



**Zoning Board of Appeals**  
Department of Planning & Community Development  
City Hall - Roosevelt Square  
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Ernest D. Davis.  
Mayor

Irwin S. Davison, Esq.  
Chair

**MINUTES**

**ZONING BOARD OF APPEALS**

**PUBLIC HEARING**

A regular meeting of the Zoning Board of Appeals will be held on Tuesday **April 8, 2014 at 7:30 p.m.** in the City Council Chamber, Second Floor, City Hall, Mount Vernon, New York at which time and place the Board shall consider the following:

**ITEM # 1 ROLLCALL**

**Present**

**Irwin Davison**

**Barbara Anderson**

**Elvira Castillo**

**Lucinda Solan-Fullan**

**Maxine Green**

**Karl Scully**

**ITEM # 2 APPROVAL OF MINUTES**

**2.1** Approval of the minutes of the regular meeting held on Tuesday, February 18, 2014. **Approved Board Member Green motioned/ Castillo second/ All in favor**

**ITEM #3 CONTIUNED PUBLIC HEARING**

**3.1 Calendar No. 1708-Z** 60 South Third Avenue (Section 165.70, Block 3111, Lot 18) located within the DB Zoning District.

Application of Amani Charter School represented by attorney Jack Adesso, is requesting the following variances:

- Use Variance. The applicant seeks to operate a school. Schools are not permitted in this zone. – This is a deviation from the uses permitted within the DB zone.

- Parking. The applicant is required to have 60 on-site parking spaces. The applicant is not proposing any parking spaces on-site. – This is a deviation from dimensional regulations of the Zoning Code.

The applicant is requesting the aforementioned variances to operate a school at this premise.

**SEQRA Determination:** This action is an uncoordinated “Unlisted Action”; therefore, the Board as “Lead Agency” must determine the environmental significance prior to rendering a decision.

**The Chair reads the item into the record. The Chair indicated that he believes we completed the public hearing or closed the public hearing and that the Board was here for deliberations.**

**Mr. Adesso – Expresses that he believed the Planning Board was asked to make a recommendation to the Board.**

**Chairman Davison – That is correct. I don’t recall if we closed the public hearing or if we’re in continued public hearing.**

**Staff Long: Just to clarify: It’s a continued public hearing, Mr. Chair.**

**Chairman Davison – Ms. Davis, will you kindly read into record the recommendation from the Planning Board.**

**Staff Davis. – Dear Board Members: During a meeting of the City Planning Board held on April 2, 2014, at which time the above referenced application was referred to the Planning Board by the Zoning Board for a recommendation. The Planning Board’s recommendation is:**

- That schools (the proposed use) in the DB (Downtown Business) Zoning District are aligned with the City’s proposed comprehensive plan.

**Note: All recommendations are classified as “Type II” actions; therefore, no further SEQRA assessment is necessary.**

**Note: This recommendation is based on the information provided to the Planning Board by the applicant and does not restrict the Planning Board during site plan review (when applicable) from abiding by Section 267-34 of the City’s Zoning Code.**

**Of the Planning Board Members present during this meeting, the vote was unanimous concerning this recommendation.**

**Chairman Davison – Thank you, I believe this was the last piece we were waiting for: Mr. Adesso, is there anything else you would like to say in conclusion.**

**The applicant gives background details about the case.**

**Chairman Davison – Is there any member of the public here who would like to have the opportunity to speak for or opposition of this application? Let the record show, no one has stepped forward. I would like someone to make a motion to close this application.**

**Board Member Solan-Fullan made a motion to close this public hearing Calendar # 1708-Z, Board Member Castillo second, all in favor.**

**Chairman Davison asked to make a motion for the negative declaration for SEQRA purposes?**

**Board Member Anderson – So moved Mr. Chairman... Second by Board Member Green. All in favor.**

**Chairman Davison – We will now consider whether or not this application can be approved for Area Variance.. There are five criteria's for Area Variance read into record:**

- 1) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance? Chairman Davison stated that it's pretty clear that the answer is no.**
- 2) Can the benefit sought by the applicant be achieved by some other method that is feasible for the applicant to pursue other than and area variance? Board Member Anderson stated that they proved their point.**
- 3) Is the requested area variance substantial? Board Member Anderson stated not for the size of the building.**
- 4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Board Members stated ... no.**
- 5) Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Chairman Davison stated that he doesn't think is was self-created.**

**Chairman Davison stated they did a nice job on the Area Variance. Let's go to the last part of our deliberations tonight: the Use Variances. The law the use variance is harder to get then the area variance, because if you're changing the use of the property, it's a big deal, because you're allowing someone to take the use of the property and change it from one use to another. So the legislative and the ordinance provide more stringent rules in order to do that. So I will read the four criteria's for**

**Use variance into record.**

- 1) The owner cannot realize a reasonable return on the property as zoned. The lack of return must be substantial and proved with competent financial evidence. It is insufficient for the applicant to show only that the desired use would be more profitable than the use permitted under the zoning. Chairman Davison – we've heard in the record that there were many efforts to try to use that property for other purposes, in fact even tonight that was not possible.**
- 2) The hardship must be unique to the owner's property and not applicable to a substantial part of the zoning district. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning, not to apply for a use variance. Chairman Davison stated that this is a**

pretty clear that this is a unique development. We've had conversation if the property was obsolete or unique, perhaps both. I think that helps make that point pretty clear.

- 3) Granting the variance must not alter the essential character of the neighborhood. In making this determination, the court often considers the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. Chairman Davison this is another way of saying this is a good thing? People will walk away from this, saying this is a good idea.
- 4) The hardship must not be self-created. Chairman Davison stated: we said that with respect to the Area Variance earlier.

Chairman Davison - In issuing a use variance, the board may impose "such reasonable conditions and restrictions. I think the one reasonable condition and restrictions we need to add, has to do with the parking: because Mr. Adesso was very helpful at the last meeting, by showing us how the existing parking was used by the tenant could be expanded on a needs basis, even if a tenant requires more space or if there's another tenant. We will add that as a condition. Any other members feel the same way? We have any additional conditions?

Board Member Scully – I just wanted to point out that, this is one of the few projects that I've seen present before this Board requesting a use variance that, in my view would be a text book example of what this Board should approve. This is a parcel that has been in this location for a number of years it is built as a school, it's designed as a school, not with standing the fact that there had been uses within the building itself. It doesn't take away or deviate from the fact that the building is not adapted to any other uses that would be in common with the other structures that are within that area. I've look at a number of the legal cases and there are actually a number of cases that Zoning Boards have adapted uses for buildings that come obsolete and in also all of those cases the ordinance challenges to attempted to do so. In almost all of those cases the Zoning Board has reached a conclusion that they would permit use. The applicant is not asking this Board to change the use of this building to something that it's not. This is a school; it's always been a school. So to the extent that we're approving this project I believe that it's constant not only for the historical value that the applicant's attorney has describe, but also based on all of the statutory criteria, it's obviously good evidence before this Board that if there was an attempt to adapt the use it would extremely difficult, giving the size and the scale of the volume of this building, compare to the type of uses that would be deemed financially or commercial valuable in that area. So with respect to the reasonable rate on return argument, I think you made a compelling case for that and obviously the self created hardship I think you made a compelling case as well giving all the factors.

Chairman Davison: Any other comments? Would someone like to make a motion with respect to the approval of the Area and Use Variance?

Board Member Solan-Fullan - make a motion we approve the Area and Use Variance for the Amani Charter School at this location on the parking condition: That if at any time there is an increase in the intensity of the building use in any manner that relates to parking, the applicant will return to the Zoning Board for the appropriate variances.

Board Member Castillo – second

Chairman Davison – There's been a motion made and second. All in favor: All present in favor. Motion Granted.

Meeting adjourned.

**Note:** Work Sessions will be open to the public but closed to public participation subject to the Open Meetings Law, [§ 105 of the New York State Public Officers Law, Article 7].

**Note:** Items listed on the agenda are subject to change and amendments and/or additions may be placed on the agenda.

**Note:** The next regular meeting of the Zoning Board of Appeals is scheduled to be held on Tuesday May 20, 2014.

**Note:** The Zoning Board will host its work session on May 14, 2014 at 4:00pm in the Memorial Room, City Hall

William Long  
Planning Administrator

cc: Mayor Ernest D. Davis  
Nichelle Johnson, Chief of Staff  
George Brown, City Clerk  
Jaime Martinez, Acting Commissioner

Building Department  
Lobby  
Press  
Susanne Marino, Deputy Commissioner