANO: It's the western.

MR. GOLDMAN: The western one is towards
Penfield Road. That's the one that's moving.

MS. SCHWARTZ: That's west (indicating)?
MR. DiSTEFANO: Yes.
MR. CHOLETTE: Yes.
MR. MIETZ: It's actually north.
MR. DiSTEFANO: It's actually northwest.

It's like towards the city.

MS. SCHWARTZ: All right.
MR. GOLDMAN: It's kind of more west than --
MS. SCHWARTZ: West is going downtown.
MR. GOLDMAN: Yes.
MR. DiSTEFANO: Yeah.
MS. SCHWARTZ: But this isn't.
MR. DiSTEFANO: Yeah, it's going downtown.
MS. SCHWARTZ: But they're closing that one and putting it --
MR. DiSTEFANO: No, they're closing that one and moving it further to the west.
MS. SCHWARTZ: Oh, I see.
MR. CHOLETTE: The east one --
MS. SCHWARTZ: Yeah, yeah, yeah. Okay.
MR. CHOLETTE: The circle then becomes bigger.
MS. SCHWARTZ: Yes.
MR. DiSTEFANO: An interesting side comment regarding the application, I don't think the State is going to let them do it.

MS. SCHWARTZ: Really?

MR. CHOLETE: Why?

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

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

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

Should we put a year in?

MR. DiSTEFANO: Sure.

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


MS. SCHWARTZ: Okay. That's good.

MR. CHOLETE: Thank you, Judy.

Are there any others?

Can I have a motion to approve the minutes as amended?
(Motion made by Mr. Goldman to approve the May amended minutes.)

(Seconded by Ms. Baker Leit.)

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

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

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

Rick, will you please read the first application?

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

MR. SCHAAF: Good evening. My name is Eric Schaaf with Marathon Engineering and I'm representing
With me tonight to answer questions should they come up Aaron Malbone from Buckingham Properties and Brian Mendler, the owner of Yolickity.

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

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

What we found is that outdoor dining is being requested by patrons of the three restaurants that I mentioned. So our proposed project we're proposing that five hundred and fifty-five square feet of patio.
Now, this patio is going to be constructed with clay
pavers with a sand filler. It will be very analogous
to impervious pavement. They're also going to have
outdoor seating for twenty patrons. There will be ten
two-person tables, with complimentary landscaping
including about eighty-two linear feet of forty-two
inch high ornamental fencing - and a detail was
provided of that fence.

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

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

We are here tonight respectfully requesting
two variances from the Zoning Board. One is to allow
this outdoor dining area in a front yard that abuts a
residential district. The second piece of paper that I pointed out tonight is a letter from that neighbor whom we are abutting supporting this project.

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

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

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

Again, we respectfully request that you grant approval to each of these variances.
I would be happy to entertain any questions.

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

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

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

They opened about three weeks ago.

MS. SCHWARTZ:  Three weeks ago?

MR. MALBONE:  Uhm-hum.

MS. SCHWARTZ:  So what is that exact date?

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

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

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

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

MS. SCHWARTZ:  Okay. The reason I say that
is because this is really interesting. Mrs. Caiazza couldn't be here tonight because they have an unfortunate situation that keeps them from being here. But she did send me an email that is really quite different from this letter of approval. And I would like to share it.

MR. MALBONE: Sure.

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

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

That's why I wonder when he really signed
this and were you open for business at the time?

UNKNOWN: They were absolutely open --

MR. DI STEFANO: You have to --

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

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

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

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

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

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

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

MS. SCHWARTZ: I have a --

MR. MENDLER: They are.

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

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

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

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

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

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

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

Aaron, why don't you answer that?

MS. SCHWARTZ: All right.

Yes, what about that?

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

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

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

MR. MENDLER: And just so you know, we have instructed our employees to go outside and look for trash. No question every once in a while some, you know, a customer's spoon here or there gets missed.
That being said, one of the duties of our managers when they come in in the morning is to walk the property. I mean, I live in this town and I want this to be the nicest building in the entire town, believe me. And we are crazy about cleanliness. We've been in there and we are constantly cleaning. There is no question that once in a while when it's a busy night something might get dropped and the wind might blow it. It's unfortunate and we're not - we don't want that to happen.

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

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

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

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

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

DR. LAWRENCE: Now, will there be any illumination? Will people be able to be outside at ten
MR. MALBONE: We plan on having the patio being from dusk till dawn. So there's no outside lighting on the building currently. There'll be no lighting around the building.

MR. MENDLER: Correct. We will, I mean, we'll close it down. We are extremely respectful of the neighbors. You can ask the people in Greece and in Webster where we also have outside seating areas. They want it. They want to sit outside. There is only three months out of the year where they can sit outside. And they want to sit outside, they're asking for it. So, I mean --

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

MR. MALBONE: Yes.

MR. CHOLETTE: There is no lighting outside?

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

MR. CHOLETTE: How will it be closed?

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

MR. MALBONE: The patio is --
MR. CHOLETTE: -- the patio is vacated at some time?

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

MR. MENDLER: Fence.

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

MR. MENDLER: Correct.

MR. CHOLETTE: I don't understand that. I mean, you're saying somebody goes in there for ice cream at 9:30 and they decide to sit out there, you're going out there to tell your customers you have to leave this area?

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

MR. CHOLETTE: You said dawn to dusk?

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

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

MR. DiSTEFANO: Is there a way that you can
lock the patio area?

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

MR. MALBONE: We can put a gate on there.

That was one of the --

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

MR. MENDLER: Nope.

MR. MALBONE: No.

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

MR. MENDLER: Three.

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

MR. MENDLER: Correct.

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

MR. MENDLER: Right.

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

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

MR. MENDLER: Correct.

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

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

MR. CHOLETTE: That you needed outdoor seating.

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

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

MR. MENDLER: You said at that time.

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

MR. MENDLER: Why?

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

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

MR. CHOLETTE: That's fine. But you have
three other facilities --

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

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

MR. MALBONE: Can I speak to that?

I'm sorry.

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

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

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

MR. MENDLER: Okay.

MR. CHOLETTE: And there's --

MR. MENDLER: What --

MR. CHOLETTE: I'm sorry, there's nothing you
can say that will change my mind.

    MR. MENDLER: That's fine.

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

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

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

    MR. CHOLETTE: No, you cannot --

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

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

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

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

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

    Why would people be against that?

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

MS. BAKER LEIT: I think the question is: What was different about this location when you applied in December that at that time you chose not to -- MR. MENDLER: The customers are overwhelmingly asking for it right now.

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

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

MS. BAKER LEIT: Okay.

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

Honestly, we don't have to have it. But when multiple -- every night I'm trying to explain to my employees why we have chairs locked in a room and tables locked in a room that we can't bring outside when customers - residents of this town - customer, after customer, after customer are asking for it and we
have to say no. And they don't understand.

So that's kind of the dilemma that we're in. Do you know what I'm saying?

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

MR. MENDLER: We have them locked because --

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

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

MR. GOLDMAN: It's misleading.

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

MR. GOLDMAN: But when you say --

MR. MENDLER: Can I explain --

MR. CHOLETTE: Wait a second.

MR. MENDLER: I can explain it.

MR. CHOLETTE: Let's let the --

MR. MENDLER: I can explain it.

MR. CHOLETTE: -- applicant answer the
question.

MR. MENDLER: We have --

MR. MALBONE: Actually --

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

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

MR. MENDLER: Correct.

MS. SCHWARTZ: I have another question.

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

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

MR. GOLDMAN: Every night?

MR. MENDLER: Every night.

MR. GOLDMAN: Okay. Thank you.

MR. MENDLER: Yup.

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

MR. MENDLER: What does that mean?

MR. MALBONE: Like the landscaping?

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

MR. MALBONE: All right.

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

MR. MENDLER: Well, our Henrietta store is directly across the street from Target. So that's kind of in it's own world over there in the shopping plaza.

Our Greece store is in a somewhat residential -- it's on Long Pond, right next door to Greece Athena High School. There's housing tracks behind our store and homes in front, across the street. And our Webster store is, like, right across from Webster Schroeder
High School, off Hard Road between Starbucks and Subway.

Did I answer?

MR. MALBONE: Uhm-hum.

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

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

I'm not sure if --

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

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

MR. CHOLETTE: So it will be totally transparent?

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

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

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

So I would like to know what was included in
that calculation?

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

MR. CHOLETTE: That's the --

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

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

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

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

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

MR. CHOLETTE: Is it everything that you show
on the diagram?

MR. SCHAAF: It is everything within our parcel.

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

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

MR. CHOLETTE: Okay.

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

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

MR. MALBONE: There's also land --

MR. SCHAAF: Behind it.

MR. MALBONE: -- behind the parking lot.

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

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

MR. SCHAAF: It does.

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

MR. SCHAAF: You're showing that --

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

MR. CHOLETTE: All the green back in where?

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

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

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

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

MR. DiSTEFANO: -- some of that island(indicating), then all of the area in front and
then along the side all the way back.

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

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

MR. CHOLETTE: Our engineers?

THE WITNESS: No, the applicant's engineers.

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

MR. SCHAAF: We can provide that.

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

MR. SCHAAF: We can provide it --

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

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

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

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

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

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

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

MR. CHOLETTE: I understand.
My other problem is - to answer the owner's concern, how could anybody be against this because it's going to look so attractive - is that it does look attractive. Unfortunately, in my mind a residential area to have perhaps as many as twenty customers sitting out in a front yard in a residential area detracts from that being a residential area.

MR. MENDLER: It attracts?

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

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

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

MS. SCHWARTZ: Yes.

MR. SCHAAF: I don't --

MR. MALBONE: Yes.

MS. CORRADO: I have a question: If part of the intent of putting the patio furniture out is to make a pretty clear suggestion that they should stay in that area and not cross into Mr. Caiazza's yard, would you be open to including signage that indicates private
property next door and signage that asked patrons to stay within that area?

    MR. MALBONE: Absolutely, yes.

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

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

    There is a sizable sidewalk there.

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

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

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

    MR. CHOLETTE: I don't think that's Judy question. I think Judy's question is: If you - instead of this proposal - came in with a much scaled back proposal saying what we want is room to put two or
three tables out there on the sidewalk; would that be possible?

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

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

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

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

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

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

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

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

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

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

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

MR. CHOLETTE: Okay. Anything else?

Fine. Thank you very much.

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

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

There being none this part of the public hearing is closed.
6A-02-14 Application of Christopher Costanza, architect, and The Harley School, owner of property located at 1981 Clover Street, for 1) an Area Variance from Section 203-2.1B(4) to allow a horticultural building to be 1,144 sf in size in lieu of the maximum 336 sf allowed by code; and 2) an Area Variance from Section 203-2.1C(2)(a) to allow said horticultural building to be 54 ft. from a lot line in lieu of the minimum 100 ft. required by code. All as described on application and plans on file.

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

MR. DiSTEFANO: Okay. Thank you.

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

The program that we're talking about is a hoop house that is eleven hundred square feet and the picture is right here(indicating). It's a building that is associated with the school's agricultural curriculum and also with the school's food program.
One of the goals of the school is to provide one hundred percent of the leafy greens in the cafeteria from their own gardens. The school just recently completed the Harley Commons that has a large greenhouse. And in the greenhouse space they're experimenting with vertical green walls to grow everything from basil and tomatoes and sugar snap peas. And the idea is to between the wintertime in the greenhouse and the springtime in the hoop house and the garden in the summer is to produce one hundred percent of the leafy greens for the cafeteria. There are five hundred students at the school. And, you know, the amount of the minimal size that they need to produce an adequate quantity of leafy greens and vegetables that would actually help offset the product that they have to purchase offsite, the eleven hundred square feet is not as big as they would probably want it, but it's a good size to get them close to where they need to be.

The two variances that we're asking for, one of them for the location of the greenhouse or the hoop house. The hoop house will be placed on a LRA district, a Residential A zoning district. A hoop house type structure is allowed to be five feet from the property line, but because the school is a special
permitted conditional use inside the residential
district then it kicks up to some more strict codes, in
which case the hoop house would have to be a hundred
feet from the property line.

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

The code is intended for the hundred feet to
protect residential zoned property. Because the
adjacent property that this is close to is not a
residential zoned property, that is why we are asking
for you to accept our plea for the variance for the fifty-four foot of distance between the corner of the hoop house and Harley's property line.

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

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

At some point it grew so fast and it was so popular, you know, that it was overlooked that there needed to be a permit to make the structure a legal structure. The code for residential districts says that an agricultural building can be a maximum of three
hundred and thirty-six square feet. I'm not sure where that number came from. It seems kind of arbitrary to me, but I assume the intent of the code was to limit quarter-cultural buildings to something that is reasonable and is an appropriate scale with the typical residential lot. Now, most residential lots in the LRA districts are about a quarter to a half an acre. The Harley site is twenty-three acres. So the Harley site is approximately seventy-five times larger than the average residential lot and this hoop house is three times the size of what is allowed in the residential zoning.

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

Are there any questions?

MR. CHOLETTE: Are there any questions?

MR. DiSTEFANO: Could you explain why – I understand your reasoning behind the right-of-way and then the office complex, but why is that space for the hoop house the best place for the hoop house?
MR. COSTANZA: The location for the hoop house is in between two different existing structures already or garden structures that are being worked on. One of them is the existing garden. So part of the idea of the hoop house - that's where you start their seeds and once they get to be a certain size before maturity they get transplanted outdoors to then grow in the full sunlight.

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

UNKNOWN: A little over a quarter acre.

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

On the back side of the garden there is a stone wall, a dry-stack stone wall. And part of what the students are doing is they're taking the reclaimed stone and either stacking them into a wall along the property line in the back there or into terrace agricultural zones that could be grown for potatoes or plants. I have a picture here somewhere. You can see here(indicating)kids are actually building with the
rock and the stones. They're building these raised-up terraces for growing different types of plants and flowers. Here's another picture (indicating) I'm showing close up of the stacked walk.

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

MR. CHOLETE: I'm going to interrupt you. Although this may be very interesting, I think you've more than answered Rick's original question.

MR. COSTANZA: Okay.

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

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

UNKNOWN: We actually had a program --
MR. CHOLETTE: We need your name.

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

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

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

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

DR. LAWRENCE: It sounds like a fun project.

MR. CHOLETTE: Are there other questions?

Fine. Thank you very much.
MR. HARTMAN: Thank you.

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

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

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

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

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

MS. GRASSL: Paula Grassl, 475 Newton Drive. I have a porch in my instrument survey that's really just a slab of concrete in the front of my house and it's deteriorated - it's dilapidated, so it needs to be replaced.

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

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

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

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

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

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

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

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

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

MS. GRASSL: No. I mean, I already have iron
rails within – on the porch. So it's basically those
iron rails are going to go – two pillars on the front
of the concrete. It's going to come up and it's going
to be four foot out and keeping with the those rails
that are currently there. And --

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

MS. GRASSL: It's four foot.

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

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

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

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

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

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

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

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

MS. CORRADO: Thank you.

MS. GRASSL: You're welcome.

MR. CHOLETTE: Any questions?

Fine. Thank you.

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

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

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

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

MR. CHOLETTE: Good evening.

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

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

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

DR. LAWRENCE: So although it will go slightly above the fence, aren't you going to mitigate
that by putting plantings – vines or something – so
that you would hardly notice it?

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

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

MS. SMITH-HETTERICH: Yes.

MR. CHOLETTE: -- the pergola structure
itself?

MS. SMITH-HETTERICH: Right.

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

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

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

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

MS. SMITH-HETTERICH: No, not beyond the
front of the neighbor's.

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

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

MR. CHOLETTE: Right. I understand that.

MS. SMITH-HETTERICH: Yeah.

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

MS. SMITH-HETTERICH: Right.

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

MS. SMITH-HETTERICH: Right.

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

MS. SMITH-HETTERICH: Our house is forward.

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

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

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

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

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

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

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

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

MS. SMITH-HETTERICH: Uhm-hum.

MR. CHOLETTE: -- is that right on the property line?
MS. SMITH-HETTERICH: Yes. It's well -- I'm sorry, it's not. It's about a foot in because there is a strip of grass along the other side of the fence between the fence and the driveway that we are responsible for. So -- we know that. So it's about a foot.

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

MS. SMITH-HETTERICH: Yes.

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

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

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

MR. CHOLETTE: And what's going to be holding
up the structure?

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

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

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

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

    MR. CHOLETTE: I think we have the answer.

    MS. SMITH-HETTERICH: Yeah.

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

    MS. SMITH-HETTERICH: Yes.

    MR. CHOLETTE: See, I'm having trouble visualizing what this is actually going to look like when it's there. And to me this is quite important because in one way of looking at it it might look like it's not very visible at all, and as Dave says you're going to put the vines on it. But it's also possible that this is going to look like an extension of your
house coming almost over to the property line. And so
I'm trying to visualize - I see the fence and then, you
know, as I look at it from the street what am I going
to see? Am I going to see, you know, two 2x4s running
at each corner? Is there going to be one in the
center? Is it going to be a 2x10 running parallel to
Terry Town?

MS. SMITH-HETTERICH: Yeah.

MR. CHOLETTE: Can you help me out here?

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

I should have brought you a picture.

MR. CHOLETTE: Okay. Thank you.

MS. SMITH-HETTERICH: Anything else?

MR. CHOLETTE: Any other questions?
Okay. Fine. Thank you very much.

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

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

There being none this part of public hearing is closed.

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

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

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

A few years ago an almost nextdoor neighbor having the same difficulty received a similar variance
to start a facial salon. So it's not out of the ordinary.

MR. CHOLETTE: Is that business still there?

MR. GUPTA: That business is still there.

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

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

This is Kim, the owner.

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

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

The hours will be from nine to seven.

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

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

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

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

MR. GOLDMAN: By appointment only?

MS. TRAN: Yeah.

MR. GOLDMAN: And according to the floor
plan, you only have two positions?

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

MR. GOLDMAN: Thank you.

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

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

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

MR. GUPTA: You're talking about parking?

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

MR. MIETZ: The chemicals.

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

Will the ventilation --

MR. GUPTA: I don't think so because the
business is regulated by law and she had a proper
license for whatever she uses.

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

MS. CORRADO: What I'm asking --

DR. LAWRENCE: In your existing place?

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

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

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

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

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

MR. GUPTA: Self-contained?

MS. CORRADO: Thank you.

MR. GOLDMAN: I have a question about signage.
The signage of this new location or new use will be consistent with the rest of the units there, right?

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

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

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

MR. GOLDMAN: Right. Thank you.

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

MR. GUPTA: Well, it is at the lower level. It is not visible from Clinton Avenue. The size is very small - it's only a thousand square feet - and most of the doctors and dentists and attorneys that we have talked to want more than the thousand square feet. It is at the end of the southeast corner of the plaza, almost opposite the Dollar General. So it is not very
MR. GUPTA: So that has been a problem. It has not only been a problem with Dr. Chawla's property, but other properties also. And they had to after absorbing two or three years of vacancy they had to come to you and petition you for variance. There are other units lower level, again, facing Tops which are vacant or are likely to be vacant and they have had difficulty finding a proper tenant. And so --

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

MR. GUPTA: That is correct.

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

MR. GUPTA: Exactly.

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

MR. GUPTA: Exactly.

MR. CHOLETTE: Okay. Thank you.

MR. GUPTA: Thank you.
MR. CHOLETTE: Any other questions?

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

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

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

Who are these people that signed this?

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

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

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

MR. PULOSI: Yes, I would.

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

MR. PULOSI: Yes.

MR. CHOLETTE: Thank you.

MR. GOLDMAN: So I note here, just thumbing
through here, that one of the signees is Aja Noodle. Aja Noodle isn't close by.

MR. PULOSI: I'm sorry?

MR. GOLDMAN: I just note. Forgive me.

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

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

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

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

MR. GOLDMAN: Thank you.

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

DR. LAWRENCE: By the signatories of the adjacent properties.
MS. TRAN: This is eighty percent from the residents around in the Brighton and twenty of them—twenty percent of them work in the Brighton Town. And they have tried to give the support that I obliged to move over official beauty. So they try to give support that they love to go to me—to get the variance.

MR. CHOLETTE: Okay. I think we understand.

So let me go back and try to ask this again:

This whole complex, is this owned by somebody—Buckingham Properties or who owns this whole thing with all the medical buildings and all of these units?

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

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

MR. GUPTA: That is correct.

MR. CHOLETTE: The other three owners, have you had conversations with them as to what your plans are for this particular unit in your part of this building complex?
MR. GUPTA: Yes. I personally did not, but Dr. Chawla did. I personally had conversations with Dr. Lamar, who owns a large number of units and did he not see any objection to it. He himself has seven hundred square foot area of it available for the last two years - last four years and has been unsuccessful renting it out to a professional.

MR. CHOLETTE: Okay.

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

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

MR. GUPTA: Huh?

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

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

MR. DiSTEFANO: So that hasn't really been marketed - the upstairs hasn't been marketed heavily at this point in time?
MR. GUPTA: That is correct. That was two dentists upstairs and downstairs there.

MR. DISTEFANO: Oh, so they had both the up and down?

MR. GUPTA: Exactly.

MR. DISTEFANO: One practice that had an upstairs/downstairs?

MR. GUPTA: Exactly.

MR. DISTEFANO: That whole unit became vacant, upstairs and downstairs?

MR. GUPTA: That is correct, exactly.

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

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

MR. CHOLETTE: All right. We will give you a chance. You want to speak with regard to this, I'm
Sure. We'll give you an opportunity when we're done here.

Are there any other questions for the applicant?

Thank you.

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

MR. CHAWLA: My name is Dinesh Chawla. You had asked a question about the neighbors being informed. The neighbor is Dr. Karminiak(phenetic) and he himself made reference to it years ago. So he had asked for a variance and was granted and permission to have that business. So he himself is an owner and is aware of this.

MR. CHOLETTE: Okay. Fine. Thank you.

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

MS. CROXTON: My name is Carla Croxton. I'm a customer of Kim's. She has a very cheerful and helpful personality. She's happy to be in America where she can fulfill her dream to work hard and make a life for herself and her children. Kim is loved by all of her customers. She offers a service at a reasonable price which is particularly valuable to
those on a fixed income. They have come to rely on her.

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

Kim must find a way to continue her practice as of July 1st or her regular customers will have to go elsewhere. This will be a devastating blow that would be difficult to overcome. Even if she were to find a reasonable solution, recapturing her loyal customers would be difficult.

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

DR. LAWRENCE: Thank you very much.
MR. CHOLETTE: Thank you.
MR. KOST: Hi. My name is Frank Kost. I live at 100 Parkwood Avenue in Brighton and have lived there since 1993.
Shortly after moving to Brighton from Henrietta I looked for a place to have my hair cut and
I found what was then called Fantastic Sam's and started going there. Kim then became the owner of that store – of that franchise – about fourteen years ago. So when she became the owner she became the owner of the store that I went to. So I was going there just because of proximity.

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

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

But I think from my by perspective, I bicycle or walk over to Kim's place. It's a local gathering place. It's a place where people – everybody really knows everybody like an old barber shop that you remember from the movies or whatever. And now that she
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is not able to stay in her current location at Tops Plaza this opportunity came up. So I'm here just to say she's a wonderful person and a wonderful asset to the community and we want Kim to stay. And if she has to move far away from where she is, the fact is that locality, that proximity to where we all go - which is Tops Plaza - is going to be lost.

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

So thank you.

DR. LAWRENCE: Thank you.

It sounds like we're lucky to have you.

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

And Frank always got his hair cut at that place and finally after several years I started having my hair cut there. And it's just very, very easy to
walk over there or to drive over there. And because Kim, as Mrs. Croxton said, is a role model. She really is a very cheerful person. And I really for one do not want to lose my hair stylist, especially because it's so reasonable and so reasonably priced and she just makes me happy. So I hope she is allowed to move into this place.

Thank you.

MR. CHOLETTE: Fine. Thank you.

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

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

Thank you.

MR. CHOLETTE: Thank you.
Any other endorsements out there?
Yes?

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

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

MR. PULOSI: No problem.

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

MR. PULOSI: Thank you.

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

Then this part of public hearing is closed. And thank you for saving this book until the 250th anniversary. It will be extremely interesting.

Thank you all for coming in.

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

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

Do I start to speak?

MR. CHOLETTE: Yes.

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

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

It's been in a position of not having been
worked on for the exception of cutting the shingles
that were hanging over because I couldn't stand it any longer for a couple of months probably. I'm just waiting hopefully for the go-ahead.

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

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

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

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

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

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

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

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

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

MR. DiSTEFANO: There may be a building code issue that he would need to address as part of the building permit review.
DR. LAWRENCE: So that's where we add --

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

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

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

MR. Cholette: Okay. Any other questions?

Fine. Thank you very much.

MR. Ryan: Thank you.

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

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

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

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

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DiSTEFANO
Secretary

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

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

EDITH FORBES (585)343-8612
APPLICATION 6A-01-14

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

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

(Seconded by Ms. Baker Leit.)

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

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

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

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

FINDINGS OF FACT:

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

2. The setback of only fifty-four feet from the lot line also is not substantial given that this lot line
is in back of the school property and is well removed from nearby structures. Its closest property is an abandoned, deconditioned railroad thirty foot right-of-way and a parking lot for an office building.

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

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

**CONDITIONS:**

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

2. All necessary building permits shall be obtained.

   (Seconded by Ms. Schwartz.)

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

   (Upon roll call, motion to approve with conditions carries.)
APPLICATION 6A-03-14

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

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

FINDINGS OF FACT:

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

CONDITIONS:

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

(Seconded by Ms. Schwartz.)

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

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Schwartz, yes; Ms. Corrado, yes.)

(AUpon roll call, motion to approve with
conditions carries.)
APPLICATION 6A-04-14

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

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

FINDINGS OF FACT:

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

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

3. No unacceptable change in the character of the neighborhood and no substantial detriment to nearby
properties is expected to result from the approval of this variance. Because the way in which the pergola is designed, its open structure and the fact that vegetation will be incorporated in the design so it will appear mainly as a patio area.

**CONDITIONS:**

1. This variance will apply only to the pergola which was described in the application and in testimony.
2. All necessary building permits shall be obtained.

   (Seconded by Ms. Schwartz.)

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

   (Upon roll call, motion to approve with conditions carries.)
APPLICATION 6A-05-14

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

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

FINDINGS OF FACT:

1. The owner has been unable to lease 1988 South Clinton Avenue since 2003, roughly eleven years.

2. Due to the size – one thousand ten square feet – and the location entrance from the Tops side of the building unit, it has been difficult to attract tenants.

3. The requested variance will not alter the essential use of the neighborhood and place an additional burden on parking because the operation is by appointment only and the fact that it is adjacent to the Tops Plaza, which permits this type of activity.

CONDITIONS:

1. The use variance is limited to a beauty salon run by appointment only, as described in the application and testimony.
2. The use variance only applies to the one thousand and ten square feet as described in testimony and as shown in the plans submitted.

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

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

   (Seconded by Ms. Baker Leit.)

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

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

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

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

FINDINGS OF FACT:

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

CONDITIONS:

1. This variance will only apply to the structure that
was described in the application and testimony.

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

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

   (Seconded by Mr. Goldman.)

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

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

I, Chad L. Smith, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

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

Dated

At Rochester, New York

______________________________
Chad L. Smith

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