

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

July 17, 2019 – 12:00 p.m.

The Board of Adjustment of the City of Jersey Village, Texas, convened on July 17, 2019, 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	M. Reza Khalili, Board Member
Henry Hermis, Board Member	Doyle Stuckey, Alternate Place 1
Ken Nguyen, Board Member	Nester Mena, Alternate Place 2
Joe Pennington, Board Member	

Council Liaison, Gary Wubbenhorst was present.

City Staff in attendance: Scott Bounds, City Attorney; Austin Bless, City Manager; Lorri Coody, City Secretary; and Christian Somers, Building Official.

**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. Consider approval of the minutes for the meeting held on March 12, 2019.**

Board Member Khalili moved to approve the minutes for the meeting held on March 12, 2019. Board Member Nguyen seconded the motion. The vote follows:

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

Nays: None

The motion carried.

**D. Consider approval of the Rules of Procedure of the Board of Adjustment of the City of Jersey Village, Texas.**

City Secretary, Lorri Coody, introduced the item. Background information is as follows:

In accordance with the Texas Local Government Code, Section 211.008(e), the Board of Adjustment shall adopt rules in accordance with any ordinance adopted under this subchapter.

Meetings of the Board are held at the call of the presiding officer and at other times as determined by the Board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses.

All meetings of the Board shall be open to the public.

Since this Board has not adopted Rules of Procedure, this item is to discuss and adopt the Board of Adjustment of the City of Jersey Village, Texas Rules of Procedure.

City Attorney Scott Bounds explained that HB 2497 was recently passed by the Legislature, which provided amendments that go into effect on September 1, 2019. The proposed Rules document included in the meeting packet incorporated the HB 2497 amendments.

The Board discussed the timelines outlined in the Rules document in order to compare them with what is currently being practiced. Building Official, Christian Somers, explained the current process and timelines.

With no further discussion on the matter, Board Member Hermis moved to approve the Rules of Procedure that were included in the meeting packet as the Rules of Procedure for the Board of Adjustment of the City of Jersey Village, Texas. Board Member Khalili 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 Gary Ryan’s request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Division 1, Section 14-88(a)(6)(a) to allow the applicant to park or store a recreational vehicle in the front or side yard at the property located at 16006 Congo Lane, Jersey Village, Texas.**

Chairman Simchak opened the public hearing at 12:11 p.m. in order to receive written and oral comments from any interested person(s) concerning Gary Ryan’s request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Division 1, Section 14-88(a)(6)(a) to allow the applicant to park or store a recreational vehicle in the front or side yard at the property located at 16006 Congo Lane, Jersey Village, Texas.

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

Chairman Simchak called upon the applicant Gary Ryan to present his case and supporting evidence concerning his request for variance. Mr. Ryan thanked the Board for considering his request. He provided the Board with personal background information concerning his education and his disability. He told the Board that he has polio and has been on crutches his entire life; but recently he broke his leg, which has permanently placed him in a wheel chair. He explained to the Board that this is the first time he has asked for an exception due to his disability. He gave information on what it is like to be disabled and explained that the motor home in question is adapted so he can drive it. He is a pilot and a professional wheel chair bowler. The motor home requires 18 feet of clearance to get in and out of it. He has checked various storage facilities and they do not accommodate an 18-foot clearance. He stated that he could rent two spaces, but this would cost double the rental. He is asking for an exception/variance to the Ordinance in order that he be permitted to park his motor home at his home on Congo Lane where accessibility is not a problem. He told the Board that he

has consulted with his neighbors and they do not have any objections. The motor home is a 2015 model and is in very good condition.

Ione Ryan, Mr. Ryan's wife, addressed the Board. She gave a history of their use of a motor home, explaining that over the years they have had four (4) different motor homes. With each new home, additional features were added to assist Mr. Ryan with its operation. In recent years, he has had trouble flying and in making transfers. Because of this, their current motor home is 100% accessible and Mr. Ryan is able to transfer to the motor home and drive it by himself. He is independent and this is why he is seeking a variance to be able to park the motor home at his home on Congo Lane.

In completing their presentation, the Board asked Mr. Ryan about his search for an accessible parking space. Mr. Ryan stated that he has looked, but has been unable to find a facility with enough space to provide him the accessibility that he needs to make the transfer. The Board also asked Mr. Ryan about his travel needs in connection with the motor home. He explained his experience with travel, stating that planes are not ADA compliant and because of this he only travels now by his motor home.

With no more questions for the applicant, Board Chairman Simchak called upon Christian Somers, the City's Building Official to present any information that he deems necessary, appropriate, or relative to the application. Mr. Somers stated that he appreciates the explanation presented by Mr. Ryan. He told the Board that he has reviewed the application. He referred the Board to the three (3) criteria items listed on page 18 of the meeting packet that are needed to obtain a variance. He explained that item one (1) is related to land and other structures, not vehicles. Item two (2) explains unnecessary hardship. Mr. Somers told the Board that financial impacts are not to be considered as an unnecessary hardship. He challenged the special conditions listed by the applicant in Item three (3), stating that the applicant could move off premise or hire a driver.

Mr. Somers told the Board that he feels that applying the ADA requirements to this request would be more applicable to installing a ramp rather than the use of a motor home. He also stated that while the motor home in question is new and in good condition, parking it on his property on Congo Lane brings down property values.

The Board reviewed pictures of the motor home parked on the property located at 16006 Congo Lane. It was noted that the motor home is parked within the property lines. Some wondered if it was possible to build a structure to shield the motor home from public view. In response, Building Official Somers explained what would be required in order to build such a structure. The applicant felt that building a structure is not a fix for the problem. Mr. Somers stated that the applicant's current detached garage could be demolished and a new one put in its place that accommodates the motor home. However, such an action would require at least one (1) variance with respect to an ancillary building encroaching the 10-foot setback to a primary structure. The applicant felt that this solution could be quite costly. He was also concerned about the process of tearing down the existing structure and rebuilding a new structure large enough to house the motor home and how this might affect property values. Mr. Somers pointed out that monetary reasons are not to be considered as an unnecessary hardship.

The Board Chairman called if there was anyone else desiring to speak in favor or opposed to the granting of the application.

Mr. Erwin Camp, 16025 Congo Lane, Jersey Village, Texas appeared. He told the Board that he is Mr. Ryan's neighbor and he does not see the parking of his motor home on his property located at 16006 Congo Lane as a problem. He stated that he cannot see it how it is currently parked.

Board Chairman Simchak called upon City Attorney, Scott Bounds, to address the Board concerning the ADA law. Mr. Bounds explained that this law was originally adopted in 1990 and amended in 2008. Generally, zoning ordinances are considered to be subject to the ADA. In other words, the City in application of its zoning ordinances has to take into consideration the provisions of the ADA.

Under the ADA, there is a general provision for what is called a reasonable accommodation. Under this rule, a city discriminates and is in violation of the ADA when it refuses to make changes to its rules, policies, practices, or services when such accommodation may be necessary to afford a handicapped person an equal opportunity to use and enjoy their dwelling.

Mr. Bounds explained that there is not a lot of case law concerning reasonable accommodation and what has been ruled upon is very new. He told the Board that basically it comes down to a case-by-case decision as to what accommodations should be made to a zoning rule to accommodate a person with a disability. The Courts have generally ruled that the accommodation process be carried out through the variance process as set up by the city.

By state law, the Board, in making a decision on a request for variance, must consider:

- if the request for variance is contrary to the public's interest;
- if, due to special conditions, enforcement of the Ordinance would result in an unnecessary hardship; and
- that in granting the variance, the spirit of this chapter would be upheld and observed.

An ADA claim is broader in scope because it is caused not by the condition of the property but by the circumstances of the person occupying the property. In order to prevail in presenting a reasonable accommodation claim, the requestor must first provide the City an opportunity to accommodate them through the City's established procedures. Therefore, the City's variance process is an appropriate avenue in which to make a claim for reasonable accommodation.

Typically, a variance runs with the land. An ADA claim is unique to the person; and therefore, the Board in granting a reasonable accommodation can establish rules that relate to that person's use of the property, which gives more flexibility. Because such a finding does not run with the land, Mr. Bounds recommended that a variance for reasonable accommodation be filed in the county deed records.

The Board engaged in discussion about the City Attorney's explanation regarding reasonable accommodation. They had several questions to which the City Attorney responded.

Chairman Simchak closed the public hearing on Gary Ryan's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Division 1, Section 14-88(a)(6)(a) to allow the applicant to park or store a recreational vehicle in the front or side yard at the property located at 16006 Congo Lane, Jersey Village, Texas at 1:03 p.m.

**(1) Discuss and take appropriate action on Gary Ryan's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Division 1, Section 14-88(a)(6)(a) to allow the applicant to park or store a recreational vehicle in the front or side yard at the property located at 16006 Congo Lane, Jersey Village, Texas.**

The Board in discussing this request asked if there were any written complaints received by the City. City Secretary Lorri Coody responded that there were no written complaints but the City did receive phone call complaints.

The Board wanted to know the definition of unnecessary hardship. City Attorney Bounds explained that it is not financial in nature and typically relates to the size of the lot. However, the Board needs to decide if it exists. There was concern by some members of the Board that in denying the request it would be considered an unnecessary hardship.

The Board continued to discuss unnecessary hardship. They also discussed the difference between unnecessary hardship and reasonable accommodation. Some felt that granting Mr. Ryan's request was a reasonable accommodation needed for him to carry on with his life.

With no further discussion on the matter, Board Member Hermis moved to grant a reasonable accommodation to Mr. Ryan by allowing him to park or store his motor home in the side yard at 16006 Congo Lane, Jersey Village, Texas, but the RV must be parked behind the front of the home and limited only to Mr. Ryan's vehicle. Board Member Khalili seconded the motion. The vote follows:

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

Nays: None

The motion carried.

*The Board took a five-minute recess at 1:09 p.m. and reconvened at 1:16 p.m. when Chairman Simchak called the next item on the agenda as follows:*

**F. Conduct a public hearing on Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-253(c) to allow the applicant's existing ground sign to temporarily exceed the allowed 200 square feet of sign face area for a period not to exceed two (2) years ending May 1, 2021 for the property located at 16484 Northwest Freeway, Jersey Village, Texas.**

Chairman Simchak opened the public hearing at 1:20 p.m. in order to receive written and oral comments from any interested person(s) concerning Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-253(c) to allow the applicant's existing ground sign to temporarily exceed the allowed 200 square

feet of sign face area for a period not to exceed two (2) years ending May 1, 2021 for the property located at 16484 Northwest Freeway, Jersey Village, Texas.

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

Chairman Simchak called upon the applicant Joe Myers Kia to present his case and supporting evidence concerning his request for variance. Ralph Samuels appeared on behalf of Joe Myers Kia and told the Board that as a result of the US HWY 290 expansion project, the building located at 16484 Northwest Freeway will need to be rebuilt. As a result, he is asking that he be permitted to leave the existing signs in place until May 1, 2021 in order to give enough time for the rebuild.

Chairman Simchak called upon the City's Building Official, Christian Somers, to present any information that he deems necessary, appropriate, or relative to the application. Mr. Somers told the Board that on May 1, 2014, this Board of Adjustment granted Joe Myers Dealership L.P. a variance to the Jersey Village Code of Ordinances at Chapter 14, Section 14-253(d), permitting the applicant to relocate the existing pole type ground sign that will exceed the allowed 200 square feet of sign face for a time period not to exceed five years under Order No. 2014-03.

The June 25, 2019 application is a request to extend the temporary variance granted under Order No. 2014-03. Mr. Somers went on to explain that the Kia redevelopment permit was issued July 16, 2019. The existing property will be demolished as a result of the US HWY 290 expansion project and a new building will be built. They will need a variance for the sign face area; however, Kia corporate will have new sign standards in one year. Therefore, in extending Order 2014-03 until May 1, 2021, it gives time to start the redevelopment and also time to get the new sign standards from Kia corporate. If it is not extended, the existing signs is currently 30 sq. feet over and will need to be replaced with a sign that complies.

With no one else desiring to speak at the public hearing, Chairman Simchak closed the public hearing at 1:25 p.m.

**(1) Discuss and take appropriate action on Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-253(c) to allow the applicant's existing ground sign to temporarily exceed the allowed 200 square feet of sign face area for a period not to exceed two (2) years ending May 1, 2021 for the property located at 16484 Northwest Freeway, Jersey Village, Texas.**

With limited discussion on the matter, Board Member Khalili moved to approve Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-253(c) to allow the applicant's existing ground sign to temporarily exceed the allowed 200 square feet of sign face area for a period not to exceed two (2) years ending May 1, 2021 for the property located at 16484 Northwest Freeway, Jersey Village, Texas. Board Member Pennington seconded the motion. The vote follows:

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

Nays: None

The motion carried.

**G. Conduct a public hearing on Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-252(2)(b)(2)(b) to allow the applicant to temporarily place a pole type ground sign that exceeds the requirement that the sign be set back not less than 25 feet from the interior or rear property lines for a period not to exceed two (2) years ending May 1, 2021, for the property located at 16484 Northwest Freeway, Jersey Village, Texas.**

Chairman Simchak opened the public hearing at 1:28 p.m. in order to receive written and oral comments from any interested person(s) concerning Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-252(2)(b)(2)(b) to allow the applicant to temporarily place a pole type ground sign that exceeds the requirement that the sign be set back not less than 25 feet from the interior or rear property lines for a period not to exceed two (2) years ending May 1, 2021, for the property located at 16484 Northwest Freeway, Jersey Village, Texas.

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

Chairman Simchak called upon the applicant Joe Myers Kia to present his case and supporting evidence concerning his request for variance. Ralph Samuels appeared on behalf of Joe Myers Kia and told the Board that as a result of the US HWY 290 expansion project, the building located at 16484 Northwest Freeway will need to be rebuilt. As a result, he is asking that he be permitted to leave the exiting signs in place until May 1, 2021 in order to give enough time for the rebuild.

Building Official, Christian Somers, had no comments.

With no one else desiring to speak at the public hearing, Chairman Simchak closed the public hearing at 1:29 p.m.

**(1) Discuss and take appropriate action on Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-252(2)(b)(2)(b) to allow the applicant to temporarily place a pole type ground sign that exceeds the requirement that the sign be set back not less than 25 feet from the interior or rear property lines for a period not to exceed two (2) years ending May 1, 2021, for the property located at 16484 Northwest Freeway, Jersey Village, Texas.**

With limited discussion on the matter, Board Member Hermis moved to approve Joe Myers Kia's request for a variance to the Jersey Village Code of Ordinance at Chapter 14, Article X, Section 14-252(2)(b)(2)(b) to allow the applicant to temporarily place a pole type ground sign that exceeds the requirement that the sign be set back not less than 25 feet from the interior or rear property lines for a period not to exceed two (2) years ending May 1, 2021, for the property located at 16484 Northwest Freeway, Jersey Village, Texas. Board Member Nguyen seconded the motion. The vote follows:

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

Nays: None

The motion carried.

**H. Adjourn**

With no other business before the Board, Chairman Simchak adjourned the meeting at 1:31 p.m.



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Lorri Coody, City Secretary