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PROCEEDINGS HELD BEFORE THE BRIGHTON ZONING BOARD OF APPEALS, HELD AT THE BRIGHTON TOWN HALL, 2300 ELMWOOD AVENUE, ROCHESTER, NEW YORK 14618, ON JANUARY 4, 2017, COMMENCING AT APPROXIMATELY 7:30 P.M.

PRESENT:

DENNIS MIETZ, CHAIRMAN
DOUGLAS CLAPP
CHRISTINE CORRADO
JEANNE DALE
JUDY SCHWARTZ
JENNIFER WATSON
ANDREA TOMPKINS WRIGHT

DAVID DOLLINGER, ESQ.,
Town Attorney

RICK DI STEFANO
Secretary

REPORTED BY: DOREEN M. SHARICK, Court Reporter
EDITH E. FORBES COURT REPORTING SERVICE
21 Woodcrest Drive
Batavia, New York 14020

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CHAIRPERSON MIETZ: At this time I'd like to call to order the January session of the Brighton Zoning Board of Appeals.

Rick, was the meeting properly advertised?

MR. DI STEFANO: Yes, Mr. Chairman. It was advertised in the Brighton-Pittsford Post December 29th, 2016.

CHAIRMAN MIETZ: Okay. Will you please call the roll?

MR. DI STEFANO: Mr. Clapp?

MR. CLAPP: Here.

MR. DI STEFANO: Ms. Schwartz?

MS. SCHWARTZ: Here.

MR. DI STEFANO: Ms. Tompkins Wright?

MS. TOMPKINS WRIGHT: Here.

MR. DI STEFANO: Ms. Dale?

MS. DALE: Here.

MR. DI STEFANO: Mr. Mietz?

MR. MIETZ: Here.

MR. DI STEFANO: Ms. Watson?

MS. WATSON: Here.

MR. DI STEFANO: Ms. Corrado?

MS. CORRADO: Here.

MR. DI STEFANO: Please let the record show

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all members are present.

CHAIRPERSON MIETZ: Okay. So we will get started in a minute. I just want to -- formally, we have two new board members that are joining us for their first meeting tonight, Mr. Clapp and Ms. Watson, so thank you for joining us. We appreciate it and have a nice interesting meeting to launch your zoning board time. Okay.

All right. So Rick, when you're ready, you can read the first application.

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2 Application 1A-01-17. Application of Congregation Light of
3 Israel, owner of property located at 1675 Monroe Avenue,
4 for renewal of a Temporary and Revocable Use Permit
5 pursuant to Section 219-4, to erect a tent and hold up to
6 six outdoor special events for the years 2017 and '18. All
7 as described on application and plans on file.

8 MR. GOLDMAN: Good evening, Mr. Chairman,
9 Members of the Board, my name is Jerry Goldman.
10 I'm the attorney and agent for and member of
11 Congregation Light of Israel, a synagogue, which
12 is located at 1675 Monroe Avenue. The synagogue
13 has been operating at this location for
14 approximately five years. And since its
15 inception, there has been a need on occasion to
16 have events outdoors and to hold them in tents in
17 the backyard. It's something which has been done
18 consistently. It is also something which has not
19 caused any problems with our neighbors and with
20 the community.

21 And we are here, again, this evening for
22 renewal of the Temporary and Revocable Use Permit
23 because it is not something which is normally set
24 forth by code and for the Town to maintain some
25 degree of control. This type of use comes before

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2 the Board every couple of years. And we propose
3 no changes from what has been done previously.
4 There have been conditions imposed as part of the
5 prior applications. We are agreeable to
6 continuing those conditions going forward. And
7 we look forward to continued success on being a
8 member of the Brighton community. With that, we
9 will address any -- I will address any questions
10 that the Board may have.

11 CHAIRPERSON MIETZ: Are there any such
12 questions?

13 MS. SCHWARTZ: Have been no complaints or
14 anything from the neighbors?

15 MR. DI STEFANO: I have not received any
16 complaints, no.

17 MS. SCHWARTZ: I mean over the course --

18 MR. DI STEFANO: Over the course of the two
19 years, no, I have not received any complaints.

20 MS. TOMPKINS WRIGHT: How many events did
21 you hold in say 2015, 2016?

22 MR. GOLDMAN: I believe that there were five
23 or six in each of the years. We came pretty
24 close to the number, but we didn't exceed it.

25 CHAIRPERSON MIETZ: Okay. Any other

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questions? Okay. Thank you, sir.

MR. GOLDMAN: Thank you very much.

CHAIRPERSON MIETZ: Anyone from the audience who would like to speak regarding this application? Okay. There being none, then the public hearing is closed.

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Application 1A-02-17. Application of F & H Development, the owner of property located at 1338 Brighton Henrietta Town Line Road, for renewal of a Temporary and Revocable Use Permit, pursuant to Section 219-4, to allow for the temporary outdoor storage of construction equipment where not allowed by code. All as described on application and the plans on file.

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MR. HAUER: Good evening, Mr. Chairman and Board. My name is David Hauer. I'm managing partner and principle of F & H Development. We are seeking to extend our Temporary Use Permit to allow us ample time to attain the additional financing that we need to finish our project at 1338 Brighton Henrietta Town Line Road. We're anticipating a 12 to 16 month time frame to complete the additional capitalization to proceed forward with our already preliminary plans that we already presented to the Town.

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CHAIRPERSON MIETZ: Okay. So what have you done so far then? There is a concept plan that you have?

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MR. HAUER: We already passed architectural review. We already got to our final stage of review with the Town. And then there was some

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2 unseen expenses that we were going to be required
3 to come up with. So we need that time frame --
4 additional time frame to come up with the capital
5 to pay for these additional requirements.

6 CHAIRPERSON MIETZ: So you are saying then
7 12 to 16 months. Is that prior to starting the
8 project?

9 MR. HAUER: No, we need at least a minimum
10 of 12 months to acquire the additional capital.
11 We need to acquire at least another 52,000
12 because we were overbudget with the additional
13 requirements. That gives us ample time to save
14 the money to proceed forward with our original
15 scoping.

16 CHAIRPERSON MIETZ: How long do you think
17 the construction will take?

18 MR. HAUER: It will take us 30 to 45 days to
19 have it complete.

20 MS. DALE: Do you have any problems
21 complying with conditions that were previously --

22 MR. HAUER: No, ma'am, we don't.

23 MS. CORRADO: If I recall, when you first
24 made this request, there was a question of the
25 wetlands behind there and status with the DEC.

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Has that all been revolved?

MR. HAUER: Yes, ma'am.

CHAIRPERSON MIETZ: Okay. Okay. All right. So basically, there's nothing really that's changed. Agree with all the conditions that were imposed last time?

MR. HAUER: Yes, sir.

CHAIRPERSON MIETZ: Okay. Any other questions that the Board has?

MS. DALE: So the request is for 16 months then?

MR. HAUER: Yes.

CHAIRMAN MIETZ: Okay. All right. Thank you.

MR. HAUER: Thank you.

CHAIRMAN MIETZ: Is there anyone in the audience that would like to speak regarding this application? Okay. There being none, the public hearing is closed.

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Application 1A-03-17. Application of Ninety Rock, LLC, contract vendee, and C.T. Yang Corp., owner of the property located at 2830 West Henrietta Road, for Sign Variances from Section 205-32 to 1) allow two freestanding menu boards in conjunction with a drive-thru restaurant where not allowed by code, and 2) allow for business identification signage on the second building face of a new restaurant building where not allowed by code. All as described on application and plans on file.

MR. GRINNELL: Good evening, I'm here on behalf Ninety Rock and Tim Horton's, represented behind me with Chris Kennedy and Robert Gamperl. My name is Brian Grinnell. I'm representing Bergman Associates. I'm the architect on the project.

What we are proposing here is the Tim Horton's located at 2830 West Henrietta Road. We are located just north of Brighton Henrietta Town Line Road, which is located down here. What we're asking for is an additional sign here over the entry. This is also facing -- it's on this face, which is facing that main intersection, which is the main reason why we are asking for the request of additional signage for the

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2 building. Our biggest time for business is in
3 the morning and a lot of the traffic is coming
4 from that direction.

5 The second thing that we're asking for are
6 for menu boards for the drive-thru. Obviously,
7 drive-thru doesn't work without the menu boards,
8 but it is a conditional use. So we are
9 requesting that as well. Obviously, the portion
10 of the neighborhood the Tim Horton's fits in, you
11 know, it's surrounded by a lot of commercial
12 quick serve restaurants. You know, it's
13 certainly not going to change the character of
14 the neighborhood. Fits in pretty well with what
15 the surroundings are. With that, if you have any
16 questions?

17 MS. DALE: Yeah, I have a question.

18 MR. GRINNELL: Sure.

19 MS. DALE: So it looks like the two Tim
20 Horton's signs, it looks like one is a little bit
21 bigger than the other?

22 MR. GRINNELL: Correct.

23 MS. DALE: But in your application, you
24 state that the combined area of the two signs is
25 still smaller than the --

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MR. GRINNELL: The allowable.

MS. DALE: Than what is allowed.

MR. GRINNELL: Correct, yup.

MS. DALE: And did you -- I'm just a little curious about the fact that I think the one that's bigger is the one that faces Brighton Henrietta Town Line Road?

MR. GRINNELL: Yup.

MS. DALE: Which is actually -- I don't know, I guess I would consider that the side of the building and the front of the building being on West Henrietta Road.

MR. GRINNELL: Correct.

MS. DALE: I'm a little curious about why that was a little bigger than the other. I would have just sort of thought they'd be the same size. Did you guys think about --

MR. GRINNELL: Yeah, so as you can see kind of with the architecture, the sign face, due to the size of the entry, this sign face here, the building face, is a larger face. So what we have tried to do is kind of keep this proportional between this space to the signage and this space to the signage --

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MS. DALE: Okay.

MR. GRINNELL: Just trying to keep things proportional is really where that came from.

MS. DALE: Okay. And did you feel that you didn't have the second signage, your concern would be that people on Brighton Henrietta Town Line Road wouldn't be able to find your location?

MR. GRINNELL: Yeah, coming from that main intersection, the majority of the people, like I said in the morning, the main traffic route is coming towards 390. And that's what we are trying to get a presence, you know, in the area. So that people can see it from the road. With this being the main entrance here, in a commercial setting, it would be pretty odd to not have a sign over your door. You know, kind of showing where that the entry is to your patrons.

MS. DALE: Did you choose the entry, so I guess the follow-up question, you could have had the entrance in the front?

MR. GRINNELL: We could. But if you -- you know, if you look at where the parking is, main parking here, you know, this is -- would be the more convenient rather than coming around to the

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front where there is no parking. You know, there's not a whole lot of pedestrian traffic that would really --

MS. DALE: Yeah.

MR. GRINNELL: If there was a lot of pedestrian traffic, I could really see the argument for trying to draw people off the road. But with vehicular environment --

MS. DALE: So it was a physical design that --

MR. GRINNELL: Yeah, it's more so that it's, you know, close for the parking, to all the parking as well.

MR. KENNEDY: If I may, my name is Chris Kennedy from Ninety Rock.

CHAIRPERSON MIETZ: Come up to the podium.

MR. KENNEDY: Sure, sure, sure. My name is Chris Kennedy with Ninety Rock. And part of the reason for the street facing sign towards Brighton Henrietta Town Line Road is 80 percent of our business comes from a.m. traffic and that stretch of the road is developed going from Henrietta to 390 as Brian mentioned. So having the street sign facing 80 percent of our business

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2 makes much sense for us and then having a sign in
3 front also helps the other day parts. And we've
4 seen -- I've worked in six different states in
5 two different QSR brands, having supported signs
6 that face different day parts with the traffic
7 has dramatically helped sales in all QSR zones.

8 MS. SCHWARTZ: Have you -- I'm sorry, oh,
9 did you consider stepping that building back a
10 bit so that you could have your front entrance on
11 West Henrietta and therefore, just one sign?

12 MR. KENNEDY: So we looked at many different
13 -- many different possibilities. There's a
14 visibility issue the further back the building
15 goes. If I had it my way, which we are not going
16 to talk about today, but I've actually pushed the
17 building closer towards the road because there's
18 actually trees in the lot just south of it, that
19 would prohibit you from actually seeing the
20 signage at all. So the closer to the road is
21 better for the building and it allows us to have
22 that longer and lasting change of behavior for
23 the driver to actually turn into the building and
24 if it was behind -- if it was set back further,
25 they would drive right by it. So that was part

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of the reason.

CHAIRPERSON MIETZ: Okay. Good. Other questions?

MR. DI STEFANO: For the record, what is the total square footage of signage for both sides?

MR. GRINNELL: It's 55 point -- it's 55 square feet.

MR. DI STEFANO: 55 square feet.

MR. GRINNELL: Yes.

MR. DI STEFANO: Is the total. All right.

CHAIRPERSON MIETZ: And then any other questions about the menu boards and we face that in any other drive-thru application that we have had in the last number of years, so it's nothing unusual.

MS. SCHWARTZ: Okay. Just point out on your map there where they would be located?

MR. GRINNELL: This would be the menu board here and then behind it would be the pre-sale board.

CHAIRPERSON MIETZ: On the back side?

MR. GRINNELL: Correct.

MR. DI STEFANO: Even if those signs had any Tim Horton's identification on them, they

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couldn't be seen from the road, could they?

MR. GRINNELL: No.

MR. DI STEFANO: Thank you.

CHAIRPERSON MIETZ: Anything you want to comment about the site or what you're doing there? So nothing unusual, correct?

MR. GRINNELL: No.

MR. GAMPREL: This is Rob Gamprel.

CHAIRPERSON MIETZ: Hi.

MR. GAMPREL: Hi. We just wanted to point out that for the set back of the building, that we are matching the zoning required set back at 60 feet from the right of way and in addition to that, the building was approved by the Architectural Review Board. They are in full support of the architectural statement with the signage not being overly stated.

CHAIRPERSON MIETZ: Okay. Great. Okay. Any other questions? All right. Thank you.

MR. GRINNELL: Thank you.

CHAIRPERSON MIETZ: Okay. Is there anyone in the audience that would like to speak regarding this application? Okay. There being none, the public hearing is closed.

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2 Application 1A-04-17. Application of Chef's Cater-All,
3 LLC, contract vendee, and 745 Penfield Road, LLC, owner of
4 property located at 745 Penfield Road seeking appeals of
5 portions of the Town Planner's letter dated December 2,
6 2016, an interpretation that intended uses at the property
7 are legal non-conforming uses, and an appeal from the Town
8 Planner's Accusation of Violation dated December 7, 2016,
9 all pursuant to Section 219-2A. All as described on
10 application and plans on file.

11 CHAIRPERSON MIETZ: How are you?

12 MS. O'TOOLE: Good evening, Chairman,
13 Members of the Board. My name is Bridget
14 O'Toole. I'm an attorney with the Zoghlin Group,
15 LLC, and I'm here on behalf Chef Zazzaro, who is
16 here with me and Chef's Catering Inc., and Chef's
17 Cater-All, LLC.

18 Chef Zazzaro was previously before this Board
19 on another application. Since then, he's taking
20 the comments of the Board very seriously and has
21 re-evaluated the scope of the pre-existing
22 non-conforming use at 745 Penfield Road. We
23 believe that Chef Zazzaro's current use of the
24 property fits within the parameters of the
25 pre-existing non-conforming use.

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2 Chef Zazzaro operates his business out of two
3 locations, the catering kitchen on East Avenue in
4 the City of Rochester and the Deli and Bakery
5 here in Brighton on Penfield Road. Catering for
6 large events and the food truck business, which
7 you have heard about The in the past, takes place
8 primarily out at the East Avenue location, not
9 out of Penfield Road, and while the Penfield Road
10 location focuses on traditional bakery and deli
11 foods as well as made to order meals and take out
12 meals and delivery.

13 This appeal stems from parts of the Town
14 Planner's decision and interpretation or
15 determination that was dated December 2nd, 2016,
16 concerning the pre-existing non-conforming uses
17 at 745 Penfield Road. And for the reasons set
18 forth in the appeal that you have before you, we
19 ask you to determine first that the deli/bakery,
20 carry out food preparation uses are pre-existing
21 non-conforming uses pursuant to the Town Code.

22 Installing a hood for fire safety purposes is
23 permitted pursuant to Sections 224-4F1, 225-14A
24 and/or 225-17. That off site delivery, prepared
25 food is a lawful pre-existing non-conforming use

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2 of the property. That occasional overnight
3 parking of food delivery vehicle at the property
4 is a lawful pre-existing non-conforming use and
5 that relocating the existing dumpster and fencing
6 it in is permitted pursuant to Sections 224-4F1
7 and/or 225-14A.

8 Unless there are any specific questions about
9 the deli, bakery or carry out and food
10 preparation uses, I think that we are in
11 agreement with the Town Planner that these are
12 pre-existing non-conforming uses and I would rely
13 on our written submission in that regard.

14 CHAIRPERSON MIETZ: All right. So based on
15 what we had received in the previous, is there
16 anything that's changed in your own feeling about
17 what you are doing at the site? Because if you
18 will recall from the last discussion we had, one
19 of the things that was important for us was to
20 understand clearly what it was you were trying to
21 do at this location because what was written down
22 sometimes is a little nebulous. So you did
23 answer the question. You did. So I don't know.
24 Do you want to restate that for us? Is there
25 anything you want to make clearer?

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MR. ZAZZARO: Clarify as far as I've my two businesses, Chef's Catering.

MR. DI STEFANO: State your name for the record?

MR. ZAZZARO: Michael Zazzaro. So primarily, out of East Avenue and a full service catering, food truck production out of there, which wasn't clear a few months ago, so wanted to make that clear. And then primarily, out of 745, that is our store front. We have sandwiches, salads, prepared meals and we just -- we want to be able to cook things safer. So as far as what's done out of there, the catering that we want to do is it's more of six, eight, ten, 12 person lunches. People call for it. It's not our weddings, our corporate events. That's all executed out of East Avenue.

CHAIRPERSON MIETZ: So what you're saying is that if somebody wanted the food truck to location X on Saturday, you wouldn't be preparing those items at Penfield Road?

MR. ZAZZARO: Correct. That would be done at East Avenue. I have proper storage secured. It's actually right across the street in a

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2 parking lot. I have a contract with McDonald's
3 owner. That's where I park my food trucks. That
4 wasn't clear before.

5 CHAIRPERSON MIETZ: Okay. Anything else?
6 Go ahead.

7 MS. TOMPKINS WRIGHT: So no food trucks
8 would be parked at the Penfield Road location?

9 MR. ZAZZARO: No, we are asking for --

10 MS. O'TOOLE: May I jump back in?

11 CHAIRPERSON MIETZ: Sure.

12 MR. DOLLINGER: I would jump in, too. I'm
13 not sure that that response is consistent with
14 the application. That's one of my problems.

15 MS. DALE: Okay. When you said, no, you
16 mean, no, there won't be food trucks ever parked
17 on Penfield Road or no, that is --

18 MS. O'TOOLE: Can I clarify? So with regard
19 to the food trucks --

20 CHAIRPERSON MIETZ: Yes. Come up, again,
21 because the audience wants to hear.

22 MS. O'TOOLE: So with regard to the food
23 trucks, they will be coming and going with regard
24 to pickups and deliveries from time to time. And
25 we are saying that there may be a time

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2 occasionally that one of the vehicles, whether
3 it's a food truck or a van, may be parked
4 overnight and we think that that's consistent
5 with the use of originally with the dairy and all
6 the uses since then.

7 CHAIRPERSON MIETZ: Okay. Now, you just
8 made a statement. You said the trucks would come
9 for pickup and delivery, pickup and delivery of
10 what?

11 MS. O'TOOLE: Food.

12 CHAIRPERSON MIETZ: You want to explain like
13 what the purpose is of that?

14 MR. ZAZZARO: All right. I'll explain.

15 CHAIRPERSON MIETZ: We want to make sure
16 that we understand it clearly.

17 MR. ZAZZARO: So the food truck, production
18 of food, right before you go to an event,
19 primarily, it's done out of East Avenue. If we
20 need to, we are just being detailed and want to
21 make sure it's okay if we need to bring something
22 from 745 to East Avenue, I mean my businesses
23 they don't overlap, but I mean they're
24 co-branded. I mean it's my brand, but if I get a
25 delivery, or you know, that's primarily what

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she's talking about, food, you know, delivery of food.

MS. DALE: So if I may, you've got the location on East Avenue --

MR. ZAZZARO: Correct.

MS. DALE: -- And you've got the situation agreement with the guy who owns the McDonald's that you are allowed to park there, so how come -- can't you just say you'd never park the truck on Penfield Road? I mean like you're saying occasionally you would need that. But if you drop that, it might help. I mean like you'd have an alternative, right so?

MS. O'TOOLE: Can I jump in again?

CHAIRPERSON MIETZ: Sure, go ahead.

MS. O'TOOLE: Okay. So part of the reason that the food trucks have been there recently is the issue that I was just about to get to, which is the range hood. You know, there's no range hood currently inside the deli for cooking. And for safety purposes, it really is important to have this range hood and there would be very minimal exterior visibility, just the vent going out the back. So the trucks do have a range

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2 hood. And so some of the -- if I'm right, the
3 trucks have been used for some food preparation
4 at the property for safety reasons.

5 MS. DALE: We're just talking about just
6 overnight storage, right?

7 MR. ZAZZARO: No.

8 MS. DALE: So you're not cooking in the
9 middle of the night?

10 CHAIRPERSON MIETZ: We are mixing it up,
11 too.

12 MS. DALE: Well, I don't think we are. So
13 I'm asking you to never park the truck there
14 overnight and you're saying you need the truck
15 there because you need to cook there because you
16 don't have the range hood. So my response is,
17 you're not cooking in the middle of the night.
18 So why can't you park on the food truck on East
19 Avenue or McDonald's?

20 MR. ZAZZARO: Oh, yeah. I was just being
21 clear as far as bringing food -- you know,
22 wanting to make sure it's okay during the day to
23 have a truck, delivery truck, show up, in and
24 out. It's not going to be there long-term. I
25 just want temporary, just want permission so it's

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clear that, okay, it's not being parked there overnight.

CHAIRPERSON MIETZ: Right.

MR. ZAZZARO: It's not being parked their overnight.

MS. DALE: I thought --

MR. ZAZZARO: We're asking for partial.

CHAIRPERSON MIETZ: Okay. You want permission is what he's trying to say.

MS. DALE: I heard the applicant ask to park there occasionally so.

CHAIRPERSON MIETZ: Yeah, we're trying to get clear that we understand what you are saying about day use. But why does it need to be over there overnight?

MR. ZAZZARO: We touched on that point because the point of the truck being there when we had -- we had to touch on that because there was a violation. We had the truck parked there. It's because of the hood, to cook safer and to be -- I mean to have a hood and an anso system, these trucks are more safe than restaurants and I just need a hood. That's my point of the truck. The truck isn't there doing anything else.

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2 MS. CORRADO: Why would you not be using the
3 truck at the East Avenue location to do food
4 preparation if you don't have the appropriate
5 equipment at Penfield Road?

6 MR. ZAZZARO: We do have the proper
7 equipment at Penfield Road. The trucks aren't
8 there any more. I'm just -- I'm asking for a
9 hood because for fire safety and for my employees
10 and for the community and my neighbors, it's a
11 fire hazard for things that have been done there.

12 MS. DALE: Let's do one thing at a time. So
13 my question is, why do you have to park the truck
14 overnight on Penfield Road? And would you be
15 willing to let that go?

16 MR. DOLLINGER: I don't have that question.

17 MS. DALE: Am I not saying it right?

18 MR. DOLLINGER: I don't have that question.
19 I'm not clear what the use of the truck is. I
20 mean because we really -- I guess I'm afraid of
21 this argument. This is about uses.

22 CHAIRPERSON MIETZ: Right.

23 MR. DOLLINGER: And so at this point, you
24 know, the question is what uses are supported to
25 follow-up your question.

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MS. DALE: Yes.

MR. DOLLINGER: So the real question probably --

MS. DALE: No. I think one piece at a time, right?

MR. DOLLINGER: What is the use that the truck gets supported of why the truck needs to be there? That's kind of what you're asking, right?

MS. DALE: Yes. I heard that it's because of the hood, which is a different thing, you know --

MR. DOLLINGER: Right.

MS. DALE: I'm just saying you're not cooking in the middle of the night.

MR. DOLLINGER: Well, what is the use that supports the hood? Why do you need a hood? I'm just trying to frame the argument so we get the -- what is the use that that requires -- there's no hood there now. So what is the change in use? What's the different use that now requires a hood and also requires a truck?

MS. O'TOOLE: Okay. It's not that the use has changed. It's that safety standards have changed. There was always deli there going way

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2 back. There was food preparation and some
3 catering. It was all being done without a hood.
4 It's not that it can't be done without a hood.
5 It's that that's not the safest way to do it.
6 And safety standards have changed since, you
7 know, certainly, the teens and twenties,
8 thirties, forties, seventies, nineties. It's a
9 safety concern.

10 MR. DI STEFANO: Let me ask the question.
11 If you got everything you wanted to and the hood
12 was installed and would there be a requirement
13 for that truck to be ever parked there overnight?

14 MS. O'TOOLE: The truck would not need to be
15 there for any cooking reasons. The reason that
16 the truck --

17 MR. DI STEFANO: I'm not saying cooking
18 reasons.

19 MS. O'TOOLE: If I can --

20 MR. DI STEFANO: I'm not saying cooking
21 reasons. I'm saying would there be a reason for
22 that truck to be parked there overnight?

23 MS. O'TOOLE: And if I could please finish
24 my statement?

25 CHAIRPERSON MIETZ: Okay. Go right ahead.

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2 MS. O'TOOLE: Just let me get it out. So
3 would not need to be there for that reason. The
4 reason that it is included in the application is
5 because we believe that there's history at the
6 property of occasional truck storage. We're not
7 asking to do that all the time. There could be
8 inclement weather. Reasons come up, flat tire
9 that it may be at the property and we are just
10 looking not to get violated any time that there
11 is an extraneous circumstance. The primary
12 storage will be on East Avenue in the city.

13 CHAIRPERSON MIETZ: But again, just to
14 reframe the question a little bit then, if you're
15 fortunate enough to get the rest of that
16 application approved for the hood, then unless
17 the hood was to break down, there would be no
18 reason that the truck would need to be used for
19 anything at that site other than picking up and
20 delivering, correct? Is that correct?

21 MR. ZAZZARO: Correct.

22 MS. O'TOOLE: Correct.

23 CHAIRPERSON MIETZ: Does everyone
24 understand?

25 MR. ZAZZARO: The reason the truck was

1
2 parked there was to use the range, the hood.
3 That's why it was there just to let everyone, you
4 know.

5 CHAIRPERSON MIETZ: Okay.

6 MS. O'TOOLE: Okay.

7 CHAIRPERSON MIETZ: Go on, please.

8 MS. O'TOOLE: Okay. So I think we've
9 touched on the range hood. We believe that it is
10 permitted under three different sections of your
11 zoning code as we are permitted to have an
12 exterior alteration for a nonconforming use if
13 it's for public safety. We think that this is a
14 public safety issue and also because it is very
15 deminimous and almost the entire alteration will
16 be inside of the building with the exception of a
17 small vent going out the back which will not be
18 visible from the road.

19 CHAIRPERSON MIETZ: Okay.

20 MS. O'TOOLE: And if you have any specific
21 questions about the hood or ventilation system,
22 Chef Zazzaro is happy to answer your questions.
23 There will be a fire suppression system. It's
24 just better. It cuts out the human element. If
25 there were a fire, it would be immediately

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triggered. The gas would turn off and --

CHAIRPERSON MIETZ: I think we're pretty familiar. Go ahead.

MS. SCHWARTZ: Okay. Let's go back to the venting for the hood. There must be some difference between the cooking, the preparation that's been done all these years before versus all the preparation that you're going to be doing now. Because how were things vented before when there was no hood? So there must be a change.

MR. ZAZZARO: Yeah, I can answer that question. We're actually still using -- there was a pre-existing convection oven that is self-venting out, which let's all the fumes and smells out. That is still there. We still use that, but there was also a residential oven. There was actually a flame that didn't have a hood over it, which is, you know, it's not safe in Monroe County. It's not allowed. So that's to heat up your sauces and soups. I mean, obviously, there's other ways to do stuff, but professionally and the right way, we would like -- you know, I'd like to have a six burner range and a hood to do that stuff instead of not having

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a hood.

MS. SCHWARTZ: So what will be vented otherwise from this?

MR. ZAZZARO: So actually, the technology nowadays, there's filters and specific elements in the hood system and the actual ventilation that there's no -- there is not going to be what everybody thinks is going to be sprayed into the air, grease, all these different smells. There's filters and there's obligations. We have to get these inspected every six months and cleaned. So there's very -- there's maintenance schedules. There isn't going to be a change in what is already being done. We are already -- I'm doing it right now with the convection oven. You know, the same smells that are going out in that vent, nothing is different. I mean nothing's changed. We have been open for --

MS. SCHWARTZ: And the vent is going to be in the same spot? The vent is going to stay in the back?

MR. ZAZZARO: So the vent for the convection oven is actually on the side of the building in between the four car garage storage unit. You

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2 can see that. That goes directly out the side up
3 to the chimney and then we're -- we're asking for
4 the vent for the hood would be the back of the
5 building. So the building is like this, the back
6 side, right on this lower end is where the
7 ventilation will be.

8 MS. SCHWARTZ: That's going more towards the
9 neighbors, towards the residential area would you
10 say?

11 MR. ZAZZARO: There's quite -- there's a far
12 distance.

13 CHAIRPERSON MIETZ: Do you have an idea how
14 far?

15 MR. ZAZZARO: Actually, our neighbors that
16 it's pointing, there's quite a few distance.
17 It's been -- they're okay with it and it's not an
18 issue with them.

19 CHAIRPERSON MIETZ: Do you know
20 approximately how many feet from the nearest
21 residence that vent would be?

22 MR. ZAZZARO: The vent to --

23 CHAIRPERSON MIETZ: To the nearest --

24 MR. ZAZZARO: To the nearest house?

25 CHAIRPERSON MIETZ: Let's say to the nearest

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house, to the nearest structure.

MR. ZAZZARO: I'd say at least --

MS. O'TOOLE: Probably a thousand feet. I think the vent is farther away from -- I mean that's an approximation. I didn't go out and --

MR. DI STEFANO: A thousand feet is a long ways.

MR. ZAZZARO: 500 to a thousand feet. I'm about -- from where the vent is and then the back property line, there's about 30 or 40 feet and then there's a house about four, 500 feet beyond that.

MS. O'TOOLE: So maybe not a thousand feet. I think it is farther from my observation from the back of the building to the house behind than it is from the side vent to the house on the side.

CHAIRPERSON MIETZ: Right. Okay.

MS. O'TOOLE: Does that answer your question? Without the exact measurements. I'm just a lawyer. Not an engineer.

CHAIRPERSON MIETZ: I'm just asking for an approximate. Do you have more questions?

MS. SCHWARTZ: No.

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CHAIRPERSON MIETZ: No.

MR. DOLLINGER: I have a question.

CHAIRPERSON MIETZ: Hold on. Go ahead,
Dave.

MR. DOLLINGER: In the stipulation what was
it, 19--?

MS. O'TOOLE: 1985, '87?

MR. DI STEFANO: '85 I believe.

MR. DOLLINGER: Yeah, I was wondering which
-- it sets out the uses and I was questioning
which one of these uses that I read would require
the 20 foot hood whatever? Is that what it is?
How long is the hood? 20 feet?

MR. ZAZZARO: I can tell you what exactly
what I'm putting under.

MR. DOLLINGER: I'm going to read it. It
says, it is the business of the defendant is sale
of such goods and products by the defendant
including milk, cheese, other dairy products,
sale of -- manufacturing sale of ice cream, food
and food products, including parottas, canned
foods, frozen foods, soft drinks and beer, meats,
including frozen meats, baking and sale of bread,
pies, baked goods including pizza, household

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cleaning items such as soaps, cleaners and cleaning equipment and general articles of such nature, what out of those uses would require a hood?

MS. O'TOOLE: Well, a pizza oven would require a hood, Mr. Dollinger, as well as I think --

MR. DOLLINGER: I'm not sure -- you could use a hood, but you're telling me it would require a hood?

MR. ZAZZARO: They require, Monroe County.

MS. O'TOOLE: Now, safety, safety standards are different now.

MR. DOLLINGER: Okay. So pizza. What other uses you proposing there would be -- I'm not sure that --

MS. O'TOOLE: Well, I think this is overlooking the general part, which is that you're not limited to specific sale of specific food and that was addressed by the Town with the Decastros and in that action if you look at, there was a letter --

MR. DOLLINGER: Are you saying the letter from Gary Shirley?

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2 MS. TOMPKINS WRIGHT: I think that sort of
3 expanded it to subs and deli platters, which they
4 thought --

5 MR. DOLLINGER: I would ask the same
6 question of that letter, what in that letter,
7 which it does expand the uses or clarifies might
8 say, it doesn't say expand it, what in that
9 letter determines that you would be required to
10 have a large hood? I don't know, the range or
11 what you call it, hood?

12 MS. O'TOOLE: I got this. Because what Gary
13 Shirley's letter and the letter back from the
14 town attorney at the time, was that because --
15 just read right from it. I also -- I'm in the
16 middle here. I also note that the listing of
17 specific items is prefaced with the wordings
18 consisted of the sale of all such goods and
19 products as are now sold or offered for sale
20 including the use of words such as and including
21 indicates to me that the Town did not intend the
22 following list of specific items to be
23 interpreted as a complete list of items that can
24 be legitimately sold.

25 MR. DOLLINGER: I agree with that.

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MS. O'TOOLE: So I guess --

MR. DOLLINGER: The nature of the statutory construction you typically would continue and go along and find out what they are talking about. I find no objection to selling sandwiches or similar pre-fixed items with the understanding that they are sold for off residence consumption. The Town has recognized the sale of sandwiches, hors d'oeuvres -- grocery, deli operations in our community.

CHAIRPERSON MIETZ: Slow down.

MR. DOLLINGER: I mean I hear what you are saying. It does say that, but then it goes along to further similarly to define and restricts in a way the understanding of what the deli use is. I go back to my same question, any of these uses you see in this letter require a range hood?

MS. O'TOOLE: Yes, hot prepared deli foods would require a range hood, anything -- and baked foods. Anything that is going to be cooked over on a hot surface and produce steam and vapor should be under a hood. This is a basic safety issue and I guess I'm concerned that you're saying that even though there's hot food that has

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2 been sold in the past, that your opinion is that
3 there shouldn't be hot food sold now, is that
4 correct?

5 MR. DOLLINGER: No. I'm not saying that
6 specifically. I'm saying that I don't see
7 anything in these two letters that allows for
8 mass production it seems to me of hot foods under
9 -- under a large grill. I don't see it. I'm not
10 sure that just a broad reading of this. I mean
11 I'm trying to look at it. If you can convince me
12 differently, I'd love to hear it. I look at this
13 and I see sandwiches, hors d'oeuvres and salads.
14 I mean pizza, yes. There's a pizza in front of
15 me, but I'm looking for some information that you
16 can give me that kind of supports your position
17 that in these two letters there's evidence of --

18 MS. DALE: It's just a different scale and
19 scope.

20 MR. DOLLINGER: I don't even see the use --
21 I mean other than pizzas, I haven't seen any
22 recognition of any specific use here that would
23 require any kind of hood at all.

24 MR. O'TOOLE: I disagree. I think you're
25 mischaracterizing the scale. The scale is that

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2 Chef Zazzaro and his staff make food to order.
3 Someone comes in and if it's hot food, it's made
4 to order. I mean that's not mass scale. As far
5 as catering, you know, Chef Zazzaro said that he
6 intends -- he's talking about lunches for six to
7 ten to 12 people. And that his main catering
8 operations are out of the East Avenue location.
9 So I guess when you say mass scale, I'm not sure
10 what you mean. I think maybe we're having a
11 disconnect.

12 MR. DOLLINGER: Well, the only reason I
13 would say that is it seems to me the size of the
14 range hood leads me to believe that you're not
15 cooking one pizza. I guess that's where I'm
16 going with that.

17 You know, again, I don't know the nature.
18 I'm trying to get to the nature of your
19 operation.

20 MR. ZAZZARO: Can I go through my equipment
21 and what we -- why I have --

22 MS. DALE: Let me say first, I think the
23 struggle that we've got is that your, you know,
24 your testimony is how you're going to use this
25 facility versus let's say your East Ave.

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facility. And that doesn't seem to jive with what you're actually asking for.

MS. O'TOOLE: The hood, the reason it's 20 feet long is because it's going to cover all of the equipment. It's just larger equipment. That's all. You know, things have been moved and it's -- I mean I'm sure there's safety parameters.

MS. DALE: So you have put in new equipment that is larger, can handle more than what originally had been there?

MR. DOLLINGER: I could hear what's under the hood. I think that will definitely help.

MR. ZAZZARO: Safer equipment.

MR. DOLLINGER: Are we going in the right direction?

CHAIRPERSON MIETZ: Yeah, I think maybe it would be good to clarify what is under the 20 feet of hood. Let's hear what that is.

MR. DOLLINGER: What's the use? You know, what are you using it for?

CHAIRPERSON MIETZ: Right.

MR. ZAZZARO: So I told you it's a long the back wall. So we are looking -- I have a

1
2 convection oven, which is about four and a half
3 feet wide. Okay. And then I have one fryer.
4 And then I have a grill. Well, back it up.
5 Sorry. Back to the fryer. We want the fryer --
6 Bernunzio's in previous, they had table top
7 fryers. They are not as safe. So I'm asking the
8 fryer to be under the hood. Then I have a three
9 foot -- three foot chargrill, which we like to do
10 grilled chicken. They used outdoor grills. I
11 mean there's -- it's what we -- that's what they
12 used this for, for the grill, to do grilled
13 chicken. Then we have a flattop grill, three
14 foot flattop grill. In which they had little
15 Bunsen burner pancake flattop grills that they
16 used on the tabletops, which aren't safe. And
17 then a six burner range, which we use to make our
18 soups, sauces, heat things up, that sort of
19 thing. So I'm not -- we're not asking for an 18
20 burner stove, two double deck convection.
21 Talking about volume, I can tell you what I need
22 to push out volume. This isn't what I need to
23 push out volume. This is just to be safer.

24 MR. DOLLINGER: How would you describe your
25 set up sizewise and grillwise, et cetera, at East

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Avenue?

MR. ZAZZARO: I have as far as -- it's actually my commissary there. It's not a store front. It's just a commercial kitchen. I have an upstairs where we do all our cooking. We have an 18 burner range, four convectional ovens and a double stack convection oven and we also have a full dish room, where we do all of our cleaning, pots and pans.

MS. DALE: Do you have fryers there?

MR. ZAZZARO: And then I actually -- I actually have -- we have a walk in cooler that is inside for all of our cooling and all of our refrigeration. And then we have a cold prep kitchen area where we prep everything and everything -- all of our -- a lot of the frying for all of our on site jobs, our mobile trucks, we have a fryer in those.

MS. DALE: Oh, in the trucks, but not at East Avenue?

MR. ZAZZARO: No.

MR. DOLLINGER: How big are the grills at East Avenue?

MR. ZAZZARO: 36 inches.

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MR. DOLLINGER: Same size then?

MR. ZAZZARO: Same size.

MR. DOLLINGER: There's one or two of them?

MR. ZAZZARO: I have two.

MR. DOLLINGER: Two grills, same size, so
it's a similar set up?

MR. ZAZZARO: I have the same range.

MR. DOLLINGER: Almost the same set up both
places I mean grillwise?

MR. ZAZZARO: No, it's not.

MR. DOLLINGER: No, I'm not -- no, I just
thought you said it was. I would be impressed if
it was.

MR. ZAZZARO: Catering, need a lot of
burners, a lot of convection ovens. That's what
my East Avenue location has and which I -- that's
what we use it -- that's the use of what we do.
At Penfield, I'm just asking for one oven, one
fryer. Our grill and our flattop, it's the same
that we -- that it's used on a small scale. It's
not your largest. I mean there's larger grills
and items that you can use to produce volume and
I've worked -- I'm just making it clear what we
do, you know. The weddings, larger events, those

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2 are done out of East Avenue. Preparation.
3 Penfield Road. We are just looking for a safer
4 way for my employees, for the community, to have
5 ventilation. That's all. It's not going to
6 change what I'm doing. The menu and specials and
7 everything that we're doing today and yesterday
8 and the day before and the past two months,
9 nothing is going to change. Our business isn't
10 going to get -- I mean we have had very good
11 support through the past four or five months.
12 And we're a small business. It's not going to
13 change our business by getting a hood at
14 Penfield.

15 CHAIRPERSON MIETZ: Did you have a question,
16 Andrea?

17 MS. TOMPKINS WRIGHT: I think you answered
18 it. The hood is really for the benefit you are
19 saying, you have grilled chicken. Obviously, if
20 you're going to grill chicken on a grill, you're
21 going to want a hood. And you can use grilled
22 chicken in sandwiches and salads. What other
23 types of food are you cooking on the truck
24 because of the hood? What are the foods that
25 you're cooking on the truck now because of the

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hood and then bringing into the store that you switch that and what are they used for in the final form?

MR. ZAZZARO: Yeah, grilling, grilling chicken, you know, the grill, that's primarily what that's used for, if we run a special or if we want to have a, you know, steak or different type of protein that we want to cook. But does that answer your question?

MS. TOMPKINS WRIGHT: Yeah. So it's just protein? I mean is that really the only thing being cooked on the --

MR. ZAZZARO: Yeah. Or if we wanted to -- that's all we use it for. That's 90 percent of what everyone uses their grill for, but if you're outside grilling it or, you know, if you're not under a hood, proper ventilation, it's not safe.

CHAIRPERSON MIETZ: So it's basically going to capsule all of those end devices?

MR. ZAZZARO: Yes, and it's actually --

CHAIRPERSON MIETZ: And it's going to be exhausting all pieces and parts of those operations?

MR. ZAZZARO: Correct.

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2 MS. O'TOOLE: But there will be filters that
3 will have a regular cleaning schedule.

4 MR. ZAZZARO: We supply all the details and
5 if there's more information that's needed, the
6 technology nowadays, I've done a lot of research
7 on this to make sure that it's going to benefit
8 the community. We don't want to harm or make
9 anything not what they want.

10 CHAIRPERSON MIETZ: Okay.

11 MS. SCHWARTZ: So you're saying that all of
12 the food prep at 745 will be for customers who
13 are coming in --

14 MR. ZAZZARO: Correct.

15 MS. SCHWARTZ: -- And buying over the
16 counter?

17 MS. O'TOOLE: There will be some delivery --

18 MR. ZAZZARO: As far as if somebody calls and
19 wants -- it was being -- nothing that we do now,
20 but if someone calls to place an order over the
21 phone, that wants to have their order ready when
22 they pick up, that's calling ahead, catering
23 delivery, you know. We haven't -- we are not
24 delivering meals right now as far as, you know,
25 one meal here, one meal there. I don't have

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2 delivery drivers coming in and out and you know,
3 shipping this food all over. This is a front to
4 my business to what -- so people can come and
5 enjoy a sandwich, a salad, our baked goods. My
6 sister spends a lot of time and what we do for
7 all of our cakes, baked goods. We are doing all
8 that there. Customers come in. You can see what
9 we do.

10 CHAIRPERSON MIETZ: Okay.

11 MS. SCHWARTZ: So you're not preparing food
12 there then to be taken elsewhere to be sold?

13 MR. ZAZZARO: No. That's catering. That's
14 East Avenue. If I was doing a catering job for
15 50 people, hundred people, 150 people, whatever
16 event it is, it's all done out of East Avenue.
17 I'm pretty detailed as far as my staff. You
18 know, we have a staff there and we have a staff
19 at 1700 East Avenue as well. We have a catering
20 staff and a store staff. We do cross train.

21 MS. SCHWARTZ: Okay.

22 CHAIRPERSON MIETZ: Okay. Other questions?
23 Did you have more that you wanted to? Do you
24 have more?

25 MR. DOLLINGER: I wanted to follow-up a

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little bit on this.

CHAIRMAN MIETZ: Yes, go ahead.

MR. DOLLINGER: I wanted to go back to the question and answer we just had. Where this is my concern, my not -- I still have a little disconnect on where it's going. I don't understand why the food trucks -- because I think that -- are we all -- I think we are all pretty much understanding the deli, the bakery, to some extent, the matter of degree, the carry out business has always existed I think, deli, bakery and carry out business. I think you've got decent evidence of that. I think the degree of what was in the carry out business is a little bit in question, but I still think that relative to what you're doing, I'm not sure it's exactly the same thing. So I'll just leave that open for the Board, their decision.

The preparation area, it doesn't go to a use. You just have this preparation area, but it's not a use. It's kind of a function. I'm trying to put that in the context of the use because this is about the use and it's about what the prep area is going to be used for that creates -- the

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2 fact that you have a prep area is not a
3 violation -- is not nonconforming with the prior
4 use. The problem is, what is the prep area going
5 to be? It's cluttered argument, but say it's a
6 prep area instead of a use. But that's not the
7 use. That's just the function. The question is,
8 what use is that function going to support? And
9 that's where I get a little off track and a
10 little confused.

11 I have a question as to why you need a food
12 truck there at all? I mean what are you doing
13 there that would -- that would require or that
14 use would be facilitated by the existence of a
15 food truck on the property? What use are you --
16 I know you have a food prep area. And I know
17 you're going to prepare food there. But what's
18 the use of the food prep area for and how does it
19 relate to the trucks?

20 MR. ZAZZARO: If we need to -- like I said
21 before, if we need to bring any supplies, my
22 business --

23 MR. DOLLINGER: I'm not talking about the
24 food trucks. I understand you have to bring the
25 trucks in and out. The food trucks that, you

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know, the green food trucks that I saw there.

MR. ZAZZARO: Those are my company trucks to deliver. I mean if I need an employee to bring something from 745 to East Avenue, that's what I'm -- that's all we are asking for. I don't want to have --

MS. DALE: You use a truck instead of a car?

MR. ZAZZARO: If I get delivery of food?

MS. DALE: Isn't it a kitchen?

MR. ZAZZARO: It's a mobile.

MS. DALE: But you also use that for nonkitchen transportation like --

MR. ZAZZARO: Yeah.

MS. O'TOOLE: It has refrigeration.

MR. ZAZZARO: It's a box -- it's a big FedEx truck. The same UPS trucks that go up and down the streets. It's the same thing, actually a little smaller, but to the same degree. They let out the same smells and --

CHAIRPERSON MIETZ: I think you know what the trucks are. Go ahead.

MS. CORRADO: Because your trucks are multi-function, the primary function being on your kitchen on wheels, but they are also

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2 functional as a delivery vehicle between your two
3 locations. Do I understand then what you are
4 looking for is maximum flexibility to be able to
5 park that truck overnight if at the end of the
6 day it's at the 745 location? It's just going to
7 be sitting there overnight? It's not going to be
8 used as an auxiliary kitchen in addition to
9 the --

10 MR. ZAZZARO: No, not an auxiliary kitchen.
11 If I have my hood, that truck's primary function
12 if I need an employee or there's a lot of
13 different scenarios in business and we're having
14 things go on at multiple places. So if I need
15 someone to bring something, you know, I don't
16 like to have my employees use their personal
17 vehicles. If we have to load, you know, cases of
18 things or, you know, if we have to bring food
19 product back and forth, like I say, the
20 businesses, they overlap a little bit. For
21 example, some disposables or things that we
22 order, it doesn't make sense for me to order if I
23 have a \$500 minimum for a delivery and I can't
24 meet a \$500 minimum at one location, but I can
25 meet it for both, I need to bring food. That's

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what I'm getting at.

MS. CORRADO: So would it be a tremendous hardship if at the end of the day if that vehicle is at 745 and it's 10:00, 11:00 o'clock at night, it's not possible for you to transfer it back to East Avenue? Is that a hardship that you're running up against when that vehicle ends up there?

MR. ZAZZARO: That's why I'm asking for -- I don't want to say that I'm not going to do it and then I do it. You know, if there is a day, if something happens, weather, if I have an employee situation where so and so can't drive or they don't -- they don't have a vehicle, but you know, they get dropped off to work and I need them to go over to East Avenue, that's what I'm getting at.

MS. CORRADO: I mean for practicality but --

MR. ZAZZARO: Right, the truck's not going to be sitting there pushing --

CHAIRPERSON MIETZ: Okay.

MR. ZAZZARO: The truck's not going to be there pushing out food. It would be sitting there and if it would have loaded, it wouldn't be

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interfering or causing any ordinance or anything.

MS. TOMPKINS WRIGHT: I don't know if this is where the Board would go on this, but would you be -- if the Board were to agree to permit occasional parking overnight for a specific number per year, a maximum number per year? I'm not saying that the Board would.

MR. ZAZZARO: No.

CHAIRPERSON MIETZ: Okay.

MR. DOLLINGER: Do you have any evidence of a prior existence of a large commercial truck as a use on this property?

MS. O'TOOLE: Well, there was an operating dairy for many years and the dairy trucks, it's my understanding, made deliveries.

MR. ZAZZARO: Those were commercial vehicles.

MS. O'TOOLE: And those were commercial vehicles.

MR. DOLLINGER: Yup, that was I think a different piece of property. On this piece of property, I mean there was a dairy there. But it was a dairy, owned all the property around it. It was a big dairy. I remember playing there. It was a long time ago. It was a dairy. It was

1
2 a whole different use than this use as a
3 building. Do you have any evidence that there
4 was a commercial truck, Bernunzio's or any of
5 those deli uses used this as a --

6 MR. ZAZZARO: I don't have any visuals. But
7 we just have verbal evidence that there was --
8 there was milk trucks, delivery trucks. They
9 delivered. Those were their delivery trucks.
10 They were commercial trucks just like --

11 MR. DOLLINGER: Right.

12 MR. ZAZZARO: We're not looking to --

13 MR. DOLLINGER: I understand they were
14 delivery trucks, but any trucks like commercial
15 vehicles parked overnight or actually parked at
16 this property?

17 MS. O'TOOLE: We don't know exactly where
18 they were stored. But it's not, you know,
19 inconsistent to extrapolate that they possibly
20 could have occasionally been on this property
21 given the use of the property in the past, which
22 to have a nonconforming use, you don't have to
23 continue each and every part of that individual
24 use in order for that to be a part of the
25 nonconforming use.

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2 And just to briefly address, you know, an
3 increase in volume in business is not an
4 expansion of a nonconforming use. There's no
5 citations to that in the appeal. So if it's all
6 right, I'd like to move on.

7 MR. DI STEFANO: One question, the prep area
8 at 745 Penfield Road, would that ever be used in
9 conjunction with the East Avenue facility?

10 MR. ZAZZARO: No, those are two separate
11 businesses like I said.

12 MR. DI STEFANO: So if you had a large
13 catering order that you were taking out of the
14 East Avenue, nothing would be done on the
15 Penfield Road portion in regards to that large
16 order?

17 MR. ZAZZARO: No, primarily out of East
18 Avenue, all larger caterings, the word catering,
19 defined in my scale, is delivering food at a
20 higher scale on East Avenue. At 745 Penfield
21 Avenue --

22 MR. DI STEFANO: Right, but if you had such
23 a job, you know, if you had a 300 person
24 wedding --

25 MR. ZAZZARO: I've done jobs for a thousand

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people out of East Avenue.

MR. DI STEFANO: So there wouldn't be that problem. There would be no problem. Thank you.

MR. DOLLINGER: I'm sorry. But so to go back to the trucks again, sorry, the trucks, the fact is, my next question is, so the food that is -- do you actually -- is the food that is sold on the trucks, is it cooked on the trucks exclusively or do you cook things currently at East Avenue?

MR. ZAZZARO: So I'll give you a run down, real quick summary of trucks. For example, we specialize in our gourmet plates and sliders. All the slider rolls are cooked, baked at East Avenue. All the burgers are handpressed at East Avenue and those are cooked on the truck. Say we go to an event at 5:00 o'clock. We get there, we show up. We start cooking them there. It's finishing food on the truck. All the production is done at East Avenue, grilling chicken, slow cooking pork, prepping mac salad, fries. All of that is done on East Avenue. The trucks, food trucks, we just finish the food. It's cooked on

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2 site as far as the -- you know, as far as, you
3 know, we don't cook burgers ahead of time. But
4 does that make sense? Things are prepped at East
5 Avenue.

6 MR. DOLLINGER: You prep them and you cook
7 them?

8 MR. ZAZZARO: Yes. Like we're not going to
9 slow roast pulled pork on a food truck. We're
10 going to get that ready ahead of time. Have it
11 all ready to serve.

12 MR. DOLLINGER: Now, is it your anticipation
13 that some of the preparation for the food trucks
14 would occur on Penfield Road?

15 MR. ZAZZARO: No. All the food production
16 is at East Avenue. The food trucks also as a
17 delivery vehicle, I wanted to be able to bring
18 stuff back and forth. That's all the clarity.

19 MS. DALE: So if say you got the hood that
20 you needed --

21 MR. ZAZZARO: Right.

22 MS. DALE: -- And I think then the only
23 reason you said you'd have the food truck
24 actually at Penfield was --

25 CHAIRPERSON MIETZ: Transport.

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MR. DOLLINGER: Delivery.

MS. DALE: Saying that you wanted your machinery, your trucks, whatever --

MR. ZAZZARO: And that would be for that purpose.

MS. DALE: That would be the only reason?

MR. ZAZZARO: Yes.

MS. DALE: That's where you are going.

MR. DI STEFANO: Yeah, and that goes back to, you know, why overnight. I think that's the big question.

CHAIRPERSON MIETZ: Okay.

MS. SCHWARTZ: I just want to touch on something. You said that you were going to grill on Penfield. You're grilling chicken, grilling chicken also on East Avenue?

MR. ZAZZARO: Correct.

MS. SCHWARTZ: What's the difference --

MR. ZAZZARO: Well, on East Avenue, we handle all of our catering orders out of 745 Penfield Road. The chicken is grilled there for our customers who come in that order our chicken salads or panini sandwiches, whatever, that we -- the chicken is done at 745.

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2 MS. TOMPKINS WRIGHT: Originally, the use of
3 the kind of deli and sandwich platters what not
4 incidental to a grocery store, that was located
5 at this site and I think last time you were here
6 you did mention that there would be some not
7 necessarily exact grocery story items but some
8 grocery like items. Is that still --

9 MR. ZAZZARO: So right now, we have our to go
10 meals, easy meals for people to take and heat up
11 at home. Same thing that was done there before.
12 We have our pizzas and calzones and also little
13 side salads. Every couple days we rotate, but
14 that with our drink, there's really -- as far as
15 milk and eggs, if you're referring to that kind
16 of grocery?

17 MS. TOMPKINS WRIGHT: Something similar to.

18 MR. ZAZZARO: As far as the grocery side, I'm
19 not going to say no to it but, nowadays, things
20 are a lot different than those days. Wegman's --
21 everything is right down the corner. For me to
22 store some of this grocery product is going to
23 cost me money because I'll end up throwing it out
24 because they won't sell. Because mainly everyone
25 goes to Wegman's and it's right up the street. I

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know I would.

CHAIRPERSON MIETZ: Okay. All right. Go ahead. Did you want to make any more summation here or any other issue you would like to bring up?

MS. O'TOOLE: I will be as quick as possible.

CHAIRPERSON MIETZ: Sure.

MS. O'TOOLE: Mr. Chairman, so I think we touched on the delivery issue and the hood. You know, with regard to noise, that comes from trucks and delivery trucks, this was addressed back in the matter Building Inspector the Town of Brighton versus Josephine and Philip Decastro and specifically, touched on it that there have always been trucks, always been complaints and, you know, just reminder for the Board that noise is not properly considered on the appeal in the context of a pre-existing non-conforming use, but even if it were, there have always been deliveries. There's always been noise with trucks. If anything, trucks aren't as loud as they used to be.

Forgive me. I'm trying to -- we have jumped around a little bit from my original plan. Oh,

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2 the dumpster. Okay. So Chef Zazzaro would like
3 to move the dumpsters for convenience purposes
4 and to make a better flow of traffic through the
5 property and proposes to fence it in. We think
6 that is permissible under Town Code Section
7 225-4F1 and/or 225-14A.

8 If there is any other questions, we are happy
9 to address those now.

10 MR. DOLLINGER: I have another question.
11 You're not going to like it. So if there were
12 parking commercial vehicles overnight, wouldn't
13 you think that would have been addressed in
14 Mr. Shirley's letter? He talks about deliveries
15 and, you know, we are trying to reduce the
16 obnoxious quality of the delivery truck.

17 MS. O'TOOLE: Respectfully, Mr. Dollinger,
18 that's purely conjecture. I didn't know
19 Mr. Shirley. I didn't know the property in 1985
20 and what issues were important to the Town in
21 1985. You know, it's hard to say. I can't say
22 that he would have addressed that. I don't think
23 anyone can say that besides Mr. Shirley. Unless
24 I'm mistaken, I don't think he's here tonight.

25 MR. DI STEFANO: Okay. So I want to touch a

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little bit on the external changes to the structure.

CHAIRPERSON MIETZ: Okay. Go ahead.

MR. DI STEFANO: And I just want to see where you make this connection.

MS. O'TOOLE: Sure.

MR. DI STEFANO: 225-13A, which is regarding the continuation of nonconforming uses at the end of Part A, it's very specific where it says, nor shall any external evidence of such use be increased by any means whatsoever. Pretty strong wording right there. The addition of vents, fans, anything that's going to be added to the exterior of that building is in contradiction to this requirement. Then you make a leap with regards to the wealth, safety and welfare, I just wanted to continue that leap and hear how you're making that presumption that that would be allowed where it's very specific in 225-13A, where it wouldn't be allowed.

MS. O'TOOLE: In 225-17, forgive me. I seem to have misplaced my section of the code. If I recall correctly, in 225-17, it talks about alterations to pre-existing nonconforming uses

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specifically. And where --

MR. DI STEFANO: Repairs and maintenance.

MS. O'TOOLE: Repairs and maintenance if you'd like to take a moment.

MR. DI STEFANO: Okay. Why don't you continue on.

MS. O'TOOLE: 225-17, external alterations, even significant exterior alterations are permitted in a pre-existing nonconforming use if there are any interests of public safety which, you know, it's our belief, firm belief, that a range hood with a small vent out the back will significantly improve public safety for the employees of Chef's Catering, the patrons and the neighboring properties. The properties -- we're not in Hamlin. We're not on, you know, five acre lots. The properties are close enough that if we are cooking food and which has been done over the years, and we believe it's a pre-existing nonconforming use, the safest way to do that is with a range hood.

MR. DI STEFANO: Okay.

MS. O'TOOLE: Does that answer your question?

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MR. DI STEFANO: Ahuh.

CHAIRPERSON MIETZ: Okay. Are there any other questions the Board members have of the applicant as far as clarifications, understanding what they are doing? I think they've been pretty clear to describe it. Are there any follow-up? Yes, Jen.

MS. WATSON: I do have a question. So in the code that you just read where there's no external change, would the dumpster and the fence be considered an external change having to do with a nonconforming use?

MR. DI STEFANO: That is certainly something we can discuss and, you know, decide whether we feel if that falls within that section of the code or whether it doesn't. Yes, that is something that is part of the discussion. That's why they are asking for that --

CHAIRPERSON MIETZ: Right.

MR. DI STEFANO: -- Portion of the question in their application.

MS. O'TOOLE: And in terms of moving the dumpsters, the dumpsters are a fixture of the property. The fence around it would be a fixture

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2 of the property but again, that just keeps people
3 and animals out of the dumpsters. And frankly,
4 it's better visually for the neighborhood if they
5 are fenced in.

6 CHAIRPERSON MIETZ: Go ahead.

7 MS. CORRADO: In order to be sure, too, did
8 I understand correctly you had initially planned
9 to add an external cooler? Do I understand
10 correctly that that is not in the current
11 application?

12 MR. ZAZZARO: Yes.

13 MS. O'TOOLE: Correct.

14 CHAIRPERSON MIETZ: Okay. Any other
15 questions that the Board members have at this
16 point? No. Okay.

17 MS. O'TOOLE: Thank you so much for your
18 time. Can we have rebuttal?

19 CHAIRPERSON MIETZ: And will you what?

20 MS. O'TOOLE: If anything specific comes up
21 on --

22 CHAIRPERSON MIETZ: We will consider that.

23 MS. O'TOOLE: Thank you very much.

24 CHAIRPERSON MIETZ: Generally not, but if
25 there's something material. Can I just get an

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2 idea of those of you that are here for this
3 application? How many of you would like to
4 speak? You can just raise your hand. It will
5 just give me an idea how many people might want
6 to speak. And you can approach, change your mind
7 or if somebody additional can. Okay. All right.
8 Good.

9 So why don't we just do this then. We'll
10 start on this side of the room and we'll just
11 start in the first row and then move ourselves
12 back, just to have a little order and save time.
13 Go ahead.

14 MS. KRAUS: My name is Sherry Kraus, 46 Park
15 Lane, a few blocks from the sited issue this
16 evening. I'm here speaking not only for myself,
17 but my sister-in-law, Ann Kraus, who lives on
18 Colonial Village Road.

19 First of all, I'm actually going to speak
20 to the application and the appeal, which I'm not
21 sure that Ms. O'Toole and Chef Zazzaro were just
22 talking about here. The descriptions of what
23 they plan to do on that property are quite
24 different from -- if you read the application
25 that went before Ramsey Boehner and that he ruled

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2 on adversely and said this was not a pre-existing
3 nonconforming use, and then you look at the
4 appeal that was made to you, and you compare that
5 application to the one that I'm sure you won't
6 forget for many years, remember that four hour
7 hearing that you had on September 7th, a hundred
8 and eight pages of transcript, compare that
9 application to the one then, and you tell me
10 what, in fact, comports to what you just heard.
11 That only difference in this application before
12 you this evening is the removal of the outdoor
13 cooler.

14 The rest of it, quite lengthily set forth,
15 and I think it's the reason David was asking a
16 number of clarifying questions and Dennis and
17 others, they still want to conduct apparently,
18 according to the application, a food truck
19 catering business from the site with the
20 allowance of on site parking of food trucks
21 during the day for loading and unloading and for
22 the ability to park -- have occasional parking
23 overnight of food trucks. They, just as in the
24 September 7th application, they want the
25 installation of commercial kitchen equipment,

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2 which is capable of producing the vast selection
3 and quantities of prepared and cooked foods that
4 would be needed for a catering food truck
5 business and for the employment of a much larger
6 number of employees, I believe ten was the
7 number, that have historically been on this site,
8 by the way, notwithstanding their representations
9 to the contrary.

10 Throughout and even Ms. O'Toole noted
11 tonight, they concede that this operation out
12 of -- in Brighton is going to have greater
13 intensity, greater volume than the previous
14 operation. They're saying, oh, don't worry
15 about. That's not even an appropriate issue to
16 be looked at for a nonconforming use. Well,
17 that's certainly not true.

18 And if you will -- by the way, I do want to
19 mention, hopefully, you got my December 21st
20 letter.

21 CHAIRPERSON MIETZ: We did.

22 MS. KRAUS: And the eight page memorandum of
23 law that Bruce Freeman, an attorney, on Colonial
24 Village Road and I, and I will also reveal that I
25 am as well an attorney, prepared to support the

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2 legal basis for everything I'm going to say this
3 evening or have said in those submissions.

4 Now, again, all I can say because I have to
5 address the application and the appeal, which I
6 think you do, too. You hear a lot of things
7 being said up here this evening just now. I
8 believe you need to be very very careful here.
9 To hear things like occasional parking, primarily
10 at the East Avenue site versus the Brighton site.
11 Those words are mushy. Those words have no
12 meaning. Those words would be impossible for
13 Rick and Ramsey and others to enforce. You say,
14 okay, well, how hard, how bad is it to allow a
15 food truck to be there occasionally? Well,
16 what's occasionally? And Ms. Dale, even if you
17 said 20 nights a year or 30 nights a year, or
18 whatever, you can't enforce that. It's not right
19 to ask the neighborhood to try to enforce that or
20 patrol that. These are mushy. These are not
21 even relevant. Just look at the application,
22 what they are asking for and what the appeal is.
23 We saw in the last hearing that, it was like --
24 it was like a shape shifter. You'd ask a
25 question. Here's this answer. You'd ask another

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2 question. It's that answer. I don't know. I
3 don't feel that I know what the operations are
4 going to be even represented by Ms. O'Toole and
5 Chef Zazzaro. If their operations were going to
6 be as limited and benign as they are trying to
7 have you believe this evening, they didn't even
8 need to come for an appeal. It would be a
9 pre-existing nonconforming use. Ramsey would
10 have found that. If they had modified the
11 operations, plus, why would they need food trucks
12 at all on this site if it's nothing but a little
13 bakery and a little deli there to sell over the
14 counter to people who drop in. That's not what's
15 going to happen.

16 And I will tell you, I was at that East
17 Avenue site. You may remember I mentioned that
18 in September. That site, I went to the back.
19 That loading area could have at most one truck.
20 I truly question the credibility or even -- don't
21 even question the credibility, maybe Chef Zazzaro
22 believes he can truly support this regional food
23 truck catering business from that tiny site.
24 Now, remember, this business is not Bernunzio's
25 serving a neighborhood. This business is --

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2 look at their web site. We gave you the screen
3 shots of it. It's a growing food truck catering
4 business serving not only the Rochester area but
5 as far as east as Utica, as far south as Ithaca
6 and as far west as Hamburg. So you're telling me
7 that they are really going to support that entire
8 regional food truck catering business from that
9 tiny little site that they have -- the employee
10 told me they had outgrown and were going to shift
11 to the Bernunzio site. From that little site
12 there where they have room for one food truck in
13 the back to load and unload.

14 No, what's going to happen is they're going
15 to get -- they're going to try to get an approval
16 here for something that will leave a little
17 window of opportunity, something that they can --
18 they can squeeze through and really begin
19 converting over the years. Because really how
20 vigilant can people be? Our neighborhood cares.
21 But we can't constantly be calling Rick and
22 calling Ramsey and bringing it to the town. You
23 can't ask the neighbors to do that. Your role is
24 to protect our neighborhood from an illegal
25 nonconforming use. That's what this is.

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2 But let me go back and again, just kind of
3 remind you of a few things here. This -- I know
4 you know this area. This is well kept
5 residential single family homes. We care about
6 our homes. The only reason there was a business
7 there, many businesses including Bernunzio's,
8 small neighborhood businesses, was that they were
9 conforming uses. You know that. This business
10 would not be allowed there. Rick told me long
11 ago that if they had come in and sought to place
12 their business in Brighton, it would have had to
13 have been in a light industrial zone like Metro
14 Park. They would not have been allowed to
15 operate right at this site. They are trying to
16 shoe horn in this food truck catering business or
17 whatever it is or whatever it may morph into
18 eventually if they get the proper approvals into
19 a very very inappropriate site with an incredible
20 potential for detriment to our neighborhood.

21 Now, you know our nonconforming use
22 provisions in Brighton are tough and they are
23 strictly enforced. They have to be. And that
24 reflects broad land use principles in New York
25 State and really throughout the country. That

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2 does not favor -- it favors the eventual
3 elimination of nonconforming uses.

4 We're not supposed to do something to support
5 them or expand them. That's why we actually have
6 a law that says the expansion of a nonconforming
7 use is prohibited. One tiny exception, that's
8 it. These are not favored uses. And again, the
9 reason is good. They depressed -- they are out
10 of character with the neighborhood. They have
11 the potential for depressing property values and
12 quantity of life of nearby neighbors. Ask our
13 neighbors here. Plus, they undermine the
14 effectiveness of our zoning laws.

15 Now, I'm, mercifully for you, going to
16 address the sole issue of importance here this
17 evening, one issue, and that is that this
18 application has been before you before with just
19 those tiny minor resets. If you look at the
20 application and the appeal, it is the identical
21 application that you heard on September 7th and
22 you ruled on.

23 At the end of that four hour hearing, you
24 unanimously denied the application in a four page
25 decision. And I would like to offer that

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2 decision into the record in which you decided
3 that the proposed uses did not meet the
4 requirements of a legal non-conforming use at the
5 property.

6 Now, please note, the applicant did not file
7 a judicial appeal of that ruling. They could
8 have, but they didn't. What did they do?
9 Instead, they took a course of action, obviously,
10 intended to bring this matter back before you
11 again to re-hear and possibly reconsider and
12 change your determination that you made September
13 7th. But now, what you need to know and I'm sure
14 you do, they have not brought forward any new
15 relevant facts that did not exist or were not
16 known to them at the time of the earlier hearing.
17 There's nothing new here.

18 Now, the question becomes, well, is this a
19 significantly different proposal however? Is
20 this a different proposal? Well, the answer is
21 no. If you look at the application and the
22 appeal documents -- and I don't know. I would
23 think you would probably be able to re-hear it as
24 a new application. If they withdraw their
25 application this evening and said, gosh, you

1
2 know, you're right, that application does make it
3 sound an awful like the one we heard on September
4 7th, but you know, really, we're just going to do
5 a little bakery there. We're just going to do a
6 little deli there, over the counter. Hey, we
7 don't need food trucks. Why would you need food
8 trucks to do over the counter. Bernunzio's
9 didn't need food trucks. The Decastros didn't
10 need food trucks. Withdraw that application so
11 that you know what your ruling on. They haven't
12 done that. They are just making representations
13 that they hope will lure you into reconsidering
14 what the ruling was on September 7th.

15 Now, the other thing is all the legal claims
16 that were made, you had all -- there's nothing
17 new in the law, nothing new in the law at all
18 that's being brought forward to you tonight.
19 Every legal claim I believe Miss O'Toole said, we
20 are saying that, hey, you got it wrong on
21 September 7. This was just -- this should have
22 fallen within the pre-existing non-conforming use
23 that was there before. Hey, you got it wrong.

24 Well, she doesn't actually say that because
25 they don't really want to mention the September

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2 7th hearing at all. But that proposal, that
3 legal claim was part of your finding what was
4 before you on September 7th, and specifically and
5 expressly in your decision. You found that the
6 proposed use of the property was not within the
7 ambient of the lawful non-conforming use to which
8 the proposed use needed to be compared. And that
9 the comparison was made to that 1985 stipulation,
10 which was called the settlement use.

11 And I would like to add, by the way, because
12 I'm hearing a lot of discussion about
13 Mr. Shirley's letter. Well, Mr. Shirley was the
14 building inspector. And he posed a question
15 requesting an interpretation from the town
16 attorney, Mr. Gilbert. Mr. Shirley's letter
17 doesn't have any impact to modify or supplement
18 or interpret the stipulation setting, the
19 settlement use, setting the pre-existing use.
20 It's the attorney letter back, which is much
21 narrower. It doesn't go on and on and on about
22 all here's what I'm thinking and tell me what you
23 think about this. His letter is much more
24 carefully worded and simply says, I believe that
25 subs are an allowable use -- an allowable

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2 preparation because it wasn't intended to be an
3 exclusive listing of the foods, but this would be
4 a food that would be within that. So just as I
5 keep hearing about the Shirley letter, I think
6 the Shirley letter is actually not relevant to
7 the legal examination of this.

8 Now, what you did on September 7th, is, first
9 of all, you made the ruling that they are trying
10 to get you to change tonight, which is that the
11 proposed use is simply just a continuation of the
12 pre-existing non-conforming use. You've already
13 been there, done that and you have ruled against
14 them.

15 Then in the September 7th application, they
16 also had two alternative grounds that they wanted
17 you to consider, which is that it was an
18 allowable expansion of the non-conforming use.
19 Well, you didn't even have to get to that one
20 because Brighton law doesn't let you expand on a
21 non-conforming use or an allowable change from
22 one non-conforming use to another. Your decision
23 did address that in the negative against the
24 applicant by holding that they had not met the
25 requirements necessary to approve the requested

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2 change in the non-conforming use of the property.

3 So you have your decision. You've already
4 been through this. They had a full and fair
5 hearing. They are now coming back saying, we
6 want you to look at it again and we believe it's
7 a -- it really falls within the pre-existing
8 non-conforming use. They don't mention --
9 they're, obviously, ignoring the fact that you
10 ruled expressly on that.

11 Now, why am I going on about your prior
12 ruling? Why does that even matter? You may be
13 saying that's okay. Yeah, we did that, but can't
14 we just look at it new tonight and can't we just
15 rule how we feel tonight. The answer is actually
16 no. Your Board, determinations by you, are what
17 they call quasi judicial in nature. I know we
18 have some lawyers here. You know what that
19 means. That means they have precedential affect.
20 We have the case law. Your rulings have
21 precedential affect for any subsequent
22 proceedings and it's under the legal doctrine
23 known as *res judicata* if you like Latin terms.
24 This means that when you have given a prior
25 ruling to an applicant on an interpretation of a

1 zoning provision, you should rule in accordance
2 with your own precedent. Well, hey, this was
3 only four months ago, right? You probably even
4 remember. As applied to this ruling -- or this
5 application, this means that your ruling this
6 evening should be consistent with the findings of
7 fact and decisions you made on September 7th.
8 The fact that they now have a lawyer and they may
9 be bringing forward a few citations of case law,
10 you know, you got a lot on -- the intensity
11 doesn't matter. The volume doesn't matter.
12 Noise doesn't matter. Disturbance, traffic
13 issues don't matter. Well, first of all, that is
14 not true. Check the memo. These are not --
15 these are flawed legal arguments, but that's not
16 even important. Because the fact that they are
17 trying to bring forward some new legal arguments
18 or some new ideas that they didn't bring forward
19 on September 7, that doesn't change anything. If
20 they had wanted to bring forward some new legal
21 arguments, they should have taken the appeal, an
22 Article 78, to the Supreme Court, and made those
23 arguments there. That doesn't entitle them to
24 come back before you, take a second bite at the
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apple and have another go at it.

Now, let me tell you though, if you let them get by with this and you modify your ruling, I believe you are going -- well, first of all, it would be wrong. It would be the wrong thing to do. Not legally supportable. But secondly, this doctrine that I'm talking about, this *ras judicata*, this precedential value, this quasi judicial feature of your determinations, is your only defense against potential abuse of the appeals process that can come to you.

If any applicant who gets a bad decision from you -- or not a bad one. You never make bad decisions, but who gets an adverse decision, can safely forego an expensive judicial appeal, an Article 78, of your adverse decision and can have another go at it with the hope of having a better result the next time simply by resubmitting virtually the same proposal to the Town Planner, Ramsey Boehner, like what was done here, getting his adverse determination which, of course, he's going to do, I mean he looked at the application and then boot strap that second administrative determination into filing an appeal, again, to

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2 you. That means it's like Ground Hog Day. This
3 could go on over and over and over again unless
4 your answer to the applicant including tonight,
5 each time this happens is that you are
6 constrained to make findings consistent with your
7 previous findings on the same facts and same
8 issues as were made in a previous hearing.

9 Okay. One more sentence and I'm done. I ask
10 you this evening to deny this application on the
11 ground that it has already -- that you have
12 already ruled in the September 7th hearing, that
13 the proposed use is not within the ambient of the
14 pre-existing non-conforming use on the property
15 and that the proposed installations are not
16 permitted under the town code non-conforming use
17 laws. And I will submit a copy of my statement
18 for the record as well. Okay. Thank you for
19 your time.

20 CHAIRPERSON MIETZ: Thank you. Okay. Next
21 row. Next speaker. Come up, sir.

22 MR. BARROW: My name a Jeff Barrow and I
23 have live at One Colonial Village Road and I'm
24 here also representing my wife, who was going to
25 speak but has bronchitis.

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2 I'm here, again, in opposition to the
3 application as we were on September 7th. And I'm
4 certainly not a lawyer. I just happen to live
5 there. It did likewise appeal to me a part from
6 the cooler, the things in the application were
7 the same as before. And I know I left that
8 September 7th meeting pretty clear about what
9 would happen or what should happen at the site
10 and what shouldn't happen.

11 And as I listen to the representations
12 tonight, what was occurring to me is that there
13 has been now a period of a few months where
14 actual behavior, actual events have taken place
15 that weigh in my mind very heavily against what
16 might be said when I look back at what's actually
17 happened and on a number of occasions, I have
18 sent emails to the Town with my observations. So
19 it wasn't very long after that very clear ruling
20 on September 7th, that food trucks did start
21 appearing and they did stay overnight and were
22 plugged in and were running. And I'll submit a
23 photograph of that. Thank you. And part of the
24 reason I knew that is I could hear it. I knew
25 there were representations that these things are

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2 so quiet, but this was November. Getting cold,
3 windows closed at our place and I got up from the
4 couch because I could hear and feel something.
5 And I went outside to see what it was and sure
6 enough, it was the truck plugged in and the
7 compressor running and it goes on and off.
8 Obviously, in the winter I'm assuming it would be
9 less than summer. In the summer I'm sure it
10 would be running more to keep things cool.

11 And it was around just before Thanksgiving
12 that the intention became even clearer when that
13 whole area behind the garage was paved so that
14 the food truck could be there. And it was paved
15 and you will see there that there was an
16 extensive electrical outlet also installed. So
17 in my mind, the intention was very clear that
18 despite your ruling, we're going to do it anyway.
19 And it stayed there till about two weeks ago.
20 There was sometimes it was gone, but by my record
21 that I submitted to the Town, most of the time,
22 nearly all of the time, it was there up until
23 about two weeks ago when the truck was removed
24 and the large billowy signs that were -- sign
25 that was out on Penfield Road was also taken

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down. There was non-conformance.

And my wife had certainly witnessed the loading of trucks there, the food trucks. We have also because we're very close, well closer than 500 feet. If you drive by the thing, you'll be able to see how close. Our front yard is -- I think is like 35 feet from the house setback to the road. So when I think about that distance to the deli, it's not very far at all. And it just doesn't make common sense to me when I see day after day ten employee vehicles lined up on the fence line, that this is just to create food for some neighborhood people that are walking in.

As you heard on September 7th, from all of the neighbors, that in 20, 30 years, it took about four people to run the deli when it was a deli. Obviously, it's not a deli any more. And something much bigger intensity is going on that that whole fence line is now filled with employee vehicles. Not in front of the deli because that's saved, obviously, for customers who do come in. You can sort of see the difference as lunch time when the customers come in.

So really my point is that there's this

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2 representation to allow occasional and use of
3 words, primarily but unfortunately, the behavior
4 is such that I ask you to take that into account,
5 that to have a -- even when the ruling was as
6 firm as it was on September 7tho have that
7 ignored, to give some leeway now, I think would
8 be disastrous for our little neighborhood. Thank
9 you.

10 CHAIRPERSON MIETZ: Thank you very much.

11 MR. DOLLINGER: A couple questions.

12 CHAIRPERSON MIETZ: A question for him.

13 MR. DOLLINGER: A couple of questions.

14 MR. BARROW: Yes.

15 MR. DOLLINGER: So when you say that you saw
16 them loading the truck, what were they loading?
17 I mean what was your impression what they were
18 loading? Did you see them loading the truck?

19 MR. BARROW: Yes, I was not willing to go
20 over there and examine closely.

21 MR. DOLLINGER: Right.

22 MR. BARROW: So I make no representations
23 what it was.

24 MR. DOLLINGER: Okay.

25 MR. BARROW: On one occasion, it did seem

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odd that the lights were being turned off which made it harder to see. No, I can't say for sure.

MR. DOLLINGER: And when the trucks were there overnight, at what point would you call -- did he put the electrical system in for the trucks?

MR. BARROW: I didn't see the electrical -- I mean I'm at work during the day.

MR. DOLLINGER: At what point did you notice that I guess is my thought?

MR. BARROW: It was late November. So the paving was done I believe on the Wednesday before Thanksgiving. And then the photo that I took was soon after that with the truck there and that's when I noticed that the electrical was also there.

CHAIRPERSON MIETZ: Okay.

MR. DOLLINGER: And then would you suggest that you can consistently see four or five employee cars or --

MR. BARROW: More than that.

MR. DOLLINGER: More than that. Consistently?

MR. BARROW: Yeah. Depending how you

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2 determine consistently. I think other neighbors
3 who are there during the day may be able to give
4 you a better answer because I'm at work. I leave
5 kind of early. And I come home later at night,
6 but I have certainly very often seen nine or ten
7 cars there.

8 CHAIRPERSON MIETZ: Okay. Thank you.

9 MR. BARROW: Thank you.

10 CHAIRPERSON MIETZ: Who would like to speak
11 next? Thank you.

12 MRS. CHRISTOPHER: My name is Anna
13 Christopher and I'm speaking for my husband, Tom,
14 and myself. We live at 44 Colonial Village Road.
15 We have lived there for 42 years. We are opposed
16 to the application of Chef's Kitchen. Some of
17 the things we've noticed that Chef's Kitchen
18 involved semi trailer delivery trucks. Some of
19 the time they leave their trucks running when
20 making the delivery. These are large trucks and
21 when leaving the parking lot, they are having a
22 difficult time turning on to Colonial Village
23 Road.

24 In addition, when the deli had three signs
25 and large banner on the corner of Penfield Road

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2 and Colonial Village, I told Tom I was having
3 trouble seeing oncoming traffic. He had the same
4 problem. I thought it was because I was short.
5 I would think some of the employees also have
6 trouble seeing when pulling out on Penfield Road.
7 This was a safety concern for us as well as the
8 customers.

9 We feel in the future they may succeed as a
10 deli, but they are straying from the concept.
11 There are small amount of basic groceries
12 available at the business, but your deli has
13 already become a restaurant with tables inside
14 and in the future the plans are to expand to a
15 food production facility, which includes catering
16 and food trucks. This is what we object to. The
17 larger hood is the first step. We want to keep
18 the uniqueness of our neighborhood and it has a
19 long history from 1938 and we want to continue to
20 preserve it. Thank you.

21 CHAIRPERSON MIETZ: Thank you. Okay. Who
22 would like to speak next? Keep it going here.
23 Go right ahead, ma'am.

24 MRS. COTE: Hi, I'm Barb Cote and I've lived
25 at 40 Colonial Village Road for 24 years. I'm

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2 directly across the street from the driveway on
3 Colonial Village that goes into Chef's Kitchen.

4 I was here at the September 7th meeting just
5 like Ground Hog Day. I'm in opposition to this
6 application simply for the same reasons that have
7 been stated tonight which is I believe that they
8 are attempting to go to the same thing that they
9 wanted before and their behavior has spoken
10 louder to me than the words that they spoke
11 tonight. So my observations was that this use of
12 the property was for serving of prepared food on
13 premises to serve people who walk, drive in,
14 carry out. We've already stated that.

15 Since then what I've observed, multiple
16 people getting out of cars and going in in
17 uniforms like Jeff mentioned, large number of
18 employees. Signs posted at the road that are so
19 large that it's difficult to see around the
20 signs. Tables and chairs set up for seating,
21 dining inside. Large van parked behind the
22 garage overnight. The van parked in the back of
23 the building at times which I was assuming for
24 loading and unloading. Other smaller vans parked
25 behind the building at the back door loading and

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2 unloading. I don't know what they were loading.
3 It could have been what they stated. My
4 assumption was it was part of the catering
5 business because that's what they do.

6 And Nancy mentioned that the large trucks
7 were there and that's my lawn that they are
8 driving over. So we've always had problems with
9 large trucks coming out of that corner, but it's
10 particularly bad right now. Thank you.

11 CHAIRPERSON MIETZ: Thank you.

12 MRS. COTE: I wanted to hand this in. This
13 was an e-mail that was sent when things were
14 observed.

15 CHAIRPERSON MIETZ: Okay. Thank you. Okay.
16 Let's go. Who would like to speak next? Anybody
17 on this side, on the left side of the room, my
18 left, that wants to speak?

19 MR. FREEMAN: Yes, I want.

20 CHAIRPERSON MIETZ: Please do.

21 MR. FREEMAN: My name is Bruce Freeman. I
22 live at 126 Colonial Village Road.

23 CHAIRPERSON MIETZ: Can you adjust the mic
24 up because it was down? There you go.

25 MR. FREEMAN: I'm here on behalf of myself

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2 and my wife and we are opposing this application.
3 I Sheri mentioned, she and I drafted a memorandum
4 which we submitted to you. And she did a great
5 job explaining basically the legal arguments that
6 we tried to make and won't reiterate them, but I
7 want to emphasize a couple of things.

8 In September, this Board made several
9 specific findings in a very concise four page
10 decision. I just wanted to reiterate what some
11 of those were because they are findings and they
12 may have a legal preclusive affect on anything
13 that happens after those findings are made.

14 As David Dollinger just said, the 1985
15 settlement agreement that was reached in
16 litigation between the Town and the Decastros
17 outlines the non-conforming use, which is allowed
18 on the property. And it was slightly augmented
19 by a letter, 1989 letter, opinion from the deputy
20 attorney. So we have a finding that the
21 non-conforming uses allowed on the property is
22 already described quite definitively in those
23 settlement documents from the eighties.

24 The Board in September went on to find that
25 the proposed food production business would be

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2 facilitated by a 21 foot long hood. I don't
3 really know what that is. The hood covers an
4 area that is used for grilling food that was
5 specifically in the finding. The finding also
6 said that two heavy duty food trucks would be
7 used to deliver the food that is prepared there.
8 And that the food would be delivered off site and
9 sold off site. Now those three factors, they
10 increased ability to prepare food. The use of
11 heavy duty -- these are big, large capacity food
12 trucks to deliver the food off site and the sale
13 off site, all of those factors were found not to
14 be within the limits of the use allowed by the
15 1987 settlement findings. That's another
16 specific finding. Obviously, the Board,
17 ultimately, found that the applicant had met the
18 requirements for an approved change in the
19 non-conforming use. That non-conforming use was
20 specifically referred to in the findings as food
21 production facility. I mean it was clear to you
22 guys back then that the use that's being applied
23 for is quite a change from a tiny neighborhood
24 grocery with a sandwich bar. It's now a food
25 production facility operating two large food

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2 trucks and using a 21 foot hood that covers a 21
3 foot long cooking area. It's completely
4 different. So I think the findings were correct.

5 As Sheri said, those findings were not
6 appealed. So one of the points we wanted to make
7 in the memo is that there is case law that
8 specifically talks about rulings from a municipal
9 zoning board, specifically mentioning zoning
10 board rulings. That's res judicata that Sheri
11 talked about. The fact you don't appeal
12 something, you can't come back and ask for the
13 same relief.

14 I think it's pretty clear that the bulk of
15 the relief that's requested here is exactly the
16 same as what was requested in September.

17 So the major point that I am making in the
18 memo is that the findings that were made in
19 September are kind of set in stone now. And I
20 think you're constrained. You have to follow
21 them with respect to any of the identical issues
22 that have been raised here in the second
23 application.

24 Just two other minor points, they are still
25 seeking permission to deliver food that's made at

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2 745 Penfield Road off site for sale off site.
3 They are still -- the application is asking for
4 that permission. And I mean they only presented
5 proof on two issues. They tried to prove that
6 the off site delivery of food is part of the
7 pre-existing non-conforming use. But if you look
8 at the 1980 documents, that's completely
9 contradicted by the documents which this Board
10 has already found describes what the
11 non-conforming use is. It only mentions the
12 delivery of supplies to the store that used to be
13 on the property. It does not mention the
14 shipment of prepared food from the property for
15 sale off site. It's simply not in the
16 non-conforming use and this Board has already
17 found that the food production facility, which
18 includes producing it, taking it away and selling
19 it, is not in the non-conforming use. That's the
20 finding that was made in September.

21 And finally, the applicant has argued that
22 increases in volume or intensity of a
23 non-conforming use are allowed. But the cases
24 that are cited, obviously, they deal with
25 non-conforming uses which are legitimate. In

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2 other words, if you have a non-conforming use
3 that's been deemed appropriate, only thing that
4 happens is that the use of it intensifies. There
5 are cases that say that's not a violation, but
6 those cases don't have any applicability to this
7 set of facts because they are, basically, arguing
8 that once this food production facility gets up
9 and running, there's going to be an increase in
10 volume and intensity and that's okay, but that's
11 not -- that's a perversion of those cases. If
12 you were to increase the volume based on a
13 non-conforming use, that it has not been
14 approved, as this has not been approved, a food
15 production facility has not been approved, you
16 can't boot strap the argument from a
17 non-conforming use that is not approved to fit in
18 with these cases which deal with only
19 non-conforming uses which are approved. So those
20 are the points I wanted to make. Thanks.

21 CHAIRPERSON MIETZ: Okay, thanks. Okay.
22 Anybody on the left side of the room? My left.
23 Okay. Let's go to the right. Anyone want to
24 speak on the right side of the room? Okay, sir.

25 MR. GORDON: My name is Ken Gordon. And I

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2 live at 52 Colonial Village Road. I'm a land use
3 planner. I have 40 years of experience and I
4 have advised different boards on hundreds of
5 applications including zoning boards on
6 expansions and views.

7 I feel that the presentations, especially by
8 Sheri, had really caught the essence of what the
9 considerations should be or what the Board should
10 consider. I agree as a professional, not as an
11 attorney professional, but as an associate with
12 what she had said was with respect to the law and
13 what I have seen and in fact, I have concluded in
14 many many other circumstances, just want to
15 reinforce that from experience.

16 And I think that the findings that you made
17 back in September, also, were consistent with
18 those that I would advise given the same set of
19 circumstances.

20 I'm up here tonight really because I was
21 really confused. On two occasions I tried to
22 take pictures -- actually, I did take pictures of
23 the cars parked along the side of the property
24 and trucks parked adjacent to the property -- or
25 to the building. On both occasions, I was

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2 approached by owners and one was somewhat
3 confrontational, but I recently had one about a
4 week ago, a little over a week ago, in which they
5 were very courteous. They still obviously -- or
6 they asked me why I was opposed. And I said, you
7 know, because I don't think you're currently
8 operating legally. And they pressed me on that.
9 But they also confided if you will in me or tried
10 to convince me and they told me certain things
11 that are very inconsistent with their
12 application. I agree that they have made some
13 changes and they probably intend to make some
14 changes for a short period of time, but I truly
15 can't believe based on some representations that
16 they have made that their intent is not as clear.

17 The other thing is -- the reason I'm talking
18 about the cars, is that it implies a level of
19 activity. I counted six cars and two trucks when
20 I was there last. And in conversation, I asked,
21 what are all these people doing here? And
22 everyday there's many many cars. And they said,
23 well, they are doing maintenance and stocking and
24 supplying. Now, obviously, that just doesn't
25 correlate. In a time that I was there, about 15

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2 minutes, one patron, one person came in, one
3 customer. This was about 4:00 o'clock, 4:15. So
4 I asked them about their ability to maintain the
5 facility, to maintain the business. And what
6 they said was, well, we really weren't assuming
7 that it would be profitable, that the family had
8 been in the business or in the restaurant
9 business for a long time and they wanted a
10 facility, a smaller scale, that they could
11 represent to future customers and also reinforce
12 the pride that they had as a family in doing this
13 kind of business. And they weren't as concerned
14 about making money as they were about having a
15 place where family members could do things which
16 made them feel good, made them -- in some cases
17 there were people who had already gone to school
18 and give them an opportunity to apply their
19 skills and their interests without going out into
20 the market place and do that.

21 There were a couple other things that they
22 said that were a little bit concerning. And I
23 went to pass these on. First of all, they said
24 that the public hearing was only for the purpose
25 to install ventilation hoods. That's what they

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2 told me. Clearly, their application is much
3 broader than that. Also troublesome, I don't
4 really believe this, they said, specifically,
5 their attorneys had reached an agreement with the
6 Town that they could continue to operate if they
7 made a few modifications to the operation. I'll
8 just leave it at that.

9 They said they had no outstanding violations.
10 They said that if they were operating illegally,
11 they would have already been shut down. Those
12 are the most pertinent.

13 I also want to address a couple other things.
14 They had told me they were scaling down. They
15 were no longer bringing the food trucks. You
16 know, they weren't delivering off site. They
17 weren't doing some of the activities that they
18 have done in the first few months of their
19 operations. That those had ceased and I
20 witnessed that. I think intensity is much less.

21 I'm just talking about some general concerns.
22 I believe that the September -- I'm sorry, I
23 believe that the attorney's letters back in the
24 eighties applied to a deli that specifically said
25 Bernunzio's, Decastros Deli, they were findings

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2 with respect to the deli. The things that they
3 were allowed to do were associated with a deli,
4 things that a deli operation would do. So it's
5 not a matter of things that business was
6 allowed -- could happen without the use of others
7 I don't think was ever applied. You know, it was
8 supposed to be they allowed food preparation.
9 They allowed selling of food, you know, to
10 customers. They allowed preparation for people
11 who walked in. There were different things that
12 were going on, but they were small scale.
13 Because they were allowed to do these at small
14 scale, does not mean they could take any one of
15 those and they make it their primary business and
16 primary use of the site. I think that's what
17 they have done. They have turned what used to be
18 a neighborhood store, that people were very proud
19 of, in fact, as I said before, I have seen
20 promotions for properties, houses for sale, that
21 say close to Bernunzio's.

22 To mean as I walk into there now, there is no
23 difference between what I see, and this is
24 visual, it appears like a walk-in restaurant. It
25 appears like Subways, like Moe's, like Bill

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2 Grays, you know. I mean just the look of it.

3 With respect -- now, I'm going to go back to
4 neighborhood values. That store used to be an
5 asset to the community, very very heavily used,
6 you know. Ten times the number of patrons that
7 I've seen there. I don't think you can say the
8 same. If the neighborhood really appreciated it,
9 they would have many many more customers.

10 So what I'm saying is that the character does
11 affect the representation of the property to
12 others. And if it changes by your image from a
13 deli to a restaurant, that isn't an expansion.
14 It's changing the character of the business.
15 It's changing the character of the neighborhood.
16 And I don't think that the things that they are
17 suggesting be done especially the space that they
18 have allocated. And you've identified that
19 yourselves, it just doesn't make sense that they
20 wouldn't be doing more and they wouldn't have
21 some other plans for the property.

22 I guess that's all I'll say right now. I do
23 want to say one other thing. I told them that
24 other neighbors are going to be concerned about
25 the physical impacts on site. That my concern

1
2 and also being a land use professional, is going
3 back to the purpose of your non-conforming
4 regulations, non-conforming use regulations,
5 which is to minimize the non-conformity. In this
6 case, clearly, in many respects it is expanding
7 to non-conformity and it's also changing it's
8 compatibility with this neighborhood.

9 CHAIRPERSON MIETZ: Thank you very much.
10 Okay. Who else would like to speak here on the
11 right side? Yes.

12 MR. DAVIS: Good evening. Charlie Davis,
13 745 Penfield Road LLC. I think part of what we
14 see today is change. I think we all hear about
15 Macy's closing stores, Market Place Mall changing
16 to an outlet mall. You know, we've got -- and
17 part of that reason is so many people they change
18 the way they shop. They shop online. And with
19 shopping online, products need to be delivered to
20 households.

21 Colonial Village must do a lot of shopping
22 online because we see FedEx trucks and UPS trucks
23 the size of any food truck sometimes even larger
24 up and down that street literally all day long
25 everyday of the week, but that's more so now

1
2 because of the holidays and the shopping.
3 However, it's consistent. Happens year round.
4 And that's because the trend has changed. People
5 are shopping online. Products need to be
6 delivered. There's plenty of truck traffic on
7 Colonial Village. Sometimes it gets a little
8 difficult there because cars are parked out on
9 the road. Not certain whether that's allowed or
10 not. Not a big deal.

11 However, you know, really, at the end of the
12 day, we need to be most concerned about being
13 good neighbors and being good neighbors with the
14 neighbors that are directly contiguous to us. So
15 at our last hearing, we have two neighbors
16 contiguous to that parcel. At our last hearing,
17 one of the neighbors was all for it. Couldn't
18 wait to have it happen. Was excited about it
19 happening, supported it and was very verbal about
20 it. And then our second neighbor has some
21 concerns. And so at that point, we're
22 fifty/fifty of our contiguous neighbors.

23 The neighbors directly contiguous to us, Jeff
24 and Karen Barrow, voiced some concerns in their
25 letter prior to the previous hearing. And it's

1
2 probably best that any concerns there be
3 addressed as being good neighbors to allow
4 everybody to endeavor over there and remain good
5 neighbors from here forward.

6 It was mentioned in their letter that they
7 have lived there for 20 years. That would place
8 it roughly around 1996, 1997. And the deli has
9 been there since '89. So well prior to them
10 moving in, this business was there, established,
11 operating and running and they elected to
12 purchase a home there, move in next door and knew
13 what was going on.

14 They are indicating that the deli was serving
15 the immediate community and a few others in a
16 very modest way. A few others, what does that
17 mean? That's an opinion.

18 They're shifting -- they say we're
19 representing a fundamental shift away from the
20 neighborhood deli to a much larger enterprise
21 serving a wider area by provisioning food trucks
22 to cater larger events around the city. Well,
23 that's an opinion. They haven't seen what Chef's
24 does. They haven't allowed it to happen. It's
25 an assumption. It's almost like an

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unsubstantiated opinion.

Food trucks, delivery vehicles cater. They are serving food. That's what the place has always done.

They mention in their letter with the neighborhood deli that there's been continual nuisance issues. Trucks left running in the parking lot. Garbage blown and/or thrown over the fence. Early morning dumpsters being delivered and returned, et cetera, not exactly certain what et cetera is. For the most part, we have ignored these issues in the belief that the value to our neighbors outweighed our inconveniences. So what we offer in light of the continual nuisances, is the garbage, we're going to have to do a better job than. I mean nobody can actually say or has said that it's garbage from this facility. I mean everybody puts their garbage out on the street. Everybody puts their recycle out on the street. Windy days like today, that stuff moves around. Whose garbage is it? The fact that I believe somebody saying that it's thrown over the fence, it's a six foot high fence and not thinking people are throwing the

1
2 garbage intentionally over the fence; however, if
3 that's happening, perhaps we offer a larger
4 fence, okay, or a higher fence and prevent that
5 from happening to satisfy that condition.

6 As far as the trucks left running, that will
7 have to stop. It's controllable. It's not right
8 to let them run. So they shut them off. That's
9 the way it will have to be. There's signs up
10 there. The operators -- the current operators
11 will have to enforce that. If there's a
12 complaint that it's not happening, then they will
13 have to do a better job enforcing it.

14 The trash we addressed with the changing to a
15 higher fence. As far as the garbage is
16 concerned, garbage trucks go up and down the
17 street. They collect everybody's garbage. Okay.
18 They are entitled to have their garbage picked
19 up. 745 Penfield Road is entitled to have their
20 garbage picked up. It will have to be scheduled
21 such that it's during normal working hours in
22 lieu of these early morning hours pickups and
23 drop offs. So that's relatively easily modified
24 to reduce that inconvenience or complaint.

25 We believe that the request to extend the

1
2 business will have a significantly harmful affect
3 on our quality of life, property value and impact
4 many other homeowners on Colonial Village Road
5 and Dale Road. If the nuisance issues are
6 corrected, then it would improve the quality of
7 that life.

8 Property values, we know we can't talk about
9 property values. Again, somebody just got done
10 saying that people advertise their homes when
11 it's for sale because they have the business down
12 at the end of the street.

13 Nobody's offered any examples of the
14 contrary. The significantly harmful affect or
15 impact and again, now, we are speaking for
16 homeowners all the way down the street and a
17 block away in lieu of neighbors that are directly
18 contiguous to this parcel.

19 The next comment on there was about the
20 cooler. The cooler's out. That's been
21 discussed. It's off the table. Not exactly
22 certain if it needs to be addressed. And mention
23 in here we have spent considerable money planting
24 trees to provide for some level of privacy from
25 the deli. I would like to remind this Board that

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2 when our neighbors were trying to do that in
3 their backyard, they requested our permission to
4 remove the fence, do all their improvements,
5 which took several weeks, to allow that to happen
6 and then reinstall the fence and the stone that
7 was left over from that project is the stone --
8 some of that stone is what's been spread down
9 behind the garage. Behind the garage is not been
10 paved. It's a stone area for employee parking.

11 It says here, but they can't enjoy it but it
12 is not possible to accomplish this entirely, we
13 now enjoy the full view of a large shipping
14 container that has been recently placed close to
15 the fence. The shipping container was there for
16 the remodeling. When we found out it was
17 undesirable, we moved it to the back. It's off
18 the site and not to return. The shipping
19 container is not an issue.

20 The application states that the previous
21 owner employed eight to ten full time employees
22 and the plan going forward is to employ ten full
23 time employees. I would seriously -- this is
24 quoting their letter, I would seriously question
25 the assertion that eight to ten full time

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2 employees were recently part of the deli. Over
3 the past 20 years, we have never seen more than
4 three or four people even at the busiest times.
5 I haven't seen anything in black and white that
6 shows anything to substantiate that. We ran the
7 business. We know how many employees we had. We
8 can certainly provide payroll records that can
9 indicate differently than that.

10 It further goes on to say, typically. Some
11 of those were clearly students working a part
12 time job after school. Yes, they were. Some of
13 them were part-time students. What a great
14 opportunity for the kids in the neighborhood to
15 be able to get their first job without licenses
16 and be able to walk to work and enjoy the
17 nurturing of starting some part-time employment
18 and have some place nearby where that can be
19 done.

20 It goes on to say a couple other things,
21 fully operational, the working hours, I know that
22 was a concern of the Board before. And we said
23 that all those were negotiable and those have
24 since been reduced in this current application.

25 The traffic, again, the traffic down Colonial

1
2 Village Drive is more than the traffic that's
3 going to come in and out that entrance off of
4 Colonial Village Drive into this facility.

5 They talked about snowplowing. We snowplow
6 the same time the Town of Brighton snowplows.
7 That is 24/7. When it's required, it's got to be
8 done to keep the roads safe.

9 And then in closing, it talks about the
10 smells. Well, the smells are attempted to be
11 improved with the fire and life safety by
12 utilizing the hood. And it's closed with
13 unknowns like any business, there will be affects
14 made to grow and expand business. This will
15 inevitably increase the issues listed above.
16 Really speculation and just kind of piping on
17 adding more negatives to it that really don't say
18 anything.

19 In terms of the black and white, in
20 decisions, in the stipulation of record, that
21 several people have alluded to during the course
22 of this evening, there is a stipulation here.
23 This is a State of New York Supreme Court, County
24 of Monroe decision stipulation. The 1985
25 stipulation that all these conversations are

1 revolving around. Mentioned it before,
2 mentioning it again. Item 5 in that stipulation
3 talks about the purposes. And purposes relating
4 to and it specifically says, sale of all such
5 goods and products as are now sold or offered for
6 sale at the said premises by the said defendant
7 including milk, cheese and other dairy products
8 and the manufacture, the manufacture and sale of
9 ice cream, food and food products. That's what's
10 attempted to have done here and hence, the reason
11 for the application for the hood is for the
12 manufacturing of the food and those food products
13 in a safe and healthy manner. That concludes.

14 CHAIRPERSON MIETZ: Thank you.

15 MR. DAVIS: Thank you.

16 CHAIRPERSON MIETZ: Okay. Is there anyone
17 else that would like to speak regarding this
18 application? Anyone else? Hold on. Go ahead,
19 sir.

20 MR. COTE: My name is Charlie Cote. I live
21 at 40 Colonial Village Road. I just want to
22 respond to the gentleman who just spoke. There
23 are trucks that come to the neighborhood and
24 deliver things that we purchase online, but we do
25

1
2 not have an Amazon fulfillment center in the
3 neighborhood. So I'm speaking against the
4 application because I'm concerned that this is
5 going to become a food production facility that
6 prepares food for delivery off site, not in the
7 neighborhood, and so I just wanted to speak to
8 that. I'm concerned about that. Thank you.

9 CHAIRPERSON MIETZ: Okay. Thank you. Okay.
10 Is there anyone else that would like to speak
11 regarding this application? Okay. All right.
12 I'm sorry. Go ahead. What is it that -- so what
13 would you like to do here? Again, we aren't
14 going to do a rebuttal.

15 MR. DOLLINGER: I might have a couple
16 questions.

17 CHAIRPERSON MIETZ: If there's questions of
18 the application, we'll be happy to have you
19 answer some questions, you and the applicant. We
20 are not going to -- I said at the beginning of
21 the meeting, this is not -- we just can't allow
22 back and forth discussion. So if you have
23 something to add that's new, yeah, that's fine.
24 I'm just procedurally explaining what we will
25 allow you to do. If the Board has any other

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2 questions to clarify on something that they
3 heard, we will allow that.

4 Okay. Why don't we take the questions.

5 MR. DOLLINGER: Yeah, I have a question. So
6 it was my impression that this application was
7 somewhat different that so far as it didn't
8 express what you expressed before, which was that
9 you were going to be kind of producing the food
10 in this facility for sale on the food trucks.

11 And my question is, is that true? Are you
12 going to produce food in this facility on
13 Penfield Road for sale on the food trucks?

14 MR. ZAZZARO: No, we're not. We're doing
15 that out of East Avenue. Just like I said
16 earlier, all food production for food trucks and
17 all of our catering jobs are done --

18 MS. TOMPKINS WRIGHT: So tell us again, and
19 real quick, just to clarify, that is different
20 from the original application in September?

21 MR. ZAZZARO: Yes.

22 MS. TOMPKINS WRIGHT: When you came in, you
23 said that you were preparing them on site and
24 selling them. The point of sale would be off
25 site?

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2 MR. ZAZZARO: Correct. I apologize in
3 advance for September. It was unclear. And I --
4 we have our catering facility and we have our
5 kitchen and bakery. And the word kitchen scares
6 people, but if I -- deli, kitchen is just a
7 contemporary modern word for my brand. It's not
8 anything to scare. But whether it's Chef's Deli
9 and Bakery, it's the same thing.

10 MS. TOMPKINS WRIGHT: And I want to
11 interrupt. Just to confirm, because you said
12 you're talking about being separate businesses,
13 do you have two separate business entities, one
14 for catering and one --

15 MR. ZAZZARO: Yes.

16 MS. TOMPKINS WRIGHT: -- For this?

17 MR. ZAZZARO: Yes, I do

18 MS. TOMPKINS WRIGHT: -- The Penfield Road
19 location? Two separate business entities, two
20 separate --

21 MR. ZAZZARO: Separate businesses, yes. They
22 fall under the same umbrella. I have a
23 corporation.

24 MR. DI STEFANO: Separate DBAs?

25 MR. ZAZZARO: Yes. Chef's Kitchen and Bakery

1
2 is separate and Chef's Catering and food
3 trucks.

4 CHAIRPERSON MIETZ: We got it.

5 MS. TOMPKINS WRIGHT: That's fine. I wanted
6 to confirm.

7 MR. ZAZZARO: Separate.

8 CHAIRPERSON MIETZ: All right. Are there
9 any other questions that the Board members have?
10 Go ahead.

11 MS. WATSON: The application for this
12 appeal, substantial -- is based on appealing the
13 Town Planner's letter and you are asking us to
14 consider interpreting the code in support of the
15 sale of products off premises and is permitting
16 off site delivery of food, why is that in the
17 application if that's not what you are saying
18 that you're doing now?

19 MS. O'TOOLE: I think if you take a look
20 that the December 2nd letter, Mr. Boehner did
21 agree with us that the deli and bakery carry out
22 uses were pre-existing non-conforming uses. So
23 we are in agreement on that. So we were just --
24 as far as that's part of the application, it's
25 just to confirm Mr. Boehner's finding and our

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agreement with that.

In terms, we think that the letter overgeneralized delivery. So it made it in such away that, no, there will not be delivery of food with the food trucks. It's not being prepared on site for sale on the food truck, but we want to have a pizza delivery guy in a couple years, yeah, we think that that's consistent with what happened in the past.

MS. DALE: Hold on. Did that answer your question? Because I don't think so.

MS. WATSON: Not entirely.

MS. DALE: Okay. Try that again. Can you ask the question again?

MS. WATSON: Sure. Basically, the appeal that you're asking for is for us to interpret that it's okay to deliver or that the point of sale be off premises. But your verbal testimony has been saying that you're not doing that. So I'm asking why even apply for appeal if what you're doing now is in conformity with the --

MR. DOLLINGER: Maybe I can clarify that. That's been a problem and I'd like to clarify that because that is kind of a problem I have

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2 with the application like I said before. The
3 application is not necessarily consistent with
4 your testimony. That's kind of my problem.

5 And that's what I'm trying to get at is and
6 it's inconsistent in a couple ways and if this
7 helps you. You know, one is the fact when you
8 say that there's no food that's going to be
9 prepared here, is going to be put on the food
10 trucks and sold and then the second question, I
11 agree. I'm not sure that that's what this
12 application says. It still kind of implies. It
13 doesn't actually talk about that. When you talk
14 about the food preparation, it's just you went
15 from the use to all of a sudden the function. So
16 the application really doesn't discuss the fact
17 of whether or not there is going to be anything
18 sold -- produced here that is sold off site. And
19 so I want to make it clear that your testimony
20 tonight is that's not going to happen. So there
21 will be nothing that would be produced here that
22 will be put on the food trucks and taken out and
23 sold off the food trucks.

24 MR. ZAZZARO: No.

25 MR. DI STEFANO: Because the application

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2 does say that. It says, food preparation area
3 that would prepare food for delivery off site.
4 That's spelled out as Number four in the
5 application.

6 MR. ZAZZARO: Delivery can be all of our
7 meals, prep meals packaged to go and for people
8 to come in to grab, that's -- I mean that's
9 considered -- that's consumption off site.
10 Everything that we are making at 745 Penfield
11 Road is being sold over-the-counter. Food
12 trucks --

13 MR. DOLLINGER: Are not over the counter.

14 MR. ZAZZARO: Food trucks are not --

15 MR. DOLLINGER: Food trucks are not --

16 CHAIRPERSON MIETZ: Okay. Come on. One at
17 a time.

18 MR. DOLLINGER: Just to clarify, there's a
19 separate point of sale system in the food truck
20 that you actually sell it off the food truck?

21 MR. ZAZZARO: Correct. That's one side of
22 the business, but also the trucks are used for
23 catering. So that's why I need you to understand
24 that the trucks are at East Avenue. We do on
25 site caterings, come to your house for 50 people,

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2 hundred people, X amount of dollars, certain
3 menu. We'll come there, serve, two hours, leave.
4 But then there's also events, festivals where you
5 have your truck at, where you sell food at. I
6 need you to understand those two parts that we
7 do. And that's all done out of East Avenue for
8 the trucks. So whether we need to just make it
9 clear that -- I don't know how much clearer.

10 MR. DOLLINGER: Okay. So well, that helps
11 me a little bit. I didn't quite --

12 MR. ZAZZARO: Does that make sense?

13 MR. DOLLINGER: I'm really just trying to
14 understand this. Okay. I'm just trying to get
15 it. So are you saying that you -- that you
16 consider like -- is it possible that you produce
17 food here, put it on the food truck and then take
18 it somewhere and actually cater? Not really sell
19 it like you would downtown at 10:00 o'clock at
20 night. You would actually put it on the truck,
21 take it to a place like my friend does at Premium
22 and you --

23 MR. ZAZZARO: All of the loading and
24 production, prep for those parties and the trucks
25 is all done at East Avenue.

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MR. DOLLINGER: Okay.

MR. ZAZZARO: If it's not okay, we are asking for sometimes -- like I said, if an event happened, weather, employees, I'm not -- and I could be evaluated, I mean -- I don't know how else to state that what I'm doing, what we're going at Penfield Road is for that store, our store, bakery and our lunch.

MS. DALE: I don't understand why you're not taking the easy out here and saying --

MR. DOLLINGER: Yeah, me, too.

MS. DALE: Just take the easy out and say the food trucks won't be at Penfield Road. Just take the out, that means that you're not using the --

MR. ZAZZARO: Okay. What if I pull up in my truck to -- we need to pick up some things. Like I said, as far as the delivery --

MS. DALE: Overnight, not saying the truck can't be there during the day. They drive to East Ave. They drive to Penfield Road. They unload the truck, take ten minutes. They get back in the truck. They drive away. That's different. But by not letting that go, it makes

1
2 me very suspicious with this. Your testimony
3 doesn't match the application. You're sort of
4 dancing around with what the different words are
5 here and you're not taking that out, it makes you
6 seem disingenuous.

7 MR. ZAZZARO: Take it out. You got my word.
8 We won't have food trucks parked there overnight.

9 MR. DOLLINGER: So my next question is --

10 CHAIRPERSON MIETZ: Do you have another --
11 let's stay on point. A specific question.

12 MR. DOLLINGER: So my next question is, so
13 what are the ten people doing that are there?
14 The eight people, the ten people, what are they
15 doing?

16 MR. ZAZZARO: I can clarify that.

17 MR. DOLLINGER: Where is that going?

18 MR. ZAZZARO: I can actually show you a
19 schedule. I have eight to ten employees amongst
20 my catering business and my kitchen and bakery.
21 Four to five I have at the kitchen and bakery and
22 I can go through, myself being an employee and my
23 assistant. And then we also have a bakery, which
24 my sister runs. So there's a third person and
25 then we have a chef, an order taker, depending on

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2 how busy or slow. That's why I say four to five.
3 There's a cook. There's a person that helps the
4 counter. She takes orders and also get baked
5 goods orders as well. You can come in. You can
6 get baked goods or if you wanted to get hot --
7 order hot food made to order, she handles the
8 counter and then we have a couple part-time
9 employees that work 15 to 20 hours a week as far
10 as bakery help. It is not -- one person for
11 people to have days off and to have a life and
12 not work 80 hours a week. To make -- we make
13 fresh bread and we make all of our -- all of our
14 cookies and brownies. Everything that was done
15 there previously. It's not -- we have four to
16 five employees and I can rectify that if need be.
17 I have eight to ten right now amongst my two
18 businesses. So that's where the confusion is.
19 Ten employees are not at the kitchen and bakery
20 at one time. There is four to five. Sometimes
21 two to three.

22 CHAIRPERSON MIETZ: Okay. All right. So
23 are there any other questions over here? Is
24 there a question over here?

25 MR. CLAPP: I do have.

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CHAIRPERSON MIETZ: Please.

MR. CLAPP: Unfortunately, I'm getting more confused by what I'm hearing than clarification. But looking at the appeal you submitted, I'm looking at page 12 of 18, item number two, the preparation of food for delivery by a food truck is a natural evolution of the food preparation business. It's stating in this application as I am reading it, that that is, in fact, you're arguing that that is okay. Followed by page 14 of 18, what happens to prepared food after it leaves the property is irrelevant, yet, you show a picture of Chef's mobile kitchen at what appears to be an amusement park and you just told us that's not at all a part of your application. So I'm confused.

MS. O'TOOLE: So we are not asking for food trucks to be operating out of this location. That changed. This is a conversation between myself and my client that has evolved since the time the application was filed. There was a very short period of time as you all know between the time we got the denial and that all the papers had to be prepared to go out. And so what we're

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2 telling you today is what my client has said on
3 the record many many times tonight, that he's not
4 operating the food trucks out of this location.
5 He doesn't intend to operate the food trucks out
6 of this location and if you need any more
7 clarification than that --

8 MR. CLAPP: But my understanding, that's not
9 what's in the application.

10 CHAIRPERSON MIETZ: Right, they're saying
11 testimony that that's not what they are doing.

12 MS. O'TOOLE: And there was a violation
13 about the parking overnight. And so the
14 picture's in there to address that violation.
15 You know, that is part of our application was
16 about occasional overnight storage it sounds like
17 the Board although you have not made a
18 determination yet, is not amenable to that and my
19 client has said that he's willing to not store
20 them overnight.

21 CHAIRPERSON MIETZ: Okay. Okay. We got
22 that. All right. Does that clarify?

23 MR. CLAPP: Somewhat.

24 CHAIRPERSON MIETZ: Is there something else
25 you need because we'll discuss it further.

1
2 MR. DI STEFANO: Yeah. Just on that, well,
3 just on that note about the violation, I don't
4 think this Board has any authority to remove that
5 violation. That violation is in the hands of the
6 court system, not this Board.

7 CHAIRPERSON MIETZ: Right.

8 MR. DI STEFANO: That portion of your
9 application I just don't think we can -- we have
10 authority.

11 CHAIRPERSON MIETZ: We can't act on really.
12 Okay. All right. Did you have something else?

13 MS. CORRADO: More comment than a question
14 really. It follows on what Doug had to say. It
15 seems to me that you put significant time and
16 effort into preparing this in a short of time
17 frame as possible, but you have significantly
18 revised how you intend to operate this business,
19 which is no longer represented here, which is now
20 being presented to us in such a rambling and
21 disorganized fashion that it is impossible to
22 really get a clear reading on what your real
23 intention is and what we will have to decide. So
24 we have given a great deal of time to this. We
25 have other applicants who are waiting and I

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2 respectfully ask the Chairman to move us along to
3 our other applicants and perhaps, you'll need to
4 revisit this again.

5 CHAIRPERSON MIETZ: Well, we'll have our
6 opportunity to deliberate on this just like we do
7 all the other applications. But I'll ask one
8 more time, if any of the Board members have
9 anything else or a question that will help them
10 to answer any open questions that you have?
11 Because we're going in a circle about some of
12 this and I don't think it's necessary to continue
13 just doing that.

14 MS. WATSON: I'm just not clear on what it is
15 we're deciding.

16 CHAIRPERSON MIETZ: What's that? That we'll
17 discuss. That we'll discuss. All right.

18 MS. O'TOOLE: Respectfully, if it would be
19 more clear to the Board, we're happy to make a
20 supplemental written submission. We'd
21 also like -- we have not seen the memorandum of
22 law that was submitted by the neighbors and we
23 would like an opportunity to respond to that as
24 well.

25 CHAIRPERSON MIETZ: Okay. We can take that

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into consideration.

MR. DI STEFANO: Let me ask a question of the application. Would you like to request this Board to take this application? Do you have any requests of this Board tonight?

MS. O'TOOLE: We only to the extent that the Board feels that they are unable -- if the Board decides they're unable to decide the application as submitted with oral testimony and in writing, if the Board feels that a supplemental submission would aid the Board in making a final determination, then we request the opportunity to do so. I'm not asking that you table it, but if you decide to table it, I'd like to make a supplemental submission.

CHAIRPERSON MIETZ: Okay. All right. I think -- are we set? Okay. I think we're set. Okay. Thank you.

MR. DOLLINGER: Thank you.

MS. O'TOOLE: Thank you.

CHAIRPERSON MIETZ: All right. Is there anyone else that would like to speak regarding this application? At this point then the public hearing is closed.

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2 MR. DI STEFANO: We can reopen it if feel we
3 have to reopen it. Right now it's closed, but we
4 can discuss that.

5 CHAIRPERSON MIETZ: I don't want it open.
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2 Application 1A-05-17. Application of Gina DeJoe, contract
3 vendee, and the Estate of Robert Sigurdson, owner of the
4 property located at 70 Westland Avenue, for an Area
5 Variance from Section 205-2 to allow the reconstruction of
6 a pre-existing non-conforming porch into a two story living
7 room and master bedroom expansion with a side setback of
8 four foot in lieu of the minimum 7.5 foot allowed by code.
9 All as described on application and plans on file.

10 CHAIRPERSON MIETZ: Okay. Good evening.

11 MR. SMITH: Good evening. You want to get
12 up, stretch for a minute? It's okay with me.

13 CHAIRPERSON MIETZ: Go right ahead. We are
14 used to it.

15 MR. SMITH: My name is Chuck Smith. I work
16 with known Design Works Architecture and I'm
17 representing Gina DeJoe tonight who -- we made
18 this application as she was a contract vendee and
19 not actually own the house. So that between the
20 time that we made this application, the closing
21 has occurred. So we've been asked to do a
22 complete gut renovation of this house and we have
23 brought our application in front of the
24 Architectural Review Board and they did review
25 the architectural impact of this addition, which

1
2 is the north side of the house.

3 So what I've been looking at is the ability
4 to expand the first floor living room and in
5 doing so, we have a porch that's original to the
6 house on the north side. And it's seven foot six
7 by 19 foot, one story on peers, not insulated.
8 So it was probably a screen porch at one time.
9 And we want to make that living space. So in
10 doing so, we would actually take it down and
11 rebuild it with proper foundation and insulation.
12 And the Brighton staff, planning staff, has told
13 me that we can do that. That's right with
14 approval from the ARB and getting a building
15 permit if the footprint stays the same.

16 We are here tonight because we would like to
17 make that a two story addition and so at that
18 point, there is three and a half feet of that
19 second story that is beyond the setback line --
20 separate setback at which is seven and a half
21 feet. So that's the purpose of our interest in
22 meeting you tonight is to get a reading on that
23 application as a second story addition.

24 And so we are in the process of looking at
25 various ways to design this building to me and my

1
2 client's needs. However, if we can use that as a
3 second story, it would greatly help us to expand
4 that north bedroom into a master bedroom suite.
5 So I'll answer any questions.

6 MS. DALE: You said the three and a half
7 feet on you said the second story, the second
8 floor, second story would go about three and a
9 half feet over. Is it like a roof overhang or
10 something?

11 No, the actual porch footprint goes beyond
12 the setback by three and a half feet. But it's
13 as of right, the existing footprint is as of
14 right for the first floor. As soon as we go on
15 the second story, there's three and a half feet
16 of that second story that's over the line.

17 MS. DALE: Okay. It's not straight up?

18 MR. SMITH: It's not cantilevered up. It's
19 straight up.

20 MS. TOMPKINS WRIGHT: The additional bump
21 out, it's just a -- it's a prior -- basically, a
22 prior nonconforming.

23 CHAIRPERSON MIETZ: Correct.

24 MS. TOMPKINS WRIGHT: It's the exact same
25 footprint. They're just building straight up?

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MR. SMITH: Correct.

MR. DI STEFANO: Building a second floor.

MS. DALE: Oh, I thought you were saying the second floor was over?

MR. SMITH: No, I guess the point is a little confusing.

MS. TOMPKINS WRIGHT: The first floor is over.

MR. SMITH: If I were only to build a second story four feet out, I wouldn't be here tonight.

CHAIRPERSON MIETZ: Okay. Yeah, that would be right. Are there questions? Do we have any? Did you look at other possible ways to remodel the interior of this house?

MR. SMITH: Yes, we could possibly build off the back to build a master bedroom suite off the back of the house and so that is a possibility. Be a much bigger project. So if we could do this, it will give us more options; but there is a possibility of not having -- not doing this and building off the back.

MS. TOMPKINS WRIGHT: To build off the back, would increase the overall footprint?

MR. SMITH: Yes.

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2 MS. TOMPKINS WRIGHT: Of the property -- or
3 of the home.

4 CHAIRPERSON MIETZ: And would you just
5 approximate how much more you think that would
6 cost? Just an idea. If you were to build off
7 the back versus doing what you proposed?

8 MR. SMITH: Oh, what we would have to do
9 then is have to create the whole master bedroom
10 off the back because we would have to include the
11 bedroom and the bathroom and a connection from
12 the house to that room.

13 CHAIRPERSON MIETZ: Just a gut check.

14 MR. SMITH: Yeah.

15 MS. DALE: Like twice as much?

16 CHAIRPERSON MIETZ: Yeah, I'm not looking
17 for an exact, you know \$49.22.

18 MR. SMITH: Three times as much.

19 CHAIRPERSON MIETZ: That's fair.

20 MS. SCHWARTZ: So if you were to go off the
21 back, would it still be a two story then?

22 MR. SMITH: Yes.

23 MS. SCHWARTZ: For the porch or something?

24 MR. SMITH: Yes, so the application, the
25 footprint that I think I have shown you is, there

1
2 is a small addition off the back which is a
3 mudroom with a laundry room above. There is
4 plans to attach a garage to that footprint, too.
5 So if we had to go out the back, we would build
6 this master bedroom above the garage.

7 CHAIRPERSON MIETZ: Okay. Just an idea of
8 what you were considering.

9 MR. DI STEFANO: Did you or your client talk
10 with the neighboring property that's affected by
11 this?

12 MR. SMITH: I asked them that question. And
13 they said they have had a hard time reaching
14 those -- the neighbors. There is a couple lot
15 line encroachments that they have been trying to
16 talk to them about. So I advised them that it
17 would be a good idea to talk to their neighbors
18 before I stood up in front of you guys tonight in
19 case there's somebody behind us that has
20 objections, but I don't know that that happened.

21 CHAIRPERSON MIETZ: Okay. Good.

22 MS. SCHWARTZ: Are there other -- I didn't
23 look in the back. I looked at this front and the
24 side, but do you know of any other additions in
25 the neighborhood that have the addition in the

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back as opposed to what you want to do on the side?

MR. SMITH: Yeah, I took a look at Bing Maps tonight -- or this afternoon, and you know, the satellite photograph and took a look and there -- there are a number of additions off the back of these two story homes. One -- one house in particular, three lots south on the same side, has a very large addition off the back of the house. These lots actually can support large additions because they are very deep lots.

MS. SCHWARTZ: Right.

MR. SMITH: So they are very large lots. So you know, you can build a nine hundred square foot attached garage and still meet lot area coverage --

MS. SCHWARTZ: Right.

MR. SMITH: Even with the allowable footprints.

MS. SCHWARTZ: Because I did notice that there were no two story -- you know, there were no additions above of the existing porches within all the houses that I saw on that block. Okay. Thank you.

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2 MR. SMITH: Yeah, in general that is true,
3 yeah.

4 CHAIRPERSON MIETZ: Okay.

5 MS. CORRADO: I'm sorry. Did you say you've
6 already been before the ARB?

7 MR. SMITH: Yes. We went in front of the
8 ARB and they wanted us -- we showed them the view
9 from the street. They would like to see a view
10 from the north side, that long side which I
11 actually brought with me tonight if you were
12 interested. So we tabled that hearing to come
13 here tonight and then I will go back to them with
14 that, with that north side elevation if we're
15 granted approvals.

16 MR. DI STEFANO: Chuck, would you pass that
17 around?

18 MS. CORRADO: I'd like to see that.

19 CHAIRPERSON MIETZ: Okay. Is there any
20 other questions for the applicant?

21 MR. CLAPP: Mentioned just briefly before
22 when I took a drive through, I saw, in fact, most
23 of the houses in that section have porches,
24 single story porches with nothing above. They
25 are all relatively close to lot lines in that

1
2 area where you have, farther down the street, the
3 lots do open up more. My concern is that if one
4 house gets to build up to the second floor level,
5 pushes close then to the next one all of a
6 sudden, the houses all get closer together in
7 that stretch. And where there is, in fact, room
8 cost notwithstanding, but on the lots to expand
9 in other ways, I would be concerned about setting
10 a precedent.

11 CHAIRPERSON MIETZ: That's something we can
12 decide, discuss in our deliberation.

13 All right. Okay. So any other questions for
14 the applicant? Okay. Thank you.

15 MR. SMITH: Thank you.

16 CHAIRPERSON MIETZ: Is there anyone in the
17 audience that would like to speak regarding this
18 application? Okay. There being none, then the
19 public hearing is closed.
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2 Application 1A-06-17. Application of Jon Schick,
3 architect, Michael and Kara Maloney, owners of the property
4 located at 14 Creekdale Lane, for an Area Variance Section
5 209-10 to allow livable floor area to increase from 4,505
6 square feet to 4,599 square feet, after construction of a
7 94 square foot mudroom addition, for a maximum of 3,852
8 square feet of livable floor area as allowed by code. All
9 as described on application and plans on file.

10 MR. SCHICK: Good evening. My name is Jon
11 Schick. And as Rick said, I'm the architect for
12 Michael and Kara Maloney. So they sort of been
13 building and renovating this house for I think
14 seven years now they have lived there I think.
15 But there's -- they don't have a mudroom. They
16 don't have -- the primary entrance into the house
17 that everybody uses is on the side of the house
18 and that entrance goes directly into a dining
19 area. So there is no buffer at all. So we are
20 proposing to construct a ten foot by ten foot
21 mudroom on the side of the house and sort of be
22 modeled after the front porch stylistically. I
23 don't know if you want to see any pictures or
24 pass those around.

25 So that's already pre-existing nonconforming

1
2 because of the allowable livable square footage.
3 So we are requesting a pretty modest addition as
4 minimal as we could really make it and still make
5 it function. So just be a one story ten foot by
6 ten foot mudroom.

7 MS. TOMPKINS WRIGHT: Do you know the
8 dimensions of the current covered porch where the
9 mudroom is going? What they are?

10 MR. SCHICK: I think it's about 6x6.
11 Something like that, 5x6.

12 MS. TOMPKINS WRIGHT: And the porch is going
13 exactly where that was just larger?

14 MR. SCHICK: Correct.

15 MS. DALE: And no change to the driveway?
16 I mean looks like there's space.

17 MR. SCHICK: The driveway will not change.
18 We are proposing to add the fence, sort of the
19 gate way down there to sort of -- create sort of
20 a, you know, more public persona and then sort of
21 a more semi-private area.

22 MR. DI STEFANO: John, for the record, are
23 there other houses in the neighborhood that are
24 already --

25 MR. SCHICK: Actually, the houses on either

1
2 side of them are both pre-existing nonconforming.
3 There's other ones behind them.

4 CHAIRPERSON MIETZ: Okay. All right. Any
5 other questions by the Board members? Yes? Any
6 questions? Okay. Thank you.

7 MR. SCHICK: Thank you very much.

8 CHAIRPERSON MIETZ: Okay. Is there anyone
9 in the audience who would like to speak regarding
10 this application? There being none, then the
11 public hearing is closed.

12 Let's take ten minutes.

13 (Recess.)
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2 PROCEEDINGS HELD BEFORE THE BRIGHTON ZONING BOARD OF
3 APPEALS, AT THE BRIGHTON TOWN HALL, 2300 ELMWOOD AVENUE,
4 ROCHESTER, NEW YORK 14618, ON JANUARY 4, 2017, COMMENCING
5 AT APPROXIMATELY 7:15 P.M.
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7

8 PRESENT:

9 DENNIS MIETZ, CHAIRMAN
10 DOUGLAS CLAPP
11 CHRISTINE CORRADO
12 JEANNE DALE
13 JUDY SCHWARTZ
14 JENNIFER WATSON
15 ANDREA TOMPKINS WRIGHT

16
17 DAVID DOLLINGER, ESQ.
18 Town Attorney

19
20 RICK DI STEFANO
21 Secretary

22 Reported By: DOREEN M. SHARICK, Court Reporter
23 EDITH E. FORBES COURT REPORTING SERVICE
24 21 Woodcrest Drive

25
Batavia, New York 14020

1
2 Application 1A-01-17. Application of Congregation Light of
3 Israel, owner of property located at 1675 Monroe Avenue,
4 for renewal of a Temporary and Revocable Use Permit
5 (4A-01-15) pursuant to Section 219-4 to erect a tent and
6 hold up to six (per year) outdoor special events for the
7 years 2017 and 2018. All as described on application and
8 plans on file.

9 Motion by Ms. Tompkins Wright.

10 Application 1A-01-17.

11 FINDINGS OF FACT:

12 1. The application and related documentation indicates
13 that events held by this organization are often organized
14 on a short time frame and thus, it would be cumbersome,
15 sometimes impossible, to require zoning approval for each
16 event.

17 2. The property has been used in similar fashion for
18 limited short duration events over the course of the last
19 four years without any noted disturbances to neighboring
20 properties.

21 3. Despite being in a residential neighborhood, proposed
22 events will mostly occur during the day with no sound
23 implication and lighting only -- and a solid vegetation
24 buffer screens the property from neighbors to the
25 southwest.

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CONDITIONS:

1. The tent on all six occasions per year can only be set up two days prior and taken down no more than two days after.
2. There can be no sound implication at the location.
3. Each event shall last no longer than two days.
4. All food preparation must be off site or within the synagogue.
5. The site must be cleared of all litter after the event.
6. If lighting is required, it is to be only inside the tent itself.
7. All events shall conclude by 11:00 p.m.
8. The variance applies only to the duration of January 1, 2017, to December 31, 2018.
9. All necessary fire marshall permits shall be obtained.

(Seconded by Ms. Corrado.)

(Ms. Watson, yes; Ms. Dale, yes;

Ms. Schwartz, yes; Mr. Clapp, yes; Ms. Corrado, yes; Ms. Tompkins Wright, yes; Mr. Mietz, yes.)

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

1
2 Application 1A-01-17. Application of Congregation Light of
3 Israel, owner of property located at 1675 Monroe Avenue,
4 for renewal of a Temporary and Revocable Use Permit
5 (4A-01-15) pursuant to Section 219-4 to erect a tent and
6 hold up to six (per year) outdoor special events for the
7 years 2017 and 2018. All as described on application and
8 plans on file.

9 Motion by Ms. Tompkins Wright.

10 Application 1A-01-17.

11 FINDINGS OF FACT:

12 1. The application and related documentation indicates
13 that events held by this organization are often organized
14 on a short time frame and thus, it would be cumbersome,
15 sometimes impossible, to require zoning approval for each
16 event.

17 2. The property has been used in similar fashion for
18 limited short duration events over the course of the last
19 four years without any noted disturbances to neighboring
20 properties.

21 3. Despite being in a residential neighborhood, proposed
22 events will mostly occur during the day with no sound
23 implication and lighting only -- and a solid vegetation
24 buffer screens the property from neighbors to the
25 southwest.

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CONDITIONS:

1. The tent on all six occasions per year can only be set up two days prior and taken down no more than two days after.
2. There can be no sound implication at the location.
3. Each event shall last no longer than two days.
4. All food preparation must be off site or within the synagogue.
5. The site must be cleared of all litter after the event.
6. If lighting is required, it is to be only inside the tent itself.
7. All events shall conclude by 11:00 p.m.
8. The variance applies only to the duration of January 1, 2017, to December 31, 2018.
9. All necessary fire marshall permits shall be obtained.

(Secoded by Ms. Corrado.)

(Ms. Watson, yes; Ms. Dale, yes;

Ms. Schwartz, yes; Mr. Clapp, yes; Ms. Corrado, yes; Ms. Tompkins Wright, yes; Mr. Mietz, yes.)

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

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2 Application 1A-02-17. Application of F & H Development,
3 LLC, owner of property located at 1338 Brighton Henrietta
4 Town Line Road, for renewal of a Temporary and Revocable
5 Use Permit (1A-01-15) to allow for the temporary outdoor
6 storage of construction equipment where not allowed by
7 code. All as described on application and plans on file.

8 Motion made by Ms. Corrado to approve

9 Application 1A-02-17.

10 FINDINGS OF FACT:

11 1. The applicant is planning to re-develop this property
12 and there has been an extended process of planning and
13 re-design as well as financing.

14 2. No unacceptable change in the character of the
15 neighborhood and no substantial detriment to nearby
16 properties is expected to result in the approval of this
17 request as the construction equipment stored at the
18 southwest corner of the property will be shielded by
19 existing fencing and a great change at the rear property as
20 relates to the street.

21 3. The health, safety and welfare of the community will
22 not be adversely affected by the approval of the temporary
23 use requested as the use of the property in this matter
24 remains commercial in nature.

25 CONDITIONS:

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1. The temporary and revocable use permit shall apply to a maximum of six pieces of equipment stored only on the southwest corner of the property as specified in plan submitted and testimony given.

2. The storage for vehicles and equipment s described shall not impinge on the wetland in the south portion of the property.

3. This temporary permit shall be valid for eighteen months from January 5th, 2017, to June 5th, 2018, or when construction on site concludes, whichever occurs first.

(Seconded by Ms. Schwartz.)

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

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

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2 Application 1A-03-17. Application of Ninety Rock, LLC,
3 contract vendee, and C.T. Yang Corp., owner of property
4 located at 2830 West Henrietta Road, for Sign Variances
5 from Section 205-32 to 1) allow for two freestanding menu
6 boards in conjunction with a drive-thru restaurant where
7 not allowed by code, and 2) allow for business
8 identification signage on a second building face of a new
9 restaurant building where not allowed by code. All as
10 described on application and plans on file.

11 Motion made by Ms. Dale to approve

12 Application 1A-03-17.

13 FINDINGS OF FACT:

14 1. The menu signage variance request is the minimum relief
15 necessary for reasonable use of the property as a
16 restaurant with a drive-thru. Menu signage is a
17 requirement for the successful operation of the drive-thru
18 ordering and delivery and the presence of two free standing
19 menu boards is the norm for efficient customer servicing.

20 2. The request for the second building sign is to allow
21 a sign on the front of the building and also a sign over
22 the entrance, which is on the side of the building, and to
23 face Brighton Henrietta Town Line Road, which is where the
24 vast majority of morning traffic and customers are
25 expected.

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2 3. The difficulty leading to the variance request is not
3 self-imposed as it is a result of the zone classification,
4 the desired use of the building and its location. It
5 cannot be solved in another manner.

6 4. The variance for the second building sign is not
7 substantial as the combined area of the two signs is 55
8 square feet, which is within the limits of the total
9 allowable signage area.

10 5. Granting of the request will not result in a change of
11 the character of the neighborhood or be detrimental to the
12 surrounding properties.

13 CONDITIONS:

14 1. The building signage shall be as specified in the
15 application submitted and testimony given specifically the
16 combined area of the two building faced signs shall not
17 exceed 55 square feet.

18 2. The menu board signs shall be as specified in the
19 application as to the size and the location.

20 3. All necessary Architectural Review Board approvals and
21 Planning Board Approvals shall be obtained.

22 (Seconded by Ms. Tompkins Wright.)

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

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

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Application 1A-05-17. Application of Gina DeJoe, contract vendee, and the Estate of Robert Sigurdson, owner of property located at 70 Westland Avenue, for an Area Variance from Section 205-2 to allow the reconstruction of a pre-existing non-conforming porch into a 2-story living room and master bedroom expansion with a side setback of 4 ft. in lieu of the minimum 7.5 ft. allowed by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to deny.

Application 1A-05-17.

FINDINGS OF FACT:

1. The current style of this house at 70 Westland Avenue is the predominant style of the homes in the general area.
2. The existing porch is a pre-existing non-conforming part of the house. Reconstructing the porch with the addition of a second story removable space will change the character of the neighborhood and further exacerbate the non-conforming porch.
3. The houses in the area are set quite close to one another and this variance for a side setback of five feet in lieu of the seven feet as required by the code with the second story addition will have a negative impact on the house next door.
4. The alternative by putting the addition on the rear of

1
2 the house as the rear lot is very deep. There would be no
3 adverse affect on the neighborhood as several other homes
4 in the area have additions on the rear of the homes.

5 (Seconded by Ms. Dale.)

6 (Mr. Clapp, yes; Ms. Tompkins Wright, no; Ms.
7 Watson, yes; Ms. Corrado, no; Ms. Dale, yes; Ms.
8 Schwartz, yes; Mr. Mietz, yes.)

9 (Open roll call, motion to deny carries.)

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Application 1A-06-17. Application of Jon Schick, architect, and Michael and Kara Maloney, owners of property located at 14 Creekdale Lane, for an Area Variance from Section 209-10 to allow livable floor area to increase from 4,505 sf to 4,599 sf, after construction of a 94 sf mudroom addition, where a maximum 3,852 sf of livable floor area is allowed by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve Application 1A-06-17.

FINDINGS OF FACT:

1. The granting of the requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. Like many other homes in this area of Brighton, this house already exceeds the allowable livable square footage and the additional increase is relatively small. Further, the mudroom will replace a covered porch area making the increase even less noticeable.

2. The requested variance is not substantial. The increase in overall square footage of the house is only two percent.

3. The benefit sought by the applicant cannot be reasonably achieved by any other method. The purpose of

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the addition is to provide a mudroom for the most used entrance to the home. And applicant's documentation stated that this is the only location that the mudroom could be located.

4. There is no evidence that the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district.

5. The difficulty in complying with the code while self-created stems from the use and existing size of the property and the fact that the home and surrounding neighborhood was developed over eighty years ago.

CONDITIONS:

1. The variance granted herein applies only to the addition described in and in the location as depicted on the application and in the testimony given.

2. All necessary approvals and permits must be obtained.

(Secoded by Ms. Schwartz.)

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

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

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2 Application 1A-04-17. Application of Chef's Cater-All LLC,
3 contract vendee, and 745 Penfield Road, LLC, owner of
4 property located at 745 Penfield Road seeking appeals of
5 portions of the Town Planner's letter dated December 2,
6 2016, an interpretation that intended uses at the property
7 are legal non-conforming uses, and an appeal from the Town
8 Planner's Accusation of Violation dated December 7, 2016,
9 all pursuant to Section 219-2A. All as described on
10 application and plans on file.

11 CHAIRMAN MIETZ: I move we table Application
12 1A-04-17 and re-open the public hearing for
13 further information and clarification from the
14 applicant as to the proposed uses at the
15 property.

16 (Seconded by Ms. Tompkins Wright.)

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

21 (Open roll call, motion to table, keep the
22 public hearing open carries.)

23 (Proceedings concluded.)
24
25

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

STATE OF NEW YORK

COUNTY OF GENESEE

I, DOREEN M. SHARICK, Notary Public in and for the State of New York do hereby certify:

That the transcript appearing herein before was taken pursuant to notice at the time and place as herein set forth; that said transcript was stenographically recorded through machine shorthand by me and thereafter computer transcribed into laser printing.

I HEREBY CERTIFY, that the foregoing transcript is a full, true and correct transcription of my machine shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my stamp this 29th of January, 2017.

BY: Doreen M. Sharick

Doreen M. Sharick,

Notary Public.