

June 1, 2005

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 1, 2005 at 3:30 p.m.

Members Present: Suzanne B. Howig, Ellen Ditonto, Mary Lou Edwards, Richard Hanson, Charles Nazzaro, Tammie Donato, and Timothy Thomas (arrived at 3:40 p.m.)

Others Present: City Clerk Shirley A. Sanfilippo, Zoning Officer Lawrence Scalise, Corporation Counsel Marilyn Nieves-Fiore, Loren Kent of The Post-Journal

Chairwoman Donato called the meeting to order at 3:35 p.m.

Ms. Howig made a motion to go into Executive Session to discuss possible litigation.

Ms. Ditonto seconded the motion.

Carried: 6 ayes, 0 nays

EXECUTIVE SESSION

The Board members, Corporation Counsel Fiore-Nieves, Zoning Officer Scalise and City Clerk Sanfilippo were present during the Executive Session.

No action was taken. The Executive Session ended at 3:55 p.m.

The City Clerk read the criteria for granting an area variance.

ROBERT PACE - 26 ROYAL AVENUE

The Secretary read the petition of Robert Pace, 26 Royal Avenue, Jamestown, New York 14701, for an area variance to construct an approximately 12' x 26' carport on the property located at 26 Royal Avenue, owned by Robert and Caryn Pace, 26 Royal Avenue, Jamestown, New York, in a R-1 Zone. (Section 300-305 – R-1 Single-family Residential District. The required side yard setback is 5'. Proposed is approximately 1' from the east property line.)

Robert Pace, 26 Royal Avenue stated that the carport would be built over his driveway that would be within one foot of the property line which he shares with 22 Royal Avenue.

Ms. Howig asked why he was putting a carport in when he had a garage.

Mr. Pace stated that it was an old garage and he cannot put a car in it. He is using the garage as a storage space and a workshop for his equipment that he uses to build things. He stated that he wants a cover for his vehicles. He stated there were several other houses in the neighborhood that have carports. When he is finished building it, it will look like it came with the house.

Chairperson Donato asked if the carport was going to be closer to the existing fence.

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Mr. Pace stated it was not going to be as close to the property line as the fence.

Ms. Howig asked if the neighbors on the east side have made any comments about this being as close to their property line as it is. She knows that house is for sale.

Mr. Pace stated that he has talked with Andrea Barone who sold the house and she was in agreement with the carport and Mrs. Pace has had discussions with the prospective buyers and they also were in agreement.

Chairperson Donato asked if there was any correspondence on this petition.

City Clerk Sanfilippo stated no.

Ms. Ditonto asked if this was a prefab that was going up or.....

Mr. Pace said no – it was going to be something attached right to the house.

Ms. Ditonto asked if it was going to be wood and siding to match

Mr. Pace said yes. He also stated the roofing shingles will match the house.

Chairperson Donato asked if all water run-off would be on his property.

Mr. Pace said, yes.

Mr. Hanson asked in just talking about a carport, did Mr. Pace mean just a roof.

Mr. Pace said, yes. It will not be enclosed.

Ms. Ditonto moved to approve the petition.

Ms. Edwards seconded the motion.

Carried: 7 ayes, 0 nays

ANDREW J. BLY - 79 DURANT AVENUE

The Secretary read the petition of Andrew J. Bly, 79 Durant Avenue, Jamestown, New York for an area variance to replace the existing garage with a 24' x 24' garage approximately 2' 1" from the west side property line and 2' 2" from the rear property line on the property located at 79 Durant Avenue, owned by Andrew J. & Doris K. Bly, in a R-1 Zone. (Section 300-317 – The required side and rear yard setback for an accessory structure is 5'. Proposed is 2' 1" in the side yard and 2' 2" in the rear yard, which is no closer than the existing garage.)

Andrew Bly, 79 Durant Avenue explained that he has an existing one car garage which is falling apart and wants to replace it with a two car garage.

Chairperson Donato asked if there was any correspondence on this petition.

City Clerk Sanfilippo stated, no.

Ms. Howig moved to approve the petition.

Ms. Edwards seconded the motion.

Carried: 7 ayes, 0 nays

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BUSTY IUCULANO – 71 Pennsylvania Avenue

The Secretary read the petition of Busty Iuculano, 1620 W&J Blvd., Jamestown, New York, duly authorized agent for Aime J. Rizzuto, for an area variance to replace an existing garage with a 36' x 24' garage approximately 2.1' from the east side property line and 1.9' from the rear property line on the property located at 71 Pennsylvania Avenue, owned by Aime J. Rizzuto, 71 Pennsylvania Avenue, Jamestown, New York, in a R-1 Zone. (Section 300-317 – The required side and rear yard setback for an accessory structure is 5'. Proposed is 2.1' on the side yard property line and 1.9' in the rear yard.)

Busty Iuculano, 1620 W&J Blvd., Jamestown, commented that the existing garage is 20 x 24'. He stated the new garage's left side and back side would remain where it is now and the front would continue forward and the right side would go towards her own land.

Mr. Hanson asked if Aime Rizzuto also owned the vacant lot on the west side.

Mr. Iuculano stated, yes.

Mr. Hanson asked if the shed would remain.

Mr. Iuculano stated the plan was to move the shed back to the right hand corner and the yard will be fenced in.

Chairperson Donato asked if there was any correspondence on the petition.

City Clerk Sanfilippo replied, no.

Ms. Edwards moved to approve the petition.

Mr. Nazzaro seconded the motion.

Carried: 7 ayes, 0 nays

MARY BETH AUGUSTINE - 45 CHAMBERS STREET

The Secretary read the petition of Mary Beth Augustine, 45 Chambers Street, Jamestown, New York, for an area variance to construct a 10' x 12' sun porch on the rear of the existing house on the property located at 45 Chambers Street, owned by Mary Beth Augustine, in a R-1 Zone. (Section 300-305 – The minimum required rear yard setback is 25'. Proposed is approximately 15'.)

Mary Beth Augustine, 45 Chambers Street explained that currently there is a small concrete porch off the back of the property which actually backs under the side property of her nearest neighbor. This is a corner property. The porch comes out about 6 ½' from the existing garage – it's 12' in total attached from the house. She stated it will be a patio room.

Ms. Ditonto asked for clarification in that she is demolishing the old porch and replacing it with this 10' x 12' room.

Ms. Augustine stated that actually it will be right over the porch and build up the sides. It will have a roof, insulation and all windows.

Mr. Scalise stated that because her house is turned opposite the way houses usually situate on a lot like this, it creates a short backyard. If the house faced another way, toward Sampson Street, she would not need to bring this petition because of the setback.

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Ms. Ditonto asked if there was any correspondence on this petition.

City Clerk Sanfilippo stated yes there was.

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RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located immediately adjacent to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Elaine Paddock - 5/14/05
307 Sampson Street

Zoning Board of Appeals
City of Jamestown

RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located within 100 feet to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Bev DeMarco – May 15, 2005
46 Lee Avenue

Zoning Board of Appeals
City of Jamestown

RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located within 100 feet to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Bill & Kathy Anderson – May 15, 2005
35 Chambers Street

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Zoning Board of Appeals
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RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located within 100 feet to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Richard H. Haggmark– May 14, 2005
295 Sampson Street

Zoning Board of Appeals
City of Jamestown

RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located within 100 feet to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Christina Olson and Randall Olson - May 18, 2005
34 Lee Avenue

Zoning Board of Appeals
City of Jamestown

RE: Request for Variance
Mary Beth Augustine, 45 Chambers Street

I wish to express my support for the application of Mary Beth Augustine for a variance to construct a 10'x 12'6" patio room in the rear setback of her property.

As the owner of the property located within 100 feet to the subject property, I enthusiastically endorse her proposal to enhance her property as well as contribute to improving the aesthetic of our neighborhood.

Further comment: Great idea!
Larry Jackson - May 14, 2005
300 Sampson Street

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Mr. Thomas remarked that it was nice to see a neighborhood in our City where people talk to each other and that Ms. Augustine could go to her neighbors about this project and they were all for the improvement. He congratulated her.

Ms. Edwards moved that the petition be accepted.

Ms. Howig seconded the motion.

Carried: 7 ayes, 0 nays

TIMOTHY K. THOMAS OF FAMILY VIDEO – 611 N. MAIN STREET, 605 N. MAIN STREET, 601 N. MAIN STREET, 6 W 6TH STREET, 12 W. 6TH STREET

The Secretary read the petition of Timothy K. Thomas, duly authorized agent for Family Video, 1022 East Adams, Springfield, Illinois 62703 for an area variance to construct a 90' x 70' building, 8' from W. 6th Street, 3' from the westerly side property line and 9' from the rear property line on the properties located at 611 N. Main Street, owned by Michael Lucarello, 8 N. Dow Street, Falconer, New York 14733; 605 N. Main Street, owned by Michael Keller, 320 N. Work Street, Falconer, New York 14733; 601 N. Main Street, owned by Nick LaBarbera, P.O. Box 20943, Sedona, Arizona 86341; 6 W. 6th Street, owned by Sandra Rater, 3094 Fluvanna Townline Road, Jamestown, New York 14701; and 12 W. 6th Street, owned by Denis and Judith Moore, 1109 W. 3rd Street, Jamestown, New York 14701, in a C-2 Zone. (Section 300-309 – The front yard setback required is 15'. Proposed is 8'. The side yard setback required is 30'. Proposed is 3'. The rear yard setback required is 30'. Proposed is 9'. Section 300-502 – The front yard parking setback required (W. 6th St.) is 15'. Proposed is 5'. The front yard parking setback required (N. Main St.) is 19.1'. Proposed is 10'. The side yard parking setback required (west side) is 19.1'. Proposed is 16'. The rear yard parking setback required is 15'. Proposed is 0'.

Erik Spiegel, Project Engineer for the EADS Group, Inc. and Family Video Movie Club. He stated that the group has a project for redevelopment within the City at West Sixth Street and North Main Street. He stated that the property is occupied by a number of buildings which would be demolished to accommodate this development. He commented that they are faced with a hardship with respect to topography which will require a large retaining wall. There are retaining walls on the property currently. He submitted photos showing the property as it is and showing the existing structures on the site. He stated that their request is to build the proposed new building where the existing structure now stands. Along West Sixth Street, they want building setback relief from 15' to 8'. To the west, the adjoining property has a building that will be setback approximately the same distance as what they are asking for. The building lines along West Sixth Street will be in the same character as it is today. He stated the rear yard setback opposite West Sixth Street is 30' and they are asking for 9'. There is an existing garage that extends beyond the 9' and is closer to 6' from the property line. The topography creates a hardship. They are trying to keep the building in line with the existing structures in the area. He further stated that the other variances they are asking for from the Code are related to parking setbacks. The Code requires anywhere from 15' – 20' of setback from the property lines to the edge of parking. He stated they are still providing nearly 10' of landscape buffer between the property line and the edge of parking stalls not including the additional area located between what is theoretically the right-of-way line and where the sidewalk is. The sidewalk will add another 2-3' of landscaping buffer area. He stated that they will have nearly 15' of landscape buffer area around the property abutting North Main Street and West Sixth Street. He further commented that in order to accommodate this development, they are asking the City to vacate a portion of Mechanics Alley and they have submitted a plan to the City granting two easements – one being an ingress-egress easement. He stated that the only property that would be affected by the loss

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of the alley is the rental unit located on parcel 18 on the drawing he submitted. He stated that Family Video is willing to grant the owners and users of parcel 18 a foot ingress-egress easement along their sidewalk which abuts the West Sixth Street public sidewalk through the development and directly to their porch. The sidewalk would wrap around Family Video and up to the higher level porch of the building. Further, he stated that to gain access to their lower unit, the existing set of steps at the site right now would be replaced with new steps to reach the lower level. He further commented that the second component of the easements that Family Video would be granting would also be an emergency ingress-egress for public safety equipment and emergency vehicles to go through their parking facility. He stated that Mechanics Alley is currently inaccessible and Family Video is willing to work with the neighbors to improve the situation for the neighbors as well as Family Video.

Chairperson Donato asked about the ingress and egress on both North Main and Sixth Street and if they were going to be in and out on both sides, or is one going to be an ingress and one an egress.

Mr. Spiegel answered that North Main would be a full access and West Sixth would be an egress as it is one-way traffic.

Chairperson Donato asked Mr. Scalise if that was his understanding.

Mr. Scalise answered that was not his impression.

Mr. Spiegel apologized and corrected his statement by saying it would be ingress-egress from West Sixth but it would be a right turn out. There would not be a full access driveway where you have left turns.

Ms. Howig asked Mr. Scalise how many feet are the North Main Street and the Sixth Street driveways from the corner.

Mr. Scalise stated that Code requires a minimum of 30' and Family Video did not have it dimensioned on their drawing, but it appears that it is at least 60' from where the two property corners intersect.

Mr. Spiegel remarked that that was correct.

Chairperson Donato asked if there was going to be a significant landfill going on there because according to the pictures, it looks

Mr. Spiegel stated that for the most part the grades would remain the same in that area – there is an existing retaining wall that is along the north property line and they would be building a new retaining wall inside of that and not disturbing the existing retaining wall. There would be some aggregate type crushed stone behind the wall, but grading wise, they have to meet existing North Main Street and West Sixth Street elevations. He stated they are somewhat limited as to what type of grading they can do with the site.

Ms. Donato stated that she assumed they would have adequate drainage.

Mr. Spiegel stated that all the drainage would be tied into the sewer system on Main Street.

Mr. Thomas (Board Member) asked what kind of a building was it going to be.

Mr. Spiegel stated that it is a one story block with a brick façade faced to it and has a standing stained metal roof, brown earth-tone building with a green roof and a lighted glass block

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tower that sits in the front of the building for site lighting. He passed around a picture. It will be a lower built building than the one that sits there now.

Ms. Ditonto asked how he collected the group of parcels and were there other sites in Jamestown that were considered.

Mr. Spiegel remarked that he could not answer that question.

Todd Bezenah, Vice-President with Family Video, 4749 East Dunbar, Monroe, MI, soon to be New York, hopefully. He stated that when they do their site selection they look at downtown sites. They want to be accessible. They also look at demographics, competition, etc., but being a privately held video company, owner occupied, makes a big difference. He stated that he is also looking for a home in the area no more than one and a half hours away from the City.

Ms. Ditonto remarked that Family Video is showing more parking spaces than is minimally required for this type of business. She asked him to explain what they expect in terms of traffic.

Mr. Bezenah explained that they are a weekend business essentially, and traffic coming in and out is why they pick corners to get a good even traffic flow. Their minimum is generally 40. They have been in business since 1982, one of the first video stores ever, and that is the parking that they need with employees and a busy Saturday night.

Ms. Howig asked again about the driveway and stated that it was ingress and egress onto North Main Street and remarked how extremely busy that section was. She asked Mr. Scalise if he was concerned about that.

Mr. Scalise stated that when the project goes forward through the Planning Commission, that issue would be looked at carefully.

Ms. Howig also asked about Parcel 18 and if they had talked to just the current residents or did they also speak to the real estate agents that own the property.

Mr. Spiegel (or Mr. Thomas-Eads Group)??? Stated they have spoken to both.

Ms. Howig stated she was concerned with the steps and someone being elderly or handicapped and if it would be difficult for them to get up and down the steps.

Mr. Thomas (EADS) explained again about the steps. He also stated that they had spoken to one of the residents, not all of them.

Ms. Ditonto asked if they had a proposed value on the project.

Mr. Bezenah stated that excluding the property, it would be about \$650,000.00.

Mr. Thomas (EADS) stated that the price could go higher because of the wall system that is being required.

Mr. Thomas (Board Member) asked if the name was going to be "A Family Video" and by the pictures, they were trying to make it look like a inviting, homey kind of place.

Mr. Thomas (EADS) stated, yes.

Mr. Thomas (Board Member) asked what kind of movies do you rent? He asked if was just a "normal" video store?

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Mr. Bezenah stated they feel their selection is a lot better, definitely kid friendly, following the ordinance exactly, they have thousands of free kids' movies. The prices are \$2.50 – also a two for a \$1.00 section, huge game room to rent games. Their philosophy on their business is low prices and a great selection. It is very community friendly, more involved with their people, moving them to the towns. They also have a good report card program where the kids can come in with good report cards and get free movies for A's.

Chairperson Donato asked if there was any pornography.

Mr. Bezenah said they do have some in some of their stores, like the Detroit area. If the ordinance reads that they cannot have it, they won't, and they look at each community individually. He remarked that they just closed on another store in Brocton (Sweden Township) and they are not having it there either. He further stated that they are a family-owned private business dating back to 1982.

Ms. Donato asked if there were any questions to be directed to Family Video from the audience.

Steven C. McKoon, Gerry, New York stated that he has owned 8-10 West Sixth for many years. He stated that he really does like to see change, but he is concerned about the kids that will be coming around the video store, looking at a brick wall in front of his window, no alley any more and no parking spots. He stated that he does want to see change and if Family Video is willing to work with him, he's ready to listen. He stated that he is very concerned about losing access to Mechanic's Alley for his renters and for himself. He also stated that he doesn't know where he is going to put his garbage. He commented about the traffic flow and how difficult it is at certain times of the day on Sixth Street.

Chairperson Donato asked the EADS Group as owners to address some of the issues above.

Mr. Bezenah stated that they are used to being in downtown areas with many neighbors around. He stated that their track record is outstanding and anything the neighbors want done they will do. They have very little trash to take care of as they are not a restaurant type business. He addressed lighting issues, landscaping and parking and stated that Family Video works with the neighbors, not against them.

Denis Moore, 1109 W. 3rd Street stated that he owns one of the buildings that is proposed to be demolished – 12 W. 6th Street. He commented about his feelings when he was first approached about demolishing his building and he was not interested. In thinking over everything, talking to his neighbors, he has changed his mind and has made a deposit on another spot for his business. He stated that Jamestown would have another new business coming to town with payment of taxes for the City, and he is excited about the project. He thanked everyone for being at the meeting.

Sandy Rater, owns the house at 6 W. 6th Street, a six unit apartment house and has owned it for 19 years. She stated she has had several tenants over the years, in and out, mostly low-income. She commented that garbage has been a problem in the neighborhood. She stated that she feels the project would be a great improvement for the neighborhood and that it is a very good move for the City to approve the project.

Mark Bertolini, 613-615 N. Main Street, the adjacent property to the project, asked if the existing retaining wall was going to be left in place.

Mr. Thomas (EADS) stated yes, some of them may remain in place.

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Mr. Bertolini stated that the current retaining walls are falling apart and wondered if there were any concerns about people parking there during construction.

Mr. Thomas (EADS) commented that the retaining walls on the north side do not abut parking facilities.

Mr. Bertolini stated that the retaining wall on his property is falling down.

Mr. Thomas (EADS) explained the retaining walls.

Mr. Bertolini stated that he fully supports the project and that he would have to fix his building up so it won't look so bad next to the new project.

Reginald Wiltsie, 10 W. 6th Street stated that he has to have handicap and ambulance accessibility and was concerned about the fire code requirements.

Mr. Scalise stated that the building setback would be compliant with the Building Code as far as separation of buildings.

Mr. Thomas (EADS) stated that the sidewalk that will be provided will be at grade so it will be ADA accessible.

Mr. Scalise stated that looking at the plan now in that respect, they are looking at an easement to allow emergency vehicles in the parking lot. It would appear that it would be easier to get to the building from an emergency standpoint than it is now.

Chairperson Donato asked if there were any further questions and if there was any correspondence regarding this project.

City Clerk Sanfilippo said there was no correspondence.

Ms. Edwards moved to approve the petition.

Mr. Nazzaro seconded the motion.

Carried: 7 ayes, 0 nays

DAVID MITCHELL, SBA AND DOBSON CELLULAR SYSTEMS – 839 FOOTE AVENUE

The Secretary read the petition of David Mitchell, as the agent for SBA and Dobson Cellular Systems, 3910 South Avenue, Boardman, Ohio 44512 for an area variance to erect an additional 30' extension to the existing cellular phone tower on the property located at 839 Foote Avenue, owned by Gary's Garage LLC, 839 Foote Avenue, Jamestown, New York 14701, in a C-2 Zone. (Section 300-216 – Cellular phone towers. The maximum permitted tower height is 60'. Proposed is adding an additional 30' to the existing 150' tower for a total overall height of 180'.)

Leslie Senglaub, of the Law Firm of Harter, Secrest & Emery, LLP, Twelve Fountain Plaza, Suite 400, Buffalo, New York, representing Dobson Cellular Systems, stated she was present to renew their request for an area variance to co-locate onto the existing tower for 30'.

Chairperson Donato asked if there was any questions or correspondence on this petition.

City Clerk Sanfilippo stated there was no correspondence.

Mr. Nazzaro moved to approve the petition.

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Ms. Edwards seconded the motion.

Mr. Thomas stated that he believes that the hardship was self-created and he cannot vote to increase its height.

Carried: 6 ayes, 1 nay
Mr. Thomas, nay

Ms. Senglaub thanked the Board, Corporation Counsel and Building Inspector on behalf of Dobson Cellular for taking the time to work with them and work with this matter.

There being no further business, the meeting was adjourned.

Shirley A. Sanfilippo, MMC, RMC
Secretary
Zoning Board of Appeals