

June 21, 2018

Zoning Board of Appeals

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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 7, 2018 at 3:30 p.m.

Members Present: Ellen Ditonto, Richard Hanson, Sally Martinez, Jim Olson, Peter Larson, Judith Sandson

Members Absent: Patricia Calanni,

Others Present: Bill Rice, Vince DeJoy, Jeff Hollern

Mrs. Ditonto called the meeting to order.

Mrs. Ditonto: We have one petition that was tabled at our June 6<sup>th</sup> meeting. In order to discuss it, we need to have a motion to remove it from the table.

Ms. Martinez moved to remove the petition from the table. Seconded by Ms. Sandson.

Carried: 6 – 0

**NATIONAL COMEDY CENTER, 2 WEST THIRD ST., 387.48-1-2**

The petition of Journey Gunderson, National Comedy Center, 2 West Third Street, Jamestown, New York 14701, for an area variance and Special Use Permit to install two 357 square foot EMD signs on the front façade of the National Comedy Center, 203 West Second Street, parcel 387.48-1-2. (Section 300-0170, maximum allowable size for EMD is 144 square feet, proposed is 357 square feet. Maximum number allowed EMD signs is 1, proposed are two. Section 300-0710(k) Proposed use of the EMD signs is to be at Level 4. Level 4 EMD signs require a Special Use Permit.)

Mrs. Ditonto: Thank you. Just a couple of housekeeping items before we get started because we do have a large group here. When you do speak, and we will let the comedy center people speak first, they need to state their name and home address each time you speak because we are recording this and we need to be able to transcribe it. Members of the public will be given an opportunity to speak as well, either in favor or in opposition to the variance request and the special permit request. You need to go to one of the microphones at my left or right, state your name and home address, limit your remarks to five minutes and they must be related to the variance and special use request. At this time, we'll ask that the comedy center representatives identify themselves and please give us a little bit more information about these requests.

June 21, 2018

Mr. Panebianco: yes, my name is George Panebianco and I'm the president of the National Comedy Center. With us tonight, we have our chairman which is Tom Benson and our executive director, which is Journey Gunderson. I'm going to be speaking on behalf of the comedy center today. If there's some particular questions that you have that I don't know and they have more unique knowledge, I would defer to them and maybe have them come up and answer some of the questions. But, with your permission, members of the board, I do have a brief statement that I'd like to enter into the record at the start of the meeting.

Members of the Zoning Board of Appeals,

I'd like to thank you for the opportunity to address the board regarding the application of the National Comedy Center for a special use permit and an area variance for the signs on the exterior of the National Comedy Center.

For those of you that don't know me, my name is George Panebianco and I'm the president of the board of directors of the National Comedy Center. Before we get started and discuss the merits of the application, I would like to make something extremely clear. The National Comedy Center recognizes and acknowledges the city's role and the Zoning Board of Appeals' role in this process. At no point, have we ever considered the National Comedy Center above the laws of this community. In fact, I've spent my entire career, and specifically the last ten years, making sure that there's been an adequate respect for the laws of this community and appropriate due process. To be clear, I acknowledge that there have been some mistakes and miscommunications between the National Comedy Center and the city of Jamestown regarding these signs. We apologize for the process being delayed and the unnecessary controversy that has come with it. While there may be differences in how the law should be interpreted, it's our full intent to address the board, provide it with appropriate information so that a positive determination can be made. Rather than waste our time and dwell on how the parties have gotten to this point, I'd like to focus tonight, to be on the merits of our application and what's in the best interest of the city. As you are all well aware, the National Comedy Center project started more than eight years ago due to the vision of the original Lucy Desi Center. For eight years, a group of dedicated citizens, led by Tom Benson and Journey Gunderson, have raised over \$29 million and have created a cultural institution that will rival anything in the United States. Studies have shown that the National Comedy Center will bring \$23 million of annual economic impact to Western New York. We are literally weeks away from opening the doors and changing what happens in our community for generations.

We are here tonight, asking for your help to help us complete that mission.

As you're very well aware, we do have the application that's in front of you and it's an application for a special use permit and two area variances regarding the size of the screens and regarding the number of the screens. I did hand out, and I think Mr. Thomas may have given it to you, a breakdown of the screens themselves and I've typed up some of the unique information, plus we have the specs from the manufacturer and we also have some proposed uses. What I do want you to understand is this is not something just for the comedy center. Yes, we want it to promote the comedy center. We want this to help our tourism. But, it's also used as a community vehicle so that people can go and enjoy that. We see the piazza project out there right now where

June 21, 2018

they're talking about closing the streets and people being able to sit outside and participate and watch things. That's the purpose of these screens. It's a community purpose; not just for one not-for-profit organizations and it's our goal to do that. So, you understand, just a little bit of a brief history, we've been thinking about those screens for years and I don't want to dwell on it; I don't want to dwell on how we got to this point and unless you have specific questions about it, I'm not going to waste your time tonight. I will say that it is vital to the facility. We've spent hundreds of thousands of dollars on engineers and architectural drawings. We've tried to work with the city and short of this little glitch in the last two weeks, I think that we work very well with the city to get this facility built and be so close to the opening. So, it's our hope that you take our application into consideration and I'm going to answer any questions that you have, but I'm sure you're aware of the things that should be considered when you think about an area variance or a special use permit. And the first thing that you should consider is whether an undesirable change will be produced in the character of the neighborhood. This is downtown and we want an attraction there. In fact, the strategic plan that the city's been following and that has been so critical to the development of the west side of Jamestown, specifically wants this comedy center there and is part of that, those screens. And to be clear, when we got site plan approval and we got our building permits, they included those screens. So, it was our anticipation all along, that those screens were going to be part of this project.

Mr. Olson:               George, I sat on the Planning Commission at that time and the site plan review had nothing to do with any variances that were approved as of that date.

Mr. Panebianco:       Mr. Olson, with all due respect, I've known most of you in this council chambers for a long time. At the time that the city took that up, late 2014 and early 2015, there was a discussion because the city code was absent any specific language as far as signage and so there was a discussion about whether the city should adopt some language from codes in other cities, in Pittsburgh, but there was a specific exemption. There was a specific exemption in Section 300-07-06 and I don't know if the zoning board is aware of that exemption. But, that exemption was specific for the National Comedy Center. It specifically identified it and if you would, Mr. Thomas, I would like to hand this up to the members. Section 300-07-06 was created in April of 2015 for the specific purpose of allowing those signs to come in. and what they did, is they exempted the comedy center from that as long as there was site approval. That was passed on April 27, 2015. And clearly in our site approval, those signs were in the diagrams that were in the site approval. So, this wasn't something that we were hoping to get variance approval, or we were hoping to address this down the road. Section 300-07-06 says size located at or on museums, not in residential 1 or Residential 2, as defined in Section 300-01-06, provide however, that any such signs shall be reviewed and approved in conjunction with the site plan review and the approval process. So, it was our hope that we would be able to take care of all issues related to the signs. Now, with that said, let me be clear; we don't want to do anything that's contrary to the Department of Transportation, we don't want to create a hardship for this community and we are willing to work with the city to create guidelines. But, the purpose behind that provision was to allow us to put those signs up. There would be no other purpose for that provision. Then two years later, then the city enacted the additional regulations related to signs. As a practical matter, and I don't want to try this in front of the zoning board; we're here to ask for the variance and we want to ask you for it. But, we were always – and our attorneys for the

June 21, 2018

comedy center have specifically indicated that you have approval and you don't need to go in and get a variance.

Ms. Sandson: So, somebody issued you the approval then?

Mr. Panebianco: We received site approval and a building permit. A site approval for the comedy center with the signs and a building permit for the signs, where the signs are going to go. It was right in the site approval. I can -

Mrs. Ditonto: Mr. Panebianco, could we not to try to try this with the exemption -

Mr. Panebianco: I agree.

Mrs. Ditonto: Because that exemption was done prior to the new electronic message board signage zoning code that went into effect January of 2017. That section that you cite, does not specifically mention electronic message boards as being one of the exemptions. So, that's why the new zoning code was very important and the reason for the request for you to go for a variance and a special use permit.

Mr. Panebianco: I understand the zoning board's position. I don't want to try this case here.

Mrs. Ditonto: Thank you.

Mr. Panebianco: It would be our position that it's not required, but we're here to ask for it. We're here putting forth this application and we would ask the zoning board review it on its merits and make a decision based on its merits. That's why I didn't want to get into how we got to this point.

Mrs. Ditonto: One clarification on the special use permit. That is because of the level of animation that's required. You had said because of two signs. That's the area variance, but the special use permit is because of the request to go to Level 4.

Mr. Panebianco: That's right. We're asking for Level 4, which would allow those screens to produce video. They're not going to be a static sign. It allows those screens to produce videos.

Mr. Larson: George, if you could speak to how the design of the signs complies with any existing DOT regulations regarding showing video in that close proximity to a major state highway. That's the thing that bothers me about this. I would imagine that moving video of that sort, you don't see that on signs, billboards, anywhere else, probably, I would assume because of DOT regulations, saying that that's a distraction that's very dangerous.

Mr. Panebianco: Well you do and you do see it in certain places. For instance, if you go by the Sabres hockey arena. During the hockey games, the games are up. If you go by the Cleveland Cavaliers stadium, during the recent NBA championship, they're showing to their fans, there are 20,000 fans outside and cars going all the way. It's up to the zoning board. It's up to you to decide what it should be used for. It would be our position that we should work with the city and

June 21, 2018

determine when it should be used. We do not want to violate the DOT standards. In fact, we haven't been given any DOT standards. I think Mr. Thomas was able to get some information today about the DOT standards. If the DOT says, you can't show it during this hour, we will comply. If they say it needs to be this bright, we will comply. Whatever the DOT says, we will comply. It's not our role to be contrary to the city or to the DOT. It's our goal to be compliant, to try to do what we can, but also deliver what those signs were meant for. Which is, close the plaza, let them see a comedy show, let them see an introduction to comedy awards, let them be part of the festival that we have. That's the goal of those signs. It's certain – look, my family drives those streets too and I don't want to see anyone get hurt. And if the DOT says don't do this, we won't do that. If they say don't do that – I'm going to ask that any approval be conditioned on the DOT telling us exactly what's prohibited. I can't tell you, as we sit here today, what the Department of Transportation is going to say for or against us. But I can promise you this, as a member of our board and as an officer of the court, we will comply.

Ms. Martinez: Do you have to wait for DOT compliance after this then you have to get them done.

Mr. Panebianco: We have to finish them. We're not going to do anything contrary to the DOT, so we'll try to communicate with them before this year's festival to try to find out exactly what their requirements are.

Mrs. Ditonto: Do you want to take specific questions? There were a number of questions that were asked during the session earlier this month that the Department of Development couldn't answer and some of the technical specs that you've brought today are helpful and may help as we go through those questions. At this point, I'm going to open it up to members of the board for questions.

Mr. Olson: George, just a couple questions; I know you're acknowledging that the site plan approval a couple of years ago gave you permission to do that, but after January 30<sup>th</sup> of 2017 when the city council adopted the ordinance were you made aware of that by city officials? You or other representatives of that new ordinance.

Mr. Panebianco: I think there was a request in October of 2017 and as a practical matter, Mr. Olson, I just don't think it applies to us. That doesn't change my application today.

Mr. Olson: I'm just asking you a question.

Mr. Panebianco; I'm just telling you that we had counsel and the counsel not being me, we had independent counsel that said the city changed the code, they changed the city code for you and you got site plan approval for those so it doesn't apply. That's why we had the delay we did. Whether I'm right or whether I'm wrong...

Mr. Olson: So for a year and a half, if you were made aware of the ordinance change – we're sitting here a year and a half later, even though the city, whether it was Larry or whoever contacted you guys about the fact that the city felt that the request that you were going to have was not in compliance with the ordinance. Why then are we sitting here less than sixty days, or

June 21, 2018

the first time were sitting here, why are we sitting here less than sixty days if city officials encouraged you to come in and do this, why are we sitting here beginning on June 6<sup>th</sup> and now June 21<sup>st</sup> when you guys were told to do this, why did you wait so long?

Mr. Panebianco: Would you like me to be frank? Mr. Olson, because I think you're wrong.

Mr. Olson: Okay.

Mr. Panebianco: As simply as I can say it -

Mr. Olson: So, I guess I would ask Marilyn, if George thinks we're wrong, what is your opinion of that?

Ms. Fiore-Lehman: I would submit that they're here today with an application. So even though they may be of an opinion that they have a legal argument that may not require them to be in front of this body, they are here in front of this body. So, what their opinion might be, to me quite honestly, is not relevant because they have a petition before this body right now and they're here today to present information to this body to seek approval of their petition. So, what they may have believed, either in October or the months leading up to the filing of this petition, to me, is irrelevant. Because they're actually here today.

Mr. Panebianco: And that is our goal today; just to be clear. If I could live life over again, I would've changed a lot of things and maybe we could've brought a lawsuit and went to court to decide whether we had to go do this. But, we sat down with the city, with Larry and Mr. DeJoy and we said, okay, we'll put forth this application. We want to be compliant and we want to do everything we can for the safety, the health, the welfare of the people of this community and also for the betterment of the development of the west side of this community and for the economic impact that the comedy center is going to deliver.

Mrs. Ditonto: Other questions?

Mr. Olson: I guess I'll just keep continuing. So because you felt that you had already had approval, that is the reason why you went out and purchased the screens?

Mr. Panebianco: Certainly. The site plan was approved and the site plan included the signs. So, when the city says that plan is good and it includes the signs and we had the specific code that was changed to exempt us, of course that's why we got the signs.

Mr. Olson: You seem to understand that based on the newspaper reports, social media – I don't do social media, I'm just told what it says, that the comedy center has put us in a very difficult position. Correct? The comedy seemed to disregard what we're required to do by law and they seem to have thumbed the nose at the process and I think the biggest specific and, I think, I'm not going to speak for anybody else up here, but when I drove by from the Vikings last Saturday and saw the signs, or screens, being installed prior to a vote of this body, even though it was tabled a couple of weeks ago, I contacted city representatives on Monday and it's

June 21, 2018

my understanding that cease and desist orders were issued and you guys thumbed your nose at it and told the contractors to keep installing the signs. You talk about wanting to do it –

Mr. Panebianco: Mr. Olson, hold one second –

Mr. Olson: No, I'm just asking a question. You seem to want to continue to improve the community, but I guess if I was building something and I got a cease and desist order and had to appear before you in city court a few years ago, I probably would have stopped doing things so I wouldn't have had to go to court because I didn't want to end up in front of you or Judge John and try to explain why I thought I was going to build my porch or build my addition even though I may not have had a permit or I was doing it differently than what Larry approved. That was concerning to me and not only was it concerning driving up, but then I ended up at a red light at the corner of Second and Washington, so that infuriated me even more, but I kept my cool because my four-year-old granddaughter was in the car. So, I tried to contain myself before I got home.

Mr. Panebianco: Here's the problem Mr. Olson, and you're right, Mr. Scalise used to come in front of me all the time and he appeared on behalf of the city and here's what I would say, you were right some of the time and you were wrong some of the time. That's why I gave you the other statute. If you take a look at the electric messaging display statute – look at it – it says, Section 300-07-09. It defines electric message display as a sign capable of displaying words, symbols or images that can be electronically or mechanically changed by remote or automatic signs. So, I'm going to tell you what I did. I purposely sought Larry out. I got back into town that Friday. I saw him because I wanted to talk to him about this and he handed me the cease and desist order. And I said, Larry, those signs can't display an image. Right now, they're just building the structure to put the screens up. But I said, I'll do what I can do. So, I went back to the construction site and I said John – I met with the head of Hanson Sign Company – John, is there anything you can do? Can you just work on the barriers? Can you work on some backroom electronic stuff? And they said no, we have a crew in here from Florida and those screens have to be put up. Then it's going to take us two and a half weeks to wire it so it would work. So no electronic image can be put on those screens. It's incapable. So, while you cite this as saying you're putting up an electronic messaging display sign, it cannot display an image, so it is not a sign. Then I said, okay, this is what we'll do. I'll go to Walmart and buy sheets. I'll cover it up and bungee it myself. I called my wife and said I'll go to Walmart right now. Then we had the tarp that was on the building for a year and a half. The tarp that didn't bother anyone for a year and a half. We cut the tarp up and we covered those signs. So, we weren't trying to thumb anyone's nose at it. No image could be presented and with all due respect to Mr. Scalise, those aren't in violation. An image cannot be put forth on those signs. It is a piece of black acrylic right now and if this came in front of a judge, he's going to look at and say you're not violating it because until you electrify it, it is not capable of producing an image. So, the cease and desist order did one thing; it irritated everyone in the community. It gave a black mark to the city. It gave a black mark to the comedy center.

Mr. Olson: I think it black marked the comedy center more than it did to the city, George.

June 21, 2018

Mr. Panebianco: Well, first you have to determine whether or not it's a sign Mr. Olson and it's not a sign if it can't display an image. That language is very clear.

Mr. Olson: The implication of what was being put up irritated me and maybe irritated other members of the board and the community.

Mr. Panebianco: Well we certainly don't want to irritate you, but here's what we're -

Mr. Olson: I'm just telling you my feelings as a board member when I saw that last weekend.

Mr. Panebianco: We're trying to open the comedy festival by August 1<sup>st</sup> and by waiting a week, it jeopardizes it. So, I had a choice. And I asked Mr. Teresi. I specifically asked him. I asked Mr. Scalise. I said what would you have us do? Not have those signs be operational or I'll cover them up so that for sure no display can be.... So, think about it, it's a piece of acrylic that cannot display an image. And it's covered. How did that violate this code? It didn't.

Mrs. Ditonto: Are there other questions, Mr. Olson?

Mr. Olson: No ma'am.

Mrs. Ditonto: Anyone else on the board with questions?

Ms. Martinez: My questions have to do with the display being a traffic hazard. And also, sound. We haven't discussed anywhere, nor have I seen anywhere anything about the sound that will be coming off or will they be silent most of the time unless there's something specific.

Mr. Panebianco: Unless something is being displayed. What's going to happen more than anything – and just to be clear – we're not going to sell any advertising on the sign. We will thank our sponsors for the festival, okay? But, there will be no advertising on that sign. There won't be, come and buy a hotdog or three Johnny's Hots. There will be nothing like that on those signs. And you're absolutely right. A couple things; one, there are dimmers, so the brightness goes down at night because you don't need it to be as bright at night. As far as volume, there are speakers, so when we do run events and we close that street for the piazza, they will be able to hear, but more often than not, it's just going to be displaying images and scenes.

Ms. Sandson: Do you know what level the sound will be when you are doing those events or displaying those performances?

Mr. Panebianco: Whatever's appropriate. Whatever the city tells us is appropriate and if they think it's too loud, we'll turn it down.

Ms. Sandson: And then, to my understanding, the signs will be facing the hotel across, correct? So on the brightness...

Ms. Martinez: Facing Third Street.

June 21, 2018

Mr. Panebianco: One's facing towards – you can see them...

Ms. Sandson: My question is with the brightness and then what would you...

Mr. Panebianco: WE have the ability to change it from zero percent to one hundred percent. So, it can be any level of brightness.

Ms. Sandson: What time would plan on toning it down? Or does it depend on if there's an event, is that going to go later?

Mr. Panebianco: It gets toned down the minute it gets darker. The minute it gets darker, it gets less because you don't need as much light to see the image. So, it's brighter during the day and less at night.

Ms. Sandson: And then you have no idea on the sound level. That you're going to leave up to the city.

Mr. Panebianco: What we'd like to do is, we'd like to work with the city. And establish guidelines for those screens. We don't want to work against – we want to sit down and say, what do you think is an appropriate way to manage those signs.

Ms. Sandson: Right. Because over West Third, you just have the hotel, but then you have residential buildings as well.

Ms. Fiore-Lehman: I would just advise the board that the way George is referencing, if they have an event where they're going to be closing off the street and they're going to be showing a movie or a comedy series, they would have to apply for a special event through the city. And George and I have talked about that and that's why he's referencing that they would work with the city because that would go through a series of approvals, which they're familiar with because they go through the same process when they do the Lucy Fest.

Mr. Panebianco: It would be no different than during the Lucy Fest this year. We're going to shut down the streets and we're going to have bands. And the bands are going to play. It's going to be similar to that, but I assume, much less loud. I would predict.

Mrs. Ditonto: Other questions Ms. Martinez?

Ms. Martinez: Yes. I did notice that Judy pointed out that they are going to be convex. Should they be concave so that they avoid being blatantly out there for the traffic coming down the street. That's my question.

Mr. Panebianco: I can assure you that whatever the Department of Transportation, whatever prohibitions they give us, we will comply. If they say don't operate the one screen or don't operate at this hour, we will not violate what the Department of Transportation asks us to do.

June 21, 2018

Ms. Martinez: Was there ever a thought to putting them onto the train station?

Mr. Panebianco: There was a number of different plans, but since the BPU building was purchased and we built out in front of it, it was the best use. And more importantly, it was the site plan that was approved already by the city. This wasn't something that we just decided to make up. The city approved the site plan with those screens.

Ms. Martinez: Never really understanding how big they were going to be or anything else, I don't that there was discussion of exactly the size and the – we've all known that there were going to be screens there. We've always known that that was something that was going to happen. Never were we thinking that they would be the size that they are. That's all. There's one thing about yes you understood this and he understood that, but the understanding was still not discussed enough to agree to that.

Mr. Panebianco: And that's why we're here today. We recognize that there may have been some difference of opinions, legal or not, whether Mr. Olson's right or I'm right or Ms. Lehman's right. That's why we're here asking for your help tonight in asking fo that area variance and special permits.

Mrs. Ditonto: How often do you plan on showing something on those signs?

Mr. Panebianco: Sir, I can't really tell you. I think that there's going to be displays up there. I think our logo is going to be up there and I think it depends on the content going through the comedy community. Do I think at 2:00 in the morning there's going to be a movie going on? Of course not. Okay? Do I think our logo will be up? Yes. Do I think thank yous to our sponsors will flash on those screens? No different that you would walk by the Reg Lenna now, no different then you would walk by Northwest Arena, no different than you would walk by Shawbucks. Those same type of static images will be up, but we also need the ability to have that video and have those screens. This is going to be a – I don't know if any of you have had a chance to walk through it. But the comedy center is something special. This needs to be a national attraction. And it needs to have a façade and it needs the ability to be a national attraction. And that's our hope with those screens.

Mrs. Ditonto: Other questions? Just going through the minutes from the last meeting. There was a question on 24/7 George. How much information would be displayed in what we would call the late-night hours. And you did say that the comedy center logo would be there, but you don't expect to have a lot of other advertising or anything else on the screens late at night.

Mr. Panebianco: You know, our goal is to try to work with the city to come up with what we all think is in our best interest. So, do I think that there's going to be flashing logos and flashing ads? Of course not. Of course not; that's not our mission. Our mission is to thank our sponsors, our mission is to promote the comedy center and our mission is to show everyone that it is a first-class facility. I have no problem sitting down, we have not problem sitting down with the city and saying, what should some guidelines be. Not to make too big of a point of it, but we're taking every spare minute just to get the doors open. I feel bad for these two people behind me; they're killing themselves. So, we don't want to do anything contrary to the city. I can't

June 21, 2018

think of any bigger proponents for the city than us. So, I have no problem. Go create a commission, go create a group to come up with the guidelines for it and we'll sit there and we'll talk about it and try to make those screens safe, healthy and in the best interest of the community.

Ms. Martinez: And without the argument that they had already been approved in the site plan?

Mr. Panebianco: We're here now asking for it. I have the one habit of unfortunately being a lawyer who pays attention to those details and I can parse those words.

Ms. Martinez: I generally do too, but I didn't think that before.

Mrs. Ditonto: Another question came up about aspect ratio and the need for the 357 square feet on each screen. Because of the aspect ratio of showing movies. I wondered if you could elaborate a little bit on that.

Mr. Panebianco: I just think you need the bigger size to get the clarity. If you had it smaller, those images and those videos aren't going to be able to play as well. So, it has to be that size to do it. And I will say this, I deferred to the engineers and the gold standard people that came up with this design. I can't tell you for sure. I just know that the best design company in the world designed the building, designed those screens and told us the best way to operate them. I'll defer to them.

Mrs. Ditonto: And along with that came a question about whether or not one screen could be used for certain events instead of two, or do two have to be on all the time?

Mr. Panebianco: No, one can be operated at a time. Depending on what the event is or the purpose, it's my opinion that they both should be used at the same time, but again, those are guidelines that we'll look at what the DOT says; whatever the DOT tells us, we'll comply.

Mrs. Ditonto: We did get some correspondence from the DOT which we will read into the record and from the County Planning Commission as well, at the last meeting, they did refer to the DOT and whatever the DOT thinks is appropriate in terms of especially the ambient light. Which, we weren't sure that the screen would automatically dim in order to make it less glaring at night for people who are crossing the Washington Street bridge.

Mr. Panebianco: It would be no different than your Christmas tree during the Christmas season. You set the hours, from this time to this time, it's a certain lightness and then after that, so we can set the time for those. It would be different in the summer because it stays lighter longer than it would be in the winter. We could just change those settings.

Ms. Sandson: And it would dim down when we get down to dusk.

Mr. Panebianco: Exactly.

Mrs. Ditonto: And the frequency of changing the screen also was a concern.

June 21, 2018

Mr. Panebianco: The refresh rate, the transition rate, all of those – it depends on the content and again, not to beat a dead horse, we will make sure that the transition rate and the refresh rate are compliant with what the DOT asks. What you don't want is, you don't want images splashing up there or you don't want the fade in and fade out to last too long. So we have the ability depending on the content, to adjust those things.

Mrs. Ditonto: And we do have that built into our electronic message display zoning code. It's a minimum of 15 seconds and transitions must be no longer than 1 second each. So, unless you're asking for something different than that...

Mr. Panebianco: Unfortunately, I can't tell you without seeing what the programming is going to be. I can't tell you on a movie, what that transition rate is or what that refresh rate is.

Mrs. Ditonto: But, that would be a special permit because you would be having a special event, so that would be beyond the norm, but the norm would be this transition rate.

Mr. Panebianco: They're saying, yes, we can meet those specs.

Mrs. Ditonto: Okay. Thank you.

Ms. Sandson: So that's the transition on the 1 second and then the other at 15.

Mrs. Ditonto: Right. The 15 seconds and the transition at 1. And the request for the video at the highest level, which is the Level 4 is because you want to show movies and clips of comedy and some live events, correct?

Mr. Panebianco: Yes. We anticipate, like you saw in my attachment that I gave you, there may be times like the last David Letterman Show and people may all want to see that last David Letterman Show, God forbid, if the Buffalo Bills ever made it to the Superbowl. Those screens would be valuable. People would want to go in and – the isn't just for comedy. It may also be other community-minded events.

Ms. Sandson: But on those, those would still fall event the special event guideline permit.

Mr. Panebianco: The special use, certainly, and we would apply for those. And we would welcome, we would welcome sitting down with the city and creating guidelines that are acceptable to the city and to us.

Mrs. Ditonto: Again, thank you for preparing this list of the programming that you would anticipate; that was very helpful. Some of the information that you provided today, again, helped answer some of the questions that couldn't be answered at the last meeting. I think one of the concerns at the last meeting was about what type of community events; today, you've enunciated that you might have community parties related to comedy, maybe some activities that would be large community events with maybe music and other...

June 21, 2018

Mr. Panebianco: We anticipate something similar to our festival. We're going to try to get a special permit for our festival, like we do every year. One of our other goals, one of our other pillars is to create a film festival for this community. Once a year have a film festival here and we would anticipate using that. I think you all have a copy of this. That was the list that we gave you. Those would be the expected uses that we would want for it. And if I could and I don't know if you have any other questions, but I'm sorry you had to go through this and I'm sorry we had to go through this. It was not my intention, it was not our intention and if there was differences, I'm sorry that it took so long and I'm sorry that we're here. But, we are here asking for your approval. We're asking for your consideration and with the clear understanding that we will be compliant with anything that furthers the safety of our citizens.

Mrs. Ditonto: Were there other questions from the board? If not, at this time is when we allow the public to make comments. The public is allowed to speak either in favor or in opposition to the special use permit and the area variances. Your remarks must be limited to those and they have to be five minutes or less. People have to identify their name and their home address. If you would like to speak now, during the public portion, you can go to one of the microphones to my left or right. Again, you have up to five minutes. Please identify yourselves.

Mr. Lindquist: Good afternoon. My name is Greg Lindquist, 21 LaSalle Avenue, Jamestown, New York. I am here representing one of the property owners within 100' of the premises, G. Patti Enterprises who currently owns and is developing the building at 119 West Third Street and also representing the Jamestown Brewing Company who will be our main tenant in the building. I will not delve into the legalities of whether the sign meets DOT or city approval, etc. I really want to concentrate on the impact that having this sign, or not having this sign, could have on a private business. Both the developer and our anchor and only tenant in the building, invested a total, at the end of the project, of approximately \$5 million. That \$5million investment was also apprenticed upon the comedy center not only providing the tourist traffic, but also energizing the west end of downtown and getting people to stay downtown late at night; to be able to take advantage of the brew pub, the brewing operation, the restaurant facility, etc. My response to are you going to have a lot of events? I hope you have one every night. Because we need people downtown, we need them staying downtown. We can't just shut the lights off at 5:00, go home and let the tourists go back to their hotel rooms. That was never the intent of the comedy center, never the intent of the Urban Design Plan, never the intent of the AECOM strategy study that was done a couple of years back. There has been not only G. Patti Development, but also the McClellans and a number of individual businesses that have invested a lot of money and a lot of time and a lot of effort in the hopes and dreams that NCC will be able to turn the key to a full project on time. They are doing everything that they can to do so. I would encourage the zoning board of Appeals to thoroughly think about this and to unanimously approve both the special use and the variances. Thank you.

Mr. Bonfiglio: Russ Bonfiglio, 212 Hall Avenue, Jamestown, New York. Sixty-three, that's how old I am and that's as long as I've lived in Jamestown; born and lived here for forever. I worked for the city for 29 years and I've seen a lot of stuff accepted and I've seen a lot of stuff denied and it's not in my backyard, but I think this comedy center is one of the greatest things to come to Jamestown. Obviously, I'm in favor for it. With all due respect to Jimmy, I've

June 21, 2018

heard a lot more negative things about the city than I have about the comedy center. I've heard nothing but good things about the comedy center. Every time something happens, and maybe it's because I'm a city worker, was a city worker, that it was all negative towards the city. I know five of the nine people up there and I respect all of you and I hope you would use your intelligence to accept this variance and help these people out who have worked so hard and tried to get people to come downtown to Jamestown. I've very pro-Jamestown. I always have been and I always will. I've been here 63 years and I'm going to die here. I hope everybody just gets together and solves the problem so we can all be happy and bring more income into Jamestown, bring more people into Jamestown and make everybody part of Jamestown. Thank you.

Mr. Nalbhone: My name is Chuck Nalbhone and I'm from Jamestown, New York. And I'd like to please ask the council and the board what is the restriction about I can say please before I start?

Mrs. Ditonto: You have to limit your remarks to the special use permit and the area variances that are on the table and you have to limit your remarks to five minutes or less.

Mr. Nalbhone: Thank you so much. In addressing the order of the meeting and in responding to what I think is my own opinion, but I think probably that of many, I go back to the reaction of what it's all about and why. If there is a reason as to anything, it has to be for a purpose and a purpose has to be based on rules or laws or anything that has to make compliance to why it's there and what it's about. So, if the National Comedy Center is addressing anything that is responsible and is for people coming into the city of Jamestown, I have to believe that it's worth and that it's not anything but trustful. So, in addressing the signs – now I don't have the education to respond to that as a person as far as technically or what it's for, except to say I know it represents the National Comedy Center. As far as what it would represent to the city, the signs and the representation of the National Comedy Center, the merit of what it is and what it will be, nobody has really given it complete acknowledgement or respect. So, in order for it to have any sign of worthiness, I think people have to respect the National Comedy Center and they have to respect Tom Benson and Journey Gunderson. Thank you very much.

Mr. Edwards: Greg Edwards, 3606 Nutt Road, Busti, CEO of the Gebbie Foundation and I would like to take a moment to look to and speak about the investments that have gone into the National Comedy Center. I can speak for my brethren in the foundation world. Virtually all of your local foundations have significant investments in the National Comedy Center for all the right reasons and we've talked about some of those today and there's been a reference to the annual generation of over \$20 million a year of revenue and having had an opportunity to sit in on the initial meetings for the first few years of the Western New York Economic Development Council which has really been driving the state's investments of hundreds of millions of dollars, a billion dollars in one case, into Western New York, a successful delivery of the National Comedy Center was the southern anchor to the whole tourism design for all of Western New York. It was the single unit that was used to analyze and justify on any number of levels by any numbers of professionals, that it will in fact, have the capacity to deliver \$20 million or more every year into Western New York, I can tell you with many of the folks here in the room, we've worked collectively and tried to be assured the maximum amount of that \$20 million stays here and is invested in the people of the greater Jamestown area, in a city that's in desperate need of

June 21, 2018

increased revenues and this is a great opportunity to do just that. There's any number of additional reasons that could be presented to describe why it's important that we have the video screens as depicted in the plans I saw years ago of this size and the design of the video screens. Initially they were square and then they became that kind of rounded front to the addition. But, they were always there. And that was part of what drove the foundations and incentivized us to invest upwards of \$10 million into this endeavor. I will tell you that the video screens continue to drive the Gebbie Foundations investments to the point where in this last 90 day spread to the opening, we're investing just short of another million dollars, into the city of Jamestown; in partnership with the mayor, with the Parks Department, with the Department of Development and everyone to the point where we're looking to in partnership with them, improve and add brand new seating and brand new flower pots and brand new garbage containers that will have opportunities for us to recycle in addition just to throw away. And those are the smallest investments that are going in. Chief among those is the piazza and the piazza as it evolved and was finally designed, took into specific consideration, the video screens. Worked to accentuate their capacity to draw people to our core and with them the economy that they'll bring with us. And with those video screens, the opportunity to extend the businesses' ability to raise money from that typical 9:00 to 5:00 into the evening where they'll have an opportunity to significantly grow the revenue to the businesses, the business owners, the folks that work there and ultimately the city; all of us benefitting from that. So, the piazza, at almost three quarters of a million-dollar investment, between the lights and the change in the highway was specifically designed to work in coordination with and accentuate the delivery of these video signs. I labored back and forth whether or not to speak. I felt the presentation was compelling. I didn't want to walk away from this conversation tonight to give you the view from your funders from the foundations who are all, to a person, committed in trying to advance our community. It is something that is unanimously supported by the foundations. Collectively, we invest approximately \$10 million a year into this region as intentional investments; based on your plan for the Urban Design Plan that was adopted by the city and has really driven this great success we've had in the city and I want to thank everyone who's working for the Urban Design Plan 2.0 which is then going to project ten years in the future, 15 years in the future; thoughtful, informed investments and that's really what these signs are, these video screens in front of the National Comedy Center; informed, coordinated and particularly from the funders view with us and I believe all the rest of the community. Thank you very much.

Mr. Smoker: My name is Michael Smoker and I live at 12 Arnold Street in Jamestown. I'd like to show my support to the National Comedy Center and that you should approve these special use permits and variance. I had a friend tell me a couple days ago, kind of make me aware that this was all taken care of back in 2014 as this gentleman has already mentioned that when you approved the site plans back in 2014, that you approved these screens. I know that you don't want to go into that tonight and that's okay. But I think that anything that happened after that; 2017 I believe there was an issue with the ice arena putting up a sign and that's when you made this new law about the electronic signs. They were already building the National Comedy Center and it was like already happening so I wonder if this new law that was created in 2017 even should have mattered to them and so I would show my support to the National Comedy Center.

June 21, 2018

Mr. Tota: My name is Anthony Tota. I live at 144 Clifton Avenue in Jamestown and the first thing I'd like to say is that this body is a legal body and people are trying to influence this body by stating the amount of investment that has occurred here. People are also trying to influence this body by stating how many friends they have that may be on the body that hopefully agree with them. It is not this body's duty to listen or be leveraged by anyone, no matter how big or how small in the city of Jamestown.

Mrs. Ditonto: Thank you Mr. Tota. We take that advice seriously. Can you speak to the special use permit and area variance?

Mr. Tota: Yes, I am. First of all, as far as the use permit is that this is just a product of poor planning. This should have been done a long time ago and when you rush into something, you take a risk. Now if you look at the logistics of the area you have a connection where people are coming in and out constantly. You have people in the city of Jamestown that I've seen, I've almost run into them because they violate laws on bicycles, people are not carrying appropriate lights, they're not looking at signs. Now, if you have a couple of viewing signs, like what we're describing here, you're going to have people constantly rubbernecking to see who's on those movies, to see what's on the signs. That's going to create a hazard in any area in which it simply has not been addressed for that type of situation as a result of a brand-new comedy center here. The comedy center has not addressed this body with a safety issue, which is paramount, when you have people coming in from outside who are not familiar with the area, who may stop in the middle of the street, bicyclists, young kids who may stop to look at a sign. The distraction that the sign creates to motorists going up and down the area and turning their heads, obviously everybody's going to do that and everybody knows many accidents occur when you turn your head and then look forward, but it's too late. The planning phase of this sign issue is way too late. Mr. Panebianco knows it's way too late. This is the type of thing that is rushed in and neglecting safety which is the primary reason that I believe that this subcommittee should consider. If you do not consider safety in regards to what's going to happen down there because there have been no ..... actions addressing the people that are there, the tourists that will be there, the bicyclists that violate the law and the .....driving with the people of the city of Jamestown. That's what you need to consider, the safety issue. It should have been addressed a long time ago. The safety issue sticks out because this is .....and for the safety of the people of the city of Jamestown and for the tourists coming in and to avoid the liability, those signs should not be operating. Thank you.

Chairwoman Ditonto asked three times if there was anyone else that wished to speak on the area variances or the special use permit. Seeing none, the clerk was asked to read correspondence into the record.

Mr. Thomas: Thank you Madame Chairman. There have been three pieces of correspondence received. The first is the letter from the Chautauqua County Department of Planning and Development, which was read into the record on June 4<sup>th</sup>. I can do so again if you'd like, but I'm willing not to.

Mrs. Ditonto: I would just like you to read the last paragraph because as we are addressing the public, we have in fact looked into safety concerns; that's part of our

June 21, 2018

responsibility. We have to send things to the County Planning and Development Office for their referrals and I will have the clerk read a portion of their correspondence.

Mr. Thomas: Thank you.

Having stated that this is a matter of local concern, Mr. Longley, the Junior Planner from the Department of Planning and Development concludes, however, I offer the following informal comments regarding the proposed LED video screens and their potential impact on vehicular traffic in the surrounding area. According to the FHWA Lighting Handbook from the Federal Highway Administration, some large LED signs or screens can be classified as a source of intense ambient lighting and could have an impact on traffic safety. The handbook recommends that special consideration is applied to the operation of LED screens at night, the effect that these screens could have on aging drivers. To minimize the adverse impact on traffic safety, the intensity of lighting should differ during the daytime and nighttime operation of the screens. More information from the FHWA Lighting Handbook can be found at – and at that point he provides a lengthy url to the online site for this report.

Mrs. Ditonto: And just for the record, there will be, again, the change in the lighting to reflect when there is a change in natural lighting so that addresses that. Go on.

Mr. Thomas: We have an email that was sent and requested it was cc'd to the zoning board members. From Kevin Sirwatka.

Good afternoon. Thank you for the response. I note that your prompt reply is the only contact I have received. As you may be aware, I visited city hall today and I understand the comedy center representatives were contacted regarding the construction without the required variance in spite of the notification they have continued construction. I find this troublesome that they now feel they can proceed any way they desire. I surmise this position is based on we are the comedy center. I do note, the zoning code does provide that the city can remove a non-conforming use and charge the cost back to the property owner. Perhaps the comedy center representatives would heed the need for an approval if city employees act in the manner as the code allows. I also note upon review of the handwritten application, there was no receipt number noted for their required fee to file the application and it makes me question whether it was remitted and also that the variance application lacked any schematic drawings of the proposed completed project. I also note that the 50%/wall provision regarding electronic signs.

Then he notes that he would like me to cc it to all members and submit it as correspondence.

Mrs. Ditonto: And just for clarification, I did check with the clerk and there was a payment made for the request that was sent in.

Mr. Panebianco: And Mrs. Ditonto, not to belabor this, because I know you all have places to go tonight, but I received a phone call last evening and that phone call was from Mr. Sirwatka and he apologized for sending that email and filing a complaint. I don't think he understood the whole situation. In addition, he mentions the façade. The façade, 50% of the façade, you're not counting the entire building, which would be the entire façade, so I think he's mistaken there.

June 21, 2018

But he also indicated that he was not going to object and was not going to appear here tonight and asked that I mention that to the Zoning Board of Appeals.

Mrs. Ditonto: Thank you. We have one other correspondence.

Mr. Thomas: Yes, thank you. I received an email from Frank Serillo, Regional Director of Region 5, State Department of Transportation.

In pertinent part:

We do not have any concerns with on-premises signage for the NCC as long as any and all messages on the signage are strictly for activities related to the NCC. If NCC sells images to advertise outside entities or activities, we will need NCC to apply for a permit and may or may not be able to approve one or both of them as registered signs which carry permit fees. And one or both would be subject to regulatory controls. I've copied a few DOT staff who would have some involvement if the signage is intended to carry off-premises messages.

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

Ms. Sandson: Mr. Panebianco was mentioning that they would be thanking their sponsors on this signage. Is that in relation to the last email?

Mr. Panebianco: For instance, festival events.

Ms. Sandson: Festival events; that I get.

Mr. Panebianco: That's directly in the city code. The city code allows that so you don't really need a variance for that. We will not be selling advertising.

Ms. Sandson: That I get. But then he says that the signage are strictly for activities directly related to NCC. So, again, you said on that signage you're going to be thanking sponsors. Is that directly related to activities?

Mr. Panebianco: Yes, I think it's related to our festivals and I think the Northwest Bank currently does it.

Mr. Scalise: Yes, we've done that and it's not going to say Oil Change \$19.95. it's going to say Ed's Garage is a sponsor for skating.

Mr. Panebianco: Thank you Key Bank for your sponsor 2018 festival. Thank you, Northwest.

Mrs. Ditonto: One of the concerns, I think, stated last meeting was that there would be no additional revenue derived from the signs for selling advertising that went beyond anything you got for sponsorship for events.

June 21, 2018

Mr. Panebianco: There will not be. This is a community event, it's a community product, it's meant for our community. We are not trying to make money off the signage.

Mrs. Ditonto: Just so you know, the Department of Development was speaking as best they could at the last meeting and they said that – they had indicated that there might be even times where the time of day, the temperature and all of that would be on the signs. Is that true? Is that part of what...

Mr. Panebianco: I think that's distinctly possible. If it helps the community, why not? There's nothing better than going through and going oh my God, it's minus 4 degrees out.

Mrs. Ditonto: Are there other questions? Seeing none, I would be looking for a motion. Again, the motion must state some kind of statement about both the special use permit and the area variances. There are two parts that must be – or you can take them separately. I would be looking for a motion. Is there someone who would like to make a motion? It would take four affirmative votes for approval, we have six members here. There is a petition for both an area variance and a special use permit to install two 357 square foot EMD signs on the front façade of the National Comedy Center. That will exceed both the square footage allowed and also the proposal to be at Level 4 so that the special use permit can allow for video. At this point we would be looking for a motion to approve both of those tenants.

Ms. Martinez moved to accept the application as stated.

Ms. Sandson: I'll go ahead and second, but with a question. Can we add a condition based on what the DOT...

Mrs. Ditonto: You can make the maker of the motion approve some kind of condition.

Ms. Martinez: I agree with that, yes.

Mrs. Ditonto: So that has been seconded. The motion now includes that if there are any conditions that the DOT has to approve, they have to be done before those video signs can be lit. Maker of the motion? And the second?

Ms. Martinez: Yes.

Ms. Sandson: Yes.

Mrs. Ditonto: Is there a question on the motion Mr. Larson, I saw a question.

Mr. Larson: All I was going to suggest is that DOT regulations obviously exist independently of the function of our body. I think that needs to be addressed no matter what happens moving forward, so I don't know whether it needed to be addressed in the motion, but I have no problem with it being included.

June 21, 2018

Mrs. Ditonto: Any other questions on the motion? Seeing none, I would be looking for a roll call vote.

Mr. Olson: Voting aye on this motion goes against everything that I have worked toward for 36 and a half years when I worked in this building. I don't believe the comedy center had the best interest of the community at heart. I still think that they were informed that the regulations were correct. I believe Corporation Counsel agreed with that. They were informed of that and they went ahead and did what they wanted to do anyway. I'm trying to separate the arrogance of that group from what might be the better part of the community as people have stated and I hope that this will, in fact, have the impact that it has had over the last several years prior to me retiring from here. I don't agree that they did things properly; purchasing signs, guaranteeing funders that everything was going to be done even though they knew that they hadn't appeared before this body for a variance. I just don't agree with the process, but I'm trying to separate that from what may be the overall good. I'll vote aye, but it goes against everything that I have ever been taught.

Mr. Hanson: I still think it creates a real traffic hazard and I am reluctant, but I'm going to vote nay.

Mrs. Ditonto: I am voting aye on this. The permits will be granted and the variance request will be granted with that vote. I do have to tell you that I am disappointed. That I think that the zoning board has been vilified in this process. The Zoning Board of Appeals has an important duty. Whether or not there was information shared ahead of time and promises made about site approvals. Site approvals are never made without conditions when there's a need for a variance request and I'm sorry that that wasn't clearly provided to the comedy center, but I do think that in the long run, this is going to be the economic driver that everyone in this city and county has been looking for and I think you have heard all of us with some concern today indicate that we want this to go forward because we believe it is that economic engine that we're looking for. But, we also want to have you be aware that we have a job to do and we take that job very seriously. And that we want this to be successful and we look forward to seeing those video screens and we want to make sure that they're being done very tastefully in our community. So, thank you for appearing today, thank you for sharing this information and good luck with the project.

Carried: 5 ayes – 1 nay (Hanson)

Question from the press inaudible regarding the condition to comply with DOT regulations.

There being no further business, the meeting was adjourned.

Todd M. Thomas, Secretary  
Zoning Board of Appeals