

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK
3 On SEPTEMBER 7, 2016, COMMENCING AT APPROXIMATELY
4 7:18 P.M.

5

September 7, 2016
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

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PRESENT:

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

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DAVID DOLLINGER, ESQ.
Town Attorney

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RICK DISTEFANO
Secretary

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

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1 MR. MIETZ: Okay. Here we go. So Rick, I would
2 like now to call the September session of the Brighton
3 Zoning Board of Appeals. Rick, was the meeting properly
4 advertised?

5 MR. DI STEFANO: Yes, Mr. Chairman. It was
6 advertised in the September 1st, 2016, Brighton-Pittsford
7 Post.

8 MR. MIETZ: Okay. So will you please call the
9 roll?

10 MR. DI STEFANO: Please let the record show that
11 Ms. Baker-Leit is not present.

12 MR. MIETZ: Whenever you're ready, Rick, you can
13 read the first application.

14 Application 7A-01-16. Application of 2601 Lac De Ville
15 Properties, owner of property located at 2601 Lac De Ville
16 Blvd., for modification of an approved free-standing sign
17 variance. All as described on application and plans on file.

18 MR. DI STEFANO: Is there anyone here representing
19 that application? Okay. Move on?

20 MR. MIETZ: Yes.

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1 Application 8A-05-16. Application of Alice Kanack, owner of
2 property located at 2077 South Clinton Avenue, for Area
3 Variances of Section 205-6 to allow a building addition to
4 1) extend 25 ft. into the 50 ft. front setback required by
5 code, and 2) extend 16 ft. Into the 30 ft. side setback
6 required by code. All as described on application and plans
7 on file.

8 MR. DI STEFANO: For 8A-05-16 for 2077 South
9 Clinton Avenue, which was an application that was held over
10 from last month, that has been postponed to the October
11 meeting.

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1 Application 9A-02-16. Application of Ken Kellerson/AmaehrKen,
2 LLC, owner of property located at 120 Northern Drive, for a Sign
3 Variance from Section 207-32B(1) to allow for business
4 identification signage on two building sides in lieu of the
5 maximum one side allowed by code. All as described on
6 application and plans on file.

7 MR. MAEHR: My partner, Ken, and I own a company
8 called --

9 MR. MIETZ: Can you just --

10 MR. DI STEFANO: State your name and --

11 MR. MAEHR: My partner, Ken, and I own a company
12 called Millennium Machinery.

13 MR. DI STEFANO: What's your full name and address?

14 MR. MAEHR: My name is Frank Bahner. This is Ken
15 Kellerson. I live at 9 Brewster Lane, Pittsford, New York.
16 We own a facility on Brighton-Henrietta Townline Road known
17 as Millennium Machinery, and we are here to ask for a
18 variance. We are moving into a bigger space. We moved to a
19 different area. So now we want to double our size, and we
20 have an interesting property line that needs -- we need to
21 put up two signs instead of one due to where the location of
22 the property is. We are rehabbing it now, and we're hoping
23 to move in in November. And Daniel, our architect, will
24 tell you exactly where he wants to put our signs.

25 MR. ALTAMURA: I'm Dan Altamura with Architectura

1 P.C. Architects. Basically, they are going to reuse one of
2 their existing signs. They are going to relocate it. It's
3 two feet by six feet. It is shown on your drawings. It's a
4 sheet metal sign. They are going to take it from their
5 existing building, and they are going to relocate it to one
6 of two places. So this is kind of the new main entrance,
7 but it is tucked way behind the building. So when you
8 approach the building from here, you go down a narrow drive,
9 and then parking is over here. We also have a sight line
10 that shows that.

11 So the site plan shows access to the site. It is
12 down Northern Drive through this kind of shared area here,
13 and then back behind this building where the new main
14 entrance will be. That's the location of one of the new
15 signs. The other location is directly on the face of the
16 building as you come in. So two proposed locations, we feel
17 that two locations are required because the first location
18 is to announce what the building is and direct people behind
19 the building, so where the actual entrance is. The second
20 sign will announce the entrance to the building.

21 MR. MIETZ: Go ahead. Please continue.

22 MR. MAEHR: If you look at the pictures that I've
23 given to each one of you, I will look over your shoulder
24 here, the first picture is what it looks like now. That's
25 the extent. That's what it looks like when you go to 120

1 Northern Drive. Okay. That's what it looks like now. The
2 entrance is just a gate. Once you go into the gate, you see
3 the back of the building. As you can see, the existing sign
4 there is from Rochester Acoustic. They had a sign right
5 there. The next sign is from the edge of the building.
6 There is an alleyway. It shows a car there with a sign that
7 says "go to the front of the building to the main entrance."
8 That's the alleyway along the side of the building. And
9 this is where we want to propose the second sign that's
10 already there. So we want to just duplicate what's there,
11 but there is a variance on one sign. So we kind of need two
12 because it's kind of a strange layout of the building. So
13 if you could grant us that permission, I would be really
14 grateful.

15 MS. TOMPKINS WRIGHT: And Rick, you may be able to
16 answer, but it looks like what they are proposing together
17 would be below the square footage for one sign.

18 MR. DI STEFANO: Yes, that's correct.

19 MS. TOMPKINS WRIGHT: Significantly below.

20 MR. DI STEFANO: Significantly below.

21 MR. MIETZ: Okay. Just for the record, what you
22 were in before, what type of traffic are you expecting at
23 this location that is going to have trouble finding and
24 leaving the site.

25 MR. MAEHR: We don't have a lot of people traffic.

1 We have a lot of trucks coming in and out because we are a
2 distribution network for Mitsubishi Electric. So foot
3 traffic not so much. However, we do have a couple of open
4 houses a year that we attract 100 people each time maybe
5 twice a year.

6 MR. MIETZ: So the trucks are delivering materials
7 and then taking the materials -- finished materials out.

8 MR. MAEHR: That's correct.

9 MR. MIETZ: What do you approximate the truck
10 traffic a week is.

11 MR. MAEHR: Maybe three a day.

12 MS. SCHWARTZ: I certainly, certainly sympathize.
13 I really didn't find it at first. So I certainly understand
14 your need. What I want to ask you is this, have you ever
15 spoken with the current owners or spoke with them before
16 they left? Did they find that their sign was sufficient and
17 could help their customers find them?

18 MR. MAEHR: Those people went out of business
19 probably eight years ago. The building was under
20 receivership when we purchased it. You know, it had been
21 vacant about two or three years. We did find some of the
22 data in the building, but that's about it.

23 MR. MIETZ: Yeah, it's a pretty secluded spot.

24 MR. MAEHR: Yeah, it's not the end of the world,
25 but you can see it from there.

1 MR. MIETZ: But also the truck traffic, I'm sure,
2 is not all six-wheeled trucks. It is also tractor trailers.

3 MR. MAEHR: Currently where we are now on
4 Brighton-Henrietta Townline Road, we have those trucks come
5 in, we're blocking traffic. It's a nightmare for those
6 truckers to back in.

7 MR. MIETZ: Right. I'm saying if trucks were to
8 miss this location, and then get caught up with the rest of
9 the traffic, it would be a little bit difficult for the
10 trucks themselves.

11 MR. MAEHR: They would have to turn around at MCC
12 or something like that.

13 MR. MIETZ: Right. Okay. Good. Any other
14 questions? All right.

15 MR. MAEHR: Thanks, folks.

16 MR. MIETZ: Thank you very much. Is there anyone
17 in the audience that would like to speak regarding this
18 application? Okay. There being none, then the public
19 hearing is closed.

20 MR. MAEHR: Thank you.

21 MR. DI STEFANO: Please let the record show that
22 Ms. Baker-Leit has joined us.

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1 Application 9A-03-16. Application of Joe Hancock,
2 contractor, and Dane and Virginia Detrick, owners of
3 property located at 154 Hampshire Drive, for an Area
4 Variance from Section 205-2 to allow an addition to extend 3
5 ft. into the existing 34.8 ft. front setback where a 40 ft.
6 front setback is required by code. All as described on
7 application and plans on file.

8 MR. MIETZ: Yes, come on up.

9 MS. DETRICK: My name is Virginia Detrick. I live
10 at 154 Hampshire Drive. I am here to represent myself and
11 my husband Dan Detrick. He's in a wheelchair, and he's not
12 feeling well so he wrote something for me to read to you,
13 but he's not present tonight. Dan was diagnosed with
14 multiple sclerosis more than 40 years ago. During the last
15 20 years, we've made an effort and spent money making our
16 Brighton home more accessible for him. We've added a ramp
17 with snow melting mats, an accessible first floor bathroom
18 with a roll-in shower, and a large family room with sliding
19 doors to a deck with an attached ramp. Since our porch,
20 which is fairly large, needs extensive repair, our architect
21 suggested we extend the foyer slightly into the porch area
22 to create more space at the foot of our stairs and our front
23 door. This additional foyer space will give a wheelchair
24 user enough room to swiftly and safely exit through the
25 front door onto the porch in case of an emergency. I'm

1 thinking blizzards, you know, when our back ramp is filled
2 with snow or our snow melting mats are not working. Also,
3 we would like improved access to the second floor. It's a
4 two-story house as many are in Brighton. We have consulted
5 experts on accessible renovation. Their consensus is that a
6 motorized chair lift would be necessary, and that is because
7 there is no room for an elevator. Unfortunately, we need
8 five feet of space at the foot of the stairs to provide a
9 safe transfer site for a chair lift. We only have three
10 between the bottom of the stairs and the outside wall.

11 We have lived in Brighton for 30 years. Our two
12 sons have graduated from Brighton schools. We would like to
13 use our porch space to make our home better suited for a
14 disabled person. We are not asking to extend the porch in
15 any way or change the shape of our house, but merely to take
16 three feet off the porch that's next to the house.

17 MR. MIETZ: Okay. Couple of questions, so what's
18 going to happen to that exterior wall? What is it going to
19 look like? Is it going to look exactly like it looks today?

20 MS. DETRICK: Well, there is an architect, and she
21 submitted the plans. So I assume that either you've seen
22 them or the group before this had seen them.

23 MR. MIETZ: Okay. But for the record, I guess, is
24 it going to look --

25 MS. DETRICK: As much like it does now because we

1 have a trellis on the side of our house that will remain.
2 So it shouldn't look any different.

3 MR. MIETZ: Okay. So to someone driving by, unless
4 they noticed the construction, they probably wouldn't notice
5 it at all.

6 MS. DETRICK: That's what we're hoping for. That's
7 why we chose an architect.

8 MR. MIETZ: Okay. And you feel that the rest of
9 the porch that's going to be added is going to be able to
10 serve as a porch?

11 MS. DETRICK: Yes. Yes because you're --

12 MR. MIETZ: I know. I saw it.

13 MS. DETRICK: Yeah, you will still have space, and
14 you will have space for a wheelchair also to turn around on
15 the porch.

16 MR. MIETZ: Okay. Great. Any questions.

17 MS. WEBB: Can I just say something?

18 MR. DI STEFANO: Sure.

19 MS. WEBB: My name is Cindy Webb. I'm a neighbor
20 of the Detrick's. I have been there for quite a long time.
21 Longer than they have even. They are very good neighbors.
22 They maintain their property, and I have absolutely no
23 objections. Any improvements they've made look great, and I
24 think it's kind of a necessary thing to be able to keep
25 somebody who is handicapped increasingly so in their home.

1 To me, it's one of the lesser worries I have of Hampshire
2 Drive when there are five vacant houses. One of them with a
3 tree growing up through the roof. Nobody's been in that
4 house since last January. There is a chicken coop on the
5 corner, all kinds of trash, and several other house that are
6 vacant. One that has extensive mold and nothing is being
7 done with the lawns, nothing has been cared for. To me,
8 that's more of a concern of how things look than the
9 Detrick's making a very attractive improvement to their
10 home.

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

1 Application 9A-04-16. Application of Patrick Langworthy,
2 owner of property located at 159 David Avenue, for an Area
3 Variance from Section 205-2 to allow a bay window to extend
4 1.5 ft. into the 40 ft. front setback required by code. All
5 as described on application and plans on file.

6 MR. MIETZ: Okay. Go ahead.

7 MR. LANGWORTHY: Hello, I'm Patrick Langworthy, the
8 owner of 159 David. I bought the house, started to do some
9 renovations, decided I want to change out the front window
10 from a picture window to a bay window. And it extends about
11 a foot and half into the required setback. So I was told I
12 just needed to get a variance to be allowed to change the
13 window.

14 MS. SCHWARTZ: Will it resemble the one like your
15 neighbors to the left?

16 MR. LANGWORTHY: Yes, I have a picture of the
17 window if you would like to see it.

18 MR. DI STEFANO: I think you have one in the
19 packet. Yes, they have one in their packets.

20 MR. LANGWORTHY: Okay.

21 MS. TOMPKINS WRIGHT: I think it was in your
22 application, but you can tell us, there are several homes on
23 the street that also have bay windows.

24 MR. LANGWORTHY: Exactly.

25 MR. MIETZ: And that will be the only modification.

1 MR. LANGWORTHY: To the front, yes.

2 MR. MIETZ: Yes, to the front.

3 MR. LANGWORTHY: Yes.

4 MR. MIETZ: Okay. All right. Any other questions
5 about that? Is there anyone in the audience that would like
6 to speak regarding this application? There being none, the
7 application is closed.

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1 Application 9A-05-16. Application of Fisher Associates, agent,
2 and Peter Sun/Sukora Home, owner of property located at 2775
3 Monroe Avenue, for an Area Variance from Section 205-12 to allow
4 total on-site parking to be 89 spaces, after expansion of
5 restaurant seating, in lieu of the minimum 105 spaces required
6 by code. All as described on application and plans on file.

7 MS. HOGAN: Good evening, my name is Sarah Hogan.
8 I am here on behalf of Fisher Associates. I am speaking on
9 behalf of the client Peter Sun. So we are here for an area
10 variance both for parking and for --

11 MR. DI STEFANO: Just the additional parking.

12 MS. HOGAN: Just the additional parking?

13 MR. DI STEFANO: Not for the front parking spaces,
14 no.

15 MS. HOGAN: Okay. So we are here just for the
16 additional parking. That makes it easy. So to my
17 knowledge, we were granted approval last June for the same
18 request. We're back. Just basically, the project hasn't
19 been moving forward at the speed we had anticipated. So we
20 are looking for the same area variance for the parking. We
21 have provided park counts back in 2015 for the maximum
22 parking count yielded. During the peak dinner hour, this
23 was done at half hour intervals between 6:00 and 8:30, and
24 like I mentioned, on April, 2015. We've since gone on and
25 done updated parking counts just recently within the past

1 two weeks. Again, we did them on half hour intervals
2 between 6:00 and 8:30 p.m. during the peek dinner hour.
3 Friday, August 26th, the maximum parking count yielded was
4 49 spaces. Saturday August 27th, the maximum parking count
5 yielded was 46 space. And Thursday, September 1st, maximum
6 parking count yielded was 46 spaces.

7 MS. TOMPKINS WRIGHT: Do the employees from this
8 restaurant currently park on the neighboring property?

9 MS. HOGAN: No, my understanding is that they park
10 on the parallel parking spots adjacent to the parking lot.

11 MS. TOMPKINS WRIGHT: Okay. So these counts would
12 not have included the employees then?

13 MS. HOGAN: Correct.

14 MR. MIETZ: So what's the scoop on the project?
15 Where do we stand as far as what their plans are moving
16 forward.

17 MS. HOGAN: My understanding is that they are just
18 looking at some programming internally with the architects.
19 And they are working out the kinks. And it was just taking
20 a little longer than what they had originally anticipated.

21 MR. MIETZ: Are they planning on doing something in
22 this building season.

23 MS. HOGAN: Yes, they are planning on moving
24 forward.

25 MR. MIETZ: Interior or exterior.

1 MS. HOGAN: Interior.

2 MR. MIETZ: Okay. But nothing on the exterior?

3 MS. HOGAN: Nothing on the exterior, no.

4 MR. DI STEFANO: And just for the record, this is
5 basically to provide a second menu correct for the --

6 MS. HOGAN: That's my understanding, yes. There is
7 about 2,200 square feet of additional storage area that they
8 would like to turn into more sushi oriented cuisine. So
9 they are extending the storage area that they don't utilize
10 to bring in some additional seating.

11 MS. TOMPKINS WRIGHT: I don't know if you know
12 this, you might know this, did this owner construct the
13 building?

14 MR. MIETZ: No, this is a very old building.

15 MS. HOGAN: They purchased it.

16 MS. TOMPKINS WRIGHT: Okay.

17 MS. HOGAN: Any other questions?

18 MR. MIETZ: All set? Okay.

19 MS. HOGAN: Thank you.

20 MR. MIETZ: Thank you very much. Is there anyone
21 in the audience that would like to speak regarding this
22 application? Okay. There being none, then the public
23 hearing is closed.

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1 Application 9A-06-16. Application of The Summit of Brighton,
2 owner of property located at 2000 Summit Circle Drive, for an
3 Area Variance from Sections 203-23A(4) and 203-2.1B to allow an
4 accessory structure to be located in a front yard in lieu of the
5 rear yard as required by code. All as described on application
6 and plans on file.

7 MS. BUSSEY: Good evening, my name is Susan Bussey.
8 I represent the Summit at Brighton located at 2000 Summit
9 Circle Drive. We would like a variance to have a structure
10 installed in the front lawn of the Summit. It's going to be
11 an observatory for our residents who are an average age of
12 85 plus to use as an astronomy observatory. It's a shed
13 type structure. Residents will go out at their leisure, and
14 use their own telescopes, and sit in the front lawn. The
15 reason why we need it in that location is because, according
16 to our residents, that's a spot on our property that has the
17 least amount of light pollution. So they will get the best
18 view of the sky.

19 MR. MIETZ: So basically, it isn't for use of the
20 public or anyone else with -- are people just free to walk
21 up to this structure.

22 MS. BUSSEY: Only our residents. So it will be
23 locked when they are not using it because it will have the
24 telescopes inside.

25 MR. MIETZ: So will a staff person have to accompany

1 someone out there.

2 MS. BUSSEY: No, the residents will be able to do
3 it themselves. They are pretty independent.

4 MR. MIETZ: Okay. And then they would be
5 responsible to secure it.

6 MS. BUSSEY: Exactly.

7 MR. MIETZ: And I know you have security there, too.
8 I'm sure they will keep an eye on it.

9 MS. BUSSEY: Correct.

10 MR. MIETZ: I'm just a little concerned about who
11 else tries to use it that isn't supposed to use it.

12 MS. BUSSEY: Well like I said, they are
13 independent. So it's the residents who choose to use it at
14 their leisure.

15 MR. MIETZ: You know with the park nearby and a lot
16 of kids around and those kind of things.

17 MS. BUSSEY: Right. We have security in our
18 building and around our campus 24/7.

19 MR. MIETZ: So they would keep an eye on it.

20 MS. BUSSEY: Yes.

21 MR. MIETZ: Okay. And you said for the record that
22 this is the only location where it works on site.

23 MS. BUSSEY: Yes.

24 MR. MIETZ: And nothing else is considered because

25 --

1 MS. BUSSEY: Because of the lights, yes. Because
2 of the lights around the circle, and it has the least amount
3 of lighting.

4 MS. LEIT: What kind of pathway will there be for
5 the residents?

6 MS. BUSSEY: There is already a stone pathway, a
7 gravel path there established. So it will be installed
8 right next to that pathway.

9 MS. DALE: And I think you said in the application,
10 when I look at the diagram, that the electricity was going
11 to be run underground?

12 MS. BUSSEY: Correct.

13 MS. DALE: So not visible to anyone?

14 MS. BUSSEY: Right. Right.

15 MS. TOMPKINS WRIGHT: I may have missed this. Is
16 there any kind of -- I know that it says it does haven't any
17 kind of lighting. Is there any kind of lighting that's
18 going to be accompanying the structure?

19 MS. BUSSEY: So what we're going to do is have
20 reflectors along the path and the residents are going to
21 have to bring their own flashlights if needed.

22 MR. MIETZ: And they could use it any hours they
23 wish?

24 MS. BUSSEY: Any hours they wish including during
25 the day. I guess there is some sun action too.

1 MS. CORRADO: I'm curious in similar neighborhoods
2 and elements around the community, are there observatories
3 in other --

4 MS. BUSSEY: No, this is really new.

5 MS. CORRADO: This is a new installation.

6 MS. BUSSEY: Yes. And we're partnering with the
7 Astronomy Society of Rochester according to our residents.

8 MR. MIETZ: Yeah, it's really nice that you listened
9 to the things they were interested in.

10 MS. BUSSEY: Yeah, it's pretty exciting actually
11 that we had so many residents interested in it.

12 MS. SCHWARTZ: It will be a rather seasonal
13 structure?

14 MS. BUSSEY: Yes, they will use it all summer
15 through, I think, November, and then we will close it up for
16 the winter.

17 MR. DI STEFANO: Just for the record, could you
18 just state the size of this structure? And also
19 approximately, its distance from Meridian Center Drive.

20 MS. BUSSEY: I couldn't give you -- I mean, we are
21 across the street from Meridian Center.

22 MR. DI STEFANO: Yeah, right off the drive, through
23 Meridian -- the stub road that basically, about the distance
24 you are from the road itself 100 feet, 150 feet.

25 MS. BUSSEY: Maybe 200 feet.

1 MR. DI STEFANO: Okay. And approximate size of the
2 structure?

3 MS. BUSSEY: Eight feet-ish, maybe -- maybe eight
4 by 15 or something because it has some base.

5 MS. TOMPKINS WRIGHT: It looks like the telescope
6 is only four feet in diameter and only seven and a half feet
7 high.

8 MR. DI STEFANO: Yeah, I just wanted something for
9 the record.

10 MR. MIETZ: It says 14 by 15 maybe. Okay. Any
11 other questions? Questions? No. Okay. Thank you. Is
12 there anyone in the audience that would like to speak
13 regarding this application? Okay. There being none, on we
14 go.

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1 Application 9A-07-16. Application of O'Donnell Associates,
2 Inc., agent, and Charles Davis, owner of property located at 745
3 Penfield Road, for relief from Section 225-13A/C to allow for
4 the expansion of a pre-existing nonconforming deli business to
5 include catering, on-site parking of food trucks, installation
6 of commercial kitchen equipment, and construction of a 19 ft. by
7 9 ft. walk-in cooler on the rear side of the building in a RLB -
8 Residential District. All as described on application and plans
9 on file.

10 MR. DAVIS: Good evening, I'm Charles Davis, 745
11 Penfield Road, sole member, owner of 745 Penfield Road. I
12 would like to start out with over the years we've attempted
13 to be the best neighbor possible -- excuse me -- in terms of
14 that neighborhood. We have, in the past, been asked to use
15 the parking lot by the neighbors for over -- for different
16 events, for gatherings, for overflow parking for the
17 neighborhood/household sales, the Town of Brighton has used
18 the parking lot for staging project, road projects over
19 there. And we also, in the past, have been asked by our
20 neighbors, to in order to make improvements to their
21 backyard, remove the fence, stage construction equipment and
22 materials to do backyard improvements. We've always done
23 our best to try to keep the property up, lawns maintained,
24 paint, tidy appearance. And again, all in the interest of
25 being good neighbors or the best neighbors possible.

1 We'd like to really kind of clarify in terms of our
2 application and start out with the fact that we're really
3 not -- we're not applying to expand the use. We're really
4 looking to improve the use. With the hood application,
5 we're looking to improve fire and life safety. It's just a
6 different method of cooking. With a walk-in cooler out
7 back, we are looking to reduce the carbon footprint.
8 Instead of having 10 coolers or freezers inside running all
9 the time, we can significantly reduce that by utilizing a
10 walk-in cooler. The walk-in cooler, we're proposing to put
11 out behind the building. Access to that walk-in cooler
12 would be from inside the building. So all of the stocking
13 of that cooler, and again, retrieving of that product would
14 be from inside the building. Our belief is having the
15 walk-in cooler would significantly reduce the number of
16 delivery vehicles that we need to have. Excuse me. We -- I
17 think we indicated that there may be as many as a couple a
18 day. Obviously, we would like to reduce that as much as
19 possible and keep the impact as simple or as reduced as
20 possible.

21 In terms of the food trucks, we just want to dispel
22 the myth, or the hype, or the misconception. We are not
23 looking to run a food truck operation out of there. Chef's
24 Kitchen and Bakery, who is going into the space, has one
25 food truck and one food trailer that we were proposing to be

1 parked out behind the garage and truly not visible, really,
2 without taking your eyes off of the wheel for a long enough
3 period of time to try to find it somewhere in behind the
4 garage. Those would not be running. I'd like -- we did get
5 copies of the letters from the neighbors. And I guess I
6 would ask you -- it's your forum. I mean, I can go through
7 each one of those letters and address those concerns, or we
8 can do it kind of like in general. And then if anybody
9 would like to speak, I'd like to have the opportunity to
10 speak again in case I haven't --

11 MR. MIETZ: Okay. Well, the last part we generally
12 do not do. So if there is a theme to -- I mean, we read
13 some to have them. And obviously, you will hear some other
14 comments. And if we feel that one of the comments for us to
15 be clear that we need a clarification, then we will ask the
16 person, but we can't have a cross-dialog.

17 MR. DAVIS: Okay. Well, that's why I'm asking.

18 MR. MIETZ: It really goes into some other levels of
19 communication there that is not really helpful to us. So
20 maybe what you do is if there is some general themes that
21 you feel are not clear, or based on what you believe people
22 think, like what was stated about the food trucks, then you
23 can go ahead and do that.

24 MR. DAVIS: Okay. I would like to start then.

25 There is a letter from the neighbors at 1 Colonial Village.

1 They are continuous to us with some of their concerns in
2 terms of us being there, shifting away from the neighborhood
3 deli, larger enterprise, and serving a wider area. I mean,
4 there are trends in all businesses. As far as that is
5 concerned, you know, I think one of the things that
6 continues to come up is catering.

7 MR. MIETZ: Okay. So let me stop you for a second.
8 Again, not to diagnose every one of these letters, but
9 again, the person that wrote that letter had a concern about
10 the expansion. Are you suggesting there is no expansion of
11 the business.

12 MR. DAVIS: I started out with that.

13 MR. MIETZ: Okay. I don't know if you made that
14 clear. Is that what you're stating? For the record, I want
15 that to be clear.

16 MR. DAVIS: Yes, that's correct. The word
17 "catering" keeps coming up and saying that's an expansion of
18 the business. The definition of cater is to provide food
19 and drink. That's what's been done there. That's what's
20 proposed to continue to be done there. If you -- if we look
21 at the stipulation that is approximately 31 years old, we
22 are looking at offered for sale at the said premises by said
23 defendant, milk, cheese, and other dairy products, and the
24 manufacture and sale of ice cream, food, and food products.
25 So that's all we are looking to do there is continue that.

1 In terms of the impacts to the neighborhood, I mean, we, in
2 the past, have had -- we've run anywhere from 200 to 300
3 customers through there a day. That's not going to change.
4 If anything, it would be reduced.

5 MS. DALE: And why would it be reduced?

6 MR. DAVIS: Because of the -- because of the
7 business motto. I mean typically, your people, whoever is
8 going to come there would come there. It's not going to
9 increase.

10 MS. DALE: I'm sorry, but are you not going to
11 stop -- you are not going to stop with the current function;
12 right? So I'm just curious as to why you think it will be
13 reduced for the people coming there?

14 MR. DAVIS: Well, I mean, just the business will
15 dictate that.

16 MS. CORRADO: So to be sure I understand this too,
17 the previous function was a deli, walk-in service, you place
18 your order, and you walk away with your take-away food. But
19 the proposed operation is the Chef's Kitchen with the
20 delivery function. Is there still walk-in ordering and
21 take-away of the meals as well?

22 MR. DAVIS: Yes, there is. Okay.

23 MS. CORRADO: Right. So this is then an expansion,
24 an additional function above and beyond the walk-in purchase
25 and take-away.

1 MR. DAVIS: We all along from having Bernunzio's
2 from 2004 to 2014, all along we catered. We catered to
3 almost every type of function you can imagine.

4 MS. CORRADO: With a similar type of delivery
5 vehicle as proposed by Chef's Kitchen?

6 MR. DAVIS: No, we used personal vehicles as
7 opposed to a typical commercial, I think, type of delivery
8 truck. I mean, they've got a smaller van that they do their
9 deliveries in. The food truck isn't being used for the
10 deliveries of the catering, you know. The food truck -- the
11 food truck would be -- what happens with the food truck is,
12 you know, it goes out for lunch. It may go out for an
13 evening event. It comes in. It gets parked out back, and
14 then it sits. It may go out once a day, twice a day. It
15 may go out once a week, twice a week. It depends on where
16 the events are. But that isn't taking -- that isn't
17 delivering everyday type of catering stuff. That stuff gets
18 picked up and/or it gets delivered in a regular van, just a
19 regular delivery van.

20 MS. CORRADO: Okay. Thank you.

21 MR. MIETZ: One thing, I think, that might be
22 helpful is, we read the materials that were submitted in the
23 application. And again, everyone in the audience probably
24 hasn't -- slightly hasn't. So one thing that might be
25 helpful so that we can all be clear is not only the

1 comparison of what was going on there before, but who is
2 going to operate this business, and can we get a clear
3 description of how this business is operating. I think that
4 will help us and help the people in the audience. So who
5 really is going to be operating this business.

6 MR. DAVIS: Well, Chef's Kitchen and Bakery.

7 MR. MIETZ: Okay. Is there someone here from --

8 MR. DAVIS: Oh, sure there is.

9 MR. MIETZ: And would you mind, and you can come
10 back up, that's fine. I think at this juncture it would
11 help, even with the questions, if we understood a little
12 better what they are really planning to do at this location.

13 MR. DAVIS: Okay.

14 MR. MIETZ: Would you be okay with that? I'm happy
15 to have you come back up and finish.

16 MR. DAVIS: Well, I would like to finish a couple
17 of other things first, if I could.

18 MR. MIETZ: Okay. All right. Go ahead.

19 MR. DAVIS: In terms of what's really happening
20 inside of here is the rearranging of furniture so to speak.
21 The improvements that have been done, flooring, wall
22 coverings, ceiling tile, covers, paint inside, paint
23 outside, all of that type of stuff, and it's all for a
24 walk-in business.

25 MR. MIETZ: Okay.

1 MR. DAVIS: If you look at the floor plan and you
2 look at the layout, there is ice cream that's going to be
3 served there, seasonally, obviously. In terms of the
4 cooking with one type of appliance versus another type of
5 appliance, it's really no different than cooking on your
6 stove at home, and you're just cooking a different way. You
7 are just going outside and cooking on your grill. Again, it
8 wouldn't be any different than with some of the homes that
9 are being built in Brighton. Commercial kitchens are going
10 in the homes. It's just the trend. It's simply the trend.
11 It's not an expansion. It's just a different way of doing
12 the same business.

13 MS. DALE: Could you tell us a little bit about the
14 new cooler?

15 MR. DAVIS: Sure. What would you like?

16 MR. DI STEFANO: Should we keep that for the Chef's
17 Kitchen people?

18 MR. MIETZ: Yeah, I would like to do that if you
19 don't mind.

20 MS. DALE: Sure.

21 MR. DAVIS: Well, one of the things -- I mean, one
22 of the reasons I'm up here, primarily, is because I'm the
23 owner of the property and landlord. And really in the
24 interest of being a good neighbor, and remaining a good
25 neighbor, is, you know, if we work together on it to say yes

1 or no to certain things. You know, we passed by several
2 potential tenants for that location because of the fit, the
3 right fit. I mean, there were multiples of different
4 proposals there from diners to doctor's offices. And so
5 during that time that the space was vacant, you know, I
6 really wasn't in a rush to put somebody in there that didn't
7 make sense and wasn't in keeping with what was there. And
8 you know that having been said, you know, really as we
9 worked side by side, and again certainly, you can come up
10 here and ask questions, there are certain things that as a
11 landlord, I may or may not allow. So you know, if there
12 is -- if there is anything that, you know, is talked about I
13 would like to comment on it.

14 MR. DOLLINGER: Okay. Did Bernunzio's -- when it
15 was the Bernunzio's Deli, did they ever advertise a catering
16 business?

17 MR. DAVIS: Inside the store, sure.

18 MR. DOLLINGER: Inside the store. Did they make
19 full dinners and deliver them, or did Bernunzio's make 100
20 chicken dinners and deliver them out?

21 MS. MELEO: I can answer that.

22 MR. DOLLINGER: And you said that Bernunzio's, when
23 they deliver, they delivered in private cars. And so for
24 instance, if they do pizza -- do they do pizza?

25 MR. DAVIS: Uh-huh.

1 MR. DOLLINGER: And would you call up and get a
2 pizza from Bernunzio's?

3 MR. DAVIS: Okay. That would be a question for the
4 Bernunzio's.

5 MR. DI STEFANO: So when you were running that, did
6 you do that?

7 MR. DAVIS: Yes.

8 MR. DOLLINGER: That's what I'm trying to figure
9 out. Would people order in the store and you would deliver
10 it?

11 MS. MELEO: No, people could call in the orders.
12 The vast majority was that people would call in orders and
13 they would come pick them up, or a lot of it was. Then a
14 lot of it was delivered. It just depended on -- I mean
15 really, it depended on what their requests were, their
16 requirements.

17 MR. DOLLINGER: Okay. If you were delivering food,
18 it would be -- this is my recollection too. Was that they
19 would really deliver pizza. If you went -- you didn't
20 deliver dinners. Bernunzio's didn't deliver dinners,
21 chicken dinners for 15 people.

22 MR. DAVIS: When we --

23 MR. DOLLINGER: You would order a pizza, and they
24 would deliver a pizza, if I recall.

25 MR. DAVIS: No, we delivered dinners.

1 MR. DOLLINGER: So you would actually create a
2 dinner for 15 people and deliver it out.

3 MR. DAVIS: That's correct. For neighbors, also.

4 MS. BERNUNZIO: Or more. Or more.

5 MR. MIETZ: Hold on. No. No.

6 MS. BERNUNZIO: Sorry.

7 MR. DOLLINGER: An interesting thing about that. I
8 just question whether that's in the ambient of the original
9 use.

10 MR. MIETZ: Well, I think --

11 MR. DOLLINGER: I just want to -- I'm sorry.

12 MS. SCHWARTZ: That's a whole different
13 application.

14 MR. MIETZ: Sorry. Okay. We are bouncing around
15 here a little too much for people to follow. Do you have
16 more things you would like to say at this point? Again, you
17 can come back up. But I really want to hear from somebody
18 from Chef's Kitchen that will just clearly tell us what they
19 are going to do with this location.

20 MR. DAVIS: How am I not being clear?

21 MR. MIETZ: It's very clear for us to understand.

22 MS. TOMPKINS WRIGHT: The point is, though, for him
23 to clarify because we are talking about him delivering
24 meals. So prior to the Bernunzio's, you ran a business at
25 that location as well?

1 MR. DAVIS: After Bernunzio's.

2 MS. TOMPKINS WRIGHT: After Bernunzio's.

3 MR. DAVIS: It remained Bernunzio's, yes.

4 MS. TOMPKINS WRIGHT: Do you have timing on that?

5 MR. DAVIS: Tom and Ginny had it from '89 to 2004,
6 and Michele and I had it from 2004 to 2014.

7 MR. MIETZ: And you had a tenant in there for about
8 a year.

9 MR. DAVIS: I had a tenant in there. RTK Catering
10 was in there for about 16 months or so.

11 MS. SCHWARTZ: So you own the property?

12 MR. DAVIS: That's correct.

13 MS. SCHWARTZ: Are you going to continue to own the
14 property?

15 MR. DAVIS: Yes, that is correct.

16 MS. SCHWARTZ: Okay. So you bought it from the
17 Bernunzio's?

18 MR. DAVIS: That is correct.

19 MS. TOMPKINS WRIGHT: And while you were operating
20 the property, how much of your business was preparation of
21 food that was sold on site to customers that came in, and
22 how much was to customers sent out to delivery? I mean,
23 obviously, you are talking about how much of that. Any
24 idea?

25 MR. DAVIS: You know, well, it was all for off-site

1 consumption.

2 MS. TOMPKINS WRIGHT: Right. How many individual
3 people stopping in and how much of it was you preparing a
4 meal and delivering it off site or having someone come in
5 and pick it up?

6 MR. DAVIS: It could have been as high as 50/50.
7 It's seasonal. Really a lot of it was holiday stuff. A lot
8 of it was summertime stuff. A lot of it was special events,
9 graduation parties, funerals, weddings, corporate events,
10 sporting events. I mean, there was all kinds of it on a
11 regular basis. On a regular basis, I mean, again, it was
12 based upon -- based upon the function. There wasn't --
13 there wasn't a stigma about catering. I mean, catering --
14 to cater is to provide food and drink.

15 MS. CORRADO: Well, just two quick questions, while
16 it was Bernunzio's, regardless of order and operating, it
17 was -- it prior was a grill or --

18 MR. DAVIS: There was -- there was -- we had some
19 griddles, some household griddles. There was a stove, a gas
20 stove, a convection, a double deck convection oven. And
21 there was evidence of old fires on the site. That's all I
22 can say. We didn't -- at the time we didn't -- during our
23 ten-year, we didn't --

24 MS. CORRADO: No fryer?

25 MR. DAVIS: We didn't use a fryer because it would

1 require a hood and you know --

2 MS. CORRADO: Right. So it was a larger scale
3 operation. And then I see you got some renovation underway
4 on the site. Is the renovation before the tenants or is
5 there a --

6 MR. DAVIS: No, per tenant -- Mike's sister Jill is
7 the baker. And the bakery has already opened. It opened, I
8 think, a week ago on a small portion of the store that was
9 able to be ready and get open while the balance of the store
10 continues the -- just the improvements, you know. And
11 again, they are all to date. They are all just very nicely
12 done, and you know, really very clean and meticulous, you
13 know. I mean, perhaps, maybe, there has been some
14 miscommunication of some of the construction that's going on
15 there. And maybe some of the, you know, the garage or some
16 stuff out front. And then there was a trailer situation.
17 We got a letter last week when I was in and said last week
18 you got to move the trailer. And I called Mike. And he
19 said the trailer was moved two days ago. That was gone. He
20 asked to repost the sign. We reposted the sign.
21 Apparently, it was posted incorrectly. And so it was out by
22 the road. So you know, there has been a little bit of
23 response over the last decade or so. And whatever we get,
24 it's coming to us as being good neighbors. And we turn
25 around and just being good neighbors back, and following,

1 and doing, you know, what we need to do.

2 MR. DOLLINGER: When you ran it, did you -- did you
3 produce your own bread on the premises?

4 MR. DAVIS: Yes.

5 MR. DOLLINGER: So there was how many ovens there?
6 Was there ovens to do that?

7 MR. DAVIS: Yes.

8 MR. DOLLINGER: And there was -- you would bake
9 your own bread on the premises. So it was a bakery too?

10 MR. DAVIS: Yes, the best bread is your own bread
11 baked daily.

12 MR. DOLLINGER: And then you said there was stoves.
13 Was there one stove, two stoves? How many was there?

14 MR. DAVIS: There was one stove, gas -- gas stove
15 and oven, and then the convection ovens.

16 MR. MIETZ: All right. Is there anything else you
17 would like to add at this point because again, I think we're
18 going to get ourselves into a better situation if we can
19 understand from the operator what -- what's --

20 MR. DAVIS: Well, in terms of what was there,
21 you're not going to get a better understanding from the
22 proposed operator.

23 MR. MIETZ: No, I wouldn't expect so.

24 MR. DAVIS: I mean, if we're asking -- if you want
25 to ask the questions about what was --

1 MR. MIETZ: Right.

2 MR. DAVIS: Then that was best put together with
3 me.

4 MR. MIETZ: And that's fine. I think if we want to
5 understand clearer what's going to happen there, and then
6 you can come back and illustrate -- the illustrator and talk
7 about the past rather than understanding what's going to
8 happen. It is a little too confusing, and then you have an
9 opportunity to come back up.

10 MR. DAVIS: Okay.

11 MR. MIETZ: Thanks.

12 MR. ZAZZARO: I'm Michael Zazzaro. I own Chef's.

13 MR. MIETZ: Could you give us an address.

14 MR. ZAZZARO: 745 Penfield Road.

15 MR. MIETZ: Okay. Go ahead.

16 MR. ZAZZARO: Currently, my business is four and a
17 half years old. We are over on East Avenue. We just have
18 commercial space. We are looking to put a face to the
19 business. We are looking to do a modern, a nicer modernized
20 deli, fast casual, more like Chipotle style. You come in,
21 make your plates, sliders. You can get your baked goods and
22 ice cream, but it's going to be real quick in and out.
23 There's going to be retail just like there was before.
24 Pretty much it's to put a face on my current business.

25 MS. DALE: Are you keeping your current location as

1 well?

2 MR. ZAZZARO: Yes.

3 MS. DALE: Did you think about parking the food
4 trucks at the current location instead of on Penfield Road?

5 MR. ZAZZARO: Yeah, that's --

6 MS. DALE: To get food truck out of --

7 MR. ZAZZARO: -- currently, that's where I'm at
8 now. I'm looking for additional space because we are
9 actually -- where our headquarters are now is very tight
10 parking. It's very tight to maneuver food trucks and having
11 --

12 MS. DALE: So did you have a food truck before you
13 went to the Penfield Road location?

14 MR. ZAZZARO: Yes.

15 MS. DALE: And you had that at East Avenue?

16 MR. ZAZZARO: Correct.

17 MS. DALE: But are you saying that's a hardship?
18 Is that what you're saying?

19 MR. ZAZZARO: So a lot of the catering and drop-off
20 services that we do there, we are transitioning, but we are
21 going to have both locations. So a lot of the catering and
22 production of food will also be at my current place.

23 MS. DALE: The housing of the truck when that's not
24 being used?

25 MR. ZAZZARO: Right. Well, we are going to have it

1 tucked in the back over on 745 Penfield Road.

2 MS. DALE: In the back. So is there a back you can
3 park it where it wouldn't be visible?

4 MR. ZAZZARO: Absolutely.

5 MR. MIETZ: From the road? All right.

6 MS. TOMPKINS WRIGHT: Can I go back real quick to
7 something you said? You said there would be a retail
8 component?

9 MR. ZAZZARO: So some Coca-Cola coolers, some
10 Snapple coolers, I do plan on having meals, frozen meals,
11 prepared meals. It's been brought to my attention through a
12 lot of the neighbors that that's what they like. And I'm
13 going to have a suggestion box, but we are going to
14 currently do what was there which very -- you know,
15 everything that I am doing now, but we're having some cooler
16 space for some meals and what not.

17 MS. TOMPKINS WRIGHT: So not a full grocery, but
18 there will be a retail component of coming in and purchasing
19 some products that are not necessarily a catered meal at the
20 location.

21 MR. ZAZZARO: Correct.

22 MR. MIETZ: Milk, bread --

23 MR. ZAZZARO: Everything that was there before, we
24 were planning on doing. Just kind of a modernized and just
25 to put a facelift to our current business. We do gourmet

1 plates and sliders off of our trucks. So you are going to
2 be able to come in for lunch and be able to get a plate. We
3 have four or five different protein options and different
4 sides. And it's going to be very fast service. But mainly,
5 it's going to be during the day, lunch service. And we do
6 plan on being open for dinner, but I don't plan on being
7 open late.

8 MR. MIETZ: What does that mean.

9 MR. ZAZZARO: 7:00, 8:00, current hours that it was
10 open before that's what we plan on doing, if not, close
11 earlier.

12 MR. MIETZ: So a couple of other questions then. So
13 the catering part of business versus what you just
14 described. So what you're talking about is someone walking
15 in the front door and being able to procure a bunch of
16 things that you described. Okay. So that's -- that's part
17 of business. Then what is the other part of the business
18 that will be housed or operated at that location.

19 MR. ZAZZARO: So people will be able to come in.
20 So if you see on the diagram of the footprints when you walk
21 in the building, you will be able to meet on the left side
22 of the doorway. The POS -- the two POSes, you can come in
23 and either get your baked goods, or you can come in and get
24 retail or hot food. Then you cash out and go right back
25 out, or you pick your catering order as well. So there is a

1 family of five, ten, fifteen that wants to place an order,
2 come right up to the counter, and it will say "catering
3 pick-up."

4 MR. MIETZ: All right. And then to support the food
5 truck operation, all right, which is the -- is that going to
6 be managed and operated out of this location as well? In
7 other words, dealing with whatever prepared foods are
8 necessary for the food truck.

9 MR. ZAZZARO: All the food truck is is we go to --
10 we go to sites and we actually -- I mean, they are all
11 self-contained. They have a fire compression system on it.
12 They are more safe than most restaurants around. We go to
13 private functions or parties, or we will be downtown at the
14 Fringe Festival or the Public Market Food Truck Rodeo. But
15 everything is done on the truck on-site at the event. So
16 when we come back, we plug in for our coolers to stay up to
17 temp, but there is no -- I mean, everything is -- the safety
18 of these trucks is --

19 MR. MIETZ: I guess my question is this really, the
20 material that you are using to build the meals on that food
21 truck, it's going to be shipped into this location? There
22 is no preparation of any food in that building to support
23 the food truck? It's just literally a case of lettuce goes
24 on the truck, onions go on the truck. How is it really
25 happening? That's I guess my question.

1 MR. ZAZZARO: Yeah, so currently where we are at
2 now, obviously, we support the truck business at our current
3 location.

4 MR. MIETZ: Okay.

5 MR. ZAZZARO: And now we are looking to have -- we
6 are adding an efficient hood. So we are looking to have
7 some indoor cooking which we will provide some proteins for.
8 I mean, I couldn't tell ya. I mean, it will come out of
9 both areas. Does that answer your question?

10 MR. MIETZ: Yeah, I think so.

11 MS. TOMPKINS WRIGHT: But for instance, the chicken
12 for like the sliders, is that being cooked at this location
13 and then put on the truck, or is the raw chicken being
14 cooked on the truck?

15 MR. ZAZZARO: No, we don't cook the raw chicken on
16 the trucks.

17 MR. MIETZ: We're going to finish this little train
18 of thought here. And then is there another component of
19 customers being able to call and say I have a graduation
20 party and I need 50 dinners, or 50 sliders, or 50
21 somethings, and you will be providing that service as well
22 at this location.

23 MR. ZAZZARO: At my current -- so a lot of -- let's
24 say 80 percent of the drop-offs, we do breakfast drop-offs,
25 a lot of lunch, hot and cold, which comes out of East Avenue

1 right now. We will be transitioning to have some of the
2 production -- I mean, that's why I'm looking to add a more
3 sufficient kitchen to this site. So a lot of -- some of the
4 production will be executed for the trucks there, but as far
5 as the dinners, like --

6 MR. MIETZ: Or whatever --

7 MR. ZAZZARO: That's my current business. Like
8 someone will call -- that's my current business. We don't
9 -- I don't deal with individual -- like if someone calls and
10 says I need 50 dinners, I mean, we do a lot of tray buffet
11 drop-offs.

12 MR. MIETZ: So in other words, you mean like a thing
13 of pasta.

14 MR. ZAZZARO: Yes, but if a family wants that, you
15 know, that wants -- there is five people, we would have
16 maybe five individual things. Like I said, I want to have a
17 cooler which is like take-and-go meals.

18 MR. MIETZ: So the preparation of that material will
19 be at this location.

20 MR. ZAZZARO: Correct.

21 MR. MIETZ: So if someone calls up and says I have
22 a party for 30 people and I need this, and this, and this,
23 you prepare all of that and then deliver it to their
24 location.

25 MR. ZAZZARO: Yes.

1 MR. MIETZ: Sort of what I guess we call catering.
2 I know it can be misinterpreted in other ways. Some call it
3 prepared food delivered to their location versus a pizza.
4 Okay. Just to create some kind of -- so people are clear
5 about it.

6 MR. ZAZZARO: Yeah, I wanted to read something. It
7 came back from the attorney in 1989 in regards to the
8 property on January 18th referring to 745 Penfield Road.
9 "I'm writing you to advise you that I concur with your
10 interpretation of the zoning ordinance and agree that the
11 sale of sandwiches and other prefixed food items is
12 allowable on the premises provided that the material is not
13 consumed on the premises, but is designed strictly for
14 off-site premises or off premises consumption." And that's
15 exactly what I'm doing.

16 MS. CORRADO: Okay. You do the food truck
17 operation, and I'd like to back up a little bit to that.

18 MR. MIETZ: Okay. Go ahead.

19 MS. CORRADO: And with your food trucks and at
20 night, you've been out to a late event, how late are they
21 coming back to that site?

22 MR. ZAZZARO: My food truck business, it's more of
23 if you have a food truck and cater with it, you put out a
24 better product. So a lot of my trucks are for catered
25 events. They are not what everyone thinks. We are not out

1 on the street vending. We go to your house or event. We
2 cater. We just don't cater to everybody.

3 MS. CORRADO: So to finish my question then, what
4 would be the latest that the food trucks are coming back
5 from those events or from a location off -- site?

6 MR. ZAZZARO: Yeah, between 9:00 and 11:00 is the
7 latest, but a Public Market Rodeo ends at 9:00. And my
8 location now, we are a lot closer. It's a lot tighter. And
9 we are very -- we pull in and shut our engine off. Like I
10 said, we plug in so our coolers are cold, and we unload our
11 dirty dishes, and we lock up. We clean up.

12 MS. CORRADO: So you would be doing a similar
13 process at 745 Penfield Road?

14 MR. ZAZZARO: Correct; and it's very -- Look, I
15 mean it's -- there is nothing -- it's not like you are
16 cooking, or making, or creating all of this noise. It's
17 done for the night, and then the next day I have a cleaning
18 crew.

19 MS. CORRADO: So two more questions. So how many
20 employees will be coming back from the events and doing this
21 break down and unloading process?

22 MR. ZAZZARO: Right. So generally what, like
23 Charlie was saying, our lunch business, I have a food truck
24 driver/head cook that drives the truck, cooks the food. And
25 then I have someone that takes orders that comes in, meets

1 me at the site. And then he leaves. So that's not even --
2 I'm just telling you how my operation works. And then for
3 larger events, if we were, for example, at Fringe Fest or
4 different events that are in town, we have other staff that
5 we staff accordingly. It depends on how big the events are,
6 but I currently as far as drivers -- is that what your
7 question was?

8 MS. CORRADO: How many people would be unloading at
9 the end of that day?

10 MR. ZAZZARO: One to two.

11 MS. CORRADO: At 11:00 at night?

12 MR. ZAZZARO: One to two people.

13 MS. CORRADO: All right. And then the last
14 question for now. The coolers on the truck, when they are
15 plugged in, I assume there is a compressor. It makes a
16 sound. What kind of sound impact does it have?

17 MR. ZAZZARO: It's very minimal. It's really
18 quiet. My trucks have all state-of-the-art refrigeration.
19 It doesn't -- it doesn't make a lot of noise at all.

20 MS. CORRADO: And do they run all night long or is
21 it plugged in overnight or --

22 MR. ZAZZARO: It's just to maintain the
23 temperatures. So you are not in the truck going in and out
24 of the coolers so the compressor is not running at night.

25 MR. MIETZ: But they are running 24 hours.

1 MS. CORRADO: So there is a sound. They make a
2 sound one way or the other. I'm just trying to get a sense
3 of --

4 MR. ZAZZARO: Yeah, they are very minimal.

5 MS. CORRADO: -- whether the next door neighbor is
6 hearing a humming noise all night long.

7 MR. ZAZZARO: Right.

8 MS. DALE: How do you plug them in? Is there an
9 extension cord from the truck to the building?

10 MR. ZAZZARO: Yeah. So all of the electric for the
11 coolers is wired. Like I said, the trucks are
12 self-contained. They have a cord.

13 MS. DALE: How many trucks?

14 MR. ZAZZARO: A cord that runs from -- it's usually
15 a 220 plug.

16 MS. DALE: And how many trucks?

17 MR. ZAZZARO: Two.

18 MS. DALE: Two food trucks. Okay.

19 MS. SCHWARTZ: Could you describe the difference
20 between the operations of East Avenue and 745, part one.
21 And part two, do you see in time the whole operation at East
22 Avenue moving into 745 because you've basically enlarged it
23 with coolers, and space for trucks, and so forth.

24 MR. ZAZZARO: So the current -- the current
25 business at East Avenue, it's drop-off. Like I said, the

1 food trucks, we go and do on-site parties. I have my
2 offices there. My event coordinator works there. We have a
3 few cooks. We have five full-time people. We do -- so all
4 of the prep, I have coolers. I don't have a walk-in there.
5 I have all reach in coolers and freezers, but it's perfect
6 for my drop-off business. Like I said, I want to put a
7 front facelift to my business and have an actual retail
8 because we go everywhere. We are mobile which is great, but
9 we want -- we would like to have a home front too. So the
10 business that's going to be done at 745 is going to be for
11 that retail, like Charlie said, 200, 300 -- 100 to 300
12 people. I'm hoping if that's -- I mean, I'm hoping for at
13 least that. You always hope for the best, but like I said,
14 it's going to be very quick fast-casual food. I have some
15 picnic tables we redid outside. I'm going to be putting in
16 a bike rack, I know a lot of people in the neighborhood like
17 to ride their bikes, and come in, and get some baked goods,
18 or once the kitchen is open, come in for lunch, get some
19 lunch, if we're serving our subs, sliders, and plates, or
20 grab a meal. But I do plan on doing a lot of the production
21 for that on site with my hood that I'm proposing.

22 MS. SCHWARTZ: At 745?

23 MR. ZAZZARO: Correct.

24 MS. SCHWARTZ: Right. Your website makes it --
25 gives the appearance, gives the impression, makes it look

1 like you do very large events. I mean, you have a whole
2 listing and so on. And if I recall, it looked like you had
3 more than two trucks.

4 MR. ZAZZARO: I have two trucks and a trailer.

5 MS. SCHWARTZ: Was that all that was on there? It
6 looked like more. But it looks like a huge operation.

7 MR. ZAZZARO: We just got a second truck. It's
8 done two events. It's been in the shop so it really hasn't
9 been active, but like I said the trucks -- and as far as on
10 my website, we try to showcase all of our work. A couple
11 key partners that I have in business is the Rochester Museum
12 and Science Center, we are on the list to cater there, and
13 also, Nazareth College. So those are two of our top
14 customers. We also do a lot for the hospital and U of R.
15 But as far as large meaning, I mean, we do small 10, 15, 20
16 people all the way up to 100, 200, a few hundred. I mean,
17 it doesn't -- once you do 200, you can do 400. It's the
18 same amount of work for 300 to 500.

19 MS. SCHWARTZ: Okay. So my last question is what's
20 the total number of employees for both sites? What would be
21 your total number of employees drivers, cooks, everyone?

22 MR. ZAZZARO: Yeah, I have 10 employees.

23 MS. SCHWARTZ: Total?

24 MR. ZAZZARO: Yes.

25 MS. DALE: Do you own, or rent, or lease on the

1 East Avenue location?

2 MR. ZAZZARO: I lease.

3 MS. DALE: How much longer do you have on that
4 lease?

5 MR. ZAZZARO: It's actually a month-to-month lease.
6 I have a really good relationship with the owner, and I
7 manage the property. I run my business out of there. I
8 have a lease, but I -- it's a month-to-month lease.

9 MS. DALE: So they could kick you out with like a
10 30-day notice or something?

11 MR. ZAZZARO: No, I have a three month -- a
12 three-month notice in my lease. And yeah, I'm not going to
13 get kicked out.

14 MR. MIETZ: Okay. All right. Hold on. So
15 questions.

16 MS. TOMPKINS WRIGHT: Just to respond to some of
17 the letters that the Board received. The hours listed on
18 your website are for your total business that will not --
19 they list 7:00 a.m. to 11:00.

20 MR. ZAZZARO: Like I said, I started my business
21 from nothing. I started my business on a cell phone. So I
22 worked all the time. So I mean, people called me, they
23 needed lunch at 7:00 a.m. But that obviously, that's not my
24 hours that are going to be at Chef's Kitchen and Bakery.

25 Like I stated previously, the hours that are there, we are

1 looking to the do the same if not scale back a little bit.
2 Trust me, I'm a family guy. I want to make sure I'm
3 neighborly, and make sure nobody is disrupted or bothered by
4 being open late.

5 MS. BAKER-LEIT: So can you just clarify what hours
6 you're expecting to be open?

7 MR. ZAZZARO: I have the hours on the application.

8 MR. MIETZ: Yeah, they are on there.

9 MS. TOMPKINS WRIGHT: And also, there were concerns
10 about how the two trucks and trailer are being stored with
11 none of the kind of visual barriers -- and this might be a
12 better question for the landlord -- the physical barriers,
13 the fence, the landscaping, that is meant to shield the
14 truck storage from the neighbors from the road?

15 MR. ZAZZARO: Yeah, I plan on -- I mean, I plan on
16 doing all of that. I want it -- like there hasn't been an
17 enclosure for the dumpsters, I plan on doing that. I plan
18 on putting in an enclosure for the area where the trucks
19 are. Currently, it is just temporary. There's a trailer
20 there with some equipment that I'm waiting to move inside.
21 But that's temporary. That trailer is going to be moved.
22 So that's -- I know that was a concern. But also, the
23 trailer that I did have in the front, I know a couple of
24 people were asking about, we actually -- when we opened the
25 bakery, we did a soft opening, and we were giving away

1 sliders and our kettle chips to the neighbors. We did not
2 advertise. It was just to tell people what we were looking
3 to do here. So that's why that was there, but I moved it a
4 couple days after.

5 MR. MIETZ: Okay. So any questions specifically
6 regarding what the proposed operation is and operation is at
7 this point.

8 MR. DOLLINGER: I have --

9 MR. MIETZ: Go ahead.

10 MR. DOLLINGER: So you are going to retain the East
11 Avenue. Is that where the caterer works? Is that where the
12 event coordinator manages? So that's still going to
13 continue to be your office there?

14 MR. ZAZZARO: No, my offices are being moved to the
15 745.

16 MR. DOLLINGER: They are?

17 MR. ZAZZARO: There's actual offices there unlike
18 where I'm at now.

19 MR. DOLLINGER: Okay. So the event coordinator is
20 going to be there as a full-time employee and all of that
21 stuff?

22 MR. ZAZZARO: Correct. Correct.

23 MS. BAKER-LEIT: Just for the benefit --

24 MR. ZAZZARO: Did that answer your question?

25 MR. DOLLINGER: That did answer my question.

1 MS. BAKER-LEIT: I would like to read the hours of
2 operation. The proposed hours of operation are Monday
3 through Saturday 10:00 a.m. to 8:00 p.m., Sundays 11:00 a.m.
4 through 8:00 p.m.

5 MR. ZAZZARO: And I know when we filled the
6 application out for Saturday and Sunday, to be honest, those
7 will be scaled back. Like I said, I don't want to be open
8 late. I don't want -- everyone that works in this business,
9 you want to have a life too.

10 MR. MIETZ: Okay. It's kind of important for us to
11 understand what that -- that's like a little too nebulous.
12 Well, in other words, are these the hours.

13 MR. ZAZZARO: Those were just copied from what was
14 there before.

15 MR. MIETZ: All right.

16 MR. ZAZZARO: So right now our bakery hours, we
17 have been open from 7:00 to 2:00. And to be honest, we
18 haven't really gotten -- it's usually around 8:00, 8:30, but
19 like I said, it's very small low key. We haven't really
20 done any advertising or anything. But too, people really
21 want us to -- people are coming in around 3:00, 4:00 o'clock
22 as well. So we don't really plan on being open --

23 MS. TOMPKINS WRIGHT: But just to confirm, if the
24 board was to approve this and limit the hours to these hours
25 in your application, that would be acceptable?

1 MR. ZAZZARO: Absolutely.

2 MS. CORRADO: And that includes the food truck
3 activity, preparation, and return, and unloading.

4 MR. ZAZZARO: Yeah. So as far as the food truck,
5 like I said, there is not really -- like we take the truck
6 to a wedding, like if we go to Cayuga Lake or if we go to
7 Syracuse Jazz Fest. So in some events, we do leave the
8 truck there over the weekend for the event. But when we do
9 come back, we are never -- like I said, it's between that
10 9:00 and 11:00.

11 MS. CORRADO: So then your hours of operation are
12 actually --

13 MR. ZAZZARO: Well, that's not the hours of
14 operation.

15 MS. TOMPKINS WRIGHT: Of the store being open are
16 --

17 MS. CORRADO: Right. So what's the distinction
18 then between the retail hours and the food truck hours
19 because I think there is a different impact on the
20 neighbors.

21 MR. MIETZ: We just want to make sure we are clear
22 about it and everyone else is clear about it because like
23 for example, we just talked about 10:00 a.m. and you were
24 talking about this bakery operation being opened earlier
25 than that or did I misunderstand.

1 MR. ZAZZARO: Right. Well, the bakery, we've been
2 opening at 7:00 a.m.

3 MR. MIETZ: Okay. So that says 10:00 so --

4 MS. BAKER-LEIT: The question is what time -- is
5 7:00 a.m. the time when the baker gets there and starts to
6 prepare stuff and 10:00 a.m. is when it's open to the
7 public, or we want a distinction between retail hours and
8 what hours do your employees actually have to use the space.

9 MR. DAVIS: May I add something or --

10 MR. MIETZ: Well, before you add something, let's
11 clear this up because it's important for a lot of reasons.
12 One, it's important how the property is going to be used.
13 The second thing, if we were to approve this application, we
14 would probably condition it on very specific hours that it
15 could operate. Operate as a preparatory, operate as a
16 retail business for people coming whether it's the bakery
17 part or whatever part. And we need to be clear what those
18 hours are. So that's the reason why we need it.

19 MR. DAVIS: On the application, it was asked what
20 the previous hours were.

21 MR. MIETZ: Correct.

22 MR. DAVIS: Okay. So we gave those hours, and we
23 did -- it changed seasonally. So nicer days, summertime,
24 people were grabbing breakfast before work, we were open
25 earlier. Summer nights we stayed open later.

1 MS. TOMPKINS WRIGHT: So your current operation,
2 what times would you need to be open?

3 MR. ZAZZARO: This is -- so the way the vision is
4 to have the store open at 10:00 a.m. I mean, I want it to
5 be open for lunch business that 11:00 to 1:00 or 2:00-ish,
6 and then it kind of dies out. And then you have us, being
7 in the neighborhood that we are in, a lot of people getting
8 out of work 4:00, 5:00 o'clock. So that's why I was
9 thinking between 6:00 and 8:00 at the latest. But like I
10 said, I'm not opposed -- I don't want to be open late.

11 MS. TOMPKINS WRIGHT: But what about breakfast?
12 You're saying 10:00 a.m., but the bakery is currently
13 opening earlier than that. So what time would you --

14 MR. ZAZZARO: We would like to open at 7:00 a.m.

15 MR. DOLLINGER: Do you mean open the doors or have
16 a worker there baking?

17 MR. ZAZZARO: No, my sister gets there at 5:30
18 every day.

19 MS. DALE: So 7:00 a.m. is when the doors open?

20 MR. MIETZ: We are really concerned about clearing
21 up the retail part. So the retail part is from 7:00 a.m. to
22 approximately 8:00 p.m. that would actually be customers
23 coming in and out of this location, not how many in the
24 hour, but is that correct.

25 MR. ZAZZARO: Yes.

1 MR. MIETZ: Okay. All right. And then outside of
2 those hours would only be a proprietary person working in
3 there, or this issue with the food trucks returning after
4 8:00 p.m.; is that correct.

5 MR. ZAZZARO: Correct.

6 MR. MIETZ: Okay. Just want to make sure we're not
7 putting words in your mouth, but just really what you are
8 trying to do.

9 MR. ZAZZARO: Can I say something? The food
10 trucks, once they come back, like I said, where I am now, I
11 mean, there has never been any complaints. And I just --
12 they are instructed when they return, pull in, shut off.
13 It's a very simple, and it's very quiet.

14 MS. DALE: There haven't been complaints where you
15 are now. Is that a residential area?

16 MR. ZAZZARO: Correct.

17 MS. SCHWARTZ: I missed what you are saying.

18 MS. DALE: He said --

19 MS. TOMPKINS WRIGHT: The current location is a
20 residential area. And they park their food trucks there.
21 And there hasn't been any complaints as they return the food
22 trucks late at night and park them there.

23 MS. LEIT: And how long have you been at that
24 location?

25 MR. ZAZZARO: Four and a half years.

1 MR. DOLLINGER: What's the address of that?

2 MR. ZAZZARO: 1700 East Avenue.

3 MR. MIETZ: Can you describe where that is on East
4 Avenue?

5 MR. ZAZZARO: It's directly across from McDonald's.
6 There is a driveway directly -- if you pass Wegmans, there's
7 Kroger Street. The first driveway on the right, that's us.
8 There is a house in the front. It used to be a kosher
9 catering business for 35 years. They lived in the front and
10 ran the business in the back.

11 MS. SCHWARTZ: So you took over from a former
12 caterer?

13 MR. ZAZZARO: Yes. Correct.

14 MR. MIETZ: Okay. So any other questions about
15 what is proposed, by the board members here, in regards to
16 the operation.

17 MS. SCHWARTZ: I have a one question. It's little
18 different. How long if, even if, have you been looking to
19 expand, because this really is, or move?

20 MR. ZAZZARO: Expand as far as --

21 MS. SCHWARTZ: I mean, you're on East Avenue and
22 you found 745. Had you been looking for a long time?

23 MR. ZAZZARO: About two years.

24 MS. SCHWARTZ: About two years. And you saw other
25 locations in between?

1 MR. ZAZZARO: I've looked at hundreds of
2 properties.

3 MS. SCHWARTZ: And why is this one -- what is it
4 about this one, this property.

5 MR. ZAZZARO: It just fits what I want to do. Like
6 I said, I want to put a face -- the Bernunzio's, the
7 background history that that place had, you know, my
8 business, Chef's could be a modernized version of that.

9 MS. SCHWARTZ: And you feel that this really is
10 appropriate for a really, truly residential neighborhood?

11 MR. ZAZZARO: I do.

12 MS. SCHWARTZ: Okay.

13 MR. MIETZ: Okay. Any other questions so we can
14 keep this moving because I know there is a lot of people
15 that want to speak.

16 MR. DI STEFANO: And I think just a little, and if
17 you guys don't want to go there, that's fine. I would just
18 like a little understanding on the commercial hood, grill.
19 I am wondering what kind of impacts in terms of odor that
20 that's going to have on the neighborhood. I think pretty
21 much what was there was, I would say, residential type of
22 equipment that everybody has in their house. What you are
23 proposing is a commercial kitchen, more or less. And I'm
24 just wondering what type of --

25 MR. ZAZZARO: Well, there is a -- there was a

1 convection oven.

2 MR. DI STEFANO: Yeah, I think people have
3 convection ovens in their homes too.

4 MR. ZAZZARO: Yeah, and a lot of older style delis
5 and places don't have hoods. If you don't have efficiency,
6 I'm looking to be more efficient.

7 MR. DI STEFANO: Right. And one of the issues that
8 we have is by the fact that you are trying to be efficient
9 and getting those odors up out of the deli, itself, you get
10 them out into the atmosphere. What possible impact is that
11 going to have on the neighboring properties?

12 MR. ZAZZARO: I have actually talked to a hood
13 contractor. I mean, the way they position and do their
14 side, I mean, do all of the duct work and everything. There
15 is a lot of different places that are in residential areas
16 that have hoods.

17 MR. DI STEFANO: Would it be running through the
18 roof or the side of the building?

19 MR. ZAZZARO: So it would go right up the top and
20 right into the air. So it would not be shooting out all of
21 this grease and things that people think.

22 MR. DAVIS: It's not going to resemble a Burger
23 King where you drive by, and they are char boiling, and
24 there is --

25 MR. MIETZ: Smoke. Yeah.

1 MR. DAVIS: Yeah, the way the hoods are built and
2 Mike's proposing to put a brand new unit in with all current
3 technology that all has to go through a pretty strenuous
4 permit process.

5 MR. MIETZ: No, understood. It's all coded.

6 MR. DOLLINGER: So I was wondering, so the hood --
7 I'm not very familiar with this stuff. The hood goes over
8 the grill?

9 MR. ZAZZARO: So in order to have a kitchen,
10 everything that has a flame, grill, range. There was a
11 range there, like, things that were not in fire code.

12 MR. DOLLINGER: So this grill --

13 MR. ZAZZARO: You have to be under a hood.

14 MR. DOLLINGER: This shows the future grill and set
15 up?

16 MR. ZAZZARO: No, it's the grill line. So there is
17 going to be --

18 MR. DOLLINGER: So there is going to be a grill and
19 then also a flame burning thing.

20 MR. ZAZZARO: It's going to be commercial
21 equipment.

22 MR. DOLLINGER: How long is that grill?

23 MR. ZAZZARO: The grill --

24 MR. DAVIS: Twenty feet.

25 MR. ZAZZARO: No, the grill is not 20 feet. The

1 hood is 21 feet.

2 MR. DOLLINGER: The hood is 21 feet. The grill is
3 18 feet.

4 MR. ZAZZARO: No. No. The grill is four feet.
5 The flat top grill is three feet.

6 MR. DOLLINGER: That's what I mean. All of the
7 cooking that creates fire and --

8 MR. ZAZZARO: Yes. Correct.

9 MR. MIETZ: Is contained in that 21 feet.

10 MR. ZAZZARO: Yes. Does that answer your question?

11 MR. DOLLINGER: Yeah.

12 MR. MIETZ: Okay. Thank you very much. Mr. Davis,
13 if you wanted to continue, or do you want to illustrate
14 anything in comparison to what from the years that you
15 managed the Bernunzio's operation to what these gentlemen
16 are proposing to do?

17 MR. DAVIS: No, I don't believe so unless there are
18 any questions in terms of what was done there versus what we
19 are talking about doing there.

20 MR. MIETZ: Well, just because it was a focus of a
21 few minutes of conversation about the hours. So you
22 mentioned while he was speaking that seasonally it might
23 open a little sooner or stay open a little later. What
24 would you say generally the hours of the Bernunzio's
25 operation were.

1 MR. DAVIS: Generally, it really didn't open before
2 7:00 o'clock in the morning. You know, we did -- between
3 selling newspapers, and breakfast sandwiches, and coffee,
4 and that type of thing, obviously, we were trying to create
5 business earlier in the day. The lunch business was very
6 strong during the day. Lunch, we would extend until late in
7 the afternoon. And then in the evening, you know, in the
8 summertime when we were doing ice cream, we may have stayed
9 open as late as 9:00 o'clock, but that was only because, you
10 know, people could walk up and get ice cream there as
11 opposed to getting in the car and driving away. So again,
12 it was seasonal. We pulled it back in bad weather. Sundays
13 we would close.

14 MS. SCHWARTZ: What was the extent of the
15 advertising that you would do?

16 MR. DAVIS: Yeah, we weren't quite as tech savvy as
17 Chef's. You know, that again, the trend for everybody's
18 marketing now has gone away from newspapers, or signs out
19 front, or buying coupon advertising. It's just a better way
20 of doing it. In the social media, everything has changed.
21 So to answer your question, we did, you know, we would do
22 some of the coupon savers. We would advertise in some of
23 the church brochures. We had a website. You know, we did
24 advertising on the website.

25 MR. MIETZ: Go ahead.

1 MS. CORRADO: Regarding the renovation and the time
2 frame, if this is all granted per your request, when do you
3 anticipate having Chef's Kitchen in and operating fully?

4 MR. DAVIS: We would very much like to have that
5 done -- I think it takes two or three weeks to have the hood
6 built after the permit is approved. So we have to go
7 through that permit process first, and so whatever that
8 takes, everything else is ready to go.

9 MR. MIETZ: And you have some site improvements
10 that were described by the tenant that said he was going to
11 be creating some barriers for where the trucks would be
12 parked, also, so all of that stuff is --

13 MR. DAVIS: Yeah, in the back.

14 MR. MIETZ: I understand why it's not there now.

15 MR. DAVIS: Well, as long as the weather allows for
16 that stuff to go in, it would go in this year. We would
17 very much like to be open -- it's the first part of
18 September here -- no later than the end of October. As long
19 as, you know, if that screening -- if that screening is best
20 done with landscaping, well then you know, it's -- we don't
21 want to put it in and lose it over the winter. If it's best
22 done with fencing or a combination thereof just as long as
23 the weather permits it, we will get it in and get it done.
24 You know in the back there where we are talking about
25 putting the food truck and food trailer, there are -- I

1 mean, there is a fair amount of vegetation in there. There
2 is a -- I am not certain if that's a 6-foot or 8-foot fence
3 on two sides. The garage is about 14-foot tall on the front
4 side. If it's, you know, when it's put in there properly,
5 you would really have to squint to see it if driving down
6 Colonial Village Road. You would spend more time looking
7 for it than you would watching where you are going.

8 MS. CORRADO: Okay. So to sum up, the building
9 would be ready for Chef's Kitchen to be in and operating by
10 October. And there maybe some extended time needed for site
11 plan improvements into the next season.

12 MR. DAVIS: Yeah. I think, you know, we got to
13 figure out what's best whether it's done with decorative
14 fencing or landscaping. I happen to prefer landscaping, but
15 whatever.

16 MS. CORRADO: Right.

17 MS. SCHWARTZ: Does a business need a C of O even
18 it's a similar business?

19 MR. DI STEFANO: Depends on what they do. The
20 renovations that they are doing here, yes, they would need C
21 of O. They would need building permits and a C of O.

22 MS. SCHWARTZ: What about the bakery?

23 MR. DI STEFANO: I don't know the changes. I'm not
24 sure exactly what has transpired in there because we have
25 not received any applications at this point in time. One

1 thing is that I think everybody needs to be clear on is that
2 some of these other improvements that might be made to the
3 site including the walk-in cooler, and the fencing, and
4 other things could require variances. So we don't know
5 because we haven't gotten to that point yet if this was even
6 going to move beyond tonight. So there is a lot of other
7 unknowns. So they could have to get a variance for the
8 walk-in cooler and that may not get approved.

9 MS. SCHWARTZ: Okay.

10 MR. DI STEFANO: So I don't know. I don't have any
11 official site plans with dimensions on them.

12 MS. SCHWARTZ: I was curious with how it was so far
13 and that's --

14 MR. DI STEFANO: And that's something we all have
15 to keep in mind because not everything they are proposing
16 could be allowed by code. We are in a residential district.

17 MR. MIETZ: Are there any open building permits.

18 MR. DI STEFANO: There is nothing. No permits. My
19 understanding is that everything that is going on there now
20 is mostly cosmetic which won't require building permits.
21 But what happened in the bakery aspect of it, I have no
22 idea. I don't know if they changed out equipment or if they
23 would even need a permit for changing out equipment. If
24 they take one stove out and put in another regular plug
25 stove, it doesn't require a permit.

1 MR. DAVIS: The bakery is using the same convection
2 oven.

3 MR. DI STEFANO: Then that doesn't need any permit.

4 MS. SCHWARTZ: Okay.

5 MR. DAVIS: Everything has been cosmetic inside.

6 MR. ZAZZARO: I just wanted to bring up, we did --
7 the building inspector did come by. I spoke with him about
8 a week and a half ago. Just checking out and seeing what we
9 are doing, but everything that I did was all cosmetic. We
10 painted. We improved -- put LED lighting in, put FRP, just
11 plastic board, in areas in the dish room, just from the
12 floors, all cosmetic things.

13 MR. MIETZ: Okay. Thank you.

14 MR. DI STEFANO: All right.

15 MR. DAVIS: He's really done a nice job.

16 MR. MIETZ: Just so people understand what you've
17 done so far.

18 MR. DAVIS: I think one of the things, Rick raises
19 a good point, if some of that stuff is going to prolong the
20 overall plan, then I would suspect that we would want to
21 open up temporarily, or I shouldn't say temporarily, but
22 open up a portion of it, put up a temporary wall for the
23 future, and get things going, absolutely.

24 MR. MIETZ: Okay. Again, you need to have a
25 thorough understanding of what requires separate approvals

1 because, again, if you come in and talk to Rick, he can
2 certainly give you some thoughts about those.

3 MR. DAVIS: And that's our architect planner Joe
4 O'Donnell.

5 MR. MIETZ: Okay. Very good.

6 MR. DAVIS: All of those processes have been
7 started but not submitted because we crawl, walk, run, type
8 of thing.

9 MR. MIETZ: That makes sense. So we are good with
10 these guys at this point in time. Anything else you want to
11 add, Mr. Davis.

12 MR. DAVIS: I don't believe other than like on that
13 walk-in. The walk in, again, would be directly behind the
14 store. We would propose to screen it. The entry and exit
15 of it would be through the store. And so there wouldn't be
16 exterior loading, or unload, or slamming of doors, or
17 carting stuff in and out, that type of thing.

18 MR. MIETZ: And then one thing that I noticed in
19 the application, and then we can be finish with this. What
20 kind of truck traffic, delivery traffic would be going on on
21 a daily basis to take care of supplementing the total
22 operation.

23 MR. ZAZZARO: We would be getting two to three
24 deliveries a week. Currently, one would be Sysco. One
25 would be our produce which is Flower City. And then we have

1 our paper products as Regional Distributors. And if it's
2 busy, then throw an extra one in there, but two to three a
3 week that's what we plan on as far as trucks.

4 MR. MIETZ: The actual dropping things off.

5 MR. ZAZZARO: Right. Coca-Cola.

6 MR. DAVIS: One of the things that Mike and I did
7 talk about and that was to get with the vendors and make
8 sure they are using straight trucks in attempts to avoid
9 tractor trailers. We have had them in the past. I think
10 one of the letters had indicated there was or may have been
11 some apparent damage to a lawn or whatever. So the smaller
12 the truck, we will attempt to get a smaller truck.

13 MR. MIETZ: A six wheel truck versus a tractor
14 trailer.

15 MR. DAVIS: Right. I mean, we can do tractor
16 trailers, but we really don't want to.

17 MS. TOMPKINS WRIGHT: And that level of deliveries
18 is consistent with when you were operating the property?

19 MR. DAVIS: Actually, we would have had it more
20 often than that. I think part of that thought process is
21 that with the walk-in cooler, you stock more efficiently and
22 reduce the number of deliveries.

23 MR. MIETZ: Okay. Any other questions? Okay. We
24 are moving along. Okay. Thank you very much both of you.

25 MR. DAVIS: Thank you.

1 MR. MIETZ: Okay. So at this point then we can
2 invite whoever would like to speak. And let me give you a
3 little bit of advice because there is probably numerous
4 people that want to speak. I would just ask for the benefit
5 of us gaining new information that you state, obviously,
6 your desire to either support or not support this
7 application and why you are here. I would just ask that if
8 you are going through progressions of people here, we get
9 new information so we're not restating the same thing, "I
10 don't like trucks," something like that just so it moves
11 along. And it's also beneficial for everybody in the
12 audience and it's also beneficial to us to understand. We
13 don't want to cut anybody off. You all have a right to
14 speak. I appreciate you being here. You are concerned
15 about your neighborhood, and this is an important decision
16 that has to be made. So again, you have the right to do
17 that and just appreciate a little decorum. Okay? Fair
18 enough? So why don't we just go by a raise of hands. Let's
19 just get an idea of how many people want to speak. Just
20 raise your hand, please. Okay. So why don't we keep it
21 orderly then. Let's do it from the front to the rear. So
22 who was in the front that would like to speak.

23 MS. BARROW: Hi, my name is Karen Barrow, and I
24 live at 1 Colonial Village Road. I am right next door to
25 Bernunzio's Deli. I do have a petition for the Board that

1 was signed by as many people as we could get to sign in the
2 amount of time that we had given the fact that it was a
3 holiday weekend. So I would like to pass that as Exhibit A.
4 I also have some pictures from the website of Chef's
5 Catering. I'm confused, but Chef's Catering. And there are
6 delivery trucks that you might want to take a look at. I
7 don't know if you have these pictures yet or not.

8 MR. MIETZ: Okay.

9 MS. BARROW: So let me take you through a little
10 bit. I live at 1 Colonial Village Road. I have lived there
11 with my husband for 21 years. We knew Tom and Ginny. We
12 knew the next owners and so on and so forth. I am quite
13 distressed and very concerned about the intensity and the
14 desire for an operation such as is requested by the
15 applicant. Our street is tree lined. All the houses are
16 white. The neighborhood has been around since the late
17 1930's. We back up to Corbett's Glen. We are a very narrow
18 street, and we live right next door. The fence is six feet
19 tall or less because it has sunk into the ground. It's
20 wooden, and it also has shrunk with age. So there is a lot
21 of gaps. Our streets comprise mostly of young families and
22 children who ride their bikes, and who are out on the
23 sidewalks, and older empty nesters, such as myself and my
24 husband, and retirees, who take walks in the evening.

25 It's in addition to this neighborhood, we are

1 mostly middle class and we have the financial means and
2 willingness to invest in the appearance of our property and
3 have done so. When I moved into our home 21 years ago,
4 Bernunzio's Deli operated as a small neighborhood deli. I
5 bought the house next door understanding that they would
6 sell a few baked goods which they did, cookies, cannolis,
7 meats, and anything you would find in a deli, cold salads,
8 et cetera, ice creams, snacks, and a few other things. We
9 noticed that the deli was frequented mostly during the early
10 morning when people are on their way to work to pick up a
11 cup of coffee, and then midday when construction workers
12 were working on the roads, and they decided that going to
13 Bernunzio's was better than going to Tops or East Avenue
14 Wegmans where it's often very crowded. That's where a
15 majority of the noise, sounds, commotion, traffic, and
16 anything else would take place. It would again then go
17 through a lull and pick up again in the early evening when
18 people were on the way home from work to pick up, "Could you
19 get that gallon of milk for me, hunny, please," and
20 circumvent the Wegmans lines. We have a deck in the back of
21 the house, and we have sunk in a significant amount of money
22 in landscaping including but not limited to a stream, a Zen
23 garden, and lots of foliage as was stated before. My
24 concerns are around noise. Trucks make noise. Air
25 conditioners make noise. People who have to go outside as

1 employees to smoke make noise. Dumpsters make noise. I've
2 already had to complain. Mike and I talked about this. I
3 had to complain over the fence one evening when my husband
4 and I were enjoying a quiet evening and there was metal
5 being thrown into metal. So metal debris being thrown into
6 metal dumpsters. Noise happens when you live next door. We
7 are two story, and so noise rises and our bedrooms and all
8 of our bedrooms are upstairs. I'm concerned with the size
9 of the trucks. No one has talked about the size of the
10 trucks. The weight of the trucks. The number of wheels on
11 the trucks. Trucks make noise. I'm concerned about the
12 dumpsters. Now, apparently there are two. Will they
13 increase in size? Will they stay the same? Dumpsters make
14 noise. How many times a day with increased food production
15 will those dumpsters be opened and closed? When we were
16 there before there was probably one or two times a day, if I
17 was home during the day, and I did have an office in the
18 home. And we support small business. My husband and I own
19 a small business. But when I was home, I would hear it
20 maybe once or twice during the day with the amount of food
21 that was produced there. Coolers and air conditioning
22 systems make noise. Air compressors make noise. They go on
23 they go off. They drip. They rattle. They shutter. They
24 make noise. Hood fans make noise. And then lastly, I'm
25 increasingly concerned about road noise. With increased

1 traffic, there's bound to be road noise. That's all I have
2 to say tonight. Thank you very much.

3 MR. MIETZ: Thank you.

4 MR. DI STEFANO: Just for the record, we did
5 receive a petition. "We the undersized oppose the
6 application before the Board to expand/change the
7 nonconforming use of the property 745 Penfield Road known as
8 Bernunzio's Deli because we believe the proposal will be
9 detrimental to our neighborhood. That was signed by
10 approximately 40 individuals within the Colonial Village,
11 Penfield Road, Alaimo, and Dale Road neighborhood.

12 MS. BERNUNZIO: How many people total are in that
13 neighborhood?

14 MR. DI STEFANO: Couldn't tell you. I don't know.

15 MR. MIETZ: Okay. Sir, go ahead.

16 MR. BARROW: Okay. I'm Geoffrey Barrow. I also
17 live at 1 Colonial Village, and I will try to respect your
18 time by not covering some of the same things. But just to
19 add to what was said, when we moved in, some people have
20 said well you knew you were moving next to deli. And we
21 did. But we also knew that we were living next to the deli
22 with the support of our Town who would be enforcing the
23 existing rules and regulations as to what was to be there.
24 And so we felt very confident about the move. And it's not
25 to say that there aren't some problems. You know, when you

1 live next to even a small neighborhood deli, there is
2 garbage thrown over the fence. Not by the owners, but by
3 kids and things, and it blows there. There is a sign put up
4 to say trucks turn off their engines. It works sometimes,
5 but it's not a great remedy. And the owners, the people
6 running the thing, are not there to see. They are inside
7 working, of course. So these things happen. So I do want
8 to say that when we first understood that the deli was going
9 to reopen, we were in support because we did enjoy the
10 neighborhood deli that we had. It was, as we read the
11 variance, the application, that we became increasingly
12 concerned. And in particular, I started to become alarmed
13 by what I felt at least were substantial inaccuracies in the
14 application. For instance, the applicant indicated the
15 previous tenant had 8 to 10 full-time employees. As a
16 person who frequented that deli regularly, and I'm sure
17 others will be able to talk to this, I never saw in 20 years
18 more than three or four people. And more often than not,
19 they were students on a part-time capacity. The applicant
20 said the previous tenant made deliveries using two to three
21 always automobiles. In relation to trucks, I find this
22 misleading. It was a very low-key operation. There would
23 be one car going out with some food. Not at all what's
24 being talked about tonight. And it certainly wasn't quite
25 two food trucks and a food trailer. The applicant indicated

1 that the previous tenant did store vehicles on site. This
2 is certainly not in keeping with my observation. In the
3 evening after the deli was closed, as far as I could see on
4 a consistent basis, the parking lot was clear. There was
5 nobody there except for the people living in the residential
6 property adjacent to it.

7 So we've heard talk about hours. And as I've
8 listened to this, I really am concerned about the difference
9 because the application didn't talk about those hours being
10 from 7:00 a.m. to 8:00 p.m., but thank you for covering
11 that. As far as a neighbor is concerned, what really
12 matters is the full hours of operation and the thought of
13 trucks coming back from an event and parking behind the
14 Bernunzio's which is right underneath our bedroom windows
15 and unloading dirty dishes, plugging in, and running air
16 conditioners overnight. Frankly, it just dismays and
17 saddens me. So obviously, you have heard some of the other
18 concerns including cooking odors, propane tanks, and things.
19 But as far as the screening and fencing, I'm not convinced
20 how these things can be hidden. I don't know exactly the
21 height of the truck, but I do know that a six-foot fence
22 will not hide them. They are certainly much taller than
23 that. So already there is a shipping container in the view
24 of our back lawn even though we have some trees there. So
25 hiding that, I think, is a very different thing. I really

1 struggle with the statement that this is improving and not
2 extending when we are talking about a cooler being built on
3 the site, when we are talking about bringing in the food
4 trucks to be serviced there. To use the argument that homes
5 are putting in a commercial kitchen, I really struggle with
6 that. If I would have put in a commercial kitchen, that
7 would be for my family. I won't be operating that on a
8 regular basis throughout the day turning out food. So those
9 hours of operation, it appears to me that common sense
10 dictates it's intensifying to a significant degree of what
11 was there before. And I commend the business. I think it's
12 a great idea. I just don't believe that a quiet suburban,
13 low density residential street is the correct location for a
14 business such as this. Thank you.

15 MR. MIETZ: Thank you. Okay. Yep. Go ahead.

16 MR. WIEGANDT: Hello, I am an adjacent neighbor on
17 Park Lane, Ralph Wiegandt, 21 Park Lane. I have only two
18 quick points to make. One addresses some of the issues of
19 the previous operation and the gentleman who just spoke, my
20 son worked there for a number of years. And I went back and
21 forth to pick him up. He was in high school. And I saw no
22 more than two people in there working at any given time.

23 The other point I think you really need to drill
24 down in is Sunday. Sundays, in a residential neighborhood,
25 are an important day of quiet and repose. And knowing the

1 previous operation, I've lived in the neighborhood since
2 1991, I was glad they carried the New York Times. I could
3 go to Bernunzio's, but I knew Sunday was really a day of
4 quiet for that neighborhood and it should be. And I think
5 you really need to drill down on what is the Sunday to be
6 for this operation given the nature of it. So thank you
7 very much.

8 MR. MIETZ: Okay. Okay. Is there anyone else in
9 the first two rows that would like to speak. Okay. Third
10 row? Go ahead. Come on up, please.

11 MS. CHRISTOPHER: My name is Nancy Christopher. My
12 husband, Tom, and I have lived in our house 44 Colonial
13 Village Road for 42 years. We had been there when
14 Bernunzio's and DeCastro's were at the deli. We raised our
15 children here and all three of their families live nearby.
16 Two of our granddaughters attend Mercy. So we will be
17 picking them up frequently. Of course, we have to turn left
18 onto Penfield Road and go to Mercy. We are concerned about
19 the potential of increased traffic on our street with the
20 possibility of extended hours of operation of the new
21 business, food trucks, delivery trucks, and employees coming
22 and going. Last week when part of the business was open, we
23 already saw an increase of cars turning around in the first
24 four driveways of the houses on Colonial Village.

25 When I was writing this, I thought about the

1 essence of the neighborhood. I realized long ago why it was
2 made Colonial Village Road as I hope all of you do. Most of
3 the houses are white plat board with different colored
4 shutters and some have window boxes. All are two story
5 colonials. There are gardens and large trees including at
6 the deli. I referenced the deli instead of Chef's because I
7 actually didn't know the name. The past and present from
8 1938 when our house was built, the homeowners have preserved
9 the uniqueness of the neighborhood, and I feel it is our job
10 to carry this on. When I dive into the street, it makes me
11 feel like I'm coming home to a special place. I hope this
12 feeling does not disappear with the expected increase in the
13 number of cars travelling and turning around on our street
14 and the adjoining streets, a parking lot instead of grass
15 and trees, and an increase in noise all coming from the
16 deli. Tom and I sit on our front porch frequently and see
17 people walking, riding their bikes, jogging, pushing their
18 babies in strollers, and walking their dogs. We see one of
19 the neighbors teaching his son how to ride a two-wheeler on
20 the street. I saw a group of seniors hiking towards
21 Corbett's Glen. We also see a group of people heading
22 towards Corbett's Glen with fishing poles for a day of
23 fishing. Our children frequently take their children to
24 Corbett's Glen in the summer and the fall. And it's an easy
25 walk to the end of our street and the path down to the Glen.

1 On Sunday, I also noticed a young couple holding
2 hands as they are walking towards Penfield Road. That same
3 day I saw a grandfather, father, little girl, and a dog
4 taking a walk towards the street and three girls riding
5 their bicycles towards Penfield Road. I'm sure some of the
6 people using our street live in the adjoining neighborhoods
7 Dale Road East, Dale Road, Park Lane, Alaimo, and Penfield
8 Road.

9 The proposed expansion would most likely have an
10 impact on a much larger area than Colonial Village. The
11 deli may change its business by changing its focus, but we,
12 as residents of Colonial Village, might have to give up the
13 solitude and the real purpose of a neighborhood to have the
14 freedom and opportunity to take a pleasant walk, go for a
15 bike ride, and in both directions on Colonial Village, go
16 for a hike to the Glen, and just enjoy what a true
17 neighborhood can be in Brighton, little noise, just laughter
18 of children, minimal traffic, a place to teach a child how
19 to ride a bike, an oasis from the hustle and bustle of our
20 daily lives. Everyone who has been raised on the street,
21 their children and future generations, may use what the way
22 of life could be. A place to come home to and a place of
23 solitude, beauty, and uniqueness. If we are lucky to live
24 here, I think we should preserve the neighborhood as
25 homeowners have done before us. I urge the Board Members to

1 consider the negatives of how an expansion of the deli would
2 impact this neighborhood and the neighborhoods around us.

3 Thank you.

4 MR. MIETZ: Thank you very much. So anyone else in
5 the first three rows? Go ahead.

6 MS. SERAZIO: I probably will not be as well spoken
7 as these people. I live at 715 Penfield Road and I --

8 MR. DI STEFANO: And your name too.

9 MS. SERAZIO: My name is Cara Serazio. I live at
10 715 Penfield Road. I live in the old DeCastro's house which
11 originally owned the deli. My house backs up to it. I
12 can't tell you how much work they have done there, and how
13 they've improved it. It looks beautiful. And I'm very
14 proud that they have done it. I'm proud they've created
15 jobs. I'm proud that they are there. I'm happy to have
16 young people trying to be entrepreneurs. And really, I
17 think we should give them a chance. My house backs up to
18 it. There is a dumpster there. They are going to put
19 something there. I mean, I can see where the food truck is
20 going to be. I don't really care. I want them to do well.
21 I'm proud to have them for my neighbors, and I wish other
22 people would say the same thing. Penfield Road is right
23 there. It's busy. Is it really going to make it any
24 busier? I mean, everybody has children. Everybody has
25 their lives. These people have their lives too, and that's

1 all I really have to say. I really hope you take them into
2 consideration. Thank you very much.

3 MR. MIETZ: Absolutely. Thank you. All right. So
4 where are we? Who else would like to speak? Just raise
5 your hand as it gets toward the back there. Okay. Come on.

6 MR. BELL: Hi, my name is Mike Bell. I live at 63
7 Colonial Village Road right down the street from the deli.
8 I have been there 22 years, and just a couple of
9 observations and nothing long. From what I noticed last
10 week when the trailer was parked there, I couldn't help but
11 feeling is the neighborhood going to start looking like that
12 -- the area up in Despatch Drive in East Rochester because
13 if that's what we're going for, then maybe we will vote yes
14 on this.

15 And then the second thing, when I go to my eye
16 doctor, he always asks me are the things the same, better,
17 or worse. He says it the same, better, or worse. Same,
18 better, or worse. I've seen three deli proprietors here and
19 it's been the same. In some cases better, Charlie did some
20 things that I thought were better. To me, this looks a
21 little worse. To me, it's not better just looks a little
22 worse. Thank you.

23 MR. MIETZ: Okay. Thank you. All right. Yes,
24 come on up and speak.

25 MR. MACPHERSON: Good evening. My name is Dan

1 McPherson and my wife, Susan, and I have lived at 92
2 Colonial Village Road for almost 32 years this month. We
3 have been there long enough to have enjoyed all of the
4 businesses that have been at the end of this street from the
5 DeCastro's to Bernunzio's. We love the convenience of
6 having a little market, a place to get a sub or some deli
7 items. We do not, however, support the proposal from Chef's
8 Catering to put a large scale food truck and catering
9 operation on the site and to expand the nonconforming use of
10 the property. We echo our neighbors concerns about noise,
11 smells, fumes, and the effect that it will have on the value
12 of our homes. We also worry about traffic and safety as we
13 try to exit our street to Penfield Road. We are very
14 concerned about the amount of space on the property for the
15 parking of 10 full-time employees, two to three food trucks,
16 very large delivery trucks, and customers. With all of
17 those vehicles, it is very possible that parking will spill
18 out onto our street which is very narrow. When one car is
19 parked on our street, the street basically becomes a
20 one-lane road. We already witnessed a large Sysco tractor
21 trailer truck almost blocking the driveway with a delivery
22 right in the middle of the afternoon. The other worry is
23 that they will soon realize that there is not enough space
24 for parking and enlarge the driveway and parking lot which
25 would eliminate the green space in front of the business

1 which has always helped to blend it into the neighborhood.
2 These are worries with the size it is now, not to mention
3 they consider themselves a growing business. Our street has
4 a very unique history, and there is really nothing like it
5 in Rochester. It is quiet. It is a quiet tree-lined
6 street, and has a park-like feeling. That is what attracted
7 us to it all those years ago. And it really hasn't changed.
8 I disagree with their contention that "given that there are
9 no significant changes to the building except for the
10 walk-in cooler, the character of the neighborhood remains
11 unchanged." Here's an example of what I am talking about.
12 Here are photographs of the mobile kitchen that they had
13 parked on their lawn when they opened up two Sundays ago.
14 They placed the food trailer right on the lawn in front of
15 the store and were serving food out of it. They left it
16 there until, I assume, when they were asked by the Town to
17 remove it on Wednesday. It was an eyesore and a terrible
18 first impression of our neighborhood. When I think of food
19 trucks I think of carnivals and festivals and city streets,
20 not a quiet neighborhood.

21 As our other neighbors have said, I am bothered by
22 the comparisons they have tried to make between their
23 business and the previous one. I never saw more than a few
24 employees working at these last businesses. I never saw
25 vehicles permanently stored there. People drove cars not

1 trucks, and certainly not food trucks, and drove them home
2 at night. The scale of food preparation and delivery of
3 items was nowhere near what they are proposing to do. With
4 so many vacant properties all over Rochester, I do not
5 understand why they wouldn't want to move up to a location
6 where they could operate freely and have room for their
7 growing business. Sorry for the shaky voice, but thank you
8 for listening to me.

9 MR. MIETZ: Don't worry about it. Thank you.
10 Okay. Come on, please.

11 MS. COTE: Hi, I'm Barb Cote, and my husband and I
12 live at 40 Colonial Village Road which is right across the
13 street from the deli. We've lived there for 23 years,
14 raised three boys. Two of our boys worked at the deli at
15 various times. Their jobs were making sandwiches, waiting
16 on customers, with one other employee in the deli. We used
17 the deli to buy milk, eggs, occasional things like that.
18 That kind of scale is what all of our neighbors are used to
19 in the deli. Teenage kids get jobs there. It opens in time
20 for you to get a breakfast sandwich. It closes when it's
21 time for kids to do homework. It doesn't operate, it
22 doesn't have great ambitious operations that plan to serve
23 Rochester to Buffalo footprint or prepare hundreds of meals
24 to be shipped out. It just wasn't in the plan. In the
25 previous ambitions of the deli, maybe they did deliver

1 before. I never saw it. My son never mentioned it. I just
2 don't see the vision for our neighborhood and the vision for
3 Chef's as going in the same direction. Thank you.

4 MR. MIETZ: Thank you.

5 MR. BELL: My name is Ryan Bell. My wife Annaliese
6 and I and our daughter have lived at 118 Colonial Village
7 Road at the opposite end of the block from the property for
8 about three years. And you have heard and will hear tonight
9 a number of concerns from residents on our street regarding
10 the application for Chef's. And I want to start off by
11 stating that I believe all or most of these concerns to be
12 valid. My wife and I share many of these concerns
13 ourselves. However, I'd also like to offer an alternative
14 perspective on the issue. We feel strongly that the
15 existence of a deli or similar business on the site is a net
16 positive for our street, and that the loss of this type of
17 use would result in a significant detriment to the character
18 of the neighborhood. The presence of the prior business,
19 Bernunzio's, was one of the factors that made it attractive
20 to us to purchase a home in this location, and we were
21 frequent customers there over the past couple of years. An
22 extended vacancy of the building and/or eventual reversion
23 to residential use and subdivision of the land would seem
24 possible or even likely if this application is denied
25 outright. It would be a net negative in our area. I am not

1 an expert in zoning law. I don't know what type of options
2 may exist for this type of application, but I would like to
3 encourage and attempt to find a set of conditions that would
4 allow this business to operate in a manner that provides a
5 resumption of walk-in quality food service to the
6 surrounding neighborhood while mitigating the most serious
7 impacts to neighbors. And I just want to add, based on what
8 I've heard so far tonight, I do continue to agree with the
9 majority of the concerns mentioned. And I further do feel
10 that clear answers are still needed about the exact nature
11 of the intended operations in order for me to give my
12 support. Thank you.

13 MR. MIETZ: Okay. Thank you.

14 MR. SMALL: Hello, my name is Eric Small. My wife,
15 Erin, and I live at 69 Colonial Village, a few doors down
16 from the deli. We were attracted to Colonial Village to
17 raise our young children primarily due to the quiet
18 environment, and proximity to Corbett's Glen, and the
19 abundance of families with young children on the street.
20 There are currently seven families with elementary children
21 or younger living on Colonial Village Road. Erin and I have
22 three young boys under the age of seven who are just
23 beginning to make friends with our neighbors and play in our
24 streets, in our yards. We value our unique community where
25 our children can learn to ride bikes on the streets and will

1 eventually meet up with friends to play independently in the
2 neighborhood or in Corbett's Glen. I also look forward to
3 the spring and fall days when our kids can take a short bike
4 ride to school at Indian Landing Elementary crossing
5 Penfield Road at Colonial Village Road. Our street and the
6 surrounding neighborhood are truly an oasis of nature that
7 reminds me of my upbringing and a place where we feel
8 comfortable letting our children explore and learn. We are
9 also aware of the history of Bernunzio's Bakery and Deli and
10 appreciated the fresh baked goods and availability of quick
11 sandwich for lunch in a pinch. Family walks in Corbett's
12 Glen often ended at Bernunzio's where we would get a cookie
13 or a sandwich. In fact, my older two children knew the
14 employees at Bernunzio's and called it the cookie store. We
15 were all disappointed when Bernunzio's closed their doors.
16 And we came to the realization that a neighborhood deli that
17 primarily catered just to our neighborhood was not likely to
18 find long-term success on Colonial Village Road. I was
19 cautiously optimistic that Chef's Catering was the kind of
20 business that might succeed in Bernunzio's absence. And I
21 remained open minded of the possibility. However, after
22 reading Chef's letter to the Town requesting an expansion of
23 nonconforming use leaves me with a nervous feeling. I have
24 three main concerns regarding the expansion of nonconforming
25 use proposed by Chef's Catering that may impact my family's

1 way of life on Colonial Village Road. The letter states
2 that Chef's Catering will have 10 full-time employees and
3 claim that this is not an expansion of Bernunzio's business
4 as Bernunzio's also had 10 full-time employees. In the five
5 years that we lived on Colonial Village, I've only ever seen
6 Bernunzio's having three or four employees at most including
7 the owners. The number of proposed employees makes me
8 worried that traffic and parking on Colonial Village Road
9 would be excessive, spill-over parking, or driving on
10 Colonial Village Road by the current driveway will be
11 unacceptable in my opinion. Especially on our street which
12 is narrow and does not have a sidewalk. Indeed excessive
13 traffic will potentially reduce the safety of children
14 riding bikes on Colonial Village Road towards or across
15 Penfield Road. Where will employees and customers be
16 allowed to park? Particularly if business grows and will
17 they have access to Colonial Village Road from the main
18 parking lot. The letter also states that the number of
19 incoming and upcoming deliveries will remain relatively
20 unchanged from Bernunzio's although the size of trucks will
21 increase. Again, I rarely recall deliveries of food to
22 Bernunzio's and out of Bernunzio's in the five years that I
23 have lived on Colonial Village Road. And I'm concerned that
24 routine entrance or exit may pose injury to children in the
25 community. How many trucks and what size does Chef's

1 Kitchen anticipate coming and going on a daily basis, and
2 what true hours including early departure and late returns
3 from destinations are expected?

4 The letter states that minimal expansion of
5 property is required on the premises apart from a large
6 walk-in cooler. My concern revolves around studded appeal
7 to the entrance to our neighborhood which is a corridor to
8 Corbett's Glen Nature Preserve. We have already observed
9 the food truck parked for an extended period of time on the
10 grass to the entrance to our neighborhood. It is our hope
11 that the expansion proposed by Chef's Catering does not
12 include new buildings or long-term parking of food delivery
13 vehicles as advertisements which would detract from the
14 quiet appeal of the entrance to our tree-lined street. What
15 insurance do we have that Chef's Catering will not expand
16 the current footprint of the building and parking area and
17 not erode our neighborhood esthetic as a quiet entrance to
18 Corbett's Glen.

19 In summary, I am concerned about the expansion of
20 the nonconforming use proposed by Chef's Catering is vague
21 to the extent that visually and environmentally intrusive
22 development may occur. More importantly, I worry that the
23 expansion of the current business practice may lead to a
24 potentially dangerous traffic environment for children
25 living and playing on our narrow tree-lined street. It is

1 my hope that the Brighton Zoning Board considers safety
2 issues and esthetic appeal of our quiet community when
3 considering the proposed expansion of nonconforming use by
4 Chef's Catering. Thank you.

5 MR. MIETZ: Thank you. Okay. Come ahead, sir.

6 MR. GORDON: My name is Ken Gordon. I've been a
7 resident for nearly 30 years. And I have almost 40 years
8 experience as a land-use professional.

9 MR. MIETZ: Where do you live, sir.

10 MR. GORDON: 52 Colonial Village Road.

11 MR. MIETZ: Okay. Thank you.

12 MR. GORDON: What I'm going to address is really
13 the things that I know best. I am going to talk about the
14 character of our neighborhood, both personally and in a
15 planning context. I'm also going to talk about the
16 procedural or administrative issues associated with this
17 application. I'm concerned about development code
18 compliance. I'm concerned about the quality of the
19 materials that were submitted. I'd also like to make a
20 couple comments relative to SEQOR compliance. My primary
21 concerns are expansion of the use contrary to approval
22 criteria and incompatible use in residential neighborhoods,
23 introduction of potentially nuisance activities, further
24 commercialization of the property, effect on neighborhood
25 character, and as a precedent for future expansion of

1 preexisting nonconforming uses. I'm going to make some
2 general comments. I'm going to talk about the application.
3 I'm going to talk about the narrative, about the site plan,
4 and as I said also SEQR.

5 First just some general comments about this
6 application package. I believe that there is a significant
7 omission of information and lack of sufficient detail to
8 satisfactorily evaluate the application. I think there is a
9 failure to demonstrate the necessary burden of proof by the
10 applicant. I think there is significant errors, omissions,
11 and misrepresentations. And I don't want to judge whether
12 they were intentional or just out of ignorance, but the
13 materials are brought with exaggerations or under
14 statements. I'm concerned about the apparent lack of
15 respect for the uniqueness and the values of the
16 neighborhood and surrounding property owners. Again, those
17 are more general concerns.

18 Now the ZBA application. Yes, first you can look
19 at the form. There is five or six questions not answered.
20 I'm also concerned that there's really no detail that has
21 been provided even though the application says "describe in
22 detail" what is proposed. There is none. So they are not
23 really providing enough information for you to make a
24 legitimate determination to really understand the full
25 nature of the impacts.

1 Now concerns about the narrative. First of all, I
2 believe that they've totally addressed the wrong criteria.
3 They're evaluating with respect to the past use when in fact
4 they should be comparing this with the approved uses which
5 were framed in the agreement with the Bernunzio's, and the
6 later attorneys, and advice memo. So the majority of this
7 really is not really applicable to the application. I
8 believe that this is full of inaccurate statements. There
9 is misrepresentations, diminishing potential adverse
10 consequences of the action, and an exaggeration of current
11 and past conditions. I believe that there is an omission of
12 important readily available information to imply lesser
13 impacts. I believe that there is a lot of unsupported
14 opinions of the preparer or lack of reference to the other
15 materials that are submitted with or available to the
16 applicants to enhance the description. So what I've done,
17 and I'm going to submit this, is I've tried to identify what
18 I believe to be inaccuracies, understatements to minimize
19 the impact, overstatements to exaggerate the impact of
20 previous activities, and the things which are basically
21 unsupported opinions of the preparer. I've highlighted
22 these in different colors. Okay? And again, you can see
23 that the majority of the narrative is below standards. So I
24 can submit this.

25 I'd like to make now some concerns about the site

1 plan. The site plan really lacks sufficient information to
2 evaluate conformance with the evaluation criteria. It lacks
3 information normally provided on site plans and required if
4 this were a site plan to be submitted to the Planning Board
5 for site plan approval. There are some aspects of it that
6 contradict the site utilization in the application. And I
7 believe that the plan contradicts code requirements with
8 respect to residential setbacks, the number of required
9 parking spaces, buffering to residential use and internal
10 circulation. Also, maybe snow removal and maybe some other
11 aspects of the code that either are impossible to address,
12 or impossible to implement, or you have no information upon
13 which to evaluate those.

14 Now SEQR. The SEQR form that was submitted is
15 incomplete. There is a failure to address several of the
16 questions on the checklist. I don't think that it proves a
17 type-two status. And I believe that they might have gotten
18 the advice that this would actually not require SEQR review.
19 I don't know whether that's true or not, but as I read this,
20 I don't believe that it meets the criteria for being a type
21 two action. I believe that there is insufficient
22 information for you to make a significant determination.

23 You ask whether the submitted information provides
24 you with the hard look that SEQR is intended, that SEQR
25 intends for the people who are lead agents and are making

1 the determination. The application implies that there is no
2 controversy. Controversy is one of the items that can
3 elevate an unlisted action to a type one -- or to
4 significant. And I believe this could be segmentation
5 because they're really not throwing in what changes are
6 going to be at the other site. They don't bring up the
7 other site at all, whether there is going to be future
8 expansion. Obviously their business plan, if this is going
9 to be successful, implies that it's going to grow. But you
10 don't see any evidence of narrative with respect to future
11 growth. Therefore, it's very difficult to evaluate indirect
12 impacts or subsequent impacts. And if you agree that this
13 is an unlisted action rather than a type two, I believe that
14 you would have to prepare a condition that in a declaration
15 would require you to make findings and have those findings
16 give sufficient notice to affected parties to the state, to
17 the -- I'm sorry. Well, I'm sorry. The state publication
18 that addresses the efficient actions.

19 Now I have some issues from a planner's
20 perspective. I've seen advertisements for proper use on the
21 street. Which say near Bernunzio's, we have Corbett's Glen
22 at the end of the street, but you rarely see or more often
23 see proximity to Bernunzio's as a selling point rather than
24 Corbett's Glen. That sometimes provides a scale, I think,
25 of relators thinking what the importance of the property is.

1 Corbett's Glen, Corbett's Glen Park, you know, is I heard,
2 the most frequented park in the whole town. Remember that
3 there were hundreds of neighbors that were opposed to the
4 development of the glen. And through some of the lobbying
5 that was done, I think that we neighbors helped you make the
6 decision that this should be a town park.

7 The character of Penfield Road. When the road was
8 being redesigned there is a proposal for an extension of
9 four lanes. There were hundreds of people who came out in
10 opposition to that and 20 to 30 people worked with DOT and
11 their consultants for months to try to accommodate what they
12 needed to do to improve safety, drainage, and flow in
13 getting the necessary volume of traffic through, and the
14 compatibility of the neighborhood. I don't think there are
15 many streets of that size and use that are anywhere near as
16 attractive as Penfield Road is. There are five historic
17 properties that town designated, not state or national, but
18 yet that area, obviously, has character that the Town has
19 determined is important to protect. There are 13 to 14
20 thousand vehicles per day that pass the site. All of those
21 making evaluations with respect to the character of
22 neighborhood in which it's located. It's an impression, the
23 entrance to the street. That's how many "outside users" or
24 outside affected individuals there would be.

25 The proposed use is not really as benign as the

1 applicant tries to imply. You heard some statements from
2 some of the neighbors demonstrating that. Also, the
3 granting of this use gives future businesses a higher
4 threshold of what they can do on the property. We call it
5 creeping commercialization. It's a phenomenon that occurs
6 very, very frequently where one use supplants another and
7 each successive use is more -- is more out of conformance
8 that the other. One of the purposes and one of your
9 standards is that nonconforming uses are not supposed to
10 expand. And in fact, the development code actually says to
11 try to eliminate. In this case, it's an asset to the -- it
12 has been an asset. So I'm not sure that literally applies,
13 but still. And I just want you to think about this. Just
14 changing the name, all right, affects the character of the
15 neighborhood and the compatibility of that parcel with the
16 rest of the neighborhood. Thank you.

17 MR. MIETZ: Thank you. Come on up.

18 MR. FOWLER: I thank you for your patience. My
19 name is Jeff Fowler. I live with my husband Nigel at 91
20 Colonial Village Road where I have owned for 10 years. I
21 had the opportunity to sign the petition and I declined. My
22 preference for the site is to have a viable business on the
23 property that can be a good neighbor with respect to some
24 concerns that have been raised. In my estimation, the store
25 front is a positive contributor to the essential character

1 of the neighborhood and the current use variances are really
2 too restrictive for a business on the site to be viable in
3 today's environment. For that reason, I would recommend
4 relief under Section 219 where you look for four indicators
5 of hardship. One, that the ROB zoning deprives applicant of
6 all economic use or benefit of the property. As I said, I
7 don't believe a business can be viable under the status quo.
8 Number two, the hardship does not apply to a substantial
9 portion of the neighborhood. Clearly this is the only
10 property with historical commercial use and the only one for
11 which such an argument can be made. Third, the variance
12 would not have an adverse effect. I think denial of the
13 variance would have an adverse effect on the essential
14 character of the neighborhood, and the considerations of
15 physical and environmental conditions should be addressed
16 with the balance of the town code and with the important
17 stipulations in the variance. And fourth, the hardship is
18 not the self-created. It would apply to any viable business
19 model on the property as the current use variance, at least
20 in my estimation, is compatible with the long term viability
21 of the store front business. Different applicants might see
22 different terms according to their specific business models,
23 but the hardship is preexisting. Now Jeff Barrow and Don
24 MacPherson had informed me of the nature of their concerns.
25 I sympathize with their concerns, and that I too would

1 object to if I had a commercial neighbor creating the
2 disturbance that they described. In particular, I would
3 want to retain the green space and the trees facing Colonial
4 Road and the new signage to be harmonious with the
5 neighborhood. Where I most strongly part from the objectors
6 is in my standard of evidence for a proposed relief would
7 lead to the feared problems. None of my neighbors have
8 shared any objective evidence with me to that effect. If
9 Chef's ordinary business can be conducted without excessive
10 nuisance, then I'd prefer to rely on the terms of relief in
11 the existing town code rather than deny them the opportunity
12 to be good neighbors.

13 Overall, I feel the most appropriate course of
14 action might have been from mediation to bring up terms and
15 conditions available to all and to set expectations for a
16 positive relationship. And I don't know whether that's
17 possible right now, but I would really welcome it. I
18 appreciate the difficulty of your position, and you have my
19 best regards in ruling as you deem what would be in the best
20 interest of Brighton and the best interest of neighbors
21 based on the facts as you determine.

22 MR. MIETZ: Okay. Thank you.

23 MR. FREEMAN: My name is Bruce Freeman. I live at
24 126 Colonial Village Road which is at the very southernmost
25 part of the street. The business that's under review here

1 is at the northernmost part. It's a very short street. If
2 you drive straight on Colonial Village Road from Penfield
3 Road it comes to an abrupt stop. Right in front of you is a
4 walkway and access path to Corbett's Glen. Several people
5 have mentioned Corbett's Glen, but I live down right next to
6 the Glen, and there are lots of people that walk down
7 Colonial Village Road or Dale Road East to get to the
8 entranceway to the Glen. And there is obviously return
9 traffic. And I would be concerned that any increase in the
10 traffic that might stem from a business that's operating
11 right on Colonial Village Road might change that. There is
12 kind of a pedestrian-friendly atmosphere to that end of the
13 street and it's a park-like character to the end of the
14 street. And I just have some concern that maybe a
15 substantial increase in traffic would destroy those aspects
16 of the character.

17 I am an attorney, and I did want to make a legal
18 point at the risk of stating the obvious. I tried to submit
19 a letter. I don't know if you got it. It's just a one page
20 letter and it makes a very brief and obvious point which has
21 to do with the rules of statutory interpretation. The
22 statute that applies here, as I understand, it is the
23 nonconforming use code provision. It has several
24 subsections and under the rules of statutory interpretation
25 all of those subdivisions have to be given full force and

1 effect. You can't interpret one of the subdivisions in a
2 way that renders another subdivision superfluous. So I want
3 to point out that subsection A of that statute is a very
4 clearly worded unambiguous strict prohibition of any
5 enlargement of a nonconforming use. So even if you are
6 trying to weigh the facts here under subsection C which
7 allows a change in a nonconforming use, any application of
8 subsection C, in my opinion, is still constrained by the
9 absolute unambiguous prohibition of the subsection A. So I
10 would like to just make the point that if subsection C were
11 interpreted to an enlargement, it would render subsection A
12 superfluous. It's prohibited by these rules of
13 construction. So if you read the nonconforming use
14 provision as a whole, as it must be, and give it full effect
15 of all of the subdivisions, it stands, in my opinion, as a
16 strict prohibition of any enlargement whatsoever of the
17 nonconforming use that's been allowed at that property.
18 Thanks.

19 MR. MIETZ: Thank you.

20 MS. KRAUS: Hi, I know you all are getting tired
21 because I sat here too. I wish I could let you stand up and
22 move around, but I will try to be brief. Sherry Kraus, 46
23 Park Lane just a few blocks from Bernunzio's Deli. I'm here
24 this evening to speak in opposition to this application to
25 expand or change the nonconforming use. I am also speaking

1 on behalf of my sister-in-law Ann Kraus who has lived on
2 Colonial Village Road just down from the deli for 30 years.
3 And she has been a very frequent visitor there almost daily
4 for many decades at this point. I've been a resident of
5 Park Lane for 41 years. My patronizing of the deli, being a
6 customer, goes all the way back from when Ms. DeCastro lived
7 in the residence, that's the lady talked about, on the
8 property. And I can give you first-hand observation of how
9 that deli operated. From my observations over these 41
10 years, there were several different owners. And I think
11 they raise huge credibility issues regarding some of the
12 representations made by the applicant. It has always been a
13 low-key operation. You've heard this many times already.
14 Customers were primarily from the neighborhood. Just like
15 it's been said, a place you go to pick up a gallon of milk,
16 an ice cream cone, some selected grocery items, not a whole
17 lot, some freshly baked cookies which were delicious, other
18 baked goods, a slice of pizza, a submarine sandwich which
19 was made up beautifully. A deli, a classic deli. You know
20 where it's physically located. I hope you all went out
21 there to see the place at the corner of very busy Penfield
22 Road and very quiet and narrow, and by the way, this is a --
23 these streets over here are narrower than the streets in
24 central Brighton, very narrow streets, Colonial Village
25 Road. Tucked between two residences the one on Penfield

1 Road and the one on Colonial Village Road right in the midst
2 of a well maintained single family residential neighborhood.
3 You know the front of the deli, that pretty grassy area with
4 the mature trees, that helps. That screens the parking lot,
5 the driveway, makes it kind of fit into the neighborhood.
6 It's only allowed there because it's a preexisting
7 nonconforming use.

8 My observations, again, repeating so many others I
9 have never ever seen more than three or four staff people
10 inside at any time. Usually the owner and maybe two or
11 three other people often teenage kids after school
12 part-time. I have never detected outside cooking smells
13 ever. I have never detected obnoxious foul smells from a
14 dumpster from waste products and garbage ever. I have never
15 noticed a crowded parking lot, maybe a couple of cars. I
16 can't speak to overnight. I don't live right by it, but the
17 only cars that I ever saw there on a regular basis were
18 probably the owner and a few employees. I never observed
19 anything loud or disruptive about the place, either the site
20 activity on the place, the cars coming and going, anything
21 that might raise disruptive or safety issues. It's
22 basically always been a quiet little deli. That's why so
23 many people are saying gosh, we'd love to have a quiet
24 little deli there again. Well, we all would. This is not a
25 quiet little deli. The application you have before you

1 seeks to expand these operations to allow the site to be
2 used. And I don't want to get into semantics here. The
3 owner was talking about catering. What does catering mean?
4 Well, I can tell you it's -- whatever they are proposing is
5 very much broader than what was going on at the preexisting
6 deli.

7 Now here is my problem, you got a letter from me,
8 at the time I wrote that letter on August 24th, I did not
9 know the true party and interest who was going to be
10 conducting this business. And I did not know what was going
11 to be going on, what the proposed operations were even going
12 to be, because the application is so vague. And the
13 application describes the business as Chef's Restaurant and
14 Bakery. Well, that may be a new DBA that may be an old DBA,
15 but I don't think there is a website for it that I saw.
16 Then I just found out about a week ago when we started
17 seeing all of the food trucks, and trailers, and everything,
18 this business is Chef's Catering. Chef's Catering. Okay.
19 Judy, you've gone to their website. I would like to submit
20 on the record selected screen shot copies of what this
21 business is. His business is self-described as a popular
22 growing food truck catering business. Food truck/catering
23 business serving not only the Rochester area but as far east
24 as Utica, south as Ithaca, west to Hamburg, huge regional
25 business. This is not a neighborhood deli. It offers a

1 vast selection of prepared and cooked foods, vast. You got
2 it there. Not just breakfast, lunch, and dinner. They
3 prepare for all occasions weddings, cocktail parties,
4 holiday parties, corporate events, and much, much more.
5 Again, the website is much bigger than that. I just did a
6 few selections. It shows the website gives pictures of
7 their food trucks, their cooking trailers, huge, huge
8 propane tanks on the back. Did you notice in the pictures
9 the propane tanks on the back? That's for cooking and
10 heating, I assume. They describe an operation that's seven
11 days a week, again, 7:00 a.m. to 11:00 p.m. They got to get
12 in there and cook. They got to load the trucks. They got
13 to unload them in the evenings. Now, once I found out it
14 was Chef's Catering and saw that their address was 1700 East
15 Avenue in the city, almost right next to Wegmans, right
16 across from McDonald's and Dunkin' Donuts, I actually went
17 there last week on my way to work. I walked up the
18 driveway. I wasn't halfway up the driveway before I could
19 detect the cooking odors or smells, so I knew I was in the
20 right place. That was coming out of the kitchen in the
21 back. Now the building is actually an old residential
22 building like a brick building. But I will tell you, I did
23 a little -- you say oh no compliance, compliance, well,
24 guess what, you go and look on the City of Rochester website
25 for locations, and you can find out a lot. Oh, I'm sorry.

1 You can find out a lot. You know what I found out? There
2 is an open citation against them from January. And there
3 have been multiple complaints over their four years or so
4 for parking violations. And if you go there you can see
5 why. You go down that driveway. The kitchen is in the
6 back. There was one food truck squeezed into this parking
7 area. When I arrived there an employee came out in an apron
8 and asked if he could help. I did ask for the owner. He
9 wasn't there. I did identify myself as a neighbor who was
10 concerned, and I did have some questions. He volunteered to
11 answer some for me. And he said to me with my questions, he
12 said that they had outgrown the site. He wasn't sure, but
13 he believed they were going to move everything to the
14 Penfield Road place. Now, this is an employee. He said
15 they did not have enough room for the trucks. And generally
16 at night, park their trucks over at McDonald's parking lot.
17 So you know, you ask about the lease, how much time is left.
18 Now how much time is left? We don't know. I don't know.
19 But I don't know how you can accept it face value that this
20 is going to remain the primary site. I mean, this is a
21 tiny, tiny site. And somehow the Penfield Road operations
22 are just going to carry on the Bernunzio's Deli intensity.
23 I would say that that is a very, very questionable
24 representation.

25 Now under our current -- oh, the other thing. I'm

1 so sorry. You did ask about the zoning. It's high density
2 residential, but it's got an office overlay district. So
3 their location down there is not like our RLB residential,
4 low density zone that we're talking about Park Lane,
5 Colonial Village Road. That part of East Avenue is a high
6 density residential area where they are now conducting their
7 operations. Again, it's got that office overlay district
8 which allows enormous commercial and intense use. I mean,
9 this is stuff you can get right off the City website. You
10 don't have to take my word for it.

11 Under our zoning laws, if Chef's Catering, Chef's
12 Kitchen and Bakery, whatever they call themselves were to
13 come in and say where can I locate in this community for
14 this operation, you would say it would have to be in a light
15 industrial zone like Metro Park, not an RLB residential low
16 density zone like we have where the deli is now. The law is
17 simple and straightforward here. And I know we have a
18 number of lawyers on the Board. Good. I'm glad. I don't
19 want to get boring. But I think you really have to
20 understand this is primarily a legal question. It's not
21 whether we want it. We want the sliders. We like them. We
22 support small business. I do. I support small business.
23 And if I were to see Mike's truck at the Close Line Art Show
24 or somewhere else, I'm sure I would patronize it. I'm sure
25 I would love his things. This isn't about any of that.

1 This isn't about whether every single person on Colonial
2 Village Road came up here and said we think this is the next
3 best thing since sliced bread. This is about the law. The
4 nonconforming use provisions. And David can tell you this,
5 our provisions in the code are tough and are to be strictly
6 applied. Are these laws mirroring the long standing land
7 use policies that eventual elimination of nonconforming uses
8 and that's because the nonconforming uses reduce the
9 effectiveness of our zoning laws? They depress property
10 values and can contribute to the growth of urban life. This
11 is in a thousand cases on these things.

12 Now whether you review this application and treat
13 it as an expansion of nonconforming use under subsection B
14 which is the way that the applicant asked you to consider
15 it, or whether you consider it as a change from one
16 nonconforming use to the other under subsection C, the
17 factors weighing against an approval will make this decision
18 not even a close call.

19 If you look at it as an expansion, and Bruce
20 brought it up too, you don't have the power to approve it.
21 The expansion of a nonconforming use is expressly prohibited
22 in our code. My guess is that you are going to give the
23 applicant a break, not hold him to the terms that he used in
24 the application and consider it under subsection C which
25 would be the change from one nonconforming use to another.

1 I mean, I think that's probably what you might do. I don't
2 know what David will suggest.

3 However, if you go under that section the applicant
4 has a heavy burden of showing, first, that the new use will
5 bring the site into closer conformity with the residential
6 zoning than the pervious nonconforming use, closer not
7 farther away, closer. And secondly, two prongs, that the
8 new use will only have a minimum detrimental affect on the
9 surrounding residential neighborhood. That is a huge
10 burden. This business approval does not even come close to
11 meeting those two requirements. Everything about the
12 proposal will move this site in the direction of greater
13 nonconformity rather than greater conformity. For example,
14 you are going to have vastly greater food production and
15 cooking on the site. And I don't know how you could come to
16 any other conclusion. Although, I will tell you I found it
17 frustrating that the applicant was so vague even tonight in
18 their answers. Vague, what is going to be done here? What
19 is the scope and scale of this operation? I submit that you
20 have to make your judgment based on that Chef's Catering
21 website. That tells you everything you need to know with
22 all of this extra food cooking and preparation. And you
23 know it's going to be done at the deli site. I mean it's
24 been done at East Avenue, and he did say in his testimony
25 that there would be cooking. They are not just going to be

1 loading stuff onto the food trucks to be cooked off-site.
2 There are going to be cooking odors dispersed into the
3 neighborhood. Now, I love cooking odors. I grew up in the
4 south. I love smelling the chicken frying from the kitchen.
5 If I had to live next door or within 150 feet, because
6 that's normally in an industrial zone, you've got to put an
7 odor controls that would keep odors from reaching -- you
8 have to put in all kinds of stuff from them reaching too
9 far. There will be cooking odors dispersed through that
10 neighborhood when there were not cooking odors before. If I
11 were going to go buy a house on that block, and I go down
12 there and go halfway down the block and I'm still smelling
13 the cooking up there at Chef's Catering, I wouldn't buy
14 there. It's one thing to smell it on Sunday afternoon.
15 It's another thing to smell it every single day of the week
16 from early in the morning until late in the evening. There
17 is going to be a much greater food waste disposal issue. If
18 you have more food cooking, you are going to have more
19 waste, more dumpster potential issues with food spoiling,
20 not getting enough dumpster pick-up, foul smells, noise from
21 the dumpsters. There is going to be much greater site
22 activity. You heard that. There is going to be
23 disturbances from the neighborhood loading and unloading
24 from the food trucks and trailers. It can't be otherwise.
25 There is going to be more food trucks. I mean how can you

1 possibly say that for a food production business of this
2 scale that it would have the same or lesser delivery needs
3 than Bernunzio's Deli in the past. It's going to be longer
4 hours of operation. And again, I'm glad to you got into the
5 point, now wait a minute, you say you are going to be open
6 for retail from X to Y, but what are the real hours when
7 people a going to set up on the site because that is a
8 disturbance to the neighborhood. Now we haven't talked a
9 whole lot about parking. I predict here tonight that there
10 will be inadequate parking at this site for all of the food
11 trucks, trailers, delivery trucks, personal vehicles of
12 whatever employees are there, and retail customers. And if
13 I'm right and this parking lot turns out to be too small,
14 it's not really big, guess where the overflow is going to
15 go? It's on Colonial Village Road. And you heard the
16 concerns there. Or, they are going to go in there and they
17 are going to chop out the green space, the little grassy
18 lawn, the trees because they have to enlarge the parking
19 lot. They can't manage without it. And there is going to
20 be new safety issues, traffic on the site. Safety issues
21 from storage and handling of those propane tanks. Nobody
22 asked that question here tonight. What about that? I mean,
23 I would like to hear that answer. I don't know if you'll
24 choose to ask that. Are those propane tanks going to be
25 left mounted on the trucks at night? Don't they have

1 spares? Where are they going to be stored? Are they going
2 to be stored in the garage or some place? Isn't that a
3 potential safety issue? And finally, physical enlargement
4 of the nonconforming use. They are asking to put in this
5 outdoor walk-in cooler. It's physical expansion of the
6 nonconforming use. There is no way that they can meet the
7 requirements of subsection C to allow a change in the
8 nonconforming use. Bear with me. I am almost done. Just a
9 few more moments. There is an issue that we really haven't
10 addressed. I didn't address it in my letter really, but I
11 want to address it tonight to get it on the record.

12 The issue is whether the preexisting nonconforming
13 deli use that you heard about tonight has been lost as an
14 abandonment under Section 225-13D of our town code. Now
15 here is the way the code reads: If the nonconforming use,
16 meaning the deli use, is discontinued for one year or more
17 for any reason, it cannot be reestablished. And it doesn't
18 matter what the intention of the owners are to resume the
19 nonconforming use. It does not matter. That's irrelevant.
20 It's right there in the code, doesn't matter. Application
21 stated, and we think this is probably about correct, that
22 the deli seized operation September 7th of 2015, one year
23 ago today. Now, have they reestablished the nonconforming
24 deli operations by today as required? Or else they lose,
25 abandon, the nonconforming use, and it goes to residential

1 zoning. Well, I would argue no, and here's why. The only
2 retail use of that property in this whole year began on
3 August 27th, that was a week ago Sunday, when a very small
4 section of the building had a sign marked bakery open
5 offering the sale of a limited selection of cupcakes,
6 cookies, brownies, and baked goods, little, little. I think
7 it closed at 3:00 or something. I'm not sure. This was
8 for, at most, a week to eight or nine days, several days.
9 Then it closed down again. This extremely limited business
10 activity, just this limited opening to sell some limited
11 bakery goods, I would submit to you falls far short of the
12 requirement under the code that they have to reestablish the
13 prior nonconforming deli use, the part of nonconforming use,
14 before that one year statute of limitation ends. They
15 didn't do it. You heard they are not going to get up to
16 operations until the end of October. And I would even
17 seriously question to what extent is it going to be
18 mirroring the old deli use, but the question -- you don't
19 even have to worry about that. The question here is, is
20 this tiny little minimal period of opening, selling a small
21 selection of bakery items for a limited number of days, does
22 that somehow toll the statute of the limitations one year?
23 I say no. I say it does not. So, basically, I think the
24 nonconforming use has expired. I think it no longer exists,
25 and it has reverted. So again, I want to place that on the

1 record because that is a serious, serious issue here. All
2 right. I'm into the conclusion.

3 This is a vastly larger scale and higher intensity
4 of nonconforming operations proposed to the site as the
5 previous nonconforming use of that neighborhood deli. This
6 means that the applicant has not met the requirements under
7 our town code to support the change for nonconforming use
8 since he has demonstrated the proposed use has brought the
9 site into closer compliance to the industrial zoning than
10 the former operations, and that the use would have only a
11 detrimental effect on the neighborhood. And as a further
12 and separate ground for your denial, I would submit that
13 there is a question as to whether the prior nonconforming
14 use status on the property has been lost. Because the deli
15 use as been discontinued for one year or more. So I ask you
16 this evening to deny this application. Thank you very much.

17 MS. SIDOTI: Good evening, I will try to keep this
18 as short as possible. I was not planning on speaking
19 tonight.

20 MR. DI STEFANO: State your name.

21 MS. SIDOTI: My name is Shaina Sidoti. I own
22 Effortlessly Healthy. I am also a member of your Brighton
23 Chamber of Commerce.

24 MR. MIETZ: What is your address just for the
25 record?

1 MS. SIDOTI: My address is 265 Bay Village Drive in
2 Rochester.

3 MR. MIETZ: Okay. Go ahead.

4 MS. SIDOTI: So I wanted to come up here and speak
5 a little more about food trucks, catering companies and
6 whatnot. I started as a food truck, solely as a food truck
7 and meal delivery service. So there were a lot of comments
8 about all of these meals being made and delivered out of
9 this place. My company makes over a 1,000 meals a week out
10 of a 700-square foot kitchen. I am located on a very small
11 little plaza on South avenue 1921 South Avenue right after
12 the hospital, next to Mr. Shoe's Pizza. I have 12 parking
13 spots. My landlord, in my lease, agreed to have my food
14 truck take up one of the parking spots. Okay? So now there
15 is 11 parking spots. I have 10 full-time employees that
16 park on the streets. No one is ever there at the same time.
17 Okay. We have different shifts. The food truck is
18 extremely safe which is part of the reason my landlord
19 allowed it to be in front of the business. The propane
20 tanks are secured properly. So there are no safety hazards
21 there. And as far as the City of Rochester food truck code
22 goes, these food trucks are equipped with very high end fire
23 protection systems, some of which are better than most
24 restaurants, which is why the city is expanding their food
25 truck program system. They started with nine food trucks

1 and now it's over thirty. You go to the Public Market, you
2 go to the Brighton Town Market that you have every week,
3 correct? You have two foods trucks that are always there.
4 So if food trucks were a huge problem, then I'm assuming
5 Brighton would not allow food trucks there on a weekly
6 basis. I'm also going to assume that if they were a
7 problem, there would be complaints about the trucks.
8 Instead, based on what I've heard from the trucks that are
9 at the market, they actually do a lot of great business.
10 That's one of the busiest markets in the city. As far as
11 my -- you know, being a small business owner, I feel like a
12 lot of times people look at your business and not look at
13 you. I met Mike on my food truck when we were -- I was
14 pulling up to a diabetes fundraiser where he was donating
15 almost a thousand dollars of food to juvenile diabetes.
16 He's a nice guy. We have a baby together. He has a five
17 month old baby. This business, he's not looking to go and
18 ruin this nice neighborhood. He's looking to just have his
19 company open for the deli hours like Bernunzio's was. Yes,
20 expand a little, but still keeping his current kitchen. He
21 has no interest in getting rid of that kitchen. And the
22 parking situation at the current kitchen, it is a one-lane
23 single driveway that honestly is so narrow I get nervous
24 pulling my SUV back and forth in it. That is why there is a
25 parking problem there. There is just no space.

1 You know, his sister stopped going to college. She
2 started because she followed her passion of baking which is
3 why the bakery is there, and why we opened the bakery last
4 week. And it might just be a small showcase of desserts,
5 but you know what, they are delicious. Everybody loves
6 them. The cupcakes have been the talk of town for the
7 people who are in favor of this. If you look at
8 Bernunzio's, what they are doing to it -- sorry if I am
9 boring you. You all look super bored, but I am just going
10 to keep talking.

11 MR. MIETZ: Go right ahead.

12 MS. SIDOTI: If you look at what he's doing to
13 Bernunzio's, he's making it really nice. He's putting a lot
14 into it. My business, personally, I put \$25,000 into where
15 my little store is. It used to be a place where there
16 was -- it was a little Mexican restaurant that maybe served
17 20 a people a week. Now it sounds like if I have a meal
18 delivery service, a food truck, and catering, and cafe, it
19 sounds like I am doing a hell of a lot, but really it's
20 managed properly. So it's not a burden to anyone. And I'm
21 in a residential area. He's trying to make this business
22 beautiful so everyone really likes him in the community and
23 he's fully aware of the staple of the community. I went to
24 Indian Landing. My mom would take me to get a rice crispy
25 treat every other day. It was a fun thing to do. He's not

1 this bad guy coming to ruin this town and to ruin this --
2 these people's lives. It's like listening to everybody you
3 all make it seem like this is so bad. He is just a guy that
4 just wants to have a successful business. And you know
5 what? It takes a hell of a lot of courage to start a small
6 business and to grow it. So instead of doubting it,
7 especially doubting it before you know the true facts, you
8 should let it open and see what really happens. Are the
9 odors really going to bother you? I make all of these
10 meals. I never had one complaint about odors and I have a
11 house right behind my business and next door to me is a
12 pizza place. If you want to talk about odors, a pizza place
13 has a lot of them. I feel like you can't jump the gun here.
14 And I'm honestly getting a little frustrated at listening to
15 everyone because there is a lot of assumptions and not a lot
16 of facts when it comes to running the business. And you
17 know what? Honestly, I'm sure if anyone saw this food truck
18 operating at food truck rodeo, and they said let me go see
19 the truck, Mike would invite them in, and I'm positive that
20 once this place is done everyone will really love it. And
21 no one will be complaining because it's really, really good
22 food.

23 And one more thing, the efficiency with the walk-in
24 cooler, I have seven very large coolers in my store. My
25 RG&E bill was \$1,000 this month. \$1,000 because I run all

1 of those different coolers. Can you imagine the impact that
2 that's doing? This one cooler is going to be less loud than
3 an air conditioner. And the food trucks being plugged in,
4 you can't hear them because the compressor in the
5 refrigerator is quiet to begin with, then you have a food
6 truck as is a shield. So you really can't tell the
7 difference. So I think everyone needs to give this company
8 a chance instead of just say don't do it. It's a good thing
9 to Penfield. And the amount of renovations he's doing shows
10 it is a serious improvement which is why he's taking longer
11 than three weeks or a month because he really is making it
12 really nice, and you can see the exterior.

13 I also heard everyone is concerned about the grass
14 and the trees in the front. No one ever said that those
15 were leaving. It's all staying right there. Those benches
16 have been painted. I put flowers up. It's beautiful. And
17 also the bakery was closed because it was Labor Day and we
18 went on a little family vacation for the first time in four
19 years. The bakery reopened today. So I think there is a
20 lot of misconceptions, and I hope you guys will give him a
21 chance before you said no. And I welcome either of you to
22 go in either of our food trucks, come by my company, and I
23 will show you all the meals I prepare and how much it
24 doesn't affect anyone. Just give him a chance. Okay.

25 Thank you.

1 MS. ZAZZARO: My name is Jillian Zazzaro. Mike is
2 my brother. I run the bakery. I'm the baker. I do
3 everything there. There is a lot of things that have been
4 said that are false that I kind of want to counter. I've
5 been there day in and day out. We opened on August 28th,
6 10:00 to 3:00. We had a soft opening. Yeah. There were
7 many cars there, but it was because everyone knew and, you
8 know, let's support our family. There were many neighbors
9 that came. They were very happy to see us there. I really
10 haven't ran into any troubles with any neighbors. You know,
11 the next day I get there at 6:00 every morning. I open the
12 doors at 7:00. Whether people come in or not, I'm there.
13 I'm baking all day. We have breakfast pastries. I'm there
14 every day. So I see what comes in and what goes out. I
15 have had only one to two cars at a time being there so far.
16 We were opened for a week. We were closed over the holiday
17 weekend as Shaina said for a little vacation. And what was
18 assumed that we opened for a week and closed back down,
19 that's false. We opened back up today. It was just the
20 holiday. And we will be open for -- I mean, the duration.
21 This is may passion. Like this is my brother's passion. We
22 run this business together. We are not looking to destroy
23 the community. We are looking to just make it better, and
24 I've had so many little kids come up. And they love the
25 cupcakes, and the brownies, and the different things that

1 they see in there. I mean, I feel like I'm there every day
2 so I can tell you firsthand what's going on. When we first
3 went there to look at the property, Penfield Road is so
4 busy. It's busy as it is. And yes, I had a hard time
5 getting out, and we weren't even there yet. So I don't see
6 how that would be an issue making it more busy, I guess, is
7 what I am trying to say.

8 You know, counteracting the media. You can't go on
9 the media. It's just like social media or the media of
10 Hollywood, you cannot go on someone's website and say this
11 is all they have to offer. This is who they are. You can't
12 know everything about them from online. I'm sorry that's
13 not really what you can do. That's just what I think. And
14 I mean hopefully, you guys had heard everything today and
15 try to make the best decision you can. There is no -- you
16 know, you can't go on a website and just say this is who you
17 are. You know, you have to actually talk to the person and
18 make a conscious decision. So I think I've hit all of the
19 points I wanted to. Like I said, I've had a lot of kids, I
20 mean, there are cupcakes, cookies. You know, like I said,
21 I'm there every day. Like I said, and it's a great thing
22 for the whole neighborhood, I feel. And you know kids going
23 back to school, they will come after school, before school
24 breakfast. So I think it will be a good thing. We're not
25 looking to change the front of the store. We're just

1 looking to do the same thing, baked goods, deli. We're
2 looking to do the subs and have our catering behind it.
3 Thank you.

4 MR. MIETZ: Okay. Thank you.

5 MS. MELEO: I wasn't going to do this because I'm a
6 terrible public speaker, but it's interesting how people
7 speculate.

8 MR. DI STEFANO: State your name.

9 MS. MELEO: Michelle Meleo. I worked at
10 Bernunzio's for 10 years.

11 MR. MIETZ: And your address.

12 MS. MELEO: Under Charlie. I'm sorry.

13 MR. MIETZ: Can you give us your address?

14 MS. MELEO: 25 Arlington Drive. Okay. So it's
15 really interesting. I raised my children 11 years in that
16 neighborhood. The store became available. Charlie and I
17 were looking for a business to get into. We had a big
18 family, five kids, between the two of us. That's what we
19 wanted to run it for, a family business. I knew Tom and
20 Ginny very well. Tom and Ginny did not retire at the age of
21 50 selling a gallon of milk here, a couple cookies, there
22 and couple of sandwiches. They had a huge catering
23 business. That's what made it lucrative to us. We didn't
24 buy it to sell a cookie, a gallon of milk, or a sandwich.
25 People just don't do that. Okay. As far as my employees, I

1 had 9 to 10 employees at a time. I could probably dig up so
2 some old schedules to show you. I'm not going to listen to
3 former employees' parents saying what their kids said
4 because they don't know. All right. There were four of us
5 there every single morning, full-time employees. All right.
6 I had a full-time baker. I had myself. I had a helper in
7 the backroom helping me cook, and I had a girl before lunch
8 out front getting deli meats ready, taking in orders, and
9 deliveries. Deliveries, I had 11 delivers a week, and two
10 of those companies twice a week and one every day. Okay.
11 So there were trucks in and out of there. Behind the garage
12 where the truck is parked right now, or I don't even know
13 what else is there. We had a neighbor that lived on
14 Colonial Village because the neighbors wouldn't turn him in
15 because it was one of their neighbors who parked a large
16 landscape vehicle back there with a trailer and had his
17 plows, and rollers, and everything else back there, and
18 worked on his equipment and nobody said a thing. Okay.
19 This is directly next door to number one. As I look around
20 this room, I've counted 17 faces that I recognize, not from
21 Bernunzio's, a lot of them from my children's friends from
22 school growing up. I could probably tell you how many are
23 here that have frequented this store. This lady right here
24 twice a day. Some of other ones here and there. So they
25 can't tell you how many employees I had. They can't tell

1 you the vehicles unless they had a camera looking at our
2 store from open until close. They don't know. They don't
3 know squat. I'm sorry. They don't know what our sales are
4 or were. They don't know what Bernunzio's sales were. So
5 you know what? I don't know what to say. That's really all
6 I have to say. Everyone is tired. Everyone should go to
7 bed because I mean it's really ridiculous. And it's almost
8 like a little witch hunt. Nobody wants to give someone a
9 chance. And you're selling a house and oh my god there are
10 five kids in this family. What are you going to do?
11 Petition you don't want five kids in a three bedroom house.
12 You know, give it a chance. I just don't get it. People
13 didn't know me. They didn't know Charlie. The Bernunzio's
14 didn't give people forewarning that they were selling. The
15 Bernunzio's didn't tell anyone they were selling up until
16 the week they were leaving. So they didn't know what to
17 expect from us either.

18 MR. DAVIS: Michele, what about the advertising for
19 homes for sale on that.

20 MS. MELEO: Yeah, it's all mentioned. But they are
21 mentioning other food places around us.

22 MR. MIETZ: Okay. If you're speaking, you can't
23 speak.

24 MS. MELEO: You know, so I started looking at
25 houses on Colonial Village that have sold, way back since

1 number one sold. Okay. You said you had been there
2 30 years or whatever. So it was Sunny's on Blossom Road
3 they were mentioning. They were mentioning Lisa's that's
4 over near the trailer park on the other side of Corbett's
5 Glen. I mean they were mentioning all of these food places.
6 And you know, I don't know. And the other thing about
7 Corbett's Glen, I don't know why people are so happy about
8 it. There are a lot of sketchy people that walk down to
9 Corbett's Glen. Totally sketchy. Cars are being robbed in
10 the parking lots. You know, that's -- I don't think that's
11 an asset to the neighborhood. I wouldn't want that at the
12 end of my street, but it's there. So you can take what I've
13 said and make a decision. I just needed to state what I
14 know and not what neighbors that don't work there know. All
15 right. Thank you.

16 MR. MIETZ: Thank you. Okay. So at this point is
17 there anyone else that would like to speak regarding this
18 matter.

19 MR. BLAIR: My name is Nigel Blair. I live at 91
20 Colonial Village Road. I just want to be brief. One thing,
21 I went to the food truck. I think that IS one of the things
22 that doesn't come across from the neighbors so far is that
23 we are really excited that this was coming back. We had a
24 year where there was nothing, and it really was a bad
25 part -- I think that having a food service there was a good

1 character to the neighborhood. And when it was vacant, it
2 really felt kind of abandoned. And it made our neighborhood
3 less good. So the fact that we had someone willing to start
4 a business there was really exciting. I think they showed a
5 lot of great community spirit in starting their business in
6 the space. And as one of the younger people in the
7 community, I know it's characterized as a lot of newlyweds.
8 And well, newlyweds and nearly deads that is kind of
9 accurate. But among the younger ones, we all went down to
10 look at this food truck. So I think it was kind of exciting
11 to have that space. And the way they did it I think it
12 showing modernization. I don't know if we have the young
13 people say I love delis. It's just not a current thing
14 anymore. We need something that expresses the newbies in
15 the neighborhood. And we have new people moving into the
16 neighborhood. I am concerned with a lot of the newbie
17 aspects to this. And yes, of course, I do agree with a lot
18 of concerns also, but I believe on the balance of this that
19 the newbism is getting overstated here compared to some of
20 the benefits it brings to the community. And specifically
21 on the claim that they made a poor attempt to resume
22 business in a year. It was a pretty big show. I think they
23 did a great effort of reestablishing the business with the
24 bakery and also with the food truck that was temporary, but
25 was a way of just kind of announcing to the neighborhood

1 that this was a new thing. And I would -- it would be a
2 real shame if you ruled on the one point to say that oh, it
3 really wasn't in a business for a full year so you should
4 cancel the nonconforming use. The conforming use on
5 balance, I don't think anyone was really asking for those to
6 be turned into houses. I know maybe a few people would like
7 to see it as houses, but that would lessen the value of the
8 community to see that they were turned into regular houses.
9 And then we would probably say, should they be white picket
10 houses like the rest of the street or can you put in a
11 mansion in that new spot? I think it would be a shame if we
12 let the lapse happen. It would also be a shame if we
13 weren't a little lenient and said you can do subs there.
14 Why is it so specific? Is it not acceptable? That if it
15 was a taco restaurant, would that be a problem? You know I
16 think the choice of food is pretty restrictive in the way it
17 is described. And I would like to see a wider variety. We
18 went down for subs while it was open as Bernunzio's since I
19 was living there, but I would like to see a larger variety.
20 I kept getting the same thing much every time. So thank
21 you.

22 MR. MIETZ: Thank you. Going once, twice, going
23 three times.

24 MS. MELEO: Can I say one thing? I do have an
25 article. I do not have it with me. But the closing date

1 for the last people that had Bernunzio's, it might be a
2 little misconstrued. I had it last down for October 6th,
3 2015. And I can print that off and show it to you if you
4 want me to bring it in.

5 MR. MIETZ: Okay.

6 MS. KRAUS: I would like to address the fact that I
7 was there that day. And he told me he was closing, and it
8 was September 5th.

9 MR. MIETZ: Okay.

10 MS. MELEO: Officially, it says the October the
11 5th.

12 MS. KRAUS: Well, that was the last day in store.

13 MS. MELEO: I saw you on camera. I saw him tell
14 you that.

15 MR. DI STEFANO: Okay. Let's not.

16 MR. MIETZ: Okay. It's our responsibility to
17 establish what that legal date is. Please. Please.

18 MS. KRAUS: Ann Kraus, 85 Colonial Village Road.

19 MR. MIETZ: Okay. Thank you. Very good. Are we
20 set then? Okay. Very good. So if there is no one else
21 that would like to speak regarding this application, then
22 the public hearing is closed.

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

STATE OF NEW YORK:
COUNTY OF MONROE:

I, BRIANA L. JEFFORDS, do hereby certify that I reported in machine shorthand the above-styled cause; and that the foregoing pages were typed by computer-assisted transcription under my personal supervision and constitute a true record of the testimony in this proceeding;

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action;

WITNESS my hand in the town of Brighton, county of Monroe, state of New York.

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

1 PROCEEDINGS HELD BEFORE THE ZONING BOARD OF
2 APPEALS AT 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK
3 On SEPTEMBER 7, 2016, COMMENCING AT APPROXIMATELY
4 11:40 P.M.

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September 7, 2016
Brighton Town Hall
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

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

DAVID DOLLINGER, ESQ.
Town Attorney

RICK DISTEFANO
Secretary

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

1 Application 7A-01-16. Application of 2601 Lac De Ville
2 Properties, owner of property located at 2601 Lac De Ville
3 Blvd., for modification of an approved free standing sign
4 variance. All as described on application and plans on file.

5 Motion made by Mr. Mietz to deny

6 without prejudice

7 Application 7A-01-16.

8 (Seconded by Ms. Tompkins Wright.)

9 (Ms. Corrado, yes; Ms. Baker Leit, yes;
10 Ms. Dale, yes; Ms. Tompkins Wright, yes;
11 Mr. Mietz, yes.)

12 (Open roll call, motion to deny without
13 prejudice carries.)

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1 Application 9A-02-16. Application of Ken Kellerson/AmaehrKen,
2 LLC, owner of property located at 120 Northern Drive, for a Sign
3 Variance from Section 207-32B(1) to allow for business
4 identification signage on two building sides in lieu of the
5 maximum one side allowed by code. All as described on
6 application and plans on file.

7 Motion made by Ms. Dale to approve

8 Application 9A-02-16.

9 FINDINGS OF FACT:

- 10 1. The main entrance of the building is obscured from the
11 initial vehicular access to the site. Therefore, a second
12 access is needed to give the minimal relief necessary for the
13 use of the property.
- 14 2. Only two signs will be used. One on the west side where
15 visitors arrive to the site. And the other one above the main
16 door of the entrance. The signs are 24 inches by 72 inches and
17 are not large or lighted. One of the sign is from their
18 existing location that will be reused. The total size of the
19 two signs together is less than the maximum allowed for a single
20 sign.
- 21 3. The building has been empty for some time. However, it
22 still has two signs in place from the previous occupants and
23 those signs are approximately where those signs will be.
- 24 4. The difficulty related to the variance request is not
25 self-created. The unique shape of the property and the secluded

1 location is the cause of the difficulty as it is not accessible
2 from West Henrietta Road.

3 5. The variance request will not result in a detrimental change
4 in the character of the neighborhood or surrounding properties,
5 as it is a general commercial area. The new signage will not be
6 visual to the surrounding properties.

7 CONDITIONS:

8 1. Only two signs each 24 inches by 72 inches will be used and
9 will be located as per the application submitted and the
10 testimony given.

11 2. Any necessary Architecture Review Board and Planning Board
12 approvals shall be obtained.

13 (Seconded by Ms. Schwartz.)

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

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

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1 Application 9A-03-16. Application of Joe Hancock, contractor,
2 and Dane and Virginia Detrick, owners of property located at 154
3 Hampshire Drive, for an Area Variance from Section 205-2 to
4 allow an addition to extend 3 ft. into the existing 34.8 ft.
5 front setback where a 40 ft. front setback is required by code.
6 All as described on application and plans on file.

7 Motion made by Mr. Mietz to approve
8 Application 9A-03-16.

9 FINDINGS OF FACT:

- 10 1. Requested variance is not significant at three feet into the
11 existing 34.8 foot front setback.
- 12 2. Since the proposed addition will be under the existing front
13 porch and will not alter the front porch roofline, the addition
14 will be minimally obvious.
- 15 3. No other alternative can get the applicant better handicap
16 access to the home.
- 17 4. No negative effect in the character of the neighbor will
18 result in the approval of this variance since the addition will
19 be minimally visible and will not alter the street scape.

20 CONDITIONS:

- 21 1. This variance only applies as per plans submitted and
22 testimony given
- 23 2. All necessary Architectural Review Board and permits shall
24 be obtained.

25 (Seconded by Ms. Schwartz.)

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

4 (Open roll call, motion to approve
5 with conditions carries.)
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1 Application 9A-04-16. Application of Patrick Langworthy, owner
2 of property located at 159 David Avenue, for an Area Variance
3 from Section 205-2 to allow a bay window to extend 1.5 ft. into
4 the 40 ft. front setback required by code. All as described on
5 application and plans on file.

6 Motion made by Ms. Schwartz to approve
7 Application 9A-04-16.

8 FINDINGS OF FACT:

- 9 1. The extension of 1.5 feet into the 40 foot setback for a bay
10 window is minimal.
- 11 2. The bay window will add character to the front elevation and
12 not obstruct anyone's view.
- 13 3. The house next door and several others on the street also
14 have front bay windows.
- 15 4. There will be no adverse effect on the health, safety, or
16 welfare of the neighborhood as a result of this variance.

17 CONDITIONS:

- 18 1. This variance only applies to the front extension of the bay
19 window as described in the testimony given and described in the
20 application.
- 21 2. All Planning Board approvals must be obtained.

22 (Seconded by Ms. Tompkins Wright.)

23 (Ms. Corrado, yes; Ms. Baker Leit, yes;

24 Ms. Dale, yes; Ms. Tompkins Wright, yes;

25 Mr. Mietz, yes.)

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

1 Application 9A-05-16. Application of Fisher Associates, agent,
2 and Peter Sun/Sukora Home, owner of property located at 2775
3 Monroe Avenue, for an Area Variance from Section 205-12 to allow
4 total on-site parking to be 89 spaces, after expansion of
5 restaurant seating, in lieu of the minimum 105 spaces required
6 by code. All as described on application and plans on file.

7 Motion made by Ms. Tompkins Wright to approve
8 Application 9A-05-16.

9 FINDINGS OF FACT:

10 1. The granting of the requested variance will not produce an
11 undesirable change in the character of the neighborhood or be a
12 detriment to nearby properties and is not substantial. Recent
13 parking counts show ample parking capacity to meet the
14 business's needs after renovation. Further, the property owner
15 is comfortable with the number of parking spaces will be
16 sufficient.

17 2. The granting of the area variance will be consistent with
18 the overall character of the neighborhood and not create any
19 adverse impacts on the quality of life or the surrounding area.

20 3. The type of restaurant being that it includes a hibachi
21 style does not have a high parking demand as a conventional
22 restaurant.

23 4. The benefit sought by the applicant cannot reasonably and
24 readily achieved by any other method. The building contains a
25 significant amount of dining space which cannot be utilized by

1 the property as its current use as a restaurant without a
2 parking variance due to physical constraints of the property.
3 All available parking areas on site have already been utilized.

4 CONDITIONS:

5 1. The variance granted herein applies only to the parking
6 variance required by the additional dining space added pursuant
7 to the application and the testimony given.

8 2. All necessary approvals and permits must be obtained.

9 (Seconded by Ms. Schwartz.)

10 (Ms. Corrado, yes; Ms. Baker Leit, yes;
11 Ms. Dale, yes; Ms. Tompkins Wright, yes;
12 Mr. Mietz, yes.)

13 (Open roll call, motion to approve
14 with conditions carries.)

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1 Application 9A-06-16. Application of The Summit of Brighton,
2 owner of property located at 2000 Summit Circe Drive, for an
3 Area Variance from Sections 203-23A(4) and 203-2.1B to allow an
4 accessory structure to be located in a front yard in lieu of the
5 rear yard as required by code. All as described on application
6 and plans on file.

7 Motion made by Ms. Schwartz to approve
8 Application 9A-06-16.

9 FINDINGS OF FACT:

- 10 1. The variance for a cement pad housing an observatory 92
11 inches in diameter and 90 inches high will not result in the
12 substantial change to the neighborhood which houses the Summit
13 of Brighton as the structure is small.
- 14 2. The structure will be 100 yards from the roadway.
- 15 3. The structure is located on a dead end street.
- 16 4. No other location on the property is suitable for the
17 residents to access the observatory with a telescope because of
18 the difficulty presented by interfering artificial light.

19 CONDITIONS:

- 20 1. This variance applies only to the structure as per plans
21 submitted and testimony given.
- 22 2. All necessary permits shall be obtained.

23 (Seconded by Ms. Corrado.)

24 (Ms. Corrado, yes; Ms. Baker Leit, yes;

25 Ms. Dale, yes; Ms. Tompkins Wright, yes;

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Mr. Mietz, yes.)
(Open roll call, motion to approve
with conditions carries.)

1 Application 9A-07-16. Application of O'Donnell Associates,
2 Inc., agent, and Charles Davis, owner of property located at 745
3 Penfield Road, for relief from Section 225-13A/C to allow for
4 the expansion of a pre-existing nonconforming deli business to
5 include catering, on-site parking of food trucks, installation
6 of commercial kitchen equipment, and construction of a 19 ft. by
7 9 ft. walk-in cooler on the rear side of the building in a RLB -
8 Residential District. All as described on application and plans
9 on file.

10 Motion made by Ms. Corrado to deny

11 Application 9A-07-16.

12 FINDINGS OF FACT:

13 1. Comparison of whether the proposed use is consistent with or
14 more conforming than the use as described in the settlement from
15 April of 1985 hereinafter called "The settlement use." The
16 settlement use establishes the lawful nonconforming use to which
17 the proposed use needs to be compared. The Board needs to make
18 a determination if the proposed use is a more conforming use
19 than the settlement use, more conforming to the underlying
20 established residential zoning. The applicant's proposed use is
21 not within the ambient of the settlement use. As a general
22 proposition, the proposed use contains a production facility for
23 the sale and consumption of food items inconsistent with the
24 food items and methods of sale envisioned by the settlement use.
25 The inconsistencies between the proposed use and the settlement

1 use are evidence that the proposed use is a substantial and
2 unlawful expansion of the lawful nonconforming settlement use.
3 And it is discovered and delivered by analysis of three separate
4 factors: One, the structural and infrastructure expansion
5 required by the proposed use versus the settlement use. Two,
6 the nature of the proposed use food products versus the food
7 products contemplated by the settlement use. And three, the
8 expanded business operations required to support the proposed
9 use relative to the settlement use. One, the infrastructure and
10 changes required by the proposed use evidences a change of use
11 and/or an expansion of use including the 21 foot commercial hood
12 extending over the grilled cooking operation, and two food
13 trucks, and a food trailer stored on site, installation of a
14 commercial kitchen versus the residential kitchen as employed in
15 the settlement use, and a 19-foot by 9-foot commercial cooler
16 addition extending outside of the current building envelope.

17 The distinct difference between the food products sold in
18 the settlement use versus the proposed use also evidences the
19 expansion and/or change of use.

20 The settlement use evidences sale of classic "deli" items,
21 salads, deli meats, et cetera. The proposed use is for grilled
22 and baked complete dinners and side dishes.

23 The difference in the manner of business operations also
24 evidences that the proposed use is an unlawful change or
25 expansion of the current lawful settlement use. The settlement

1 agreement that creates the settlement use specifically states
2 that the lawful sale is items that "are now sold or offered for
3 sale at the said premises." In the proposed use, the sale of
4 foods are sold off the food truck, not the at deli. The point
5 of sale is not at the deli. This distinction evidences that the
6 proposed use becomes a production facility that is a distinct
7 expansion and/or change of the underlying lawful settlement use.
8 Essentially, the proposed use partially creates a production
9 facility as opposed to the established uses retail/sale
10 business.

11 In addition, the proposed use is a vastly different scale of
12 production. Because of the forgoing findings the Board
13 determines that the proposed use is in less conformity with the
14 underlying zoning than the established lawful settlement use.

15 (Seconded by Ms. Dale.)

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

19 (Open roll call, motion to deny carries.)
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C E R T I F I C A T I O N

STATE OF NEW YORK:
COUNTY OF MONROE:

I, BRIANA L. JEFFORDS, do hereby certify that I reported in machine shorthand the above-styled cause; and that the foregoing pages were typed by computer-assisted transcription under my personal supervision and constitute a true record of the testimony in this proceeding;

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action;

WITNESS my hand in the town of Brighton, county of Monroe, state of New York.

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