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Zoning Board of Appeals

Proceedings by Authority

State of New York,
City of Jamestown, ss:
Council Chambers

The regular meeting of the Zoning Board of Appeals of the City of Jamestown, New York, was held on Wednesday, June 12, 2019 at 3:30 p.m.

Members Present: Ellen Ditonto, Stephanie Camay, Robert Kenyon, Sally Martinez, Michael Panebianco, Judith Sandson

Members Absent: Patricia Calanni

Others Present: Larry Scalise, Peter Larson

Mrs. Ditonto called the meeting to order.

Mrs. Ditonto: We have several petitions on the agenda, so a couple of housekeeping items; if you are the petitioner, or representing the petitioner, when your petition is read, please come to the table here at the front and at that time you'll be given an opportunity to talk a little bit more about your request. We also then have questions from members of the board and then an opportunity for the public to make a comment, five minutes or less, you must state your name and home address each time you speak. We do have microphones at the two sides of the auditorium if you wish to speak during the time of the public comment. We will have the clerk read each petition and again have somebody representing the petitioner come forward at that time.

ROBERT AND NEKISHA MCADOO, 1209 NEWLAND AVE., 387.18-1-3

The petition of Robert and Nekisha McAdoo, 1209 Newland Ave., Jamestown, NY 14701, for an area variance to 1) install a 8' x 6' storage shed on the side of the residence, 1' from the east property line, and 2) permit the installation of a 10' x 26' paved parking space in the front yard of the property, 1' from the east property line, at 1209 Newland Ave., parcel 387.18-1-3 owned by Robert and Nekisha McAdoo in a R-1 zone. (Section 300-317 Accessory Structures – the required side yard setback for a shed is 5', the proposed is 1'. Section 300-502 E and F, The required setback for a parking space is 10', the proposed is 1'. Parking in a front yard is not permitted in the R-1 District)

Mrs. Ditonto: Who are the petitioners?

Mr. McAdoo: Myself and my wife, Robert and Nekisha McADoo 1209 Newland Avenue.

Mrs. Ditonto: Thank you. And sir?

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Mr. Howard: Lester Howard.

Mrs. Ditonto: And you want to speak during the public comment section?

Mr. Howard: The five-minute deal.

Mrs. Ditonto: Okay, then you have to go back to your seat and you'll go to one of the microphones when we open that up for public comment, okay? Thank you. Mr. McAdoo do you want to explain a little bit more about your request for the area variance?

Mr. McAdoo: Yes, ma'am. We bought the house last July. Within the first month, my truck was parked in the road, I was hit twice. At that point I started reaching out to contractors and here at city hall, so we had a permit for the front driveway apron and the asphalt was also permitted through Kingsview and city hall. We have the blueprint and receipts through each contractor. When we put this in, there was no issue at first and as it started, time went by, probably about two weeks or so, I reached out myself to Kingsview to have some grass, topsoil work done because where they had installed this driveway, it had tore up probably about 18 inches into the neighbors property. We then had Kingsview; the owner and a second person went over trying to fix the situation and from my interpretation of talking to Kingsview they were not taken well at the door. After a while, we're here now so we are filing for a variance to keep that there. We had everything we could in the right manner; permits, contractors, signatures off of employees from the Zoning Board. I have new pictures. The first pictures I first gave you was right after, so it was kind of dirty, but now as the grass is growing, I have a new picture of how it's settling and it looks more appealing.

Mrs. Ditonto: You can bring that picture forward and we will share it with the board. Thank you. While he's coming forward, Mr. Scalise, can you explain about the permitting process of what happened? Larry? Can you please explain how there were permits for this?

Mr. Scalise: He contacted the Department of Public Works to have a new driveway apron put in. The permit was granted for that. His contractor, I don't remember the gentleman's name, came and saw me about putting a parking place in the front and I explained to him that it had to go back past the front edge of the house and somehow the gentleman didn't understand that. When he put the parking place in, it stopped at the front of the house. Part of this is they were looking at trying to pull alongside the edge of the house, but it's so narrow in through there, I don't know if they'd be able to actually get a vehicle in there to clear the front of the house or not.

Mr. McAdoo: I do have - the new photo I put up there. My truck is a full-sized truck and it is backed in there at that point in time alongside the house, so if that's an option, I'm willing to go that route also.

Mrs. Ditonto: The request though is because there is not enough space between your property line and where you have both the shed and the fact that the parking is still in front. If your truck can go all the way to the side without going over the property line, that might be a possibility.

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Mr. McAdoo: And it can.

Mrs. Ditonto: Okay, there are two separate issues here for the Zoning Board. The other one is regarding the shed. Do you want to talk a little bit about that?

Mr. McAdoo: The shed is just because I have a swing set and the backyard is very secure for my children. I have a two-year-old and a 3-month-old and we often have multiple kids over there; anywhere from four to seven toddlers. So, we try to keep the back enclosed, childproof and kid-friendly. So, therefore, with keeping the shed on that side of the house, it's a long way to park my car in the garage, instead of having my snowblower, my lawnmower, my yard utensils there, I'd have to put that right in my children's play area in order for me to have the shed. That's about 9 ½' by 24' or 26' of the property that I was trying to utilize.

Mrs. Ditonto: Okay. Thank you. Are there questions from members of the board?

Ms. Martinez: My question is, could the shed go right to the edge of the house? This is the shed we're talking about, the one that's already there?

Mr. McAdoo: Yes; the shed can move anywhere. It can move all the way back to the patio porch in the back. It can move back or it can move to the front of the house, but then...

Ms. Martinez: That's a good guard to keep the kids from coming around and I understand that.

Mr. McAdoo: It is. And there's a natural barrier there with the property line of the trees, so it's a natural deterrent for my children.

Ms. Martinez: But if it were at the edge of the house, on the other side of the windows, then you'd have room there for the two vehicles to park without putting a parking area in the front yard, which is not permitted.

Mr. McAdoo: I can move it completely back and that would give me another 18' or so.

Ms. Martinez: Yes, enough room for the two vehicles so you'd have to switch when you need to, but you'd get two vehicles off the street, just by moving the shed back.

Mr. McAdoo: Yes.

Mrs. Ditonto: Other questions?

Mr. Panebianco: Is the other driveway on the other side of your house yours?

Mr. McAdoo: Yes. It's a shared driveway, a single driveway. The wife and I work different shifts. I work 12-hour days, six days a week and it's impossible to do that carousel of cars when you have a two-month old. We just went through winter with a new child, so when

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we're trying to move a car at 10:00 am or you're trying to come in and bring your kid into the house instead of parking on the street, depending on which car is where, that's why we went the route of a second driveway.

Mrs. Ditonto: So, you wouldn't need two cars parked in the new driveway space, you would just need to move it back far enough so it's on the side of the house and not in the front of the house. And the vehicle would be this truck that you show us in this picture.

Mr. McAdoo: Yes, ma'am.

Mrs. Ditonto: Any other questions? Seeing none from the board at this time, it's time for the public comment period. At this point, if there's someone in the audience who would like to speak either for this petition to be granted, or against it. They have to come to the microphone at one side or the other, right over on this side of the auditorium, over there and state your name and home address, your remarks need to be limited to the variance request only; the area variance for either the shed to be 1' from the property line or that the parking spot is in the front. You must limit your remarks to those two items. Please identify yourself. Speak into the microphone.

Mr. Howard: My name is Lester F. Howard. I live at 1201 Newland Avenue, Jamestown, New York and I've got – can I approach it up there? When they were doing this over here, I called the police department and the police department says they can't do nothing about it. And the police department said I had to call the Sheriff's Department. I called the Sheriff's Department in Mayville and they said to me that I had to go through a civil lawsuit.

Mrs. Ditonto: And you need to speak to the petition sir. What is your opposition to this, either the parking or to the shed? Please try to have your remarks to speak to that.

Mr. Howard: Well, they put the driveway in there or whatever. Before they even did any of that crap – because I saw them out there one day looking for the stake, for the surveyor stake. I went out there and put a wooden stick in the surveyor's stake and Mr. McAdoo said to me, two words. If you want to know the words, I'll tell you.

Mrs. Ditonto: No.

Mr. Howard: As soon as he told me that, I turned around and walked back to my property and I didn't say nothing more to him.

Mrs. Ditonto: I just need you to summarize your remarks. You're opposed to where the driveway was added because it's too close to your property?

Mr. Howard: No. I was showing him where the stake was, the surveyor's stake for the property line. I looked that up and I put the wooden stake in the pipe and they didn't pay any attention to that. They dug the surveyor's stake out and they encroached on my property and the permit that Kingsview got from the city was – I've got it here. Do you want to see it?

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Mrs. Ditonto: No, I think we have a copy, thank you.

Mr. Howard: I just got it surveyed by Roger's Surveyors and they encroached on the property 2.5" – wait a second. (inaudible). Do you have a new survey plan up there or what? (inaudible).

Mrs. Ditonto: Mr. Howard, do you want to go back to the microphone? Do you have anything else you'd like to say? We'll review this.

Mr. Howard: Yes, anyway I've got a permit here that was obtained by Kingsview Paving here and I thought Mr. Scalise was giving the permits out, so I went over there. I left a message for him to call me, but he never called me, so I came down here to court one day and the court was cancelled, or the hearing was cancelled and – on here it says the encroachment. They've got to check their encroachment. It says here for a driveway. It also says here, anticipated damage; none. Well they come over on my property 2.5 square feet and also 16. They ripped the flowers out in there and I had a lot of them in there. A flower bed. They took the topsoil and just destroyed it. Threw it out someplace, I never seen it.

Mr. Scalise: What you were given is a copy of the encroachment permit our Department of Public Works issues. The reason it was checked encroachment is an -

Mr. Howard: I can't really hear you too good.

Mr. Scalise: You have an encroachment permit that was given by our Department of Public Works. That's why it says encroachment, that means it's out in the right of way; it's on city property, the driveway. When it says anticipated damages, it's not talking about your property, it's talking about the city property.

Mr. Howard: Yes, but it don't say that.

Mr. Scalise: But that's what it says.

Mr. Howard: Okay. But anyway – I've got a couple of other things here too.

Mrs. Ditonto: Please try to summarize it, okay Mr. Howard? Because you only have about a minute left okay?

Mr. Howard; This is an R district, right? Is this an R district.

Mr. Scalise: It's an R-1 district, yes.

Mr. Howard: I've got a thing here you sent me. I probably ain't going to make it in a minute. But anyway, it says you've got to be 1' from the line or something. In order to get his driveway in there, he had to encroach on my property and they cut it right down like that and took that flower garden right out of there and threw it out. And ripped – I had black plastic, right on the line there. I was 6" from the line with my flower garden there and they ripped all the

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flowers out there and they cut it down at a 45-degree angle there and destroyed the topsoil, just took it and got rid of it. They ripped the plastic out and Kingsview Paving came – first of all, I guess he said it was – the guy that come over there said he was a father of the lady over there that owns the place and he said I'm sorry for what my kids did to your property and I says your apology is unaccepted. He went across the street, got in his car and he gave me two choice words, if you want to know them, I'll tell you.

Mrs. Ditonto: I don't, but Mr. Howard I need you to finish because your time is up. It sounds like we have an issue in terms of the surveying, that you have a survey here that differs from what was on record. We're going to have to have that reviewed.

Mr. Howard: This – you can – anyway, it was \$600.00 to survey this property and that's the only way I could prove anything is to get it surveyed because the surveyor's stake was missing. And I went over there and what the surveyor's stake was laying on the ground and I got plenty of pictures. I got them home, a whole thing. And it was done last October. the driveway's in, the shed is in there and I thought this was supposed to be for a permit. Aren't you supposed to get the permit before you put the stuff in?

Mrs. Ditonto: There were some permits granted. That's why we're here now, is to straighten out the issue of the way the parking is. The permit was granted for the apron on the driveway. It's just now that the parking was not behind or on the side of the house, it was in the front of the house.

Mr. Howard: That's right. It's in the front of the house. Back to the driveway there, they put up a shed there. I've seen the shed and it's right up close to the house and it's less than a foot from my property line. I don't care about that.

Mrs. Ditonto: And we did just talk about that.

Mr. Howard: Excuse me?

Mrs. Ditonto: We did just talk about that with the homeowner. I do have to cut you off Mr. Howard. I need you to sit down and we have to see if there's anyone else who would like to speak. Thank you. Is there anyone else who would like to speak on the petition of the McAdoo's at 1209 Newland Avenue?

Mr. Howard: Excuse me again. One more question. How long will it be before I get a ruling on this?

Mrs. Ditonto: I don't know because we haven't had any discussion yet. So, if you want to sit and wait, then we'll have our discussion. Is there anyone else who would like to speak on this petition? Seeing none, we'll close the public comment section and return to the board. Are there other questions? Comments?

Ms. Martinez: I do think it needs to be resolved. If we have two different surveyor's drawings, we certainly have to know what's right.

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Mr. Scalise: Look at the one survey I provided.

Mrs. Ditonto: This is the one that we have.

Mr. Scalise: Yes. I left mine and I apologize.

Mr. McAdoo: Ma'am? In the photos with the rope going from post to post for the surveying, that's going off of his surveyor's marks. When we did put that driveway in, Kingsview did remove the first surveying stake. So, when he had it resurveyed, I deliberately put a rope from one stake to the back stake so that is where his surveyor's – it's a physical image of that.

Mrs. Ditonto: While we're waiting for Mr. Scalise to look at the survey, we could discuss, as a board, the shed. If it would be amenable that you move the shed so that you're not encroaching at that 1' property line. That would eliminate the need for the variance for that. If you would. And then we would just have to deal with the driveway issue.

Mr. Scalise: I have looked at the survey and it clearly shows the asphalt driveway that would be on the McAdoo's property is not over the line. There is an area; 2 ½' x 14.69' the claims of approximate limits of disturbed ground. That would be a civil matter between the two parties. That's really not a matter for the Zoning Board. But the survey that Mr. Howard provided shows that the driveway is not over the property line.

Mrs. Ditonto: Is it within the 1'?

Mr. Scalise: Part of it is it's supposed to be a 10' setback and they were doing approximately one, so it still doesn't change that issue. It does show that it did not cross the line.

Ms. Martinez: Well I'm glad it didn't cross the line, but it certainly is a lot less than it should be.

Mrs. Ditonto: How would the board like to handle this petition request?

Mr. Panebianco: As far as the driveway is concerned, I think, part of, if you look in the zoning regulations, part of the purpose of zoning is to keep the streets uncongested. So, putting in another driveway, I think, would meet that end. I would move to grant their petition. The witness who just spoke mentioned that he didn't have a problem with the shed being where it's at. I think his problem was more with Kingsview and how the driveway was put in. I didn't hear anything regarding problems with the driveway itself. My position would be that the position would be granted.

Mrs. Ditonto: Is there a second to approve the area variance for the property at 1209 Newland Avenue that would include leaving the shed where it is, correct Mr. Panebianco? And to allow the parking in the space that's now a second driveway.

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Mr. Panebianco: Yes. It seems as though, based on the photos, that the truck can get back far enough, so if no one has a problem with the shed being where it's at then I don't see why that'd be a problem. That's my motion.

Mrs. Ditonto: Is there a second?

Ms. Sandson: I'd second that motion.

Mrs. Ditonto: Thank you. Is there a question on the motion to approve the petition?

Mr. Kenyon: I have a question on the storage shed being on the side. From the material I read, I thought that was one of the issues, being that that was 1' from the property line and not in the back of the house. I think the storage shed should be in the backyard. It's unfortunate that you bought the house and there's other issues, but pretty soon storage sheds will be on the front corner of the house or on the front lawn and I just don't think that's proper. You cannot mow your lawn 1' from the property line with the storage shed unless you're just going with weedwhackers, so I have an issue with the storage shed on the side.

Mrs. Ditonto: I think that the petitioner agreed to move the shed during our discussion. Am I correct? Is that right, Mr. McAdoo.

Mr. McAdoo: I'm willing to find another place for it, yes.

Mrs. Ditonto: So, Mr. Panebianco, as a maker of the motion, we wouldn't need to have that as part of it.

Mr. Panebianco: I'll amend it, yes.

Mrs. Ditonto: And would you agree to the amendment in the second?

Ms. Sandson: I would agree to that.

Mrs. Ditonto: So, we do not have to have the motion to include an area variance for the 1' for the shed because the owner will move the shed so it is not there at the edge of the property line, but closer to his home in the backyard, correct?

Mr. McAdoo: Correct.

Mr. Kenyon: Is there any issue with a snowplow, shoveling as far as the 1' berm. It doesn't leave much room for any snowplowing or shoveling.

Mr. McAdoo: I guess I'm misunderstanding your...

Mrs. Ditonto: In the driveway, at the edge of the driveway.

Mr. Kenyon: How will you shovel your drive, if you only have 1'?

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Mr. McAdoo: Wouldn't it go in the yard?

Mr. Kenyon: You'll have to keep it away from...

Mr. McAdoo: I went through this last winter.

Mrs. Ditonto: Did you already go through a winter with it that way?

Mr. McAdoo: Yes, I went through this last winter. I have a snowblower, so as I go through, it all goes to the center yard.

Mr. Kenyon: Your center yard.

Mr. McAdoo: Yes. My property right now is a U shape, so what I had done is the snow was blowing all toward the front yard and then as I continue up the second driveway, rotate the propulsion and go into the front yard.

Mrs. Ditonto: We have a motion on the floor that has been seconded as amended to approve the area variance to have the driveway on the side of the property. We would expect that the vehicle would be moved back because you're now taking the shed out of the way so that you can move that back.

Mr. McAdoo: Correct.

Mrs. Ditonto: Just a matter of clarification. We still need the area variance as long as that...

Mr. Scalise: Yes, because it's within 10'. For the driveway to stay, you'd have to grant the variance.

Moved by Mr. Panebianco, Seconded by Ms. Sandson.

Carried: 6 – 0

Mrs. Ditonto: You've been granted the variance request. Please make sure that you do follow up moving the shed and again, putting the vehicle back.

Mr. McAdoo: I'll be able to get it done this weekend, I'm pretty sure.

Mrs. Ditonto: Okay. And you can always talk to Mr. Scalise if you have questions or you need further clarification.

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JEFFREY I. IRELAND 800 WEST THIRD STREET, 387.09-5-20

The petition of Jeffrey I. Ireland, 800 West Third Street, Jamestown, NY 14701, for an area variance to expand the existing parking lot 6' to the west, 4' from the west property line at 800 West Third Street, parcel 387.09-5-20 owned by Irish 5 Properties, LLC, P.O. Box 66, Panama, NY 14767, in a R-1 zone. (Section 300-502, Design and Layout Standards, The required setback for parking areas in the R District is 10', the proposed is 4'.)

Mrs. Ditonto: Representing the petitioner today, please identify yourself and your home address.

Mr. Edwards: Hi; Greg Edwards, 3606 Nutt Road, Busti, New York and I was asked by Jeff Ireland to appear on his behalf and the company's behalf to address any questions that the board may have about the request.

Mrs. Ditonto: Thank you. Do you want to explain a little bit more about the need for the additional parking spaces?

Mr. Edwards: I will, gladly. The J. Edwards Insurance Agency is a fourth-generation, family-owned insurance agency. It's, I think, important to note that it's locally owned and they were previously located across the street in the Third Street Plaza and were able to acquire what used to be the Trinity Guitar building right there on the corner and as many of you may have noted, but I'll state for the record, there has been significant renovations and investments into the property from my view and others I've spoken to, significantly improving the look and value and the true beneficial growth in that commercial area of Hunt Road. It's one of our gateways and investment in that area is significant. As part of that growth and development, they've analyzed the parking capacity that they have for their customers and as part of that, inquired with their neighbor about the capacity to expand the parking area, paved parking, toward the boundary line between the two buildings. I'm pleased to report they have an excellent relationship with their neighbor Lisa. She indicated that not only did she have no opposition to the expansion over as indicated in the petition, but as far as she was concerned, they could pave it all the way right to her driveway, which includes part of her property as well. That's not their desire or intent. They want to maintain that nice little grass strip between the two properties. This does give them more access for their patrons. Having been in there, it's important for patrons to be able to move their cars through that kind of circle, horseshoe area, they'd have a clear access point out onto Hunt Road. And by having cars, or having the ability for cars to park off to the side, that maintains that flow and that access for their customers. It's pretty straightforward. They're looking to expand the blacktop a bit in that, kind of unusual, almost pie-shaped area that's depicted in a drawing. This is within the boundaries of their property as indicated by – the survey is Steven Gustafson and again in full approval of the encroachment onto that – towards the neighbor's property.

Mrs. Ditonto: Thank you. Are there questions from members of the board? Mr. Kenyon, you look like you have a question.

Mr. Kenyon: No question. The neighbor's happy, there's no problem.

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Mrs. Ditonto: Anyone else?

Ms. Martinez: Is there correspondence to that effect?

Mr. Edwards: I don't have it here in this file. My conversation with my brother-in-law has been more along the lines of their neighbors and they're agreeable to these sorts of things. I don't have anything in the file.

Mrs. Ditonto: And I don't believe we have any correspondence, no.

Mr. Olson: We haven't received anything, no.

Mr. Scalise: I just was told by Mr. Ireland that they were okay with it, but I've not spoken with them or received any correspondence.

Mr. Kenyon: Should we get something in writing just to clarify that?

Mr. Edwards: It was my understanding from talking to Mr. Ireland that as per the code and the obligations, everyone received notice with the opportunity to respond and again, this is by his representation that the neighbor did not feel the need to correspond with the city on this issue. But, then again, that's all representation.

Mrs. Ditonto: Any other questions or comments? Seeing none, it's time for the opportunity for the public to have a comment on a request for an area variance at 800 West Third Street to add some additional parking on that property. If there's anyone in the audience who would wish to speak, please go to a microphone at my either left or right, state your name and home address. Seeing no one come forward for this petition, we'll close the public comment. Are there other questions or additional comments from members of the board? Otherwise, I'd be looking for a motion on the area variance for 800 West Third Street for Irish 5 properties.

Moved by Mrs. Martinez, Seconded by Mr. Kenyon.

Carried: 6 – 0

KEITH AND NICOLE VANSTROM, 120 PARK STREET, 387.19-1-10

The petition of Keith and Nicole Vanstrom, 120 Park Street, Jamestown, NY 14701, for an area variance to install an 18' round above ground swimming pool in the rear yard, approximately 3 feet from the South property line at 120 Park Street, parcel 387.19-1-10 owned by Keith and Nicole Vanstrom, in a R-1 zone. (Section 265-3 C, Swimming Pools shall be set back a minimum of 8' from the property line, the proposed is 3').

Mrs. Ditonto: Thank you. Please identify yourself and your home address.

Mr. Vanstrom: Keith Vanstrom, 120 Park Street in Jamestown.

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Mrs. Ditonto: Mr. Vanstrom, do you want to talk a little bit about the pool placement?

Mr. Vanstrom: Yes, we're looking to install an 18' above ground pool in our backyard. We will be within 3' of the property line of 122 Park Street. I've gotten a letter from my neighbor Dawn Meabon at 122 Park Street which you should have, expressing that she didn't have any issue with the pool being 3' from the property line. That's about it.

Mrs. Ditonto: The pool hasn't been installed yet; I'm assuming.

Mr. Vanstrom: It has not.

Mrs. Ditonto: Can you tell me, is there going to be any kind of a decking around that or is the 18' the total width?

Mr. Vanstrom: 18' will be the total width. There will be no decking around it.

Mrs. Ditonto: Questions from members of the board?

Ms. Martinez: My only question would be about the drainage. If your neighbor says it's okay, what kind of drainage are you going to have if you have to drain the pool any time?

Mr. Vanstrom: We will be able to drain it into the backyard if need be.

Ms. Martinez: Okay.

Mrs. Ditonto: Other questions? I think it would probably be appropriate if we had the correspondence read. Do you have the correspondence?

Mr. Olson: Sure.

I Dawn L. Meabon are the owner of the property at 122 Park Street. I am aware that my neighbor, Keith Vanstrom, 120 Park Street will be installing a pool. I am also aware that it will not be within the required distance from our property line as per the City of Jamestown requirements and I'm perfectly fine with this. If you have any questions, feel free to contact me.

Ms. Martinez: You have fencing already on your property?

Mr. Vanstrom: We do not, but we plan to put up fencing after the pool's installed.

Ms. Martinez: Okay and you're not going to be coming for a – you're coming for a fence – a 6' fence is what he's allowed, right Larry?

Mr. Scalise: Yes. If he wants taller than 6' he'll be before the board. We have a petition just like that coming up here.

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Ms. Martinez: I know. Then my question would be, the safety of the pool for kids. Does it have steps that you send up or does it...

Mr. Scalise: State law requires that they have stairs that lock up in place or can be removed. And the height on the sides and all of that, he has to comply with all of that. And we've had that discussion. There should be no issue on achieving that.

Mrs. Ditonto: Thank you. At this point it's time for members of the public. If anyone would like to speak either for this petition request to be granted; an area variance at 120 Park Street, or in opposition, please go to one of the microphones, state your name and home address and limit your remarks to five minutes. Seeing no one in the audience who wishes to speak on this petition, it's time for us, again, to have a motion on the area variance at 120 Park Street to allow an above-ground pool to be placed 3' from the property line.

Moved by Ms. Sandson, Seconded by Mr. Kenyon.

Carried: 6 – 0

Mrs. Ditonto: Your petition's been granted. Please make sure you work with Mr. Scalise and that if you do have fencing, that you abide by our zoning regulations as well. Thank you.

KRISTOFER AND SIMONE SELLSTROM, 67 CHESTNUT STREET, 370.15-7-20

The petition of Kristofer and Simone Sellstrom, 67 Chestnut Street, Jamestown, NY 14701, for an area variance to install a 9' tall wood fence along the East property line for privacy at 67 Chestnut Street, parcel 370.15-7-20 owned by Kristofer and Simone Sellstrom, in an R-1 zone. (Section 300-0206, Fences in Residential Districts, The maximum allowed height for a fence in the residential district is 6', the proposed is 9').

Mrs. Ditonto: Thank you. Please identify your name and home address:

Mr. Sellstrom: Hello, I'm John Sellstrom and I'll be representing Kris and Simone. I'm actually living with them at 67 Chestnut.

Mrs. Ditonto: You've given us a packet of information. Do you want to walk through that?

Mr. Sellstrom: Attached, in the handout is a letter from Simone and Kris explaining the reasons more in-depth on why they would like it. Attached is also the before, during and after photos along with the approved fence design. Pretty much what happened is, Kris and Simone's neighbors to the right of them, or the east side, she just recently bought the house and she cut down 22 trees and that really had all their privacy to their back porch. Now that the trees are gone, you can definitely see the significant difference in the photos. Most of those photos are taken off of the back porch and now you can see directly into the neighbor's back porch and backyard. They are seeking just to put a fence up just for their privacy back. They are planning to

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put a 6' fence with a 3' lattice on top so they can grow some vines or something like that and add a little more light to their backyard while retaining their privacy.

Mrs. Ditonto: Thank you for that. Are there questions from members of the board? There was a fence through part of that.

Mr. Sellstrom: Yes, on the very back wall they have a retaining wall, their neighbor has a retaining wall, it's about a 5' retaining wall and then they have a 5' fence on top and the neighbor next to us on the east side has an older fence that is 6', but it's easily cleared by the porch. You can see right into the backyard. Frankly she doesn't seem to have problem looking at us or us looking at her, but it's more that they would like the privacy back on their side. With all those trees, they had a lot of cover and you could barely even see their backyard. It all came from that secondary lot which is directly in front of her, which is to the east side of 67 Chestnut, which is just now an empty lot. I don't know if there was a house there at some point in time that they demoed.

Mrs. Ditonto: And the fencing design that is shown here, I think in the petition it said that it was going to be a wood fence with lattice. So, it's a stockade fence?

Mr. Sellstrom: Yes. The bottom is going to be wood as well, the 6' bottom and the lattice at the top would be wood as well.

Mrs. Ditonto: Okay. Questions from members of the board.

Ms. Martinez: We live in a city. Nobody has privacy in their backyard. They can put up – I can understand, we had a situation with dogs, large dogs, I can understand that, but I just – it's living in a city.

Mrs. Ditonto: Other questions, comments.

Mr. Kenyon; The actual fence will just be 6'. How tall...

Mr. Sellstrom: 9' tall is the total.

Mr. Kenyon: 9', but how much is the lattice? 2' or 3'?

Mr. Sellstrom: 3' on the top of the 6'.

Mr. Kenyon: So, you're still with a 6' fence.

Mr. Sellstrom: Which will be smaller, lattice, it's not going to have the wide-spacing lattice. It's going to be smaller spaces.

Mr. Kenyon: You're still going to see through some. It's not going to be as if it's solid.

Mr. Sellstrom: Correct.

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Mr. Kenyon: If the solid is 6' and then 3' is lattice.

Mrs. Ditonto: Other questions or comments?

Ms. Camay: So, the lot at 14 is currently vacant?

Mr. Sellstrom: The lot to the east side of the house is vacant. The lady lives on Spruce, but she owns that whole back lot there as well. And you can see her – she's the one that took out all the trees, that house, the white house.

Mrs. Ditonto: Other questions? Seeing none, it's time for us to ask if there's any correspondence.

Mr. Olson: No.

Mrs. Ditonto: There is not, so we'll open it up for public comment. At this time if there's anyone that would like to speak on the request for a 9' fence, 6' of stockade fence and 3' of lattice at 67 Chestnut Street on the east property line, please go to the microphone, state your name and home address and limit your remarks to five minutes or less.

Ms. Howie: I'm Lynn Howie, I'm at 64 Spruce Street and I am concerned about a 9' fence in the city. Is it going to set a precedent? Can anybody that has a 6' fence just decide to put up a 3' lattice or does it depend on your neighbor saying you can't do it? I'd rather have – in my backyard, I'd just as soon everybody take care of their houses, the back of their garage and I'd like a 4' wrought iron fence. It's the city and I think 9' is way too tall. And I know the property – it's atrocious looking because the trees came down, but then with that 9' fence there? Trees need to be planted along for some privacy.

Mr. Sellstrom: Unfortunately, we can't plant trees on that side because we don't actually have room. There's very limited space.

Mrs. Ditonto: You can address the board, that's okay. We'll ask those questions of you.

Ms. Howie: That's what I'm concerned about is it going to set a precedent that we're all going to live in the City of Jamestown and live in a fortress if everybody wants a big 9' fence around their house or if they want one in their front yard for privacy.

Mr. Panebianco: Where do live, ma'am?

Ms. Howie: I live at 64 Spruce Street.

Mrs. Ditonto: 64 Spruce.

Mr. Panebianco: Is that near the house?

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Ms. Howie: Well, I'm 100'. I got the letter. Nobody else, my neighbors really cared, but I do care, so that's why I showed up.

Mrs. Ditonto: She's within the 100' of the property.

Ms. Howie: Yes, I did receive the letter.

Mr. Kenyon: How long is the fence? I know it's 9' high, but what's the length?

Mr. Sellstrom: If you look at the first picture it actually has the description on the very last page for the survey. Pretty much it's going from the back corner to – it's not super long, it's just in the back, east side section. On this picture it actually goes to this post right here and just in the back, so you actually won't be affected in the front area, it would be mainly just to block the east neighbor looking at the back porch. It would go from this corner all the way down to this post, but there is still significant...

Mr. Kenyon: So how far – an estimate – 50', 10'?

Mr. Sellstrom: Probably more than 50'. It's just in the backyard, but they have a pretty long house.

Mr. Kenyon: And it's running along...

Ms. Howie: Down to the street?

Mr. Sellstrom: No, it would not be. It's only in the backyard.

Mrs. Ditonto: Ma'am if you have comments, you can continue to make them, otherwise we'll ask the questions for you, thank you.

Mr. Panebianco: You see this photo? I can see the fence right now. So, would that be 9' or 6'?

Mr. Sellstrom: That's 6'.

Mr. Panebianco: So, looking from the street, it would be 6' and looking from the street, you wouldn't be able to see the 9' fence.

Mr. Sellstrom: Unless you're looking at her empty lot, then you would see it.

Mr. Kenyon: That's what I was trying to get. Where the 9' section is. That's not 50'.

Ms. Camay: Just the green section? Is that where it is?

Mr. Sellstrom: Yes, just the green section on the last survey.

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Mr. Olson: Sir, you need to go back to your microphone to speak, please. Thank you.

Mrs. Ditonto: And while you're approaching the microphone, there was something in the original request that said that they wanted it for partial, which you're showing us, a partial area that would be the 9', but they might want to extend that in the future. I think that's a question that we can't answer now. If we would approve it, it would be for that small section.

Mr. Sellstrom: That's fine. There's a couple of pine trees in the back that were blocking it and she recently chopped the very tops of them off. You can see them in this photo. She took a hatchet to them and chopped them, but that would be – as soon as you can see it going up on that angle, that's where the fence would end and start as well.

Mrs. Ditonto: So, the 6' fencing would go for the length of that property line and then the 9' is just the 50' from the side of the house to the back of the lot.

Mr. Sellstrom: Yes. Only the 9' – the 9' is the only part that they're adding. Everything in the front is going to stay how it is. That's her fence. It's going to be staying there. We're just going up to that point in the back and into the back corner of the northeast side. It's really just to cover that main view of – especially on this photo. This photo is exactly what we're trying to get – just that little topper off.

Mrs. Ditonto: Other questions or comments? We do not have any correspondence on this, so at this point if you have no questions, we would be ready for a motion on the variance request for the fencing on the east property line for part of it to be 9', a new section of fencing.

Moved by Mr. Panebianco, Seconded by Ms. Camay.

Carried: 4 – 2 (Martinez, Sandson – nay)

Mrs. Ditonto: You have to have four votes to get approval, so you were granted the variance request. Again, please make sure that you understand that it is for that one section. That doesn't mean you could expand it through the property. And please talk to Mr. Scalise if you have questions. Thank you.

Ms. Camay left the meeting.

GIULIA SOWREY, 182 WEST VIRGINIA BLVD., 387.20-4-1

The petition of Giulia C. Sowrey, 182 West Virginia Blvd., Jamestown, NY 14701, for an area variance to install a 20' x 32' deck, 7' from the West property line at 182 West Virginia Blvd., parcel 387.20-4-1 owned by Randal T. Sowrey, in an R-1 zone. (Section 300-0305, R-1 Single Family District, The required front yard setback is 25' or the average depth of properties within 150' (approximately 15'), proposed is 7'. Deck was constructed as the owner did not know she needed a permit).

Mrs. Ditonto: Thank you. Please identify yourself, name and address.

Ms. Sowrey: Giulia Sowrey, 182 West Virginia Blvd.

Mrs. Ditonto: As the petitioner, do you want to tell us a little bit about this project, the decking?

Ms. Sowrey: Absolutely. We purchased the house a little over a year ago, almost two years in October. We actually purchased the house for this guy right here. We needed a ranch to be able to accommodate his special needs. Stairs are just not an option for us. This summer, we decided to put a deck on so that he can have a safe outdoor space to play in. As it stands, our only option for him is a play yard in our backyard since he does tend to even grab grass and put it into his mouth. We really need something that's more contained for him to be in. He often gets left out of outdoor activities because we don't really have a space like that. So that was really our main purpose in adding this deck and being able to provide something with some decent space – my mom has a deck that's quite large and he adores it, so we really just wanted to be able to provide something for him to have a safe space to play outside. As well as our other children, but really focusing more on being able to give him something to be able to do outdoors as well.

Mrs. Ditonto: Okay. And when you had the deck built, you didn't apply for a permit at that time.

Ms. Sowrey: No, we have another home and we had done some basic home improvements and I'd never gotten a permit before. I honestly just didn't know that that was necessary, especially for something that was on the side of the house. I understand now that that's technically the front of the house for Gwendolin, but I didn't know that.

Mr. Sowrey: We were under the assumption that a building permit would be for an actual structure like a full building, so we weren't aware.

Ms. Sowrey: Right. This is my husband by the way, I'm sorry.

Mrs. Ditonto: Please identify yourself.

Mr. Sowrey: Randall Sowrey, 182 West Virginia Blvd.

Mrs. Ditonto: Thank you Mr. Sowrey. Okay, this is a triangulated property because it's on West Virginia Blvd. and Gwendolin Ave. so that's why the setbacks are set the way they are because it's considered the front yard versus a back yard or side yard. So, do we have questions from members of the board?

Ms. Sandson: Who constructed the deck? Was it a DIY thing?

Mr. Sowrey: We hired.

Ms. Sowrey: We hired and it's not completed at this point. Once Larry Scalise came and saw us, we halted all work until this point because we, again, we didn't want to do anything

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we weren't supposed to, we just didn't realize we were doing something we weren't supposed to. So, we have completely halted at this point. The deck, the framing is completed and we have personally put the boards on top, just so they're not laying in the grass, but it is being constructed by a crew.

Mr. Kenyon: Who's the contractor that was doing it?

Ms. Sowrey: It's actually the Amish that are doing it and they're going under a contractor. I'm not sure exactly what contractor they're going under for insurance purposes, but they're Amish that we've worked with before and have had some other work done at my mom's house.

Mr. Sowrey: And they were recommended to us.

Mrs. Ditonto: Other questions. Have you had any conversations with your neighbors in that area?

Ms. Sowrey: Yes. We actually have spoken to all of our neighbors except for two; one of which, literally, just moved in two weeks ago and...

Mr. Sowrey: The other is moving out in two weeks.

Ms. Sowrey: Right. Other than that, we've spoken to all of our neighbors and as far as they've proclaimed to us, I think we actually had some letters that were written, they're all for it, every single one of them. that we are aware of.

Mr. Sowrey: We handed them in to Larry.

Mrs. Ditonto: I think at this point it would be appropriate then for us to listen to the correspondence. We'll have that read into the record.

Mr. Kenyon: Can I ask one more question? I know on the side; those posts are up pretty high. I know in the drawings, they're saying 42.

Mr. Sowrey: Those will be chopped down. The deck railing will be installed onto that on the standard height. Those are up for the railing to be mounted to and then once the railing is installed, then they will chop that down to the correct height.

Mr. Kenyon: No fence?

Ms. Sowrey: Like I said, we halted – no, it will just be a regular railing with spindles in between, normal spindling. Safety first, a gate will also be – it's going to be a built-in gate so that it's again, completely enclosed deck spacing, but regular spacing between the spindles as well. The height in the pictures – we halted all work, so again they didn't get the chance to chop it down to the appropriate height.

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Mr. Kenyon: I was wondering about a fence, but you're doing railings.

Ms. Sowrey: Nope, just the typical height. He doesn't stand or anything like that. We just have to make sure that he isn't going to fall off of the deck.

Mrs. Ditonto: Okay, let's go ahead with the correspondence.

Mr. Olson: We, Roger and Carrie Cole, live at 21 Gwendolin have no problem with our neighbor on West Virginia Blvd. adding a patio to their house.

Second letter: Joseph and Cathy Constantino, 17 Gwendolin have no concerns with the neighbor on West Virginia Blvd. building a deck.

Third Letter: Shannon and Marv Neubauer: My husband and I live at 22 Gwendolin Avenue. Our neighbor Randall Sowrey at 182 West Virginia is attempting to make improvements to his home to benefit his handicapped child as well as benefit the rest of our neighborhood. My husband and I are very concerned. We are in the process of making improvements to our home while our neighbor has had his project brought to a halt by the city. On the one hand, the city encourages homeowners to make improvements and others are being penalized like Mr. Sowrey. It's very disheartening. Our wish is that the city would help people make improvements to their homes, not penalize them.

Last Letter: Robert and Carol Darling: Please be advised we have no issues with the deck being built at 182 West Virginia Blvd.

Mrs. Ditonto: Do you have an address for that last correspondence?

Mr. Olson: Neubauer? 22 Gwendolin.

Mrs. Ditonto: Okay, thank you. Other questions from members of the board? At this point we would open it up for public comment. If you would wish to speak on the petition request for the property at 182 West Virginia Blvd, please state your name and home address, limit your remarks to five minutes or less.

Ms. Malarkey: Hi, I'm Kim Malarkey. I live at 188 West Virginia Blvd. I just came today to show support for Guilia and Randall Sowrey. They live immediately next door to me and I saw the deck and I think it's a lovely structure. I think it will benefit their family and it actually beautifies the neighborhood. So, I'm in complete support of their deck.

Mrs. Ditonto: Thank you. Is there anyone else in the audience who wishes to speak? Seeing none, we'll close the public comment section. Are there other questions or comments from members of the board? Seeing none, we would be looking for a motion on the area variance request for 182 West Virginia Blvd to allow the deck to be built even though the setback is less than what is required by the zoning.

Moved by Mr. Kenyon, Seconded by Ms. Sandson.

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Carried: 5 – 0

Mrs. Ditonto: Your variance request has been approved. Please resume your project.

There being no further business, the meeting was adjourned.

James N. Olson, Secretary
Zoning Board of Appeals