

**MINUTES OF THE MEETING OF THE JERSEY VILLAGE
BOARD OF ADJUSTMENT**

December 10, 2018 – 12:00 p.m.

The Board of Adjustment of the City of Jersey Village, Texas, convened on December 10, 2018, at 12:00 p.m. in the Municipal Civic Center Meeting Room at 16327 Lakeview Drive, Jersey Village, Texas 77040.

A. The meeting was called to order by Chairman Tom G. Simchak at 12:00 p.m. and the roll of appointed officers was taken. Board Members present were:

Thomas G. Simchak, Chairman
Henry Hermis, Vice Chairman
Joe Pennington, Board Member
Joyce Berube, Alternate Place 1

Ken Nguyen, Board Member
M. Reza Khalili, Board Member
Doyle Stuckey, Alternate Place 2

Council Liaison, Gary Wubbenhorst was present.

City Staff in attendance: Leah Hayes, City Attorney; Lorri Coody, City Secretary; Danielle Amason, Assistant City Secretary; Kevin T. Hagerich, Public Works Director; Christian Somers, Building Official; and Jim Bridges, Engineering Technician.

B. Designate alternate members to serve in place of any absent Board Members.

Chairman Simchak indicated that all Board Members were present and there was no need for the appointment of alternate members.

C. Election of chairperson and vice-chairperson for one-year term beginning October 1, 2018 and ending September 30, 2019.

Chairman Simchak opened nominations for Chair of the Board for a one year term beginning October 1, 2018 and ending September 30, 2019. Board Member Khalili nominated Board Member Thomas G. Simchak. Board Member Hermis seconded the nomination. With no other nominations being made, the vote follows:

Ayes: Board Members Hermis, Pennington, Nguyen, Khalili

Nays: None

Abstained: Chairman Simchak

The motion carried.

Chairman Simchak opened nominations for the office of Vice Chair for a one year term beginning October 1, 2018 and ending September 30, 2019. Chairman Simchak nominated Board Member Hermis. Board Member Khalili seconded the nomination. With no other nominations being made, the vote follows:

Ayes: Board Members Pennington, Nguyen, Khalili
Chairman Simchak

Nays: None

Abstained: Vice Chairman Hermis

The motion carried.

D. Consider approval of the minutes for the meeting held on August 15, 2018.

Board Member Hermis moved to approve the minutes for the meeting held on August 15, 2018. Board Member Pennington seconded the motion. The vote follows:

Ayes: Board Members Hermis, Pennington, Nguyen, Khalili
Chairman Simchak

Nays: None

The motion carried.

E. Conduct a public hearing on William Dewayne Ashdown's requests for variances to the Jersey Village Code of Ordinances at Chapter 14, Article IV, Section 14-88 (b) to allow the applicant to construct an addition to the primary structure encroaching the rear setback by 12.5' and the side setback by 2' for the property located at 16225 Tahoe Drive, Jersey Village, Texas.

Chairman Simchak opened the public hearing at 12:02 p.m. in order to receive written and oral comments from any interested person(s) concerning William Dewayne Ashdown's requests for variances to the Jersey Village Code of Ordinances at Chapter 14, Article IV, Section 14-88 (b) to allow the applicant to construct an addition to the primary structure encroaching the rear setback by 12.5' and the side setback by 2' for the property located at 16225 Tahoe Drive, Jersey Village, Texas.

The Board found that all notification requirements for both the City and the applicant have been met for this public hearing.

Christian Somers, Building Official, provided background information on the request as follows:

- 1) Existing garage was originally constructed in violation of the setback requirements;
- 2) Setbacks vary for detached and attached garages; and
- 3) The addition to the structure will be a new attached garage, which encroaches the 25' rear setback by 12.5' and the 7.5' side setback by 2'.

City Attorney, Leah Hayes, verified that the existing garage is a non-conforming structure and explained that new standards do not apply to construction that has already been built.

The applicant, William Dewayne Ashdown, clarified that he did not realize that the home was in violation when he purchased the property in 2016. However, the plan for the garage will be no closer to the rear setback than the existing structure and will encroach the side setback by 2'.

With no other input from the applicant, Chairman Simchak called upon those signing up to speak at the public hearing as follows:

Robert Harper, 16218 Capri Drive, Jersey Village, Texas (713) 466-8262: Mr. Harper suggested the Board deny the variance request. He expressed concern that the appearance of the proposed addition would not match the rest of the neighborhood and that the lot would appear to have more house than green space.

Kathleen Offner, 16222 Capri Drive, Jersey Village, Texas (716) 466-8862: Ms. Offner suggested the Board deny the variance request. She explained that variances weaken the code and only benefit the applicant. She also expressed concern of flooding and stated that more concrete will result in less ground for absorption.

Jerry Offner, 16222 Capri Drive, Jersey Village, Texas (713) 466-8862: Mr. Offner suggested the Board deny the variance request. He felt that the applicant should have known the conditions of the property before purchasing. He stated that the requested variance would diminish the appeal of the neighborhood, decrease property values, and increase flooding risks.

Anna Lewandowski, 16226 Capri Drive, Jersey Village, Texas (281) 787-4465: Ms. Lewandowski suggested the Board deny the variance request. She felt that the variance would result in her home being enclosed and did not wish to be any closer to her neighbor's property. She also stated that the living space of Mr. Ashdown's home is currently 25% of the property and that granting the variance would increase that percentage to 35%. She too is concerned about flooding.

City Attorney Hayes addressed the public comments by clarifying that City standards are different from Home Owner Association standards and that the characteristics of Mr. Ashdown's lot cause the home to be different from others nearby, a condition to be considered by the Board in granting a variance. She also stated that the addition would have to conform to current building requirements that meet City, County and FEMA criteria. Ms. Hayes was of the assumption that the home was built to the standards of that time and recapped the notion that Texas is a strong property rights state and it is the City's right to provide a variance process.

Building Official Somers spoke on drainage concerns. He stated that in accordance with current city codes, the garage addition could be built below base flood elevation; however, it would require proper flood venting. He also indicated that approximately 60 square foot of permeable surface would be improved.

Mr. Ashdown clarified that his plans were to remove the existing driveway and increase permeability. His desire was to use the existing garage as a workshop/storage area.

With no one else desiring to speak at this public hearing, Chairman Simchak closed the public hearing concerning William Dewayne Ashdown's requests for variances to the Jersey Village Code of Ordinances at Chapter 14, Article IV, Section 14-88 (b) to allow the applicant to construct an addition to the primary structure encroaching the rear setback by 12.5' and the side setback by 2' for the property located at 16225 Tahoe Drive, Jersey Village, Texas at 12:34 p.m.

E1. Discuss and take appropriate action on William Dewayne Ashdown's requests for variances to the Jersey Village Code of Ordinances at Chapter 14, Article IV, Section 14-88 (b) to allow the applicant to construct an addition to the primary structure encroaching the rear setback by 12.5' and the side setback by 2' for the property located at 16225 Tahoe Drive, Jersey Village, Texas.

The Board discussed the issue of hardship in connection with Mr. Ashdown's request along with the fact that the existing structure already encroaches the rear setback by 12.5'. Some members wondered about granting a variance with conditions.

City Attorney Hayes explained that the Board could grant the requests for variances with conditions. She also explained hardship, stating that the Board, in making its decision, must consider:

- if the request for variance is contrary to the public's interest;
- if, due to special conditions, enforcement of Chapter 14, Article IV, Section 14-88(b) would result in an unnecessary hardship; and
- that in granting the variance, the spirit of this chapter would be upheld and observed.

She explained that the special conditions requirement can be applied to the shape and contour of the lot. Accordingly, she stated that the hardship in this case was the nature of the current location of the garage and that its angle, due to the shape of the lot, made it difficult for a vehicle to enter. She stated that the reason for the hardship, the oddly shaped lot, is not of the applicant's own doing. She further explained that the expense of conforming to new building requirements should not be considered as a hardship.

Council Liaison Wubbenhorst suggested that the applicant's plan to construct an addition to the property could not have been known at the time the home was purchased; therefore, a rationale for hardship exists.

The Board discussed the three (3) criteria for granting the variance. Some members felt that while the rationale for hardship exists, the encroachment would be substantial and did not support the granting of the requested variances.

The Board then discussed detached versus attached garages. Building Official Somers explained that the requirements for a detached garage are 10' from the rear setback and only 3' from the side setback, which would make it closer to the lot lines than the attached garage being requested. For this reason, he suggested that the variance requests are reasonable.

The Board then discussed public interest and the comments made during the public hearing, which led to a discussion about possible conditions to be placed upon the homeowner if the variances were granted. Some members wondered about the legality of placing conditions such as requiring a certain number of shrubs and trees. City Attorney Hayes explained that it is legal to place conditions and may be a way of finding a middle ground or compromise to create a win/win situation. However, she did state that she had never heard of additional responsibilities being placed upon a homeowner in similar instances in case law.

To aid in the discussion, the applicant stated that the 50-foot oak tree would remain a part of the landscaping. It was also pointed out that the new structure/plan would result in improved lot permeability.

With no further discussion on the matter, Board Member Hermis moved to deny the requests of William Dewayne Ashdown for variances to the Jersey Village Code of Ordinances at Chapter 14, Article IV, Section 14-88(b) to allow the applicant to construct an addition to the primary structure encroaching the rear setback by 12.5’ and the side setback by 2’ for the property located at 16225 Tahoe Drive, Jersey Village, Texas. Board Member Pennington seconded the motion. The vote follows:

Ayes: Board Members Hermis, Pennington, Khalili

Nays: Chairman Simchak and Board Member Nguyen

The motion carried.

F. Adjourn

With no other business before the Board, Chairman Simchak adjourned the meeting at 1:04 p.m.



Danielle Amason, Assistant City Secretary