BRIGHTON ZONING BOARD OF APPEALS MEETING

May 5, 2021
At approximately 7 p.m.
Brighton Town Hall Zoom Meeting
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON

EDWARD PREMO
JEANNE DALE
KATHLEEN SCHMITT
ANDREA TOMPKINS WRIGHT Board Members
JENNIFER WATSON
JUDY SCHWARTZ

JEFF FRISCH

KEN GORDON, ESQ.
Town Attorney

RICK DI STEFANO
Secretary

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, NY 14020

FORBES COURT REPORTING SERVICES, LLC
(585) 343-8612
MR. FRISCH: All right, everybody, before we start the meeting there is a few things that I'll ask. One is to keep your video off before your case is called. It's just to help manage everybody in the room. And then when it's your turn to speak or if you're speaking on behalf of a -- one of projects, there's a raise hand button in the -- In Zoom and we'll ask you to raise your hand to unmuted. And then we'll take you in order that we see people's hands raised.

So there's -- if you're on the computer there's a reactions button on the bottom. You can click that and there's a raise your hand feature. Some other times it's in the participants name and you have to click on the name. And then you can choose to raise your hand. And so that's kind of how that works.

So that's that. Please keep your video off until it's your turn to speak. And if your video's on, I'll probably turn it off just so it's easier to manage that way. And we'll get the meeting started.

CHAIRMAN MIETZ: Okay. All right. Very good. Okay. At this point then I did like to welcome everybody to the May meeting of the Brighton Zoning Board of Appeals.
Rick, I'd like to begin the meeting. Is there anything you would like to say before we call the roll?

MR. DiSTEFANO: Just that the meeting was advertised in the Brighton-Pittsford Post of April 29th, 2021. I'll ask any of the members if they have any questions regarding any of the applications?

CHAIRMAN MIETZ: Okay. Very good. Then there being no questions, let's go ahead and call the roll please.

(Whereupon the roll was called.)

MR. DiSTEFANO: Led the record show all members are present.

CHAIRMAN MIETZ: Okay. So let me just give you an idea of how we'll run this meeting tonight. Tonight we have seven applications that we need to get through tonight. What we'll do is that we will -- when your application is called, then we'll announce who is going to speak for the applicant. You will go ahead and speak. The Board Members may very well ask questions.

Once that part of the meeting is finished, then I will ask if there's anyone on the Zoom conference that would like to speak regarding the application. They will be allowed to do so. Once
that is completed, then we will close the public hearing and move on to the next application.

When we're finished with all of those, then we may take a couple of minutes break if necessary. If not, we'll move forward and begin the deliberations. You're welcome to say and listen to the deliberations. We do not allow any cross-discussion between applicants and the Board Members during the deliberations. If you choose not to stay and listen to the discussions, then you can call Rick DiStefano in the building office tomorrow during normal business hours and he can let you know what happens related to your particular application.

Okay, so we do have minutes from the March meeting. So I guess we're going to take a shot at those. Does anyone have any comments about those minutes? Judy, go ahead.

MS. SCHWARTZ: Judy, yes. On page -- hold on -- page 7, line 8 the first word should be "S-E-Q-R-A." The same thing is true for page 31, line 23. And the same thing is true for page 41, line 21, the last word. That's it.

CHAIRMAN MIETZ: Okay. Does anyone else have any other comments about the March minutes? Okay. If there are none can I have a motion please?
MR. PREMO: Move to approve the minutes as amended.

MS. TOMPKINS WRIGHT: Second.

CHAIRMAN MIETZ: Okay.

MR. DiSTEFANO: Motion to approve with corrections.

(Mr. Premo, aye; Ms. Schwartz, aye; Ms. Tompkins Wright, aye; Ms. Dale, aye; Mr. Mietz, aye; Ms. Watson, aye; Ms. Schmitt)

(Upon roll call, motion to approve carries.)

CHAIRMAN MIETZ: Okay. Rick, when you're ready, then let's read the first application please.

Application 12A-05-20

Application of Clover Park Properties, LLC, contract purchaser, and the Baptist Temple, Inc. owner of property located at 1075 Clover Street, for a Use Variance from Chapter 203, Article IA to allow for church building to be converted into professional and medical office use in a residential RLA District where not permitted by code. All as described on application and plans on file.

MR. DISTEFANO: And I'll also add application 12A-06-20, which is the same property owner, same applicant. That application has been withdrawn by the applicant.
CHAIRMAN MIETZ: Okay. Very good. So who do we have speaking for 12A-05-20?

MR. GOLDMAN: My name is Jerry Goldman. I'm the attorney and agent for Clover Park Properties, LLC, who is the co-applicants for the Use Variance which is before you this evening.

Principal speaker in addition to me is going to be John August who is an immediate neighbor to the south and one of the principals of Clover Park Properties. John has asked me to allow him a few minutes at the very beginning to express his thoughts and the history. And then I will get into the rudiments and details of the Use Variance itself.

MR. GORDON: Before -- I'm sorry, Mr. Goldman. This is Ken Gordon interrupting. Before we begin with your presentation, there's just a couple of announcements I wanted to make as part of the record. First, with respect to SEQRA, I wanted the record to reflect that the Brighton Town Planning Board has declared itself as lead agency. And for this action, which is an unlisted action under SEQRA, the Brighton Planning Board adopted a negative declaration. And this Board is bound by that negative declaration and will not be making a separate SEQRA determination. It is bound by the negative
declaration that has already been determined by the lead agency for this matter.

Secondly, I did want to point out that we have two members who will not be participating in this public hearing or in the deliberations regarding this public hearing. Andrea Wright and Ed Premo are both conflicted out on this matter as a result of the advocacy by the Harter Secrest Firm. And therefore they will not be part of the Zoning Board of Appeals for purposes of the hearing or decision making.

That does not reduce in any way the number of votes that would be needed for approval of this Use Variance. The proponent would still need to get four members of the Zoning Board of Appeals to approve the Use Variance application in order for it to be approved. It's just that we'll be proceeding with only five members with respect to this matter. So those are the matters. And I'm sorry for interrupting. I just wanted to get that out.

CHAIRMAN MIETZ: No. That's fine, Ken.

MR. GOLDMAN: Thank you.

CHAIRMAN MIETZ: Okay. Jerry, before you begin could you and John just give us your proper addresses please, before you begin.

MR. GOLDMAN: Sure. My business address is
1900 Bausch and Lomb place in the City of Rochester. My home address is 59 Branchwood Lane in the Town of Brighton. So as a Brighton resident I'm always happy to appear before the Board in my hometown. John can provide his own address.

CHAIRMAN MIETZ: Sure. That'd be great.

MR. AUGUST: Good evening. My name is John August and my wife Jane and I live at 1151 Clover Street.


MR. AUGUST: Excuse me? Can you hear me, Dennis?

CHAIRMAN MIETZ: Yes. We're good.

MR. AUGUST: Very good. We've lived here for 24 years and hope to stay another 20 years at least. We are directly to the south of the Baptist Temple. We share a 400-foot property line with the Baptist Temple. My children grew up playing football and soccer on the lawns with other neighborhood children.

The church unfortunately has declined in membership considerably since I moved into the area. It's a trend with many religious organizations -- normal -- and it's pre-COVID attendance was 20 to 30 attending members prior to COVID. COVID, of course,
has exasperated their situation even more. A large
campus is expensive to maintain and a real financial
burden on the congregation.

My wife and I, like many in the area, like
to spend a lot of time in our backyard. A
neighborhood use that's quiet during nights and
weekends would be ideal. Our project converts the
church to a high-end office building. We hope to
offer a beautifully manicured, incredible green campus
with ample parking, high-end interior amenities and
finish. We truly believe this would be a great
compliment area use for our neighborhood, one that
would have the least impact on us and our fellow
neighbors.

I apologize for the delay in getting in
front of this Board. We have numerous changes to the
plan through the process. At the outset, which was
about 13 months ago, I tried my best to inform the
neighbors of the plan and answer any questions they
had. I sent out or hand delivered 140 letters to the
immediate neighbors with as much detail as I had. I
went door-to-door to the single family homes that
directly bordered the property on Council Rock,
Highland Avenue and Clover Street.

We advertised two public meetings to be held
at the Baptist Temple and a total of about 50 total
attended the two meetings. We stayed as long as
people had questions. We then held a third additional
meeting for a group that expressed concerns and had
engaged attorneys. Mostly Country Club Apartments
owners and three single-family homes across Clover
Street from the church. We listened to the concerns,
most regarding traffic and new parking spaces we had
added along Clover Street.

A month later we reconvened one last time
when we presented changes to the plan. These included
the removal of the Clover Street parking and the
removal of the 10,000 foot addition. Without the
addition, 40 parking spots were eliminated along with
the related estimated 40 trips on and again off the
lot daily. This is a significant reduction in traffic
generated by the project. We were told at this final
meeting, for the first time by one of the homeowners,
that he would only accept -- he would not accept
anything other than the residential use. This was how
the meeting was left.

Tom Borshoff who owns numerous rental units
and Country Club Apartments and I continue to meet
over the next two months trying to gain an agreement
that he could sell to his group. Ultimately we were
unable to reach an agreement.

At that point we revised our application and resubmitted the smaller plan to the Planning Board and commenced the traffic study. We decided to move forward without the addition. It should be stated the addition fit on the site with all required parking, without any significant encroachment onto the front lawn area. The Planning Board had reviewed the plan with the addition and felt that it worked well.

The removal of the 10,000 feet lessened the project's square footage by 25 percent. Any impact on the neighbor -- neighborhood should also be reduced by that same 25 percent. As you might expect, it lessens the financial return by at least an equivalent percentage. We feel that we're asking for the minimum relief we can ask for and still have a viable project. Removing the addition means that there will be no major exterior work done at the site. There will be minor paving, upgraded lighting and installation of new doors and windows. Those will be visible to the neighborhood and that will be all. All other work will be interior and no disruption to the area.

Beyond any financial investment I have two main motivations as a direct neighbor and a neighborhood advocate. Number one, maintain this
beautiful gateway into Brighton, the huge hardwood
trees along Highland and Clover and the nearly two
acres of space are unique and should be preserved.
This no pseudo-pocket park has been here longer than
most of us have been Brighton residents.

    If developed as a permitted use, which is
single family homes, at best a remnant of the
park-like area might remain intact. It would never be
the same and certainly would change the character of
our beautiful neighbor.

    Number two, if the existing church needed to
be demolished -- which is absolutely necessary if it's
redeveloped for it's permitted use -- to demolish you
first need to remove the asbestos, which is time
consuming, difficult and very expensive. Then the
demo would begin. This is wrecking-ball type
demolition. This is a rock-solid building and much
bigger effort than taking down a home. Cite work
would then go and then construction. We estimated
that it's approximately a two-year total construction
period from start to the finish. Noisy, dusty,
construction traffic, all I think would be a huge
impact on the quality of life of anyone who lives near
it.

    The Baptist Temple has been long -- has been
here longer than most of us. It's been a great neighbor to the community, always allowing the neighborhood to enjoy its facility. They deserve a fair return for their property that they cannot get for the permitted use. With that they can continue their long existences as a house of worship. Major delay in finding an acceptable use would be crippling for this congregation and its nearly 200-year history.

I respectfully ask that you grant this use variance to the Baptist Temple and I will now turn things back over to Jerry Goldman. Thank you very much.

CHAIRMAN MIETZ: Okay. John, thank you.

MR. GOLDMAN: Thank you, John. With that introduction, we'll go into the main case for the Use Variance that we have. I'll give a little bit of background and embellish a little bit on what Ken Gordon had said relative to the status of the environmental review and the overall status of the development at the location that we're dealing with.

We have been in front of the Planning Board and have talked to them about the site plans and about the site. The Town's normal process in dealing with applications for Use Variances is to go before the Planning Board first and that is what we had done.
The Planning Board had opted for a coordinated review under SEQRA and the Zoning Board did sign off on that coordinated environmental review.

The Planning Board did absorb all the information which was brought in and issued as Ken pointed out a negative declaration at their last Board meeting, which frankly gives us our clearance, if you will, to have the Zoning Board deal specifically with the Use Variance application as before you.

Now, we have done something else as well. As John pointed out he has eliminated the additions of the building, which was slated to be on the northwest corner of the building on the Highland Avenue frontage. The net result of that as John pointed out is the reduction of parking and, what we think right now, is a better site plan. But in addition to that it eliminated the variance -- and Area Variance, which was required for this development as Rick pointed out a little bit earlier. So number two on the agenda was taken off and that became unnecessary.

All that being the case, what we have right now is basically the use of the existing building and the reconfigured parking and a little bit of a better parking situation. We also have a daycare, which has been occupying this particular property -- or part of
the property for quite a while. That daycare is
slated to stay at least in the short term of the
property -- of the use of the property even as the
variance is granted. And that should provide some
continuity for the people who have kids in the
daycare. At some point in the future that daycare
would be eliminated and would be replaced by offices.

The request that we have is for an office
use which with a portion of the office use, about a
quarter, 8,000 square feet, to be low-impact medical,
no clinics, no urgent cares, nothing of that sort
which has a high intensity. Basically medical
office -- envisioning medical offices of the type that
you would see for a doctor that would have either a
primary or secondary location. We're finding now that
a lot of doctors are conducting a lot of telemedicine
and don't even have as many trips into the site
itself.

Traffic was an additional issue to be dealt
with. And in taking a look at by the Town, traffic
impact analysis was provided. It was also provided to
the County and State. The Town insisted that both the
County and state be involved. The County clearly is
involved because we are at the intersection of two
County roads, but the Town also referred us to the
State to make sure there's no impacts on the East Avenue and Clover Street intersection.

Both the County and the State came back and said that they did not see any traffic issues with the proposal and the Town staff did not either. And the net result was that there was a finding of no significant environmental impact, which is what a negative declaration is dealing specifically with the traffic.

So with all that background we come to you this evening with our Zoning Board of Appeals application. You've received a fair amount of paper from us. We had an amended letter of intent dated April 21, 2021, with a lot of additional information supporting it. We also did a supplemental letter on May 4th which was delivered -- which was delivered to you. Kind of pales in comparison to the weight of the paperwork which has come in from the two attorneys, one who is representing -- according to the letters representing the condominiums, the Country Club condominiums and the second neighbors [sic] who represent neighbors on the other side of Clover Street.

So we have a lot of interplay between their two letters. They're sharing the same appraisal
report that has been done on their behalf. We'll be
talking a little bit about that as part of our
application as well.

As the Board knows having dealt with Use
Variance applications, there are four major elements
that need to be dealt with as part of a Use Variance.
The first is that the property owner cannot realize a
reasonable return for permitted uses. The second
standard that has to be dealt with is whether property
is unique. The third is whether the property will
change the essential character of the neighborhood.
And the fourth standard is whether the hardship, the
economic hardship is self-created.

We have provided our position relative to
that in our letters and in your information. So I'm
not going to go through all that again. Given the
fact that you've received all this information within
the last couple weeks, our supplemental letter and
certainly the other submissions, it's our
understanding and we believe the Board will likely
table this application for consideration of all the
documentation and what you're going to hear from the
public at tonight's meeting. And we'll be prepared to
address some of the issues point-by-point that have
been raised by the opponents. There are a couple we
are going to bring up as part of our main conversation here, mostly corrections and not get into a whole lot of argument because we know we don't do back and forth when it comes to these types of things.

So as you know the property itself is a 4.8 acre parcel of property located at the southwest corner of Clover Street and Highland Avenue. Certainly no other -- certainly no other property in this area is like it. It also has the church building which, as John pointed out, was constructed in 1964 and I'm sure predates most, if not all, residents' involvement with this corner and with their property.

So we took a look at it. And as John pointed out -- and perhaps I can just expound on it a little bit -- John's a little bit defensive relative to the use of this property being the most immediate adjacent neighbor to it. You can see his pool in the picture on the far left side of the -- of the picture which is up on the screen. John, of course, is in support of the application. And in addition to that, there's a letter of support from Luke Dutton who is the owner of the real property immediately adjacent to the Highland Avenue -- Highland Avenue driveway. And there are some 20 other neighborhood letters in support of this application. So while you're going to
hear from the attorneys and some of the neighbors, understand that there's not a single voice and a single mind relative to this. So we should consider what's going on here on the merits of what has to be considered by the Board.

The first standard that we have to consider is whether the current property owner can realize a reasonable return for permitted uses. And I also need to point out at this stage that the Harter Secrest letter does cite to the Town Code standard, which was written in 1992, I believe. And the State Law was amended to provide that you don't have to have proof of no return to the applicant or deprivation of any return to the applicant. But the question is whether the applicant can realize a reasonable return.

From a legal point of view the State Law does control. There's Case Law that says that local municipalities cannot alter the State Laws. So we have to review under the State Law standard. Under our argument for reasonable return we took into account a number of -- a number of factors with regard to it.

We started on with an appraised value of the property. The appraised value of the property was determined by the Bruckner, Tillett Firm, which is
well known and well respected in our community, and came out at an appraised value of $940,000. An earlier appraisal, I believe, was done on behalf of the church and showed a higher value. But, again, another correction is that the letter states on a couple of occasions that the $940,000 is our contract price or purchase price. It is not our purchase price. Our purchase price is higher. It's different. And that is a show of John's commitment to this property. He's willing to pay over what the market was in order to be able to -- or the appraised value -- to be able to secure this property for what he believes is a more benign use at the end of the day on the site.

The reality of it is that if you take a look at what is there already -- and I will point out if this were a vacant piece of land, certainly this Use Variance application would look a whole lot different. That is not the case. We are dealing with an existing building, which has a lot of issues that need to be rectified before it is repurposed. One of the biggest issues that would have to be dealt with if we were to have single family residential development on this site, would be the demolition of the building.

As John pointed out the demolition of the
building entails, first, asbestos abatement, then the actual demolition. There's a substantial cost which is documented in our papers that talk about the cost to essentially bring this property to neutral, if you will, to a point where a developer could develop it, but if someone were to buy this property and were to try to develop it for a single family residential, they would need to go and to do all of that work and to spend all of that money. And it's a substantial amount of money. And as John pointed out it is also very disruptive in terms of what would go on the site. Not to mention that if this were to be developed for single family residential use, the build out would not be immediate. It would over the course of years and that will be continual disruption that would be going on this corner for a long period of time.

But we engaged initially -- John engaged piece by piece and took a look at the site costs and the development costs. So that's reflected in the papers that we had originally submitted. Knowing that your neighbors were going to be -- going to be providing additional information, John also engaged Arena Construction, in fact, tried to interest them, in fact, into developing this property. And -- and they came back with the findings that are attached to
our May 4th letter. In particular they put a little
bit more meat on the bones with regard to some of the
costs that are involved. But, according to them at
least, the numbers that they came out with turned out
to be pretty close to what our numbers were. And that
was to develop this site and to build houses under the
current market would -- we would have to see a
purchase price in excess 1.3 million per house in
order to be able to obtain any return from this
property.

That being -- that being the case we also
engaged very early on Jamie Columbus who is a broker
who has done a lot of work in this immediate area, in
the Houston Barnard neighborhood and in -- and
throughout this part of Brighton to give her opinion
as to whether residences at that level could sell.
And in our materials there is a letter from Judy --
not Judy. That was her mother. From Jamie who
indicates that, in fact, that price is out of market.

We also have provided additional information
to show there have been very few houses which have
sold in the million plus range in the Brighton area.
It's very unusual. There's going to be some talk
about our hot housing market and our market is hot.
But the housing market right now is hot for houses in
the mid-range. They aren't necessarily hot for excess prices in this type of use in this type of area. And any showing of what house values and costs and everything else from 2018 to 2020, you can throw out window at this point because basically what we have is a pre -- or post-COVID market where supply chains have been disrupted, where costs have gone up, lumber costs have gone up, metal costs have gone up, literally every cost of building materials have gone up. I don't even know if we're building right now the $235 a square foot number is a valid number for us to work with on this -- on this particular site or for any new construction of -- of the type that we are talking about here. So in reality our numbers do show that it would -- it would be literally impossible to obtain a return for permitted uses.

The marketing of the property has been somewhat unique as well and there's a full section of that in our materials. Todd Myers who is from Keller Williams had the listing on this and actively worked with the church for a long time to try to get interest in the property. What he did do is something a little bit different and that is that he had a closed bidding process for a period of time. And if you read his materials carefully, and I'll just state in excerpts
from what he said, the property appeared in 47,200 individual searches for properties within the market. It was viewed by 1,940 individual buyers online.

There is some discussion that we've heard about, well, residential brokers weren't necessarily in the loop. Until the point where you're talking about residences, the market that we would be talking about for single family residences and development of this would be developers. And developers were the people who took a look at this and took a pass on it. And that's literally -- that's literally where we were. The interest which was generated by Todd Myers and his efforts were some churches.

One was a megachurch which proceeded probably further than anyone else. And that one would have required a much larger parking lot, would have required a loss of green space, drainage issues and everything else. It would have been far more intense use than what we are talking about here.

Smaller churches took a look at it, took a pass on it because of the expense and overhead involved with regard to it. There were some long-term offers -- not offers, but interest for retail commercial, which, of course, would be more objectionable to everybody, especially John the
immediate next door neighbor. There was no interest that we were able to ascertain from any residential builders or residential developers on the site. But suffice it to say that within the development community, this clearly was known to be available.

Part of the reason why there was not a sign out front was fear of disruption of the existing tenants which really were the financial lifeblood of this particular use. If they thought the property was going to get sold out from under them, it could create some serious problems in the short term. And therefore the marketing was conducted in a way to hit the target market of people who may be interested in this -- in this site for development, but not necessarily putting out -- putting out a sign, which could be disruptive.

The ability to secure a reasonable return is clearly impacted by the uniqueness of this property which is the second standard. For anyone to say that a 4.8 acre property in central Brighton that has a 31,200 square foot building on it is not unique as opposed to others similarly situated in the zoning district, you know, that's kind of -- I don't even have to make that argument too strong and too long.

There are some people that may say, okay. Well, the
building was there and that's the church's problem.

Okay. Take it away and you still have a 4.8 acre piece of property. It is not typical and is unique to any within the other zoning districts, certainly in this area.

The essential character of the neighborhood is the third consideration. And our argument on essential character of the neighborhood is one which was actually adopted as part of the negative declaration by the Planning Board. One of the key features of this site is the maintenance of a large, large tree green area on the corner of Highland and Clover. Everyone in the neighborhood is familiar with it. Everyone who drives by is familiar with it. It's striking. It's striking that there is that kind of open area that is available.

Our -- our intention is to maintain that green area intact, to keep all the trees intact, except those that may be diseased, but the trees would be maintained. And people have had the ability and even in weather -- weekends like this past weekend, people have been out enjoying that green area. The --

I should point out that there is a plan which is part of the opponent's submission which provides for a green area. I haven't measured it out,
but eyeballs on it would indicate that that green area
is -- is smaller and obviously would change the
character of that corner substantially more than
maintaining this building and it's current parking
which would be internal to the site.

It should be pointed out also that in terms
of effect, office uses typically are a week-day use
primarily, sometimes a Saturday-morning type of use,
rarely if ever on Sundays and probably not on Sundays
at all. Whereas some of the specialty permitted uses
such as churches, schools have off-hours activities
during the week, sometimes have very, very strong peak
parking demands. We're very comfortable that our
parking demands are never going to exceed our capacity
under -- under the Town Code.

So we feel very comfortable that, in
essence, keeping this building here with a -- with a
high-class office use with a modicum of medical will
not change the character of this neighborhood.
Everything around the perimeter remains the same and
we believe that in reality this is the best way to
preserve the existing neighborhood character in this
area.

The hardship has not been self-created and
that's the fourth standard we have to deal with.
There's a lot of -- there's a lot of discussion relative to, well, the church has enjoyed this property for almost 60 years now. So, therefore, you know they really shouldn't be able to claim any sort of hardship with regard to this property. And I guess that argument is kind of born out by the -- by the particular appraisal which was provided which -- the opponents appraisal shows that the value of the property is $269,000. I'm kind of concerned. Even the smell test would tell me that a 4.8 acre parcel property in Central Brighton is more than $269,000.

But the methodology that was used we would certainly be addressing in a written reply if -- if that becomes necessary. Because essentially the number was backed into in order to -- in order to support the argument that single family residential was the right use and appropriate and a use you could have for this property.

Clearly it's self-created. We have a situation where the church is losing money. It's been shown for the last three years that they are losing money despite their best efforts. Their abilities to sustain is not related specifically to them, but is related to a number of considerations, one of which is declining church population. But it's also a product
of the maintenance of the -- maintenance of a fiscal plan. It's just difficult to do. The best way to stabilize this property is to consider use of the property for a use that we consider to be relatively benign and consistent on the site which we think will have minimum impacts on the neighborhood itself.

I already saw, I believe it was a neighbor, who said, "When's this going to stop?" And we had a chance to talk. So I'm going to cut my comments short at this point. I see John's face. I don't know -- John, do you want to add anything or anyone else in our group want to add any thoughts before we turn back to the Board for questions?

MR. AUGUST: I'm fine, Jerry. Thank you.

MR. GOLDMAN: Okay. That having been said I think at this point we would like to entertain any questions that the Board may have and we will take notes and listen to -- to the neighbors and attorneys comments that we get on this application. So thank you.

MS. DALE: Hi, Jerry. This is Jeanie Dale. If you don't mind, I have a question.

MR. GOLDMAN: Yes, Jean.

MS. DALE: My question has to do with the congregation and whether they are planning to open up
a new location somewhere? Are they moving into another church? Are they closing all together? Or what is -- what is the plan for the congregation as it stands today?

MR. GOLDMAN: I think John may be in the best position to answer that because he has been in regular contact with the church. John, do you want to weigh in on --

MR. AUGUST: Yes. I was able to unmute myself. Thank you. They intend to find another location and try to grow the congregation. I've entered into an agreement that they can stay For up to six months just to come in and hold a Sunday morning service for their congregation, not to exceed 30 or 40 people. I will be as flexible as I can for them to try -- to do anything I can accommodate their ability to find another home and start to re-grow their congregation.

MS. DALE: Thank you.

MS. SCHWARTZ: This is Judy Schwartz. My question is for John. I'm curious, how much square footage does the daycare center use?

MR. AUGUST: They use just a little under 8,770 feet, Judy.

MS. SCHWARTZ: Okay. And how much asbestos
work will have been to be done on the interior when you change it? Or is there not an issue?

MR. AUGUST: No. It is an issue. There's a substantial amount of work that will have to be done, much of it can be encapsulated in place and it offers no issues. Where we have to bring air conditioner ducts, things through the ceiling, the plaster -- this was built in the 60s -- asbestos would have to be remediated. Any lines through any walls would have to be remediated prior.

The floor of the church is in outstanding shape. I think even the opponent's appraisal said it was above average quality construction and it's in fine shape. So things like asbestos floor tiling, it is not dryable in place -- can be covered in place with New York State -- with the DEC regulations and can be left in place. We will have a fair amount of remediation though as we remodel some of the classroom wings.

MS. SCHWARTZ: Final question. In light of the fact that there will be an asbestos issue, in light of the fact that you're going to reconfigure space for offices, I did a little thinking out of the box. You could keep the building as is. And what about having condominiums and -- and a gym and, you
know, even maybe an office if somebody wanted to have a home office out of their condo. Did you ever consider something like that which would keep it closer to a residential zoning?

MR. AUGUST: That's -- because of the issues with the asbestos in the existing building, a residential, that would take more penetrations, more air conditioning, more water into it then an office would. And penetrations for bathrooms, toilets, et cetera would probably ramp up the asbestos abatement to a decent amount.

Condos, of course, are not allowed either and are allowed under the Zoning would need relief as well. So we did look hard. We take a look at number one having someone renovate the existing building for condominiums. And we had another survey done to tear that building down and build condominiums. We estimate that the max amount of variances is 32 to 34 units. Again, purchase price and demolish, yeah, that's all, Judy, that the -- when it comes to the single family homes, six homes are what will fit on this without variances.

So we didn't go far towards the condominiums because it appeared we had similar problems. The cost of buying the property, abating the asbestos was great
enough that it put the cost per unit up awfully high where I -- we can submit. We didn't really think we were going to discuss condominiums. But we had a survey IA done by one of the leading renovators of buildings like this that we could provide that showed it was kind of a no-starter for them to either tear it down and put the 33 or 34 units up or to renovate that existing building with condominiums, should we have the Zoning approval to do that.

MS. DALE: So, Mr. August, another question for you. Do you know if anyone approached the existing childcare center to see if they would be interested in expanding?

MR. AUGUST: I have talked to them. For a while it was kind of quiet. Their efforts to market the property -- and the daycare is their largest tenant and the most important at any time for them. I've talked to them to ensure we have no immediate plans to remove them and whenever, if that was necessary they would have more than ample notice to make certain that all their people could be relocated.

MS. DALE: No. My question was if they were willing to expand and their monthly payments would, you know, increase.

MR. AUGUST: At this point -- at this point
due to COVID, they are not using the capacity of what they are leasing. I think they are rated for around 90 some children. They don't have that many now. I've talked to the owner. She has a daycare out in Webster. We've talked about this location. It fits extremely well with their demographics. Separates to two locations. Didn't indicate to me any desire to try to expand. And I know not in the immediate future because they are really in a little more space since COVID then they are even able to utilize.

MR. GOLDMAN: If I can add one other thing, Jeanie. The daycare use itself is ancillary. I'm not even sure there's a conditional use -- a conditionally permitted use in this district. As a matter of fact, I don't think schools are. So an expansion of the daycare from its current square footage would likely require a Use Variance from the Zoning Board. So we're back -- we're essentially back in the same box relative --

MS. DALE: So from -- I'm just thinking that it would be a different view, I think, if the congregation who plans to stay together and just relocate to another location, if the congregation can stay and this remains a church and the daycare expands, and I think as a Board member I would -- I
would be okay if they said, you know, we'd like to be able to have more children there, being that that's been existing for quite some time and certainly fits more in character with the neighborhood. That would not be a concern to me if the daycare --

    MR. AUGUST: We found --

    MS. DALE: I feel like it could be at least a partial solution.

    MR. GOLDMAN: The traffic study and doing the code analysis, we find that the daycare's pretty intensive for parking needs even though they're only in -- around 7,700 feet, normally that would be, I think, 28 parking spots under general office. I believe that requirement for the space now is an additional 16 feet.

    MS. DALE: I don't know. We would have to look at that, but my inclination on hand is that additional children at an existing daycare center would not have more parking needs then a medical facility.

    MR. AUGUST: That's the Code. I -- one per employee in a shift plus I think one for every five or six children could count -- but the church I don't think -- I believe, Jean, that the church explored every means before they determined they had to move.
They've had a long relationship with the daycare. I can follow up both with the operators of the daycare as well as the church to find out if they were ever offered the opportunity to expand.

MS. DALE: And other churches -- you know, if this particular congregation is not interested in staying at this location, maybe you could talk a little bit about efforts to find a different congregation that might be interested in this space.

MR. GOLDMAN: One thing. There were --

MS. DALE: I saw conflicting -- I saw some conflicting information in the materials between what you presented and what else we received surrounding marketing efforts. So I thought maybe if you explained it briefly that that would be helpful. I didn't know about specific marketing out to other worship opportunities.

MR. AUGUST: Excuse me, Jean. From -- my standpoint is the purchaser of the property. I wasn't involved in the marketing. I did get involved as I got in with the neighbors and encouraged them. Many of them had strong ties to single family developers. Some are developers themselves and through the last six months I've said publicly to that group at any one of our public hearings that if -- again, if someone
can show that they can get a decent return and wants
to build single family homes commensurate with that
neighborhood, then I certainly have no issue --

MS. DALE: But as part of this application
surrounding the burden of proof, do you not present in
your application that all efforts have been made in
order to show the hardship and that it's just not
possible for satisfactory a return to be achieved?
And so I -- I don't really follow your statement that
you wouldn't know if -- about the marketing efforts.

MR. AUGUST: Who the variances are going to
Jerry and -- with the marketing. I just came on as
the purchaser.

MS. DALE: Okay. I'm sorry. Then I should
be directing my --

MR. AUGUST: The marketing had been done by
the time I had come onto the scene.

MS. DALE: Oh, okay. Okay.

MR. GOLDMAN: Right. And I think -- I'm not
sure where the conflict is in what you're seeing, but
the August 28th letter, which is our Exhibit B, sets
forth from Todd Myers what the marketing had been to
religious uses. There are three different levels,
megachurches, existing small congregations and
religious organization -- and smaller religious
organizations for both worship and to house and educate congregants. The -- and as I stated, and hopefully it wasn't conflicting, the megachurch people, the one that showed some interest in this site, had actually made a deal and are going into the Lyric Opera building which is on East Avenue in the city. I don't know if you're familiar with it. It's a very, very large building. And they're going in there. I think it was the First Church of Christ Scientists if I'm not mistaken. But I'm not sure what the prior use was.

The small congregations took a look at it. And the problem that we have is that a building of this size is tough to repurpose for that type of use or even for more daycare use. You know, there usually is a critical mass in size that daycares go to. You know, I think the 9,000 square feet -- or 7,000 square feet -- 7,700 roughly whatever John said the daycare is now, is within the range. Usually I see them between the 7,700 to perhaps 12,000 square feet or something like that. You don't necessarily see the mega-daycares that are 30,000 square feet or 25,000 square feet.

This church is very -- gotten very small right now, which is unfortunate, but that's kind of
where it is.

    MS. WATSON: Hi, this is Jeane Watson. Is
my mic working?

    MR. GOLDMAN: Yup. You're on.

    MS. WATSON: Excellent. My question has to
do with how the use is going to be changing from what
has been there aside from the church. So I'm aware
there were nonprofits and businesses and community
organizations leasing space in the building for some
time and what is your vision for -- specifically what
do you envision being there and how does that compare
to what's been there?

    MR. GOLDMAN: I think what we visioned is a
professional office building -- is a professional
office use and that is because a lot of the other
small uses, which are in there right now which are
populating part of it, are essentially a stopgap for
the church to try create -- to create some additional
cash and some additional cash flow.

    I would tell you, from my perspective, and
this is a personal perspective now, being familiar
with synagogues, churches and everything else, their
peaks of use or far worse than anything an office use
is going to have. It's -- first of all off-peak type
of traffic is on Sundays. It's on Saturdays if they
were synagogues. It's nights. It's times that would be more disruptive to neighborhoods, I think, then even these types of uses. I think when churches first started out, a lot of it was, okay. We're going to have heavy prayer on Sunday mornings. We're going to have some activities. But it was clearly focused around times that were not as disruptive to neighborhoods.

    I mean, office use, strangely enough, is more into the type of use which is almost friendly to neighborhoods to the extent it doesn't create conflicts with people enjoying their houses. But that's my perspective.

    MS. WATSON: This is a follow up. I guess I wanted to know how many -- how many offices? How many businesses? What is the anticipated flow of the number of people coming and going? And how does that compare to what's there? Because, like you said, that daycare used -- may have a more intense people coming and going.

    MR. GOLDMAN: Right. Our anticipation is it would be a normal office use. But the Town Codes provide for parking ratios. We were at the Town parking ratios which we believe exceed what our need is going to be. More and more we're finding offices
don't need that much and a lot of municipalities are actually reducing the amount of parking because they realize that there is not as much traffic that goes in with offices. You know, I know I'm doing half of my work at home and half at the house. So that's -- that's one less car half time.

In terms of what the difference is between what's there and now, one thing that's pretty interesting is I had gone there during the week and during the day and there are a lot of cars in that parking lot during the week right now. So I can't really estimate what the difference would be.

You know, the church -- or the auditorium has 300 plus seats. You know, and to that extent when and if there were to be a use that would really be utilizing that, it would probably far outstrip the parking in the parking lot even though it is a specially permitted use. I mean, it's just a reality of what it is. Offices have a tendency to be more measured in terms of what their parking use and parking demands are and I think are more friendly.

CHAIRMAN MIETZ: Okay.

MS. SCHWARTZ: I don't think, Jerry -- and Jen, correct me if I'm wrong -- but I interpreted her question as to how many offices, different offices?
MS. WATSON: Yeah. I was really curious about, you know --

MR. GOLDMAN: Sorry, Jennifer.

MR. AUGUST: I could probably speak to that. You know, when you're trying to fit -- fill a big building like this, you're going to try to reach out and find a major tenant, a law firm, insurance agent, something like that the sanctuary space will be spectacular, but it's big and grandeur and really requires a large tenant. Conversely the couple classroom wings that are very narrow, those will probably get split up to smaller offices, 1,500 to 2,500 feet. They just need to get -- because they're thin, some of the corridors are only 40-feet wide from wall to wall, you can't make them too long and thin. They really aren't attractive.

So the -- I would guess if we were lucky, we may end up with five tenants or seven tenants to maybe a high of 15 tenants. Our company just purchased a building at 441 East Avenue which was a -- used to belong to the Jewish Community Federation down by Sibley Place. And we were able to immediately find an insurance agent to take and be our primary. It's a 22,000 foot building. They're moving into approximately 15,000 right off the bat. The back will
be filled with a smaller tenant. We even talked to Graceland Church who bought across the street is occupying the Lyric Theater to come in and use that for some auxiliary offices. So the main tenant we know who is looking around Rochester will drive the main space. The rest will be filled and I expect as I went door to door and talked to a lot of people in the neighborhood who expressed interest in opening a smaller separate office for their own use near their home.

The neighbors on Council Rock which are, along with me, I think are the most affected, none of those people -- they all seem content and they told me they endorsed the property. Two asked me if they could get a fence cut in the future so they could go through the fence if they should put their office there someday. I think that we'll find that this place is a local office for a lot of local people, Brighton people to occupy. And certainly will get a lead tenant in there of decent size, at least 10,000 I would guess.

MS. SCHWARTZ: We didn't talk about deliveries and things of that sort and trash pick up and so on. And is it going to be strictly office? There would be no like cafe or anything for tenants to
Mr. August: We may -- because we will call it a Class A office building, we want to have as many amenities to kind of match the surrounding area. And it's a beautiful area for anyone to consider making that their home to work everyday. We expect that there will be joggers and we'll probably put a shower in there, make certain that people have an ability to get out, exercise through the neighborhood, come back and take a shower. We expect we'll have a -- some sort of food cafeteria -- not cafeteria -- kitchen that the tenants could use, not for the public. It won't be open. It would just be for the people to keep their own things in -- we have some cooking equipment in there from the church -- and provide for themselves on site and sit outside and eat their meals.

No retail, nothing -- and retail, to your point, Judy, of deliveries it takes more of a constant flow of replenishing materials then an office does. With the exception of really office supplies, you might have a Mason truck or a Staples truck stop by, I can't imagine any deliveries.

As far as the dumpsters, we'll put a fully enclosed dumpster close to the building. You'll see
we've added the screening to make sure it is -- will be screened adequately. It's not screened now from Highland Avenue. So don't need much dumpster for a space like that. It'll likely be cleaned daily by one firm that will do the service for all the people, take everyone's garbage out. But I think we have a 6 yard dumpster there anticipated for the entire complex which would be probably emptied twice a week.

MS. SCHWARTZ: So the only food then would be that brought in by the tenants.

MR. AUGUST: Correct. And prepared for themselves.

CHAIRMAN MIETZ: Okay. More questions for John or Jerry? From the Board Members?

MR. AUGUST: Thank you for your time.


Okay. At this point then I would like to know who might be interested in addressing the Board as it relates to this application. If you could raise your hand please? You might have to help me a little, Jeff, because I'm not sure I can see everything.

MR. FRISCH: Yeah. I think Nick Wood will be first.

MR. WOOD: Can you hear me? Sorry. I'm trying to start my video but I'm getting a message that I can't start the video because the host has stopped it.

CHAIRMAN MIETZ: Okay. See what we can do.

MR. FRISCH: There we go.

MR. WOOD: Okay.

CHAIRMAN MIETZ: Okay, Mr. Wood. Please give us your name and address and what's your purpose. Go ahead.

MR. WOOD: Nick wood from the law firm Boylan Code. Address is 5 -- 145 Culver Road in Rochester. I, along with co-counselor Jared Lusk from Nixon Peabody, represent the Country Club Condominium Board of managers. We're appearing in opposition to the application for the Use Variance.

We have submitted a letter to the Board yesterday that sets out in detail numerous reasons why the Use Variance should be denied. I want to take this opportunity to just highlight a few of those reasons. Before I get started I mentioned Jared Lusk. And he and I along with Paul Silvestri from Harter Secrest who represent a number of the neighbors, out of respect for everyone including the Board's time have discussed coordinating our comments this evening.
so we try not to repeat one another. And with that in mind I would ask if that following my comments, John Rynne who did an appraisal that we submitted with our materials is here, whether he can address the Board. And then following him, Mr. Lusk and then Mr. Sylvestri, just in terms of sort of keeping our presentation all together and in conserving overall time.


MR. WOOD: Thank you. So we've heard a lot of background already about the project and just to make clear it's to convert an existing church building into a commercial office building, but it doesn't include just professional offices. It also includes medical offices and that's medical offices with patient visits. So there's been a lot of talk about the professional offices, but again, those medical offices and patient visits are an important part of the project.

The -- as the Board I'm sure knows, the property is currently in a residential district. And it's not only in a residential district, but it's in residential low density A district. Permitted uses are only single family detached dwellings, Town of Brighton municipal buildings, family childcare homes
meaning child care provided in homes subject to
certain conditions home occupation. So occupation
right in somebody's house.

It does include, I want to point out, a
number of conditional uses and one of those
conditional uses is, in fact, daycare centers. There
was some discussion about that earlier whether daycare
centers were a conditionally permitted use in this
district. And as I read the Zoning Code they
certainly are.

In any event, as the Board knows since
commercial offices aren't permitted in district a Use
Variance is required, and the standard to obtain that
Use Variance is very high. It's a strict standard.
And one of the reasons for that is because a Use
Variance essentially defeats the expectations of
persons who acquired property in a residential
district in reliance on the fact that they were in a
residential district and all the properties were
subject to those restrictions. So a Use Variance, you
know, much different than an Area Variance really
defeats the expectations of the people that live in
the area.

And another thing for the Board to consider
in addition to the specific requirements of the Use

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Variance, which I am -- Jared Lusk and Paul Sylvestri will into -- is that this project is to put a commercial use in a residential district at a time when I think it's common knowledge that residential inventories are fairly limited -- you know, demand significantly exceeds supply at this point. Yet this project is going to convert land that's owned as residential to a commercial use.

Having said that, I'll move to the requirements for a Use Variance. I won't go over all of them specifically. I'm sure the Board is familiar with them. But the first one I want to talk about is the first requirement and that is that the applicant has to demonstrate that the applicant can't realize a reasonable rate of return, provided that the lack of return is substantial as demonstrated by competent physical -- I'm sorry -- competent financial evidence.

One thing that is very important for the Board to keep in mind is that in analyzing the reasonable rate of return is from the perspective of the current owner, not the developer. So there's been a number of references already, I think, to the developer purchasing the property whether it's a purchase price or an appraised value that they received and then doing an analysis from there to come
ultimately to the conclusion that the property can't be developed for single family homes. But that's not the analysis, whether some purchaser can come and buy the property for a certain amount. Again, it's whether the owner can realize a return.

So I'm going to address some of those issues and then later on Jared Lusk will address some of the reasonable rate of return issues as well. And I'm also going to briefly address the uniqueness requirement and the self-created requirement.

So as I mentioned it's from the owner's perspective that we have to look at this from. And the -- that -- the main error that that results in in terms of the redevelopment analysis that the applicant has provided, is that the applicant includes the price, as I mentioned, that it is paying. That's substantially -- either it is paying or it's an appraisal price. But in any event, that substantially increases the overall development costs when you look at it, development of single family homes.

So that is not relevant and should not be included when you're looking at that analysis. And we've cited Case Law in our letter to the Board that fully supports that point. So that alone really makes cost of redevelopment submitted by the applicant
inapplicable here.

The second -- the second main issue that we see with the cost of residential redevelopment that is submitted by the applicant is that they submit a construction cost of $235 per square foot. And that was initially -- there was a letter from Woodstone Builders that, although it was a little vague as to exactly what it was referring to, but was offered in support of the $235 as being the cost for construction. We went on Woodstone's website and included materials with our letter that would show that they are selling homes for $235 a square foot. So it's sort of inescapable conclusion that if they're selling homes for what is about $235 per square foot, that includes all the site acquisition and development costs, sales commission and profit. Yet here what's been done is that $235 square foot amount has been added on top of the site acquisition and the development costs.

And the other point there is that when you look at the houses that are on the Woodstone website -- again we submitted, there was three of them -- they're typically a little smaller than the houses that have been proposed -- that are contemplated in the proposal that we've offered to the
Board as an example of six house redevelopment that could be done economically feasible here. And we've also submitted information that indicated that as the house -- size of the house goes up, the per square footage amount goes down. So we think it's actually event -- that the amount is -- the $235 is even high.

Lastly the applicant has sort of arbitrarily chosen 4,000 square foot custom homes to do their analysis. And one, when you use a custom home, I suppose you could make a construction cost anything you want because you can put anything you want in the house and you could make it, you know, those construction costs as expensive as, you know, somebody might want them to be. And then when you translate it to a $4,000 square foot house, that of course is going to increase the overall construction cost. If the houses are smaller, the overall construction costs are going to -- are going to go down as well.

So the end result of all of that is that the applicants then claim that house here can't sell for $1.3 million. But all of the underlying materials that supports that is not really applicable. So the fact that a broker may say that a house can't be sold here for 1.3 million is irrelevant because that's not the price that a house would have to be sold for in
order to make a single family development be economically viable.

The next point I want to touch on is the marketing efforts that were made by the Baptist Temple. And I know there's already been some discussion about what exactly that entails. I would refer to the Board just in -- maybe you've done this already, but if you read the letter from the broker pretty specifically, it, I think, is pretty clear that the property was only listed for two months from May 12th to July 12, 2019. When I read the letter, and I think others agree, there's talk about it -- them wanting to start selling the property in 2018, but for the period prior to when it was listed in May of 2019, they were, according to the letter, in discussions with one particular church -- which apparently, I guess, is the church that has bought Lyric Theater -- those fell through. Then it was listed for two months. Then the offers that came in were -- and there was sort of a strange process. It was sealed bids, not a lot of information put out around parameters, you know, a sales price.

After that two-month listing period, they then signed a contract with that same church that had discussions with and we're under contract for a period
of time. And then that -- the church canceled the contract. And it appears at that time they went to John August.

So the conclusion, again, is it really was only listed for two months. And that we would submit just is not sufficient to establish diligent efforts to sell the property, which are required under the Case Law, and particularly the Case Law that was submitted -- cited in the letter from Harter Secrest.

And that two month listing period is actually to be contrasted with the appraisal that the applicant submitted from Bruckner Tillett, which refers to a marketing time of one year. So their own materials suggest it should have been a much longer time and a better way of marketing it.

There was also a question about whether there was marketing specifically to potential churches. Again, I'd refer the Board to the letter from the broker. He refers to there being, I think, some interest from churches, but I did not see any reference in there to any specific marketing efforts to churches. And you read the letter. I just looked at that now while the discussion was going on, but nothing jumped out to me specifically.

And, you know, lastly the -- the church, I
guess, didn't want to upset its tenants, but it
didn't -- and they've acknowledged they didn't even
put a for sale sign out in front of the property to
get interest from people that were driving by. We've
got letters from two real estate brokers that they are
right in the area, who stated they weren't aware the
property was for sale.

With respect to the appraisal that the
applicants have submitted, again, they're contention
that they haven't been able to sell the property, but
their own appraisal indicates that they should, in
fact, be able to sell the property, as is, for
940,000. Now again, that's important because it's not
what a developer -- whether the developer who pays
940,000 or maybe something more than that, can then
turn around and get an adequate return. That's not
the analysis. It's whether the Baptist Temple can get
a reasonable return. They're the ones whose rights
are at issue.

And again, it's the applicants appraisal.
We think there are some flaws with it particularly
with respect to some of the comparables, at least one,
Lyric Theater, being comparable -- being used as a
comparable even though it is in a district that allows
for all sorts of other uses including entertainment
uses.

But putting that aside, that appraisal values the property as of February 3, 2021, as is, for 940,000. And in it's own -- in the document in the appraisal in its definition of market value states that the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale. It's dated March 11, 2021. So that's after the attempts by Baptist Temple to sell the property. So it should presumably be taking those into account in determining the appraised value and still come to the conclusion that that's what it should be able to sell for provided a reasonable time is allowed for exposure in the open market. So again, that certainly, as it stated in the letter -- I mean, if they got -- if Baptist Temple got a quarter of that, they would get a reasonable return for the property.

So we think based on the evidence that has been submitted by the applicant themselves they not only have shown they can't get a reasonable return, but have shown that the Baptist Temple can get a reasonable return.

In spite of that, we took it upon ourselves to get our own appraisal because one of the key
elements, as we've talked about -- and the first

element is the applicant demonstrated they can't get a
reasonable return from all permitted uses. Again,
it's not that they might be able to get a higher
return from some other use, that they might be able to
get a Use Variance for. It's -- you got to look at
the permitted use. And we've submitted an appraisal
that indicates they can get a reasonable return from a
permitted use and that is sell the property for use as
single family residences.

The -- that appraisal was done by Brian
Murphy. It shows that the value today of the
property, as is, is $269,000 for sale to be developed
as a six lot residential subdivision, which is
permitted in the Town's Zoning ordinance. There was a
drawing with the appraisal by engineer Larry
Heininger, who I believe is on the call if anybody has
any questions for him. I actually had some difficulty
getting into the Zoom meeting. So I don't know if he
may have as well. But I believe he's here if the
Board has any questions about the plan.

John Rynne is at the meeting as well. He'll
describe the methodology of his appraisal. But as
indicated, he concludes that it's worth $269,000
because that's what a developer, a site developer
could purchase it for, incur the environmental and
demolition costs that the applicant actually has
submitted. So we've accepted those. And then other
site development costs. And then based on an analysis
of sales of comparable vacant lots in the area, that
the developer could sell that land for residential
development at a profit.

It's notable that the development, that six
home development that we've submitted, leaves a
seventh lot at the corner empty. So it preserves that
area as an open space and overall it has significantly
more open space than exists currently on the site.
And it saves all of the trees that are there but one.
So it's in compliance with Zoning. It keeps the
property residential. It keeps it green. In fact,
you could have made the analysis even more beneficial
to the Baptist Temple by adding a seventh house, but
in the interest of being conservative in the
development and keeping it open space, we didn't do
that.

So then, as I said, the analysis is the
return to the Baptist Temple. $269,000 under that
analysis to the Baptist Temple is absolutely a
reasonable rate of return for them. They bought the
property back in 1963. They developed it for their
own specific use. They've used it for over 50 years for their uses. So any cost that they have had initially put into the building or put in over time, they have recovered for the use of their premises. And on top of that, as a religious organization, they've been exempt from property taxes, which in looking at what the taxes would otherwise be -- allows them, at least in recent years, to save $80,000 annually in property taxes.

So Jared Lusk is going to address some of the other return issues in particular with some of the other uses that could be potentially put on the property. But again, the reasonable rate of return requirement has not been satisfied.

Secondly I want to address the second requirement which is the alleged hardship of the property in question is unique and does not apply to a substantial portion of the district or neighborhood. A key part of the uniqueness requirement has to focus on the uniqueness of the property itself and not the owner. The Use Variance can't be granted to ease the personal difficulties of the land owner. Based on that principle there's nothing unique about the property. The church's -- the church may have a decline in congregation, but in the context of the
Case Law, that's really a personal difficulty of the Baptist Temple and not related to the property. And, in fact, there's examples of churches in the area whose congregations are growing.

And with the respect to the property itself and the building, we've also cited in our letter a number of examples of properties in the area where buildings have been torn down and new residences have been constructed. So there's nothing unique about that. There's numerous examples in the area where that's happened.

And lastly, the uniqueness can't be a result of the owner's actions. Since Baptist Temple is the one that designed and built the building the applicants now claim is unique, any uniqueness is self-created. And that is also the reason the Board -- that requirement has not been met and the Board should deny the variance.

So that's a good segue into my last point which is the hardship being self-created. So first and foremost, I think the more important point here, and we've cited numerous cases in our letter to the Board supporting this and I'll quote from one of those cases, is that hardship is self-created for zoning purposes where the applicant for a variance acquired
the property subject to the restrictions from which it seeks relief. So I made a FOIA request to the Town. And I went up to Town Hall. They were just made available, I think it was, on Monday. The zoning maps that were adopted in 1956 and there was also a zoning map adopted in 1962, both of those show the property zoned at that time as Class A Residential. So it was zoned as Class A Residential when Baptist Temple acquired the property.

So since Baptist Temple acquired the property subject to the restrictions from which it seeks relief, under the Case Law its hardship has been self-created. They were aware of that zoning when they went into the property. They decided to build this structure, which, you know, suited their own purposes. They constructed it with asbestos in it. They constructed it maybe in a, you know, particular way, but they knew or should have known when they went in, based at least on my reading of those zoning maps and it being zoned as residential, that was -- that a commercial use wouldn't be allowed, again, based on what the zoning maps indicate.

So -- and -- and the -- it's important to note that the applicants have not claimed in their application otherwise. They've not come in and said
that, no, when we bought this property, it was --
commercial uses were -- when Baptist Temple bought the
property, commercial uses were allowed and the zoning
changed over time and while were weren't a commercial
use or were not grandfathered when we bought it,
should have been -- we thought we would at one point
point be able to use it for commercial uses. They
haven't made that claim.

So on that basis alone I think the Case Law
establishes that it was self-created. The point that
has been made or that they argue for the fact or the
claim that it's not self-created is because, in their
application at least, the physical characteristics of
the building, the fact that's it on the corner of two
county roads, and the increasing amount of in-facility
religious observance. And the physical
characteristics of the building, I already stated,
it's hard to see, but a use that could not -- or a
hardship could not be more self-created when they're
the ones that built the building that they're now
claiming is causing hardship.

With respect to the roads, one of them's a
Town road, but they were on that corner when they
purchased the property. Those roads weren't put in
afterwards. And with respect to the declining
congregation, again, that goes back to a personal
difficulty that Baptist Temple is having. We cited a
number of examples in our letter of churches that seem
to be growing.

So on all of those -- for all of those
reasons we believe that -- and we think the evidence
is clear that the -- any hardship, and we don't think
there is any, is self-created. So having said all of
that since we submitted an appraisal here, and we have
John Rinds here, I do want to turn it over briefly for
John Rynne to go through and explain to the Board the
methodology that he used in his appraisal. And he
also had a little difficulty getting on Zoom. He was
down in another conference room in my office. So he's
in my office. And I'm going to switch seats with him
now.

MR. RYNNE: Good evening, everybody. I'm
John Rynne. I'm the president and owner of Rynne
Murphy and Associates, Inc. It's a real estate
appraisal and consulting firm that started in 1984.
I've been a real estate appraiser and consultant for
48 years. I also am a licensed New York State real
estate broker. I'm a certified general real estate
appraiser certified by New York State. I'm a member
of the Appraisal Institute, NAI member and a SRA
member which is a Senior Residential Appraiser. I've had numerous experiences with subdivision appraisals, in the hundreds. And I've actually had experience with economic hardship cases also for a period of 35 or 40 years. And economic hardships are very difficult to prove.

And my appraisal that I submitted shows that. I was hired by Country Club Condominiums to analyze a six-lot subdivision. The lots -- the hypothetical that these would be approved and constructed to be developed with single family homes at a later date. The lot sizes were approximately anywhere from 0.51 acres to -- 0.53 acres and rose to 0.91 acres. And four of the lots had access from Clover Street. Two of the lots will have access from Highland -- Highland Avenue.

The bottom line is as far as what I was able to do by a subdivision model that I've used hundreds of times is to abstract out a residual value for the Baptist Temple in the amount of $269,000. Now, that's obviously less than what the assessment is of the Temple, less than what the Bruckner appraisal is. However, in the economic hardship cases I have seen, if the return is positive, and in this case it is, $269,000, even though it's less than -- and let's say
the Bruckner appraisal is valid and does sell at
930,000 as church -- the $269,000 does represent a
positive return.

The subdivision method that I used simply
takes into consideration -- it kind of works
backwards. It starts out with finished lots and I --
it subtracts from that development costs and also
holding costs of a subdivision. And in -- during a
time period of -- a holding period would be two years.
My study indicated that the absorption period for
those lots as of vacancy and put to the highest and
best uses, single family homes, would be over a
two-year period.

So you got two -- you got two cash flows.
You got year one and year two. You got revenue for
these lot sales in year one, finished lot sales in
year two, and subtracting from that would be
development costs and holding costs for years one and
two which would result in what would be called a sales
net operating income. That would have to be
discounted for the present value of a dollar. As you
know, a dollar in the future is less than it is today.

I'll give you an example. If someone were
to give you a -- let's say $1.10. In one year from
now the present value of that $1.10 would only be
worth a dollar if the rate of return was 10 percent.

So all those things went into my appraisal in getting to the residual value of $269,000. In order to estimate what the value of the finished lots would be, I used four comparable sales, three of which were in the Town of Brighton and one was in the Town of Pittsford. And on pages -- I don't if the Board has the appraisal in front of them, but on pages 28 through 40, is what's called the sales comparison approach. And in that sales comparison approach it outlines what those finished lots would be on an individual basis, each of the six lots.

On page 41 there is a chart in the right-hand column that shows what the lot values -- finished lot values would be along with what the size of each lot was. As an example, Lot 1 I had a value of $165,000; Lot 2, $195,000. You'll notice Lot 2 and 3 were 0.91 acres and they were substantially back off Clover Street for privacy, plus they were larger. So they warranted a price of $195,000 each. And then going down the line, Lot 4 was $169,000; Lot 5 was $170,000; Lot 6 was $185,000. Four of the lots, Lots 1 through 4, will have access off Clover Street. And Lots 5 and 6 will have access off Highland Avenue.

So part of the -- part of the subdivision
analysis is -- to start out is to get what those finished lots would be worth if sold over a two-year period. The next step would be to outline what the expenses are, holding cost and development cost. And on page 46 -- 45 and 46 I've outlined the basis of the expenses of the holding cost and also the development cost. On page 45 it outlines pretty specifically where the -- some of these holding costs are and some of the development costs are. As an example holding cost would be real estate taxes. Earlier in this report I outlined that these finished lots would be assessed at about $150,000 based upon the tax rate per thousand. The holding cost per lot for real estate taxes would be $6,000.

As another example, insurance -- insurance market estimates would be $3,500 in year one, $2,500 in year two because in year one there's projecting I think four lots sales and in year two, two lot sales. So in year two holding costs are going to be less because in year one, four of the lots are going to be sold.

One of the biggest expenses, obviously, are development costs. And the biggest development costs which are located on page 46 include demolition, regrading and environmental. That's going to total
$477,000. That's by far the biggest development cost. The other development costs are in the form of tree removal, private drive costs, et cetera, separate electric. One of the reasons the development costs aren't higher is that the utilities are -- the lots are going to be very close to Highland Avenue and Clover Street. And therefore a lot of the lots in the marketplace are sold to builders who will pay for these lots -- the lot values I outlined as an example. I compensated in my lot values recognizing the fact that Mr. Smith Builders buys Lot 6, Lot 6 is near Highland Drive and it's going to be sold as is. And the builder will be -- the builder of the house will be responsible for hooking up to the street utilities. So a lot of development costs are less than a typical subdivision where you have to run a lot of sewer and other utilities into -- deep into a parcel. So on page 51 is a summary basically of the whole -- whole subdivision model. And on page 51 you'll see that this is a model that is typical of subdivision methodology that I've used hundreds of times in doing subdivision appraisals for 30 or 40 years. And it's very concise and simple in a lot of respects. At the top of page 51 you'll see there's -- over -- since this subdivision will be sold -- will
extend more than one year, I put in a periodic price increase on an annual basis of 2 percent. I also as a consequence of selling these lots, factored in marketing and commissions at 7 percent, legal and accounting at 1 percent, miscellaneous at 1 percent, developer's profit at 13 percent. Now, this developer's profit would only be for -- only be for the sites.

This model was set up hypothetically that the site developers is going to put these lots on the market after development and sell them to separate home builders. The 13 percent represents profit only to the developer of the site. So additional profit to the home builders that buy the sites at a later date. And a lot of times the profit on vacant sites that are going to be controlled by the home builder, they take a little less profit on the sites in order to get a bigger return on the house -- house development.

So on the top third of the page you'll see year one and year two. And you'll see four lot sales in year one that total sales revenue of $689,000. In year two there are two lot sales that total $397,800. In year one there are, between holding costs and developments costs, $592,750 with a net sales operating income of $96,250. In year two the sales
revenue is $397,800. The holding cost and other expenses in year two are $173,000, net sales operating income of $224,292.

Since we have to be concerned -- in any subdivision analysis we have to be concerned about the time value of money. The example I gave you $1.10 a year from now is only worth a dollar today. That is also considered here. Where I discount the $96,250 by a present worth factor of 0.9284 which the present worth of $96,250 today is 89 -- only $89,366 for year two. The discount is over 80 percent of the $224,292. And so the present value of that $224,292 that's going to be received in year two will be discounted down to $179,526.

When you tabulate both of those together, the present worth is $269,000. And $269,000 represents a residual value. That's the value to a -- to -- assuming that you have a six lot subdivision, it's been approved for a six lot subdivision, and hypothetically it will be developed into a six lot subdivision, the value of the property at that point is $269,000.

Again that's less than the Bruckner appraisal. However, it does represent a positive return. If you have any other questions I'd be happy
to answer them.

CHAIRMAN MIETZ: Okay, John. Thank you very much. That's a lot of detail for folks to have to go over.

MR. RYNNE: That's why I figure I'd cut it short.

CHAIRMAN MIETZ: Okay. Thank you for the detailed information. We appreciate it. Okay. So is that all that's going to be speaking? We got to keep ourselves rolling here.

MR. LUSK: No. It's Jared Lusk. I'm going to speak --

CHAIRMAN MIETZ: Sorry, Jared. Go ahead.

MR. LUSK: I did send a message to the host, Mr. DiStefano, asking to put on page 190 of 293 of the online packet which was the subdivision development. I asked him that about 20, 30 minutes ago. Is there anyway that we could put that up so that the Board can see the subdivision plan that's contemplated and was discussed?

MR. DiSTEFANO: No, Jared. We don't have that available on the screen right now. So the Board Members have it. They have it in their packet and I think we can move on from there.

MR. LUSK: Okay. Thank you very much. At
least, again, we're seeing the rendering of the existing church and just wanted to be able to see the rendering of the alternative design that the -- we had invested in. Thank you.

Again, I'm here to just speak briefly regarding some additional economics. And again, with respect to -- with the retirement of my partner Tom Grinder, I believe Mr. Goldman is the dean of the land use and zoning bar in Rochester. I'm not sure how happy he is about that, but he's certainly been around a long time and I respect him dearly.

With his application however, I think it's important that you take a long hard look at it. And you as a Board have put out application forms that require dollars and cents proof that's consistent with the State Law. And I really think it's important for this Board to take a long hard look at what was submitted because I think that's what is important. That's what the applicant has provided, not what we're saying, but what they have provided. And I think when you look at the income and expense statement for the three previous years that were provided by Mr. Goldman and the church, it indicates the total investment in the property.

And in the year 2019, this is on the
middle -- bottom of the first page of the income and expense statement for 2019, it says total investment, it's left blank, meaning there was three lines through that. Looking at that presumably they have -- they've either depreciated or they have no additional capital cost associated with it. Again, going back to 2018, the total capital improvements were $8,405. And in 2017 we list the capital improvement total of $216,560. If we -- the information that we know that's in the record before the Board, 8,400 plus 216 equals approximately $225,000 of total capital investment.

I think it's important to also look at those same documents and look at the income for the church. And each -- and I'll focus -- in each year it's approximately $118,000 in revenue from rent from the different groups. Primarily I'll focus on the Kids First Childcare. They're about $85,260 and roughly -- it's roughly 84 to $85,000 a year in rent that they're receiving from the property.

I think it was Jean, one of the Board Members -- sorry if I have the name wrong -- suggested, have you thought at all about expanding the existing childcare use? If you take out -- if you look at all of their expenses associated with the
building, that's again listed in their forms, the dollar and cents proof that's required for the Use Variance, I think you'll see that the expenses that they claim to be approximately $30,000 in the whole in the day-to-day operations of the facility. But one of the large expenses of that is the church -- on page -- the last page on each report is the church sexton which approximately $40,000 in expense. Again, if the church sexton wasn't there, if they moved and the building owner was able to at least lease an additional portion, not even all of it, of additional church for daycare or another permitted use, that they would certainly appreciate more revenue and again the building would make money.

But again, I think that's important to understand that even taking the data that's been provided by the -- by the applicant himself indicates that there's an opportunity for economic return from the property. Just as importantly I think Mr. Goldman and Mr. August and their development analysis have each taken the opportunity to tell us how little money they can make and make no economic return because they -- of the sales price, I think in each of the documents that's been referred to, of $940,000.

Again. That is -- that's a fantastic -- and
I understand how it's difficult to make money with a sales price of $940,000. But the fact is the property may not be worth $940,000. In fact, as Mr. Rynne indicated it's worth $269,000. And, you know, although every owner of a piece of property would love to get the highest value they can for property, again, it's important that this Board consider, as the law requires, that it consider a reasonable return for each and every lawful use.

It is -- it is itself zoned as a residential zone. The value of a residential home lot is very different than a commercially zoned property that would allow offices on it. And so for Mr. August to present an offer that is contingent upon him receiving a Use Variance for a higher use that isn't permitted, therefore it seems preposterous to me that the Board would entertain a Use Variance application to allow a -- that is so much higher than what is the permitted use when their application materials haven't even considered A, the expansion of the existing childcare use or an allowed use, residential use, that was zoned in 1963 when they approved it.

So although the church would love to get -- I'm sure get $940,000 for the property because it's a commercial or additional church use, they're not
entitled and the ZBA cannot by law grant a Use
Variance if there is a viable other economic use that
is a permitted use. So just because you want to get
$940,000 for your property, doesn't mean you can get
it. And just because you can't, doesn't mean you
should be entitled to a Use Variance. And.
So with that I will turn it over to Mr.
Sylvestri.

MR. SYLVESTRI: Good evening, everyone. Are
you able to hear me?
CHAIRMAN MIETZ: Yes.
MR. SYLVESTRI: Can everyone see me?
CHAIRMAN MIETZ: Go right ahead.
MR. SYLVESTRI: Thank you. My name is Paul
Sylvestri. I'm an attorney at Harter, Secrest and
Emery. And I represent John and Erica Stanton
(phone) who live at 2 Marvin Park, Kristin Vanden
Brul who lives at 4 Marvin Park, and Doctors Jonathan
Friedberg and Laura Calvi who own a house at 1128
Clover Street. The Stanton's and the Friedberg's
property are directly across from the Baptist Temple.
Ms. Vanden Brul lives next to the Stanton's.
So for the reasons detailed in our letter
and letters submitted by Mr. Woods, our clients are
opposed to the proposed Use Variance. Mr. Goldman at
the beginning of all of this covered the criteria applicants must show to obtain a Use Variance. Just as a very important reminder, each and every criteria has to be met.

To be respectful of everyone's time, my comments are just going to be focused on the fact that the requested Use Variance will, in fact, change the essential character of the neighborhood to the detriment of the neighbors, but to the advantage of the developer. Mr. Goldman earlier mentioned the SEQRA review made by the Planning Board as lead agency. And he made a statement that, based on the environmental impact review, determination by that Board was made that there was no significant impacts to the character of the neighborhood. I would argue first and foremost it's important that this Board understand it has its own criteria to follow and I believe that the criteria you need to apply for a Use Variance that whether or not there is going to be a alteration of the essential character of the neighborhood is a different type of criteria than what the Planning Board needed to decide in order to make their SEQRA determination which was more a criteria of whether or not there's a significant impact to the environment over all which tends to focus more on
traffic and those types of impacts than the quality, if you will, and intensity of the use of property.

Nevertheless, again this Board has its own criteria, it has its own obligations to make its own decisions as to whether or not impacts to the neighborhood have -- are significant here and change the essential character of the neighborhood.

The project is going to introduce commercial office and even more importantly medical office uses into an older, quite well established residential neighborhood of single family homes. Keep in mind that this property is, in fact, zoned low density residential when you're deliberating. The Stantons, they lived in their homes for 21 years. Ms. Vanden Brul has lived in her home for 17 years. The Friedbergs and Calvis have lived in their home for 14 years. Now, they've recently moved from that property, but they still are owners of the house.

All of them have purchased these homes with only residential use in mind. They never imagined that the property across the street from them would turn into office space, in particular medical office space which will have a steady stream of cars in and out throughout the day. They wouldn't also have spent many thousands of dollars improving and renovating
their homes over these many years if they knew what
was going to be happening tonight and if this should
become a successful project. They are greatly
concerned about what the proposed project will do not
only to the character of their neighborhood, but the
quiet enjoyment of their properties and the impact
this project is going to have on their property
values.

As the New York Court of Appeals case stated
called the Douglasson case, which is cited in my
letter, the developer here has little to lose and much
to gain in this proposed change from low density to
commercial and medical office while the long standing
residents lose the character of their neighborhood
they that reasonably relied upon would never change in
such a fashion.

Mr. Goldman in the application claims the
character of the neighborhood will not change simply
because the look of the property will stay relatively
the same. But far more than looks impact character.
The actual property use, the kind of use, has a very
significant impact as well. Actually Mr. Goldman even
made some statements about this about how churches can
have large amounts of people, large amounts of traffic
from time to time when there are services, when there
are special events. Well, in fact, you know churches, places of religion are a traditional and integral part of a neighborhood for those very reasons. They serve as gathering places for our community, gathering places for a neighborhood. They are part of the vital character of that neighborhood. Those community events, they're not detriments, they are actually pluses for the neighborhood. And, of course, the Baptist Temple has served that purpose for more than 50 years.

This is why churches are frequently allowed use in a neighborhood zone and traffic generated by such uses are tolerated in such areas. Commercial office and medical office use is far different and far more impactful to the residential neighborhood and it's character, of course, in a bad way. Medical office use in particular will have a steady stream of cars throughout the day. A single peak hour analysis in the morning and the evening does not at all capture the intensity of the use and the impacts that it will have.

The application lacks any information on traffic flow throughout the entire day. What happens at lunch hour when all those people in the office run out to grab a bite to eat and start returning all at
the same period of time?

To get some sense of intensity of use one can just look at Merriton's Trip generation data for the proposed use. So for the proposed use it's going to generate 38 times more traffic in the AM peak hour and 21 times more traffic in the p.m. peak hour than a six lot subdivision would. Of course there's going to be glare from headlights going in and out of the site. And as Mr. Goldman did reference earlier, the use is going to require some changing of the lighting scheme which is going to create more light spillage which is noted in the Town engineer's report that was part of the Planning Board application and package and I got to think is also part of the record in front of the Zoning Board.

A commercial atmosphere is going to be created for what's been an old, very pleasant single family residential neighborhood for -- for eons. A neighborhood with some larger lots and some grand older homes that have been there for over hundreds of years including the historic stone Tollen home down the street. The character of this neighborhood drew our clients to it. And it's going to be detrimentally altered for years to come by placing an office building on it.
Mr. Goldman made some comments before about the great disruptions that construction activity would have over a two-year period of time if this was to be made into the single family homes. Well, that two-year period of time of construction activity and impact will pale in comparison to the forever use of an office building at this property.

While there may be a potential economic upside for the applicant here, the cost of that upside is going to be borne by our clients and the other neighbors from the lost property values because of this proposed change.

While we're sympathetic to the Baptist Temple's desire to sell the property and mitigate their further expenses, this fact has no bearing on the appropriateness of granting a Use Variance. As stated in the Joyce case, again, cited at the end of my letter, I'll give you a quote, "The financial situation or pecuniary hardship of single owner does not warrant the exercise of the power -- referring to the power of the Use Variance -- thus to effect the property of other owners and public generally."

So for all the reasons that were stated tonight by Counsel Mr. Lusk, Mr. Woods, the appraisal results of Mr. Rynne that you heard tonight, the
applicants have failed to meet their burden of proof
and this Use Variance should be denied. Thank you
very much for your time in listening to us.

CHAIRMAN MIETZ: Okay. Very good. Thank
you very much. Okay. At this time is there anyone
else that would like to speak regarding this
application? Please indicate by raising your hand if
there is. Okay.

MR. FRISCH: I don't see anybody.

CHAIRMAN MIETZ: Okay. Good. All right --

MR. FRISCH: Wait. There is somebody.

CHAIRMAN MIETZ: Okay. Well, then -- all
right. Go ahead Ms. Vanden Brul.

MS. Vanden Brul: Thank you. I just wanted
to add that --

CHAIRMAN MIETZ: First -- excuse me, Ms.

Vanden Brul, can you just give us your name and
address.

MS. Vanden Brul: I'm going to. My name is
Kristin Vanden Brul. I'm at 4 Marvin Park. I've been
a real estate agent in this community for about 37
years. My position is that I believe that there is
a -- the property could be very popular for future
homeowners. We do not have any -- there are really no
lots or areas in the community right now that people
can build on. The most recent subdivision was done on Willard Avenue which is off of Highland Avenue closer to Highland Hospital in that area. And that sold out in a reasonable amount of time.

There was talk before about price range and the ability to sell houses. Willard Avenue is not as desirable of a corner -- or a street as this location. This property's located in an area where homes are selling, you know, anywhere from 300 to well over a million. There's house sales in that area that -- some of them are -- there's often private sales. If you want to live in the Brighton School District, your only opportunity is to own an older home and many people that come into our community from out of town are -- prefer not to have an older home, a house built in the 1920s. They're always looking for something new. And obviously there's not too many opportunities in Brighton.

So I do feel that there's definitely a market for those. I'm in that market every day. I look at one of the houses that sold on Willard for $801,000. You know, I think any of us that know the area know that's a very high price tag for that. Most of the homes in that area sell for, you know, 2, 3 -- actually some of them do less than 2 and $300,000.
But someone was willing to invest 800,000 in that area. Obviously on the corner of Highland and Clover in an area where price range -- and even Mr. August's house is worth substantially more than the houses around the Willard Avenue house.

So I -- and there's question about the $235 a square foot. I think that you could -- if you did research as, you know, I've done and even out in -- way out in Pittsford sells their homes at $226 a foot. And, you know, actually this location is better than many of the areas that he's building at this point. So I'm -- you know, definitely believe that there is a market for residential real estate in this area. I believe if you look at the marketing that was done back in 2019 by Keller Williams, they really didn't speak at all about the fact that it's zoned residential. They were promoting a church for sale when really it's more than a church that's for sale. It's property in an R-1 district. And they didn't address that at all in any of their marketing materials. So I just felt it was important to add that.

MR. FRISCH: Yup. Jared first and then --


MR. LUSK: I'm sorry. In my rush to be brief I neglected to indicate a very important point. As Mr. Rynne indicated in his appraisal report as a residential property as a permitted use, the property -- pardon me -- is valued at $269,000. I would like the Board to know, and I'm sure Mr. Goldman is aware, this afternoon our client presented a bona fide purchase offer to Mr. Spaul -- not Mr. Spaul, Mr. Stall the trustee noted in the application in the amount of $269,000, cash offer, willing to deposit the $269,000 with my law firm to close the property, no contingency for a Use Variance permitted. So, again, as you listen to Mr. Rynne and what a reasonable value, a reasonable return on the property there is a bona fide offer on the table to the land owner for that exact amount in cash.

CHAIRMAN MIETZ: Okay. Very good. All right. Very good. All right. Who else do we have? I think there was someone else who had a hand in. Did you see it Jeff?

MR. FRISCH: Yeah. They took their hand down. But if they want to speak again, put your hand up. Somebody else?
CHAIRMAN MIETZ: All right. Go ahead.

MR. HEININGER: Hello. This is Larry Heininger. For some reason I can't get on video, but that's fine. And I'm disappointed you're not able to put up the rendering of the six lot sub. But what I wanted to add here is we keep hearing about six, 4,000 square foot homes. And I did a little toggling around with our plat map today. And in order to build 4,000 square foot per code, lots have to be 36,702 square feet. So if you take that required area and you put it on the Clover Street frontage including the park, the lots would have to be 182.41 wide and 201.21 deep. The flag lots 2 and 3 would lose 29.38 feet of depth. It would have to make up the required area with an additional width of 43 feet to 221.61.

In addition, the depth of the building pads on Lots 2 and 3 would reduce from a depth of 75 feet to 45 feet. So they would become compromised. The northward creep of the property lines of 2 and 3 would remove 78.42 feet from the back of Lot 6 and that would remove 14,565 square feet from Lot 6. So the new area would be 15,946 square feet, which is well under the RLA 231.25. So there's basically no way you could build -- have six lots sized for 4,000 square foot homes. Never having seen any kind of concept...
done by any engineering group is basically a paper exercise that doesn't stand up.

So I worked through a few iterations from 3,900 square down to 3,700 square foot lots. And you can build them, including the park. The three lots which we are not proposing to do. The three on Clover Street would be 31,491 and you could build 3,700 square foot houses. Lots 2 and 3 would be the Town minimum for flag lot of 34,688 and you could build a house of 3,885 which is actually shown on our rendering. And then Lot 6 up on Highland on the west side there would be 36 -- 33,627 and allow 3,821 square foot house.

So the latest -- in closing, the latest rendering that we did that uses the Highland Street entrance for the driveway of Lot 6 and the northern existing entrance of the church property for Lot 5, Lots 1 and 4 which is on Clover to the south, you could build 3,226 square feet on the back lots, on the flag lots, which have to 50 percent bigger than the minimum. Those could be 3,885, same number I put out a few minutes ago. Lot 5 would be 3,227 square feet and Lot 6 would be 3,647 square feet.

So you could develop six plots with -- since I live in an older Brighton home like my grandparents
1,350 square feet, even the smallest one at 3,226
would be about two and a half times what's worked for
my family for over 38 years. And that's it.

CHAIRMAN MIETZ: Okay. Larry, thank you
very much. Is there anyone else who would like to
speak regarding this application?

MR. FRISCH: There is, yeah.

CHAIRMAN MIETZ: Go ahead. Who do we have?

MR. FRISCH: I asked him to unmute.

MR. HANNA: I was on.

MR. FRISCH: We can hear you.

MR. HANNA: Can you hear me?

CHAIRMAN MIETZ: Go ahead.

MR. HANNA: My name's Tim Hanna. I live at
2660 Highland Number 2. I'm the president of the
Community Country Club Condominium Association. I
have 18 years in the banking business with Citibank
Community Savings, Rush Community Savings. I've been
in the residential development business since 1994.
In a meeting, public meeting, we had with John, a Zoom
meeting, I asked John if he had any prior real
estate residential real estate development experience.
And he said he had absolutely none. And I said that
what they submitted indicated to me based on my
experience that they didn't have that type of
experience. And after reviewing what they submitted again, that really hasn't changed.

I would characterize it as very superficial, not a lot of detail. He had very qualified people like Jeff Smith and Jamie Columbus, but it lacked objectivity. He didn't ask Jeff Smith for his opinion. He basically told Jeff Smith what does it cost to build a custom house, 4,000 feet on a slant? And Jeff obviously is very familiar with Brighton. He's built seven homes on Willard Avenue. And lots for the more part substantially smaller than what the six lot layout would be.

And it would be helpful -- I mean, Larry touched on a lot of the details. We went into it in terms of the engineering and the layout. And when you look at the layout, what we were trying to accomplish is to create a unique neighborhood based on the size of the lots, the park-like setting on the primary corner there and the location in terms of access to the major highways, to the Strong and Highland medical facilities and the Brighton schools.

I believe the neighborhood where Jeff was -- and Willard Avenue prior to his houses is primarily a quarter million dollar neighborhood. There is a short -- there is an underserved residential vacant
lot market in Brighton. However, there is not to the best of my knowledge an underserved office market. In fact, Brighton probably has a glut of vacant office space. Thank you for your time.

CHAIRMAN MIETZ: Okay. Thank you very much.

Okay. Is there anyone else that would like to speak regarding this application?

MR. FRISCH: You can raise your hand or you can send me a message.

CHAIRMAN MIETZ: Okay. Do we see anybody else?

MR. FRISCH: I do not see anybody.

CHAIRMAN MIETZ: Okay. At this point we'll wrap this part up and close the public hearing. All right. We can move to the next application, Mr. DiStefano.

MR. DiSTEFANO: Do we have all our members back? Andrea and Ed, are you back on?

MR. PREMO: Yup.

MS. TOMPKINS WRIGHT: Yes.

MR. DiSTEFANO: Great.

CHAIRMAN MIETZ: All right.

Application 5A-01-21

Application of Best Construction of Wayne County, agent, and Ellen McCauley, owner of property
located at 1129 Highland Avenue, for an Area Variance
from Section 205-2 to allow an enclosed entryway
addition to extend 8 feet into the existing 39.5 front
setback where a 60 feet front setback is required by
code. All as described on application and plans on
file.

CHAIRMAN MIETZ: Okay. And who do we have
speaking?

MR. FRISCH: Ellen was on the call earlier,
but she left and she sent us an email, to Rick and I
and a bunch of other people.

MR. PREMO: Yes, Dennis. This is Ed Premo.
I guess she got frustrated waiting.

CHAIRMAN MIETZ: Okay. Rick, do you want
hang onto and see if she comes back or what --

MR. DiSTEFANO: We can hang onto it for
tonight and if not, we'll just table it for the
applicant's --

MR. PREMO: Dennis, this is Ed Premo. I was
involved with this one and when I looked at the
property I don't know if that's enough --

CHAIRMAN MIETZ: I don't think so, Ed.

MR. PREMO: Okay.

CHAIRMAN MIETZ: No. Okay. Let's move on,
Rick. Then we'll hold it. We can talk about it
during the deliberations.

**Application 5A-02-21**

Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for a temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold up to six outdoor weddings and club special events for the year 2021. All as described on application and plans on file.

CHAIRMAN MIETZ: Okay. And who do we have speaking please?

MR. SMITH: Michael Smith, general manager and chief operator of the Country Club of Rochester, also Brighton resident at 245 Brooklawn Drive.

CHAIRMAN MIETZ: Okay, Mike. Go ahead.

MR. SMITH: Thank you, everyone, for allowing us this opportunity. We're looking to get blanket coverage for the season. We have multiple events coming up this year that require tents. We have submitted, I believe, all the proper paperwork in order to do so. The largest tent size we're looking at is a 60 by 130 on our property. As you can see where the tent would be located right next to the clubhouse.

We -- you know, we have applied for tents in
the past, but are looking to do more of a blanket
coverage for the year.

CHAIRMAN MIETZ: Okay. All right. Very
good. Any questions by the Board Members?

MS. SCHWARTZ: Yes. Schwartz. There seems
to be an awning up more on the main building, a
striped awning.

MR. SMITH: Yes, ma'am.

MS. SCHWARTZ: Is that permanent part of it?
MR. SMITH: There is a permanent awning that
is on the club that is white -- I'm sorry -- green and
white. The tent would be on the lower terrace area
that would not be connected to the building.

MS. SCHWARTZ: Okay.

CHAIRMAN MIETZ: Very good. Other
questions?

MS. SCHMITT: Mike, real quick. In your
application I thought it said that the tent could be
up for three days. Would that be typical or would it
be for the individual use?

MR. SMITH: It typically runs about 3 days.
If you think about the size of it, it takes a full day
to put it up. And if you -- so if we're to put it on
Thursday or Friday for a Saturday event, usually it's
a day before, then you have the event and then it's a
day to take it down. So that's why we submitted three
days.

MS. SCHMITT: Okay. So you're thinking the
event is a day.

MR. SMITH: All the events will be one day;
correct.

MS. SCHMITT: Thank you.

MR. SMITH: Yup.

MS. TOMPKINS WRIGHT: This is Member Wright.
The application requests six events in the year. How
many events did you -- forget 2020 obviously, which is
the year that didn't happen -- previous to that how
many events did you hold that would have had an
outdoor tent?

MR. SMITH: Usually it's about six to eight.
We kept it at six. You know, that's what we have.
You know, keep in mind too with COVID, you know,
restrictions and mandates still in place the --
sometimes the need to have an outdoor tent is part of
the reason why some of these weddings and even our
club events have gone this route. Because we are
looking obviously to provide enough spacing and social
distancing and that just provides us that relief.

MS. TOMPKINS WRIGHT: Thank you.

CHAIRMAN MIETZ: Okay. Any other questions
for Mr. Smith? Okay. Thank you, Mike. All right.

Is there --

MR. SMITH: Thank you.

CHAIRMAN MIETZ: -- anyone on the call who would like to speak regarding this application? Okay. There being none, the public hearing is closed.

MR. SMITH: Thank you for your time.

CHAIRMAN MIETZ: Okay.

**Application 5A-03-21**

Application of Robert Orlando and Sandra Kyle-Orlando, owners of property located at 151 Brookside Drive, for an Area Variance from Section 205-2 to allow a sunroom addition to extend 14 feet into the existing 56 feet rear setback where a 60 feet rear setback is required by code. All as described on application and plans on file.

CHAIRMAN MIETZ: All right. And who do we have speaking for this?

MR. ORLANDO: Good evening, Mr. Chairman, Zoning Board Members. My name is Bob Orlando. I reside at 151 Brookside Drive and we are requesting an Area Variance for the rear of our home to construct a sunroom. The room would roughly be between 160 and 170 square feet. The windows in the sunroom would match the existing windows in our home. The siding
will match the existing siding on our home. The roofing will match the existing roofing at our home. The roof lines of the sunroom will match the existing roof lines of our home. So hopefully nothing will look out of character.

Behind our home to the south we have a small tree line on the property line. And then there is a field with trees. And beyond that is a field with woods. And there's roughly a home about 800 to 1,000 square feet beyond those woods. I have -- I have spoken to both of our next door neighbors, one at 145 Brookside Drive, one at 161 Brookside Drive. Neither of them had any objections to what we are proposing. I have also spoken to the property behind us. It's 906 Allens Creek. His name is Jeff Kline and he was nice enough to come over and he had no objections and he mentioned that he was sure that our addition would be in keeping with the neighborhood, which it will be.

The home next door to us at 161 Brookside Drive in January of 2000, they were issued an Area Variance for the rear of their property and their current distance from the rear of the property to their property line is 37.9 feet. Also there are numerous homes in the area -- and I really don't know how the Zoning Laws change over the years, but it
seems like there are numerous homes in the area where
their rear setback is than 60 feet, one of the them in
particular is the home across the street, which --
hope that's better -- which they have a family room on
the back of their home and it's roughly 25 to 30 feet
from their rear property line.

We have a detached garage on our property as
possibly somebody stopped over and saw which is 25
feet from the property line. There was no other way
to achieve this -- this Area Variance that we are
requesting since we could not construct an addition on
our sides because of side setbacks. And we could not
achieve an addition in the front of the house because
it would be out of character.

We are asking for the minimum amount of
square footage which is roughly 160 to 170 square
feet. The way we determined it is we have a room in
our home that's roughly that size and we rearranged
furniture in the house and felt that that would be
minimum square footage that we needed. Now, I guess
an argument could be made, well, couldn't you build it
a hundred square feet or 75 square feet. And, I mean,
anything can be built, but the problem is that the
price of construction does not correlate to the square
footage. So if we built it -- it was built a third of
the square footage less, unfortunately, we'd probably only save 10 percent on the price and it might not be feasibly -- or financially -- economically feasible for us to do it.

If an Area Variance is granted, we will not change the physical neighborhood conditions. The proposed sunroom is only visible from the back of our home. It is not visible from the front. I've spoken to all the neighbors surrounding us. Nobody has seemed to have any objections. Environmentally, we will only be disturbing some soil around the house to put some piers in. The rain water will basically remain the same. It will be shed the same way. The rain water will not be shed on the neighbors' property. So hopefully the -- environmentally we will not change anything.

The current condition was not self-created. These were existing conditions when he purchased the home in 2012. We like the neighborhood. That's why we purchased the property. And, in fact, we even considered after a while moving because we did have a sunroom on a previous home and we enjoyed it immensely. We got to utilize the spring a lot more and the fall a lot more. And we were hoping that if the Area Variance is granted, we can do the same with
our property at 151 Brookside. Thank you very much.

CHAIRMAN MIETZ: Thank you. Board Members, questions please. Any questions?

MS. SCHWARTZ: Yes. How long have you lived in the residence? I don't know if I missed that.

MR. ORLANDO: It will be nine years in August.

MS. SCHWARTZ: Thank you.

MR. ORLANDO: You're welcome.

CHAIRMAN MIETZ: Any other questions? Okay. Thank you very much, Mr. Orlando.

MR. ORLANDO: Thank you, Mr. Chairman.

CHAIRMAN MIETZ: Is there anyone in the Zoom conference that would like to speak? Okay. There being none, then the public hearing is closed.

Application 5A-04-21

Application of Christopher Brandt, architect, and Courtney and Kevin Cotrupe, owners of property located at 85 Council Rock Avenue, for an Area Variance from Section 205-2 to allow a front porch to extend 13.35 feet into the existing 51.8 foot front setback where a 60 foot front setback is required by code. All as described on application and plans on file.

CHAIRMAN MIETZ: Okay.
MR. BRANDT: Okay. So the project we have before you that we're requesting the Area Variance for is for the --

MR. DiSTEFANO: Introduce yourself to the Board Members.

MR. BRANDT: I'm sorry. I'm Chris Brandt, project architect, working with the homeowners Courtney and Kevin Cotrupe on their proposed front porch project that we're reviewing here tonight.

CHAIRMAN MIETZ: And just an address for the record, Chris.

MR. BRANDT: For Bero Architecture is 32 Winthrop Street, Rochester, New York 14607.

CHAIRMAN MIETZ: Okay. Please proceed.

MR. BRANDT: So the project that is before you tonight is for the demolition and replacement of a front entry porch that's currently 12 foot wide 6'7 deep. And that current porch is in poor condition and it's in a style and design that's incompatible with the house and surrounding neighborhood. As is stated in the application the front porch does not comply with the front yard setbacks as the front yard setbacks for the RLA zoning district requires 6 feet front yard setbacks in the district.

I'd be remiss to note so the -- this area,
Council Rock Avenue, predates the Brighton Zoning Code which was first enacted in 1924. And all of the homes on Council Rock have a consistent setback all of which is sort of encroached into the standard 60 foot setback.

So the proposed project that we have is seeking to largely recreate the front porch that had originally been on the house when it was built back in 1910. And this block of Council Rock Avenue between Highland and East Avenue had several similar homes that were all built concurrently by the same realty company and likely the same architects of which 85 Council Rock is one of them. And a number of these houses including 55, 67, 80, and 95 Council Rock Avenue Feature prominent single story front porches that are a part of their original character and design.

And we shared a more detailed outline in the memo that should have been submitted and shown before you showing the historic photographs of several of those properties including 85 Council Rock documenting the size, form and configuration of those porches. 85 Council Rock notably is the only house that those five all built between 1910 and 1911 that has loss its original front porch.
So what we think is generally it's in keeping with the neighborhood character and is a good match for the surrounding homes. As a quick general review of the other similar concurrently constructed homes on Council Rock Avenue, 55 Council Rock Avenue has an approximate setback to the 35 feet away. That porch is roughly 13 feet by 18 feet. So 13 feet deep by 18 feet wide. 67 Council Rock has an approximate 38 foot setback that's approximately 10 foot by 16 feet. 80 Council Rock Avenue which is directly across the street from 85, its porch is roughly 14 feet by 14 feet and has a 36 foot setback from right of way. And lastly 95 Council Rock, our neighbor to the south has approximately a 38 foot setback from the right of way with a porch of approximately 10 foot by 20 feet.

So the proposed porch that we have, which is roughly 12 foot by 12 foot square is sort of right in the exact same grouping as part of the overall area as well as the projection from the building. In fact, it's a little bit on the lower end in comparison to some of the other larger porches that are original to these concurrently built homes.

So the need for this variance is -- was not self-created. And as I stated before, the RLA district requirements that were enacted after these
homes were built caused all these houses in block to
not be in conformance with both the area and the
setback requirements in this district. And in
addition to this, the non-historic current porch is in
very poor condition and is in need of replacement,
which any project on the front of the building would
require an Area Variance for the desire for creating a
porch. I think that's it for me. Happy to take
questions.

CHAIRMAN MIETZ: Okay. All right. Okay.
Does that --

MS. TOMPKINS WRIGHT: Member Wright.

CHAIRMAN MIETZ: Yes. Go ahead Andrea.

MS. TOMPKINS WRIGHT: Just a quick question.
I think I may misheard you, but I think you said
something about their somewhat consistent setback on
all the homes on this road. That consistent setback
is somewhere in the 34 to 38 --

MR. BRANDT: That -- that -- that variation
is an approximate measurement to the foundation wall
of the porches. The main mass of the house is they
all have a very consistent setback that --

MS. TOMPKINS WRIGHT: Okay.

MR. BRANDT: -- is similar -- let me get the
plan a little bit closer. Give me one second. So
that setback to the main mass of the house right now is 51 feet 9 inches to the front wall of the house. That is consistent with all of these homes that were built concurrently by the same builder. The porches vary in their size and sale. And we're more in the medium to lower end as far as the overall area and projection compared to some of the larger porches that were built at the time.

MS. TOMPKINS WRIGHT: And many of those larger porches all built at the same do extend as far as your proposing extending into this setback?

MR. BRANDT: Correct. And further.

MS. TOMPKINS WRIGHT: Okay. Thank you.

CHAIRMAN MIETZ: Other questions please.

Anything?

MS. COTRUPE: I would just like to add, this is Courtney and Kevin Cotrupe, Mr. Chairman and the Board thank you very much for considering the variance for this. Just to complete the thought, this is something that's not out of vanity. It's really out of necessity. The existing porch is in disrepair and there are safety concerns. We have two small children ages six and eight. And we would love nothing more than to sit on a nice good porch to watch them play in the front yard.
So it's our intention to be able to restore
the house to its original intent of 1910 craftsman
style to mimic the neighborhood and really maintain
the integrity of the porch with this design. And many
thanks to Bero Architecture for helping us do that.
So thank you for your consideration.

Okay. Any other questions? Okay. At this point
we'll then wrap -- find -- if anyone else would like
to speak regarding this application? Okay. There
being none, the public hearing's closed.

MR. BRANDT: Thank you.

CHAIRMAN MIETZ: Thank you.

MR. DiSTEFANO: The next two applications
are the same property so I'll read them together.

Application 5A-05-21

Application of the Country Club of
Rochester, owner of property located at 2935 East
Avenue, for 1) an Area Variance from Section
207-10D(3) to allow for the construction of three (3)
clay tennis courts in a front yard in lieu of the rear
yard as required by code; and 2) an Area Variance from
Section 207-2A to allow fencing, surrounding said
tennis courts, to range in height from 4 feet to 16
feet in lieu of the maximum front yard fence height of
3.5 feet allowed by code. All as described on application and plans on file.

**Application 5A-06-21**

Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for an Area Variance from Section 203-2.1B(2) to allow a shed to be located in a front yard in lieu of the rear yard as required by code. All as described on application and plans on file.

CHAIRMAN MIETZ: All right. Who do we have speaking on behalf of 2935 East Avenue?

MR. SPENCER: Good evening. This is Andrew Spencer with BME Associates. Can you hear me?

CHAIRMAN MIETZ: Yes, sir.

MR. SPENCER: Okay. Again, my name is Andrew Spencer with BME Associates, address at 10 Liftbridge Lane, Fairport, New York 14450, also a Brighton resident at 124 Woodgate Terrace.

With us this evening as well on the call is Rick Holfoth on the line and he is the golf course superintendent at the Country Club of Rochester. I would like to touch on both of the variance requests in general together. So I will be making some comments on both applications that are before you this evening.
The Country Club of Rochester desires to put in three clay tennis courts on an area of the site that is currently the ice rink. It is a paved area, which is just to the east of the existing paved tennis courts and directly to the west of the elevated paddle tennis courts facility at the club. The intent of the project is to remove the existing ice rink and the existing wooden shed which is a watershed for the ice rink and replace it with the three clay tennis courts. The tennis courts will be approximately 83 feet from the northern property line running along the north of the access drive coming into the club.

We are also proposing the installation of a shed which will be placed approximately 130-185 feet from the property line to the southwest corner of the clay tennis courts. And the use of that shed is for equipments, nets and things of that nature that are utilized for maintenance of the clay tennis courts. So we do have an existing shed that is close to the property line which will be removed and replaced with a shed that is further from the property line.

There is also an existing tense hut which is right to the west of the northern boundary of the clay tennis court and that is to remain with this project. We're looking for a variance to allow the clay tennis
courts in the front yard basically because of the arrangement of the property. The clubhouse is further to the west of the property, which is on the corner of Elmwood and East Avenue. And because of that configuration a majority of this site is front yard. But as you see and if you've been to the club before, there are existing other facilities on the area with similar characteristics, the existing paved tennis courts and the paddle tennis courts each of which are fenced. The existing tennis courts have a fence height of approximately 10 feet in height and the paddle tennis courts have fence height ranging from 15 to 17 feet in height depending on where you are on the property.

We're looking to propose a 16 foot high fence along the southern boundary of the clay tennis courts to mitigate for any errant golf balls that could be coming in from the T-box of the particular hole which is just to the south. This is a landing zone for some people that do slice the ball. Balls have been found in the ice rink previously and almost all the way up to the roadway on occasion.

So the 16 feet is being requested to -- for safety of those that are playing tennis as well as to stop golf balls from going further away from the golf
hole itself.

For the public record, just do want to make you aware that we did provide a letter of intent dated April 12, 2021. We did outline reasons that believe the variance should be approved. I would just briefly touch on a few of these items. We do not believe that the installation of the tennis court here and granting of the variance will produce an undesirable change in the charter. We have very similar uses in this area and it is consistent with those uses.

Whether this could be achieved by some other method by the club, the tennis court per Town Code needs to be in a rear yard. The parking area for the golf course is to the west of the existing clubhouse and takes up a majority of the space in that area. To situate a tennis court to the west of the club in the rear yard would disassociate these other similar uses. As I said that tennis building is to remain and that is the hub for the use of both the paved tennis courts and the use of the clay tennis courts.

We do believe that the shed is also a requirement because it will hold the rollers and the cleaners and sweepers for the clay tennis courts. And that needs to be in relative close proximity to this use. Now, we do have -- the applicant does not
believe that this variance is substantial. Again, as it relates to the other existing similar uses that this is going next to, it is the same exact characteristic as a tennis court and there's tennis courts immediately adjacent. And this is the minimum variance to request for location of the tennis court and the shed in the front yard. We need both of these items together and as I stated previously, they're all grouped together between the paddle tennis and the paved tennis courts.

And the 16-foot height fence is the minimum that is necessary due to the golf balls that are coming in from the course and for protection of those that are playing tennis. We have a 4-foot section of fencing along the western edge and eastern edge of the tennis court, 10-foot high fence section being proposed along the northern boundary of the new clay tension courts and a 16 foot to the south. The 10 foot high fence along the northern boundary is to stop any errant tennis balls from going out into that access drive.

We do not believe this will have any adverse impact on the physical characteristics of the property. As I stated we are taking away a paved ice rink area. We're replacing it with the clay tennis
courts. There are no adverse conditions caused by the installation of the tennis courts. There is adequate area to discharge the runoff onto the fairway of the golf course and then drain off to some lower portions of land to the east of this location within the property itself.

And I think that covers it. I won't belabor this much more than I need to. I'd be more than happy -- oh, the one thing I do want to say, Mr. Chairman. There were some letters and emails that were provided from the residents just to the north that were all in support of this project. The Country Club of Rochester did work with them, reviewed the plans, made some adjustments and they are in support of putting clay tennis courts in this location. With that I would answer any questions you may have. Thank you.

CHAIRMAN MIETZ: Okay. Thank you. Okay. Are there any questions for Mr. Spencer? Pretty straight forward. Okay. Thank you very much. All right. Is there anyone on the call who would like to speak regarding this application? Okay. There being none the public hearing is closed.

MR. SPENCER: Thank you very much.

CHAIRMAN MIETZ: Thank you. All right.
Would you like friends to forge along here or does anyone need a couple minutes?

MR. GORDON: Dennis, before we stop with the public hearings, I did invite Ms. McCauley to rejoin our meeting if she wanted to have her matter heard. Can we just have Jeff check to see if she's rejoined?

MR. FRISCH: I do not see her.

MR. GORDON: No one is in the waiting room.

MR. FRISCH: No one is in the waiting room.

MS. WATSON: Might I propose taking a five minute stretch break and --

CHAIRMAN MIETZ: Okay.

MS. WATSON: -- leave the hearing open for five minutes to give her five more minutes.

CHAIRMAN MIETZ: Okay. That's fine, but let's keep it to the five minutes because the hour's getting late.

MS. WATSON: I know. But three hours without using a restroom is a lot.

CHAIRMAN MIETZ: No. That's fine. Let's keep it to five minutes.

* * *
REPORTER CERTIFICATE

I, Holly E. Castleman, do hereby certify that I did report the foregoing proceeding, which was taken down by me in a verbatim manner by means of machine shorthand.

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

Dated this 1st day of June, 2021 at Rochester, New York.

______________________________
Holly E. Castleman,
Notary Public

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BRIGHTON
ZONING BOARD OF APPEALS
MEETING

May 5, 2021
At approximately 7 p.m.
Brighton Town Hall Zoom Meeting
2300 Elmwood Avenue
Rochester, New York 14618

PRESENT:

DENNIS MIETZ, CHAIRPERSON
EDWARD PREMO
JEANNE DALE
KATHLEEN SCHMITT
ANDREA TOMPKINS WRIGHT Board Members
JENNIFER WATSON
JUDY SCHWARTZ

JEFF FRISCH
KEN GORDON, ESQ.
Town Attorney

RICK DistEFANO
Secretary

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, NY 14020

FORBES COURT REPORTING SERVICES, LLC
(585) 343-8612
CHAIRMAN MIETZ: Okay. All right. So I guess the beginning is back to 12A-05-20 which is 1075 Clover Street. Just a couple comments here. Obviously there's a lot of material that Rick gave us and then that last few days and was noted and the conversation by the various entities.

MS. TOMPKINS WRIGHT: Dennis.

CHAIRMAN MIETZ: Yes.

MS. TOMPKINS WRIGHT: Did we check to see if McCauley came in those five minutes.

CHAIRMAN MIETZ: I think Rick checked. Rick, did you check again?

MR. DiSTEFANO: She -- she's not back on.

MS. TOMPKINS WRIGHT: Okay.

CHAIRMAN MIETZ: Okay. So let me continue please. So anyway there's a lot of material here. I don't know how the rest of the Board Members feel related to this. Again, to digest it all is significant, as the volume of it was. So why don't we just go around. Do we feel that this is a matter that we have enough information and time to be able to deal with tonight? Or what is the pleasure of the Board Members? Andrea, why don't you start.

MR. DiSTEFANO: Andrea can't.

CHAIRMAN MIETZ: Oh, that's right. I'm
sorry. It's getting later. Excuse me friends.

MS. WATSON: If I may. I would move to

table it. It's a lot to consider.

CHAIRMAN MIETZ: Okay. Can we just kind of

get a little consensus on that? How about Kathy?

MS. SCHWARTZ: I agree.

MS. Dale: That's fine.

MS. SCHMITT: I would appreciate additional
time. I want to go back and read the materials again.

CHAIRMAN MIETZ: Okay. Okay. Jeane?

MS. DALE: Yeah. I think that that's fair.

CHAIRMAN MIETZ: Okay. Judy?

MS. SCHWARTZ: Yes. I agree tabling. Much
came in yesterday too.

CHAIRMAN MIETZ: Okay. Let's do that then.

MR. DiSTEFANO: Before we do that, now we

have to talk about whether you guys want to keep the

public hearing open --

CHAIRMAN MIETZ: Yeah.

MR. DiSTEFANO: -- or do you just need to

read the materials you have? Or do you want to give

the applicant and the opposition chances to rebut and
talk to us again?

MS. DALE: I don't have a problem keeping it

open.
MR. GORDON: Well, let me just interject here.

CHAIRMEN MIETZ: Go ahead, Ken.

MR. GORDON: I think, Dennis, I heard you state after everyone made their comments that the public hearing is closed.

CHAIRMEN MIETZ: I did.

MR. GORDON: We would have to have a motion to reopen the public hearing.

CHAIRMEN MIETZ: That's fine.

MR. GORDON: Yup. Okay.

CHAIRMEN MIETZ: And we've done that in the past.

MR. GORDON: I'm just saying procedurally. If you want --

CHAIRMEN MIETZ: Absolutely. Okay what about -- how about Andrea, what do you think?

MR. DiSTEFANO: Andrea can't talk.

CHAIRMEN MIETZ: Oh boy. Oh boy. Boy oh boy. I'm shooting blanks here. How about Kathleen?

MS. SCHMITT: I don't need more material. I want to go back and double-check and make sure that I read it and recall what I remembered.

CHAIRMEN MIETZ: Okay. Judy?

MS. SCHWARTZ: Yeah. I don't think we'd get
anything new. We have enough to go over right now.
We don't need to keep it open.

CHAIRMAN MIETZ: Okay. Okay.

MR. DiSTEFANO: Ken, do you have an opinion on that?

CHAIRMAN MIETZ: Yes, Ken.

MR. GORDON: Yeah. I think that each -- both the applicant and the opponents had a full opportunity to make the record. They've made the record that they wished us to have in front of us. Unless the Board Members have a specific question. And if you did have a motion to reopen the public hearing, I would suggest that you make a limited record that we would like to reopen the public hearing to hear more information about a specific topic. That would be the only way that I would suggest that you reopen this public hearing. Otherwise the parties have all had an opportunity, the public's had an opportunity to make their arguments.

CHAIRMAN MIETZ: I agree. And generally that's what we've done. It's been something where the Board required specific additional information from an applicant then it certainly makes sense to keep it open, but, you know, I think we have debates among professionals here which is obviously something that
happens all the time. And it's up to us to kind of sift through all of that and take a look at it. How about you Jen?

MS. WATSON: May I make a procedural question? If we were to table it, keeping the public hearing closed, in the course of our review over the next month, if we had additional questions that we wanted to ask the applicant, could the public hearing be reopened at a future meeting or has that ship sailed?

MR. DiSTEFANO: The only problem you run into with that, it will be advertised as tabled, public hearing closed. So it doesn't meet the advertising requirements of a public hearing. So it's hard to reopen it with at least advertising that public hearing is still open for the general public to know that they have a right to speak.

MR. GORDON: Right. And I thought the question she was asking is if at the next meeting in June, after bringing up the project to discuss off the table if an issue came up and the Board decided they wanted more information could we at that point make a motion to reopen the public hearing, give notice and then make -- hold the decision again for another month. I think we'd run out of time under the code.
MS. WATSON: Understood.

CHAIRMAN MIETZ: All right. Okay. So do we feel comfortable then -- it sounds like the consensus is to keep the hearing closed and to move to table.

MR. DiSTEFANO: So let me just state one more thing, either side does have the right to submit additional information which I will pass on to you.

CHAIRMAN MIETZ: Right.

MR. DiSTEFANO: So just be aware that you could be getting additional stuff that they won't have an opportunity to talk about, which I don't know if they need an opportunity to talk about it.

MS. SCHWARTZ: Can they as well send in more information or not.

MR. DiSTEFANO: Anybody can send in communications to the Board.

MS. SCHWARTZ: Okay.

MS. WATSON: Is there a deadline for submissions to the Board?

MR. DiSTEFANO: I think we can put a deadline on that.

MS. WATSON: Because 24 hours is roughly 400 pages.

MR. DiSTEFANO: I apologize for slamming you guys with all that, but -- yeah. That's -- I don't
think that's fair to the Board in any way, shape or form.

MR. GORDON: And just to make -- I'm sorry.

MR. DiSTEFANO: I'm sorry, Ken.

MR. GORDON: Just to make it clear as I can procedurally, while, you know, Rick is absolutely anyone can send any communication they wish to the Board at any time. You are closing the public hearing, you're closing the public hearing and later submissions would not be part of the public hearing record.

CHAIRMAN MIETZ: Okay. Well, let's -- we got to keep ourselves rolling here guys. What is -- the general consensus is to keep the -- what I'm hearing is the general consensus is to keep the public hearing closed. Are we comfortable with that?

MS. DALE: Sure.

MS. SCHWARTZ: Yes.


MS. WATSON: I move that we table application 12A-05-20 for consideration of materials submitted and testimony given.

Do I have to say anything about the public hearings because it's already closed?

MR. DiSTEFANO: Already closed.
CHAIRMAN MIETZ: Okay. Second?

MS. SCHWARTZ: Judy.


MR. DiSTEFANO: The motion is to table, public hearing closed.

(Second by Ms. Schwartz.)

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

(Upon roll call, motion to table with public hearing closed carries.)

CHAIRMAN MIETZ: Okay. All right. Now we got everybody back here. How about Kathleen, what do we think about the 5A-02, which is the CCR tents, tents events.

MS. SCHMITT: I do not have a problem with it.

CHAIRMAN MIETZ: Okay. Does anybody have a problem with it?

MS. SCHWARTZ: No.


MS. SCHMITT: Okay. Sorry I need to pull it up on my computer. Normally I print. So just one second.
**Application 5A-02-21**

Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for a Temporary and Revocable Use Permit pursuant to Section 219-4 to erect a tent and hold up to six (6) outdoor weddings and club special events for the year 2021. All as described on application and plans on file.

Motion made by Ms. Schmitt to approve application 5A-02-21 based on the following findings of fact.

**FINDINGS OF FACT:**

1. The applicant is requesting a variance to allow an erection of a tent and hold up to six outdoor door weddings and club special events for the year 2021.

2. Granting of the permit will not negatively impact the health, safety or general welfare of the community. The tent will be installed by a professional tent company and will only be for special events and weddings.

3. There will be no effect on available facilities for the attendants of these events as the request is for no more than six events per year and it is anticipated that the special events will last not more than one day and tents will be up no longer than three
days. There is also ample parking to accommodate event goers.

4. Granting of the request will not result in a change of character of the neighborhood or be detrimental to surrounding properties as the location of the proposed tent is within the confines of the Country Club grounds behind the club, not clearly visible from the road.

**CONDITIONS:**

1. The application is granted as per the application submitted and testimony given for the remainder of 2021 for up to six events per year.

2. All necessary fire marshal permits shall be obtained.

   (Second by Ms. Schwartz.)

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

   (Upon roll, Motion to approve carries with conditions.)
MR. GORDON: Rick, did you want to add any SEQRA language to that?

MR. DiSTEFANO: Actually, Ken -- I'm sorry -- special events do not require SEQRA. It's a type two action. So we don't need to do SEQRA.

MR. GORDON: I just want to make sure we have some record -- something on the record.

MR. DiSTEFANO: Yeah. It is a type two action.

MS. SCHMITT: Thank you, Ken. I appreciate you looking out for me.

MR. DiSTEFANO: Motion to approve with conditions. I'm sorry, Judy, you seconded on that?

MS. SCHWARTZ: Yes.

MR. DiSTEFANO: Before we go on to three, do we need to make some type of formal decision regarding 5A-01?

MR. GORDON: Yeah. We should do that, Rick.

CHAIRMAN MIETZ: Yeah. I received a text or like a message from her too over her frustrations. So -- yeah. I think we could just continue this until next month.

MR. DiSTEFANO: So you want to table and keep the public hearing open --

CHAIRMAN MIETZ: Right. Ed, would you be
willing to make that motion?

   MR. PREMO: I move that we adjourn the
   hearing with respect to application 5A-01-21 that the
   public hearing is held open and that it be advertised
   as such through the next meeting.

   CHAIRMAN MIETZ: Second please.
   MS. SCHMITT: Second.
   MR. DiSTEFANO: The motion is to adjourn
   application 5A-01-21 to the June meeting.
   
   (Ms. Schwartz, yes; Ms. Dale, yes; Ms.
   Tompkins Wright, yes; Mr. Mietz, yes; Ms. Watson, yes;
   Ms Schmitt, yes; Mr. Premo, yes).

   (Upon roll, motion to adjourn carries.)
   
   CHAIRMAN MIETZ: Okay. So now we're on to
   5A-03 which is Brookside Drive for the sunroom on the
   rear. Does anybody have any concerns about this?
   
   MS. SCHWARTZ: No.
   
Application 5A-03-21

Application of Robert Orlando and Sandra Kyle-Orlando, owners of property located at 151 Brookside Drive, for an Area Variance from Section 205-2 to allow a sunroom addition to extend 14 ft. Into the existing 56 ft. rear setback where a 60 ft. rear setback is required by code. All as described on application and plans on file.

Motion made by Ms. Schwartz to approve Application 5A-03-21 based on the following findings of fact.

FINDINGS OF FACT:

1. The location for the proposed sunroom at the rear of the home is the only feasible one that will provide adequate space for the 13 by 14 square foot addition.

2. The existing rear setback is 56 feet in lieu of the 60 feet required by code. However, the requested 14 foot variance will not alter the character of the neighborhood. The immediate neighbor has a rear setback of 37.9 foot and a neighbor across the street has one less than the required 60 feet as well. This decision will hardly be visible to either of abutting properties. It will not be visible from the road and there are no homes at the rear of the property.

3. All materials will match the existing home
creating a uniformed appearance.

**CONDITIONS:**

1. This variance applies only to the 13 by 14 square foot room addition to the rear of the house as presented in testimony and written application.

2. All necessary building permits must be obtained.

   (Second by Ms. Schmitt.)

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

   (Upon roll call, motion to approve with conditions carries.)
Application 5A-04-21

Application of Christopher Brandt, architect, and Courtney and Kevin Cotrupe, owners of property located at 85 Council Rock Avenue, for an Area Variance from Section 205-2 to allow a front porch to extend 13.35 ft (12 ft. with 1.25 ft. Overhang) into the existing 51.8 ft front setback where a 60 ft. front setback is required by code. All as described on application and plans on file.

Motion made by Ms. Tompkins Wright to approve based on the following findings of fact.

FINDINGS OF FACT:

1. The granting of the requested front yard variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The proposed project largely recreates the front porch on the original home as constructed in the early 1900s. It is also consistent with multiple properties in the neighborhood that also have substantial front porches that extend into the required front yard setback.

2. The requested variance is not substantial in light of the fact that the property as currently constructed already extends considerably into the front yard setback and the porch as proposed will only extend an
additional six or so feet in the setback representing only 10 percent of the code specified minimum.

3. The benefits sought by the applicant cannot reasonably be achieved by any other method or without variance. The porch as currently constructed requires replacement for safety purposes which in all cases will require a variance and the applicant desires to return the home closer to its original construction with a more substantial porch.

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

**CONDITIONS:**

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

2. All necessary permits and Architectural Review Board Approvals must be obtained.

   (Second by Ms. Schwartz.)

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

   (Upon roll call, motion to approve with conditions carries.)
CHAIRMAN MIETZ: Okay. Then we've got the Country Club of Rochester first for the tennis courts and second for the accessory building.

MR. DiSTEFANO: Just before we start, Ken, I have a question for you. SEQRA regulations state that tennis courts in residential districts do not -- are type two actions? I'm not sure how to interrupt that if they can count Country Clubs that are in residential districts. But tennis courts are a type two action.

MR. GORDON: Right. What it says is -- just had it up here. Hold on a second here -- type two action would include construction, expansion of placement of minor accessory of residential structures including garages, car ports, patios, and tennis courts. This is not a residential structure. This is obviously for the Country Club. I do not think this is a type two. I was also just -- single lot line for an Area Variance. So I think this is both for the height of the fence and the -- allowing it in the yard.

I do think we need -- I think this is an unlisted. So we should make --

MR. DiSTEFANO: Did we give them AF?

CHAIRMAN MIETZ: Yeah. There would be one
with the application.

MR. DiSTEFANO: Let me double-check. Hold on.

MS. WATSON: I didn't have one in my stuff.
CHAIRMAN MIETZ: You didn't have one in your packet?

MS. WATSON: No.

MR. DiSTEFANO: You know what? You probably didn't have one in your packet. You're correct. I'm sorry. There is --

MR. PREMO: Yeah. I don't -- I didn't --

MR. DiSTEFANO: You probably don't.

MR. GORDON: What is the -- I don't have a copy of it either.

MR. PREMO: There it is. Wait a second.

MR. DiSTEFANO: I take it it doesn't have any impact -- environmental impacts? Can we go down a little?

CHAIRMAN MIETZ: Okay.

MR. GORDON: Can you just go back up to the top?

MR. PREMO: Yeah. If you can just go back up too. I just want to see everything on the last page.

MS. WATSON: Second page. It's replacing an
existing ice rink. So --

MR. DiSTEFANO: No grading or anything involved.

MS. WATSON: Exactly. Not a lot of site work.

MR. DiSTEFANO: Right.

MR. PREMO: Yeah.

CHAIRMAN MIETZ: Are we good?

MR. DiSTEFANO: Yeah. I think so.

MR. PREMO: Yeah. I'm good. Thank you.

CHAIRMAN MIETZ: So is there any concerns other than that, that anyone has a concern about this? Okay. Let's proceed then.

MS. WATSON: Is there anything special I need to say?

MR. DiSTEFANO: Yeah. I'll say it for you.

MS. WATSON: Okay. I'll just read what I wrote and you can add to it.

MR. DiSTEFANO: I'll do that first and then just follow me. The Board having considered the information presented by the applicant and having the completed the required pursuant to SEQRA, the Board determines that the proposed project will not have a significant environmental impact and has made the following decision:
Application 5A-05-21

Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for 1) an Area Variance from Section 207-10D(3) to allow for the construction of three (3) clay tennis courts in a front yard in lieu of the rear yard as required by code; and 2) an Area Variance from Section 207-2A to allow fencing, surrounding said tennis courts, to range in height from 4 ft. to 16 ft. in lieu of the maximum front yard fence height of 3.5 ft. allowed by code. All as described on application and plans on file.

Ms. Watson moves to approve application 5A-05-21 based on the following findings of fact.

FINDINGS OF FACT:

1. The proposed Variances will not produce an undesirable change in the character of the neighborhood nor is it a substantial request. The proposed tennis courts are situated next to existing tennis courts in the same location as an existing ice rink. The proposed location is 83 feet from the nearest property line and is visually shielded from nearby properties by mature trees and shrubs.

2. The benefits sought by the applicant cannot be
achieved by any other method. The proposed tennis court placement was chosen due to the location of the existing tennis courts, parking and pedestrian access.

3. The 16 foot height of the fencing is the minimum needed for general safety to protect users from stray golf balls from the nearby golf course. The section of the 16 foot high fencing will only be on the farthest side of the courts from the nearest property line with the northern section 10 feet in height and the eastern and western sections just 4 feet in height.

4. The health, safety and welfare of the community will not be adversely affected by the approval of this variance request. The project requires minimum grading and site work that will not impact the environmental conditions of the site. The proposed fencing will provide the necessary safety and protection from errant golf at tennis balls.

**CONDITIONS:**

1. This variance will apply only to the project as described in the application and testimony. In particular it will not apply to projects considered in the future that are not in the present application.

2. All necessary Board approvals and permits shall be obtained.
(Second by Ms. Tompkins Wright.)

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

(Aupon roll call, motion to approve with
conditions carries.)
CHAIRMAN MIETZ: Okay. Then the final is the accessory building. Any concerns here? Okay.

MS. WATSON: The same declaration again.

MR. DiSTEFANO: Yeah. I'll read that again just so --

CHAIRMAN MIETZ: Okay. Go right ahead.

MR. DiSTEFANO: The Board having considered the information presented by the applicant and completing the required SEQRA review, the Board determines that the proposed project will not likely have a significant environmental impact and has made the following decision:
**Application 5A-06-21**

Application of the Country Club of Rochester, owner of property located at 2935 East Avenue, for an Area Variance from Section 203-2.1B(2) to allow a shed to be located in a front yard in lieu of the rear yard as required by code. All as described on application and plans on file.

Motion made by Ms. Dale to approve Application 5A-06-21 based on the following findings of fact.

**FINDINGS OF FACT:**

1. Granting of the requested variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties as the proposed shed will be located approximately 185 feet from the nearest property line and will be visually shielded by existing mature trees and shrubs as well as additional plantings being proposed along the existing access drive. An existing shed structure located closer to the neighboring properties will be removed as part of this project.

2. The applicant is seeking the location of the shed due to the proximity to the clay tennis courts as the shed will house specialized equipment to maintain the courts and such equipment will be used frequently.
Because the property is not a residential use and the primary structure is placed on the western end of the property, the location of the proposed shed is considered within the front yard and the shed is considered an accessory use, therefore a variance is required to provide relief.

3. The benefit sought by the applicant cannot be achieved by feasible alternative methods other than an Area Variance because the location of the shed is determined by the location of the clay tennis courts which the applicant would like to locate adjacent to other existing tennis courts and platform tennis amenities and at the site of the existing paved ice rink which is being replaced.

4. The proposed variance will not have an adverse impact or negative impact on the physical or environmental conditions of the neighborhood. Rather the applicant will remove an existing shed that is located closer to adjoining neighboring property. So the placement of the replacement shed will be an improvement.

CONDITIONS:

1. The existing shed shall be removed and the Area Variance approval is granted only for placement of the accessory structure at the location specified in the

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application.

2. All necessary Planning Board approvals and all applicable building permits shall be obtained.
   
   (Second by Ms. Tompkins Wright.)
   (Ms. Schmitt, yes; Ms. Watson, yes; Mr. Mietz, yes; Ms. Schwartz, yes; Mr. Premo, yes; Ms. Tompkins Wright, yes; Ms. Dale, yes.) (Upon roll call, motion to approve with conditions carries.)
CHAIRMAN MIETZ: Okay. Anything else, Mr. DiStefano?

MR. DiSTEFANO: Yeah. We have -- Ken, I'm going -- stop me if you don't think I should say anything -- but we have had an application submitted from attorneys representing opposition to the Whole Foods project.

MR. GORDON: Yeah. We're going to talk about that, Rick, as to -- I mean, you can certainly receive and file it as communications, but we need to talk about when and how that's going to be handled.

MR. DiSTEFANO: Right. So --

CHAIRMAN MIETZ: Stay tuned. Yes?

MR. GORDON: Yeah. I think at this point in time.

CHAIRMAN MIETZ: Okay.

MR. GORDON: I mean, did you think we needed to decide something, Rick, on the --

MR. DiSTEFANO: No, no, no. I just kind of wanted to forewarn.

MR. GORDON: Yeah.

MR. DiSTEFANO: So forewarning, we may have an application in front of us regarding the issuance of a second building permit for the Whole Foods store similar to the one we had back in November.
CHAIRMAN MIETZ: Okay.

MS. SCHWARTZ: June you mean?

MR. DI STEFANO: For June.

MS. SCHWARTZ: For June. Okay.

MR. DI STEFANO: Possibly will have one for June.

CHAIRMAN MIETZ: Yeah. Okay. All right. Is there anything else?

MR. DI STEFANO: No. I do expect a heavy June meeting though.

CHAIRMAN MIETZ: Okay. All right.

MS. TOMPKINS WRIGHT: You're just making all of our nights right now, Rick. Thanks.

MR. DI STEFANO: You know I just want to make sure I see all your smiling faces next week.

CHAIRMAN MIETZ: Make sure you enjoy all that reading on the first thing for the Baptist Temple too, okay? All right. Thank you very much, everybody.

(Proceedings concluded 10:38 p.m.)

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REPORTER CERTIFICATE

I, Holly E. Castleman, do hereby certify that I did report the foregoing proceeding, which was taken down by me in a verbatim manner by means of machine shorthand.

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

Dated this 1st day of June, 2021 at Rochester, New York.

Holly E. Castleman, Notary Public