



City of Hamtramck - Zoning Board of Appeals
City Hall Council Chambers
3401 Evaline St., Second Floor
Hamtramck, MI 48212
313-800-5233 ext. 818

MINUTES

REGULAR MEETING OF THE HAMTRAMCK ZONING BOARD OF APPEALS
TUESDAY, DECEMBER 19, 2023
6:00 P.M.

1. **Call to Order**

Vice Chair Malek Hussein called the meeting to order at 6:05pm.

2. **Pledge of Allegiance**

3. **Roll Call:**

Present: Moammer Alghazali, Malek Hussein, Gias Talukder, Khalid Qsaimi, Abdullatif Dagenah

Absent: Asim Alshahri (Absent, Excused), Tom Habitz (Absent, Excused)

4. **Approval of Minutes:**

A. October 17, 2023.

Motion by Gias Talukder to approve minutes. Seconded by Khalid Qsaimi. Motion passed unopposed.

5. **Public Comment** (3 Minutes per Person)

No public comment.

6. **Public Hearings**

A. 8430 Lumpkin St.

The subject of the hearing is to consider an expansion of a non-conforming structure according to ordinance section §155.050(E)(5) and §155.096 for address 8430 Lumpkin St., Hamtramck, MI 48212. Parcel 41 002 06 0031 000. The applicant, Abdulmalik Mashrah, is requesting a two and a half foot variance to expand a legal non-conforming structure at the subject address.

Austin Colson (staff) presented that there is a 2.5 foot setback required. The house was built in 1910 right on the alley. The owner seeks to build a second story. The existing setback is nonconforming. The expansion is vertical; the footprint not changing. There are five standards for the expansion of a nonconforming structure. CED presented the staff report for this address and went through each standard as listed in the report. Stated that staff believes all five standards have been met.

Motion by Gias Talukder to approve variance of 2.5 feet. Seconded by Khalid Qsaimi.

Vote: Moammer Alghazali (YES), Malek Hussein (YES), Gias Talukder (YES), Khalid Qsaimi (YES), Abdullatif Dagenah (YES)

7. **Old Business:**

A. 11941 Joseph Campau Ave.

The subject of the hearing is to consider a dimensional variance to the ordinance section 121.005(a)(1) for address 11941 Joseph Campau Street Hamtramck, MI 48212. Applicant is J Elias Management Inc., a

Michigan corporation d/b/a Puff Cannabis Company. Parcel 41 004 01 0302 000. Applicant has requested a dimensional variance from the buffer of 1,000 feet of a pre-existing public or private school.

Board asked if the city attorney was present, as requested. Staff stated that although the attorney is not present, the city staff met with the attorney and that the advice remains the same as before, which is reflected in the staff report dated 10/17/2023.

Karolynn Faulkner (staff) presented the variance request materials, including the ZBA application received on 8/30/2023, the City's Staff Report presented first at the 10/17/2023 meeting, and the response to the staff report from the applicant, dated 10/16/2023. The address in question is 11941 Joseph Campau; variance request is for a buffer of 1000 feet from a pre-existing public or private school. Faulkner stated that this is a non-use variance request, sometimes also called a dimensional variance. In this case, it is the distance from an operational school. Staff referenced ordinance 121.055. Staff shared from the report that the legal advice that we were given as a city is to vote to deny the request on the grounds that the petitioner is requesting a variance from section 121.005(A)(1) and 121.005(A)(1) is not in the zoning ordinance. As stated in the report, the ZBA does not have authority to grant variances from ordinances that are not included in the Hamtramck zoning ordinance. Staff referenced the variance analysis and the four requirements that all must be met for granting a non-use variance, per section 155.024(F)(11)(a). Staff sat down.

John Fraser spoke and stated that the marijuana ordinance does not permit transfers. Stated that they are not trying to change the business, but rather adding ownership. Stated that there is no way to go to City Council with the appeal. Fraser reviewed the definition of variance under section 155.007. Fraser stated that the definition of "code" refers to all code (the code of ordinances) not the zoning code exclusively, if the regulation seeks to regulate the use of land and buildings. Fraser referenced Michigan law section 121.005(A)(1). Stated that the CRA from the state is requiring something else from the city in terms of documentation. Fraser sat down.

The board discussed the case and stated that it was particularly complex. Members stated that the city attorney advised that the city deny the request. Board members discussed denying the variance.

The board also asked the applicant questions. Asked why the case is at the ZBA and not at Council. Fraser stated that there is no mechanism to take the request to Council; the next step if denied would be Wayne County Circuit Court. Fraser stated that the ordinance is unreasonable impractical as it prohibits transfer, and that people do not invest in something that can never be sold.

The board discussed stated that the applicant is not asking to start a new business and that the request is small. The board also expressed concern that the city will be sued and considered the arguments on both sides on whether or not they have the authority to vote on this case.

The board stated that they are essentially adding additional ownership to an existing business and do not see any negative consequences to granting the request. The board uniformly agreed.

Motion by Qsaimi to approved variance request. Seconded by Dagenah.

Vote: Moammer Alghazali (YES), Malek Hussein (YES), Gias Talukder (YES), Khalid Qsaimi (YES), Abdullatif Dagenah (YES)

8. New Business:

A. 2024 Meeting Dates

The proposed schedule is the 3rd Tuesday of the month, for 2024 at 6pm. Motion to approve by Moammer Alghazali. Seconded by Khalid Qsaimi. All approved.

9. Board member Announcements

11. Staff Announcements

12. Public Comment (3 minutes per person)

13. Adjournment

Motion at 6:37pm to adjourn by Khalid Qsaimi. Seconded by Moammer Alghazali. All approved.