

**MINUTES OF THE MEETING OF THE JERSEY VILLAGE
BOARD OF ADJUSTMENT
October 17, 2022 – 12:00 p.m.**

The Board of Adjustment of the City of Jersey Village, Texas, convened on October 17, 2022, at 12:00 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
Judy Tidwell, Alternate Place 1	Nelson L. Feeney, Alternate Place 2

Board Member Ken Nguyen was not present at this meeting.

Council Liaison, Jennifer McCrea was present at this meeting.

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

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

Alternate Board Member Judy Tidwell was designated to serve in the place of Board Member Ken Nguyen.

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. Election of chairperson and vice-chairperson for one-year term beginning October 1, 2022 and ending September 30, 2023.

Chairman Simchak opened nominations for Chair of the Board for a one-year term beginning October 1, 2022 and ending September 30, 2023. Board Member Khalili nominated Board Member Thomas G. Simchak. Board Member Mena seconded the nomination. With no other nominations being made, the vote follows:

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

Nays: None

The motion carried.

Chairman Simchak opened nominations for the office of Vice Chair for a one-year term beginning October 1, 2022 and ending September 30, 2023. Board Member Khalili nominated

Board Member M. Reza Khalili. Board Member Pennington seconded the nomination. With no other nominations being made, the vote follows:

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

Nays: None

The motion carried.

E. Consider approval of the minutes for the meeting held on June 20, 2022.

Board Member Mena moved to approve the minutes for the meeting held on June 20, 2022. Board Member Khalili seconded the motion. The vote follows:

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

Nays: None

The motion carried.

F. Conduct a Public Hearing on the request of Peggy B. Davis, owner, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040.

Chairman Simchak opened the public hearing at 12:04 p.m. in order to receive written and oral comments from any interested person(s) concerning the request of Peggy B. Davis, owner, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040.

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 her case and supporting evidence concerning this request.

Applicant Peggy B. Davis presented her evidence. She told the Board she has owned the property for 18 years. When purchased, there was a glass sunroom on the back of the home. This sunroom was attached to the home some 25 years ago. The sunroom roof is currently leaking. It is worn out and needs to be replaced since it cannot be repaired. She would like to replace the sunroom with a patio cover. She will keep the floor as is and the roof will be extended out just a bit further to cover the existing floor. She intends to keep the current setback of 10 feet.

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 there is an existing glass sunroom on the home. The existing structure is at the 10-foot setback mark and because the current setback is 16 feet, it cannot be approved without a variance.

There were questions by the Board concerning the structure. Some wanted to know if it will be an integral part of the main residence. Mr. Duval answered the question stating that it is difficult to state if it is an integral part, but as the home is laid out, based upon code, there is only 2 feet to do something in the back yard. That being said, it could be considered integral. The Chair clarified his understanding of integral stating that he wanted to know if the structure can be removed from the home without making the home unusable. Mr. Duvall stated that it is not integral based upon this definition. The proposed structure is to be open air. The current glass sunroom does provide air conditioning and heating, but it is very loud and therefore unusable. The new structure will not have climate control. The applicant gave further details about the proposed structure.

There was discussion about why the rear setback is where it is currently located. Mr. Duvall did not have any information as to why but stated that there are no easements that will be affected with the proposed structure. The flooring was discussed. Some wondered if there needs to be a Code amendment to address this problem of setbacks in this area of the City. Mr. Duvall explained the issue further and stated that Staff would review the Code to determine if this is necessary.

Because of the size of the lot, some members felt that this project is eligible for a variance. The Chair called upon the City Attorney to explain the requirements for the variance to which he replied accordingly, to include unnecessary hardship requirements.

There was discussion about neighboring homes and how these homes also encroach the rear setback.

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

Mr. Michael A. Craig, 16 Parkway Place, Jersey Village, Texas (713) 882-0172 spoke to the Board. He stated he has inspected the property and does not have any objections. He also stated that he has sent the Board his written reply of support. He went on to explain the proposed structure and recommends the proposed variance. The Board asked Mr. Craig about the windows on the rear side of homes in that area concerning zero protection from golf balls. Mr. Craig stated that in the past 25 years he has only experienced two stray golf balls. He pointed out that the proposed structure will have a protective roof.

With no other comments, Chairman Simchak closed the public hearing on the request of Peggy B. Davis, owner, for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040 at 12:21 p.m. and called the next item on the agenda, item F1.

(1) Discuss and take appropriate action on Peggy B. Davis's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-

103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040.

With no further discussion on the matter, Board Member Mena moved to grant the request of Peggy B. Davis for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040. Board Member Khalili seconded the motion. The vote follows:

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

Nays: None

The motion carried.

The Board's Original Order No. 2022-06 is attached as Exhibit A and made a part of these minutes.

G. Conduct a Public Hearing on Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

Chairman Simchak opened the public hearing at 12:22 p.m. in order to receive written and oral comments from any interested person(s) on Legendary Vibes, LLC d/b/a Cru Lounge's (Cru) appeal of the Building Official's ruling that the applicant's proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, 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 supporting evidence concerning this appeal.

Mr. Derek Devon, Attorney for the Applicant, 440 Louisiana Street, Suite 900, Houston, Texas 77002 (346) 229-0106 presented evidence in support of the appeal. He told the Board that the applicants own a company called Cru Lounge and they have signed a lease in Jersey Village where they own and operate a food and liquor establishment. In addition to the food and liquor, they want to be able to sell hookah. He read the definition of hookah from the City Code. He argues that the restaurant and bar is not primarily going to sell hookah, rather they will primarily sell food and liquor and hookah will be a small part of their offering. He likened the sale of hookah to that of a convenience store that primarily sells gas, but also has other products such as soft drinks and snacks. In this case, hookah is just one of the things they will be selling.

Mr. Deyon called **Mr. Gregory Martin, 27467 Vivace Drive, Spring, Texas (281) 226-3937** to give further information. Mr. Martin told the Board that he wanted to be grandfathered in and permitted to sell hookah. He stated that prior to signing the lease, he did due diligence wherein he stated he reached out to the City to see if they were able to sell hookah in addition to food and alcohol at 17350 NW Freeway, Jersey Village, Texas in District J. He stated that he visited with Mr. Duvall, the Building Official, about their plans, and received a response that he could sell hookah in District J. Attorney Deyon submitted a copy of the email in question wherein permission was granted by the City. Mr. Martin went on to say that once he had received this confirmation, he signed the lease and began buildout of the facility.

The Board asked what facility was previous in the leased space. Mr. Martin stated it was a restaurant. Once the buildout was underway, Mr. Martin then submitted a request for Certificate of Occupancy and the request was denied because of his intent to sell hookah. Mr. Martin explained that hookah is part of their business model.

In response to Mr. Martin's statements to the Board, Building Official Duvall stated that at the time of the email, hookah was permitted. The City amended its Ordinance in April of 2022, which made hookah only allowed in District H.

Mr. Henry George Jr. spoke to the Board. He stated he has lived around Jersey Village for quite some time and is interested in having his business here. He stated that he did due diligence in making this investment. His business is a national brand with 13 locations throughout the US. He told the Board that he will sell food, alcohol, and hookah. He gave particulars about the steps of his due diligence. He stated the business model was approved in January of 2022, the lease was signed in February based upon the approval of the City. He started his application for Certificate of Occupancy was submitted in February of 2022, but the application expired and was not restarted until August of 2022 and was later denied by the City in terms of the sale of hookah. He stated that he was never given notice that the City's rules changed during this process. He stated that he currently has over \$100,000 invested in this business. The change in code has damaged the owners of this establishment.

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 he was contacted in January and the approval email was sent. However, there was a change in the ordinance in April of 2022. He went on to explain that when there is a change in Ordinance, as a practice, he reviews open permits in order to notify any affected requestors of the change. In this case, there was mechanical and water and gas line work being done, but nothing concerning Hookah; therefore, no notice was given or required. After the ordinance change and the second certificate of occupancy permit was received, Mr. Duvall did reach out to the requestor and explained that hookah would not be permitted.

The timeline was discussed. The change in the ordinance was discussed. Mr. Pruitt explained that this is an appeal of the Building Official's ruling and what the Board needs to look at is the definition of Hookah Bar to determine if the Building Official has made the right determination.

The applicant is objecting to the ruling of the Building Official because the sale of hookah is not their primary product for sale as they are also selling food and alcohol, which they feel make up the majority of their offerings.

City Manager Bless stated that the City has looked at the applicant's media and social media pages, which state it is a hookah bar. Handouts concerning same were distributed to the Board for review.

The City Attorney explained that if the Board follows the Building Official's interpretation the hookah bar is not permitted. If the Board overrules the Building Official, then hookah can be smoked on the premises to be located at 17350 NW Freeway. The social media information was discussed as well as the published menu for this establishment. Mr. Deyon submitted a hard copy of the menu which was marked as Applicant's Exhibit #2. Mr. Deyon pointed out that the word "primarily" as used in the statute applies to both the first part of the statute and to the second part following the word "or." Information from social media was read aloud concerning the sale of hookah by this business. Mr. Deyon also submitted further information concerning the business.

The Board had questions, wondering if the two who previously spoke are owners. It was confirmed that they are owners of this establishment. The Board wanted to know if there is a written timeline of the activities leading up to the denial of the certificate of occupancy. The applicant submitted a written timeline for the Board's review. It was not marked as an exhibit.

The definition of hookah was also discussed. City Attorney Pruitt explained the definition. Hookah is the pipe and the shisha is the tobacco placed inside of the pipe for smoking. The City does not have a smoking ordinance. With this in mind, the difference between smoking tobacco and smoking hookah was discussed by the Board. City Attorney Pruitt explained the difference is that there is a definition of hookah in our Code and hookah is not allowed. Adding this definition created a use wherein it is not allowed in Zone F. Hookah is permitted in Zone H.

The approval of the Building Official was discussed. This approval was initially approved for Zone J and was written before the Code was amended in April. What is being reviewed today is the definition of a hookah bar and the Building Official's ruling concerning same.

The Board asked what percentage of the customers smoke Hookah at other establishments owned by the applicant. The applicant explained that of the 60 to 70 people at one of their locations, about 7 would be smoking. The applicant explained that smoking Hookah is part of their business model, but it is not a primary focus of their business. The applicant addressed the reference to Zone J in the presented email, acknowledging that his business is located in District F. Nonetheless, the applicant pointed out that the email does include the address of 13750 NW Freeway, which is located in Zone F. He also pointed out that hookah accounts for less than 15% of their sales. The applicant pointed out that the business is a restaurant and bar with the sale of hookah and serves customers 21 and up.

The Board asked for the City Attorney to give a recommendation concerning this request. City Attorney Pruitt stated that he will not direct the Board on what to do, but stated what would happen in each instance concerning the Board's action.

With no other comments, Chairman Simchak closed the public hearing on Legendary Vibes, LLC d/b/a Cru Lounge’s (Cru) appeal of the Building Official’s ruling that the applicant’s proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F at 12:58 p.m. and called the next item on the agenda, item G1.

(1) Discuss and take appropriate action concerning Legendary Vibes, LLC d/b/a Cru Lounge’s (Cru) appeal of the Building Official’s ruling that the applicant’s proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F.

With no further discussion on the matter, Board Member Mena moved to deny the Hookah Lounge and stand before our Officer’s Decision. In hearing the motion, Chairman Simchak stated, “to clarify the motion was to affirm the decision of the Building Official, is that correct?” Board Member Mena stated, “that is correct.” Board Member Tidwell seconded the motion. The vote follows:

Ayes: Board Members Mena and Tidwell
Chairman Simchak

Nays: Board Member Khalili

Abstain: Board Member Pennington

The motion failed. A concurring vote of four (4) members of the Board is necessary to reverse an order, requirement, decision, or determination of an administrative official. Not having the necessary vote for action, the Board did not consider any further motion regarding this appeal; therefore, the Board took no action regarding this item.

The Board’s Original Order No. 2022-07 is attached as Exhibit B and made a part of these minutes.

H. Adjourn

With no other business before the Board, Chairman Simchak adjourned the meeting at 1:01 p.m.



Lorri Coody, City Secretary



**CITY OF JERSEY VILLAGE - BOARD OF ADJUSTMENT
ORDER NO. 2022-06**

WHEREAS, on August 31, 2022, Peggy B. Davis, owner, filed a request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040.

WHEREAS, the Board conducted a Public Hearing and received information from the Public and from the Applicant on October 17, 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 2, Section 14-103(b)(3)(b) will result in an unnecessary hardship for Peggy B. Davis; and
- that in granting the variance, the spirit of this chapter will be upheld and observed;

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 X GRANT _____ DENY the request of Peggy B. Davis for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article IV, Division 2, Section 14-103(b)(3)(b) to allow a 10-foot rear yard setback where 16 feet is required for a new patio cover, where a previous attached glass sunroom existed for the property located at 13 Parkway Place, Jersey Village, Texas 77040.

PASSED, APPROVED, AND ORDERED this 17th day of October 2022.

S/Thomas G. Simchak, Chairman

ATTEST:

S/Lorri Coody, City Secretary





**CITY OF JERSEY VILLAGE - BOARD OF ADJUSTMENT
ORDER NO. 2022-07**

WHEREAS, on September 30, 2022, Legendary Vibes, LLC, d/b/a Cru Lounge (Cru), Tenant, filed an appeal of the Building Official’s ruling that the applicant’s proposed use within District F is a Hookah Bar; and therefore, the applicant is not permitted to sell Hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F; and

WHEREAS, the Board conducted a Public Hearing and received information from the Public and from the Applicant on October 17, 2022; and

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

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

SECTION 1. THAT in consideration of the information before the Board, regarding Legendary Vibes, LLC, d/b/a Cru Lounge’s (Cru) appeal of the City’s Building Official’s ruling that the applicant’s proposed use within District F is a Hookah Bar, and therefore, the applicant is not permitted to sell hookah at its establishment located at 17350 Northwest Freeway, Jersey Village, Texas within Zoning District F, the Board was unable to reach a concurring vote of four (4) members on the following motion:

Board Member Mena moved to deny the Hookah Lounge and stand before our Officer’s Decision. In hearing the motion, Chairman Simchak stated, “To clarify, the motion was to affirm the decision of the Building Official. Is that correct?” Board Member Mena stated, “That is correct.” Board Member Tidwell seconded the motion. The vote followed:

Ayes: Chairman Simchak, Board Member Mena, and Board Member Tidwell

Nays: Board Member Khalili

Abstain: Board Member Pennington

The motion failed. The concurring vote of four (4) members of the Board is necessary to reverse an order, requirement, decision, or determination of an administrative official. The Board did not consider any further motion regarding this appeal, so the Board took no action regarding this item.

ORDERED this 17th day of October 2022.

FOR THE BOARD:

S/Thomas G. Simchak, Chairman

ATTEST:

S/Lorri Coody, City Secretary

