

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

June 20, 2022 – 12:00 p.m.

The Board of Adjustment of the City of Jersey Village, Texas, convened on June 20, 2022, at 12:02 p.m. in the Civic Center at 16327 Lakeview Drive, Jersey Village, Texas 77040.

A. The meeting was called to order by Chairman Tom G. Simchak at 12:02 p.m. and the roll of appointed officers was taken. Board Members present were:

Thomas G. Simchak, Chairman	M. Reza Khalili, Board Member
Joe Pennington, Board Member	Nester Mena, Board Member
Ken Nguyen, Board Member	Judy Tidwell, Alternate Place 1
Nelson L. Feeney, Alternate Place 2	

Council Liaison, Jennifer McCrea was present at this meeting.

City Staff in attendance: Justin Pruitt, City Attorney; Austin Bleess, City Manager; Lorri Coody, City Secretary; Evan Duvall, Building Official Representative and Robert Basford, Assistant City Manager.

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

Item not needed.

C. CITIZENS' COMMENTS - Any person who desires to address the Board of Adjustment regarding an item on the agenda will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter of the comment is on the agenda, the City staff and Board Members are not allowed to discuss the subject. Each person is limited to five (5) minutes for comments to the Board of Adjustment.

There were not Citizens' Comments.

D. Consider approval of the minutes for the meeting held on April 12, 2022.

Board Member Khalili moved to approve the minutes for the meeting held on April 12, 2022. Board Member Mena seconded the motion. The vote follows:

Ayes: Board Members Khalili, Pennington, Mena, and Nguyen
Chairman Simchak

Nays: None

The motion carried.

E. Conduct a Public Hearing on Saarim Damani's appeal of the Building Official's ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani's proposed "Smoke & Puff" shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F.

Chairman Simchak opened the public hearing at 12:05 p.m. in order to receive written and oral comments from any interested person(s) concerning Saarim Damani's appeal of the Building

Official's ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani's proposed "Smoke & Puff" shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F.

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

Chairman Simchak called upon the Applicant to present his case and supporting evidence concerning this appeal.

Applicant Saarim Damani presented his evidence. He explained that he got a lease signed back in January for a smoke shop. He told the Board that they intend to carry glass products and CBD. He stated that he will not carry any tobacco. He mentioned that there are already smoke shops located within 3 to 5 minutes from his location.

With no further comments from the Applicant, Board Chairman Simchak called Evan Duvall, the City's Building Official Representative, to present information that he deemed necessary, appropriate, or relative to the application.

Mr. Duvall told the Board that this came to his attention when someone called in about the smoke shop. At that time there were no permits issued to this establishment. Upon inspection, it was learned that the location was originally permitted for a hair salon and was not permitted for a smoke shop. The current ordinance does not permit locating a smoke shop in District F. After the applicant learned about the Ordinance locating smoke shops in District H, the applicant filed his appeal.

With no discussion or questions, the Board Chairman called if there was anyone else desiring to speak in favor or opposed to this appeal.

Eric Henao, 15601 Singapore Lane, Jersey Village, Texas – Mr. Henao presented information about his objection to locating the smoke shop at this location. He was concerned about the many issues that the applicant has encountered in complying with our Ordinances. He mentioned the other smoke shops in our area and is concerned that this market is already saturated. He mentioned issues with the store's signage. He is opposed to locating a smoke shop at this location.

Rick Faircloth, Chairman of Planning and Zoning, 16010 Lakeview Drive, Jersey Village, Texas – Mr. Faircloth pointed out that as part of his duties as a member of the Planning and Zoning Commission, he has worked on the Smoke Shop Ordinance and he is opposed to locating the smoke shop at this location.

The applicant spoke again. He told what he has done to prepare the building for a smoke shop. He also addressed the signage. He is working with his sign man to get the sign in compliance with City Ordinances.

With no other comments, Chairman Simchak closed the public hearing on Saarim Damani's appeal of the Building Official's ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani's proposed "Smoke & Puff" shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F. at 12:12 p.m. and called the next item on the agenda, item E1.

(1) Discuss and take appropriate action on Saarim Damani’s appeal of the Building Official’s ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani’s proposed “Smoke & Puff” shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F.

The Board discussed Saarim Damani’s appeal of the Building Official’s ruling. City Attorney Pruitt addressed the Board. He explained that a function of the Board of Adjustment is to hear appeals of the Building Official’s rulings. In this case, the Building Official has determined that this use cannot be located in District F. Therefore, the Board must decide if the Building Official has made the right decision. If so, the Board shall approve the Building Official’s decision that the smoke shop cannot be located in District F. He also explained why the Building Official would determine that it is a smoke shop rather than some other type of shop, and as such, it is not allowed in District F. He went on to say that recently, City Council passed an Ordinance that placed smoke shops in District H with a specific use permit. Prior to the passage of this Ordinance, “smoke shops” were not mentioned in the City’s Code of Ordinances; so therefore, the use is technically not permitted.

The City Attorney fielded questions from the Board and answered accordingly.

The Building Official explained the signage requirements. He also stated that every other smoke shop already located in the City prior to the Ordinance change is grandfathered.

The Board wanted to know what elements were used to determine this shop as a smoke shop. The Building Official stated that based upon the products being offered he determined it was a smoke shop.

Bobby Hajini, who is associated with the applicant, spoke to the Board. He wanted to know when the rules changed. The City Attorney explained that this happened recently. The Ordinance change located smoke shops in District H. Prior to this change, the word “smoke shop” was never mentioned in the City’s Code of Ordinances.

Mr. Hajini stated he was told that the change happened back in April. Since the lease for the smoke shop was signed in January, he feels that he should be permitted to continue with his plans. He presented the Board with handouts that pointed out the location of other smoke shops in the City. He feels that his shop should be grandfathered.

The Board pointed out that the other locations pointed out by the applicant are not in District F. The applicant agreed but stated that these other shops are 5 and 8 minutes away.

The Board stated that part of locating a business in Jersey Village is to research the Ordinances to insure compliance.

The Building Official explained the products of tobacco and glass pipes trigger it to be a smoke shop. The applicant explained his products as 20% CBD, 40% glass products, with the remainder being Vape items.

The Board discussed the meaning of smoke shop. The definition is located on page 29 of the meeting packet, which is a copy of the Ordinance passed by City Council in April locating smoke shops in District H. The definition from the Ordinance was read by the City Attorney into the record.

The Board pointed out that the applicant in his presentation referred to his place of business as a smoke shop.

The City Attorney pointed out that if a business can dedicate 100% to CBD sales than state law prohibits the City from permitting the business in the City. But, because the applicant will sell other products in addition to CBD, it makes it a smoke shop, which would need to be located in District H.

There was discussion about the use of the glass products. The applicant stated that some people use these products for CBD and for decorative items.

With no further discussion on the matter, Board Member Mena moved to deny Saarim Damani's appeal of the Building Official's ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani's proposed "Smoke & Puff" shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F. Board Member Pennington seconded the motion. The vote follows:

Ayes: Board Members Khalili, Pennington, Mena, and Nguyen
Chairman Simchak

Nays: None

The motion carried.

The Board's Original Order No. 2022-04 is attached as Exhibit A and made a part of these minutes.

F. Conduct a Public Hearing on the request of Jeff and Michelle Moore, owners, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet; and to appeal the Building Official's ruling denying the applicants' request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040.

Chairman Simchak opened the public hearing at 12:34 p.m. in order to receive written and oral comments from any interested person(s) concerning the request of Jeff and Michelle Moore, owners, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet; and to appeal the Building Official's ruling denying the applicants' request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040.

The Board found that notification requirements for both the City and the Applicant have been met for this public hearing. The Board also took note of written comments submitted by property owners within the 200-foot radius of the affected property.

Chairman Simchak called upon the Applicant to present his case and supporting evidence concerning the variance requests.

Applicant Jeff Moore presented the request. He explained that there are several homes in Jersey Village with two-story garages. He needs to build this extension to his existing garage for his mother-in-law and father. He wants it to be a living quarters for them. He wants to exceed the square footage and he wants to make this addition livable. He will do whatever it takes to comply with the Ordinances.

With no further comments from the Applicant, Board Chairman Simchak called Evan Duvall, the City's Building Official Representative, to present information that he deemed necessary, appropriate, or relative to the application.

Mr. Duvall gave the Board background information about accessory buildings. These are becoming more popular to house older parents. He explained that other cities in the area allow these type additions, but some are allowed with a kitchen and some are allowed without a kitchen.

He explained the rules for Jersey Village. He also mentioned that the Planning and Zoning Commission will be presented with a change to consider allowing this type of addition in the near future in Jersey Village.

The area of the addition was discussed by the Board. They wanted to know how ground area is defined. The Building Official explained that it is tricky and that future amendments will make this clearer.

The plans show a two-story structure. Mr. Duvall explained that if you have a two-story home, you can have a two-story garage. If you have a one story you would need a variance to allow for a two-story garage.

The City Attorney gave the definition for building area. The Board wanted to know if the Building Official has a full set of plans. Mr. Duvall explained that before the resident invests in the cost of a full set of plans, he likes to wait until the Board makes its ruling.

The ground area was discussed. The City Attorney explained that the Board will need to decide if this variance request to exceed the maximum 1,000 square feet has any underlying hardship. The second issue is the ruling of the Building Official that there can only be one residential living area per lot. Residential living area is currently defined by an area having a kitchen, which, in this case, would count as a second residential living area.

The Building Official explained that the main thing is to decide if the applicant can build a kitchen in this structure.

The Board wanted to know if the Planning and Zoning Commission will be reviewing this in the near future. Mr. Duvall stated that it will be presented to the Commission in July with many other code proposals. Therefore, it will take some time before any changes are made to the City's Code.

The City Attorney explained unnecessary hardship.

With no further discussion or questions, the Board Chairman called if there was anyone else desiring to speak in favor or opposed to the granting of the application.

Eric Henao, 15601 Singapore Lane, Jersey Village, Texas – Mr. Henao spoke to the Board. He stated that he is attending the Citizen’s Fire and Police Academies. During his training, he learned information about fires in garages in the City. He commends the applicant for wanting to take care of his parents, but he is concerned about adding a living area in the garage and the possibility of fires.

The applicant addressed the problem of fires with smoke detectors. He does not feel that it will be a safety issue.

The Board wanted to know if conditions can be added to the variance. City Attorney Pruitt stated that the Board could not add conditions to the variance. He went on to say that as far as the kitchenette, “kitchenette” cannot currently be found in the City’s Code of Ordinances; and therefore, kitchenettes are not allowed.

It was stated that if a kitchenette is not permitted, then the parents would have to move into the home with the applicants.

Applicant Michelle Moore stated that one of the reasons they want to build the addition is because of the failing health of their parents. They want to be close enough to help without hampering their parent’s freedom to come and go.

The definition of the kitchenette was discussed. City Attorney Pruitt explained that our Code does not define kitchenette because it is not presently defined in our code.

The second floor was discussed. The applicant explained that it will be accessible by elevator and stairs. The power system for the elevator was discussed.

With no other comments from the public or the applicant, Chairman Simchak closed the public hearing on the request of Jeff and Michelle Moore, owners, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet; and to appeal the Building Official’s ruling denying the applicants’ request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040 at 1:02 p.m. and called the next item on the agenda, item F1.

(1) Discuss and take appropriate action on the request of Jeff and Michelle Moore, owners, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet; and to appeal the Building Official’s ruling denying the applicants’ request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040.

The Board discussed the requested variance and appeal. The kitchenette was discussed. Mr. Duvall explained that if the stove is removed, it would not be considered a second living area.

Stoves and ovens were discussed by the Board. The Board also discussed that the Code is going to be reviewed in the near future by the Planning and Zoning Commission.

The City Attorney again explained the two issues before the Board. He asked that the Board make each ruling separate.

City Attorney Pruitt explained how the rulings of this Board will affect the Building Official's rulings moving forward until a Code change takes place.

If a waiver is granted some members of the Board felt this would set a precedent. City Attorney Pruitt explained that such a waiver could be used by future applicants as support to have their like requests approved as it sets a practice.

With no further discussion on the matter of the appeal, Board Member Mena moved to overrule the Building Official's ruling denying the applicants' request to include a stove/oven in a small kitchenette in the garage addition, making it a second residential living area for the property located at 16517 Cornwall, Jersey Village, Texas 77040. Board Member Simchak seconded the motion. The vote follows:

Ayes: Board Members Mena, Nguyen and Chairman Simchak

Nays: Board Members Khalili and Pennington

Not having a concurring vote of at least four (4) members of the Board, the motion failed.

The Board then discussed the variance request again in detail. After much discussion, it was determined that since the garage will be a two-story addition, a variance is not needed. Therefore, no action was taken by the Board on the variance request.

The Board's Original Order No. 2022-05 is attached as Exhibit B and made a part of these minutes.

G. Adjourn

With no other business before the Board, Chairman Simchak adjourned the meeting at 1:32 p.m.



Lorri Coody, City Secretary



**CITY OF JERSEY VILLAGE
BOARD OF ADJUSTMENT
ORDER NO. 2022-04**

WHEREAS, on May 6, 2022, Saarim Damani’s appeal of the Building Official’s ruling that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani’s proposed “Smoke & Puff” shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F; and

WHEREAS, the Board conducted a Public Hearing and received information from the Public and from the Appellant on June 20, 2022; and

WHEREAS, after closing the hearing and discussion on the matter, the Board made its findings;
NOW THEREFORE,

BE IT ORDERED BY THE BOARD OF ADJUSTMENT OF THE CITY OF JERSEY VILLAGE THAT:

SECTION 1. In consideration of the information before the Board, with a concurring vote of at least four (4) members, the Board voted to [] GRANT [x] DENY the appeal of Saarim Damani, finding that the ruling of the City’s Building Official that a smoke shop is a non-permitted use within District F; and therefore, Saarim Damani’s proposed “Smoke & Puff” shop cannot be located at 7412 Senate Ave, Jersey Village, Texas within Zoning District F was [x] CORRECT [] INCORRECT.

PASSED, APPROVED, AND ORDERED this 20th day of June 2022.

s/Thomas G. Simchak, Chairman

ATTEST:

s/Lorri Coody, City Secretary





**CITY OF JERSEY VILLAGE - BOARD OF ADJUSTMENT
ORDER NO. 2022-05**

WHEREAS, on May 12, 2022, Jeff and Michelle Moore, owner, filed a request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet; and to appeal the Building Official's ruling denying the applicants' request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040.

WHEREAS, the Board conducted a Public Hearing and received information from the Public and from the Applicants on June 20, 2022; and

WHEREAS, after closing the hearing, the Board in making its decision on the variance request considered:

- if the request for variance is contrary to the public's interest;
- if, due to special conditions, enforcement of Chapter 14, Article IV, Division 1, Section 14-101(b)(2)(b) will result in an unnecessary hardship for Jeff and Michelle; and
- that in granting the variance, the spirit of this chapter will be upheld and observed; and

further, the Board considered the information presented concerning the appeal of the Building Official's ruling; **NOW THEREFORE**,

BE IT ORDERED BY THE BOARD OF ADJUSTMENT OF THE CITY OF JERSEY VILLAGE THAT:

SECTION 1. In consideration of the information before the Board, concerning Jeff and Michelle Moore's request for variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-101(b)(2)(b), to allow the applicants to exceed the 1,000 square feet of ground floor area for detached garages by 343 sq feet for the property located at 16517 Cornwall, Jersey Village, Texas 77040, the Board took no action.

SECTION 2. In consideration of the information before the Board, the appeal of Jeff and Michelle Moore from the ruling of the City's Building denying the applicants' request to include a stove/oven in a small kitchenette in the garage addition for the property located at 16517 Cornwall, Jersey Village, Texas 77040, without a concurring vote of at least four (4) members, did not pass.

PASSED, APPROVED, AND ORDERED this 20th day of June 2022.

ATTEST:

s/Lorri Coody, City Secretary



s/Thomas G. Simchak, Chairman