



**NOTICE OF MEETING OF THE  
ZONING BOARD OF ADJUSTMENT  
THE CITY OF BURNET, TEXAS**

This notice is posted pursuant to the Texas Local Government Code, Chapter §551 – Open Meetings.

Notice is hereby given that the **Public Hearing and Regular Meeting of the Zoning Board of Adjustments** of the City of Burnet, Texas will be held on Monday, **April 19, 2021**, at **6:00 p.m.** at the City of Burnet's Community Center located at 401 E Jackson Street, Burnet, Texas 78611 at which time the following subjects will be discussed, to-wit:

**1. CALL TO ORDER:**

**2. ROLL CALL:**

**3. CONSENT AGENDA ITEMS:** All of the following items on the Consent Agenda are considered to be self-explanatory by the Board and will be enacted with one motion. There will be no separate discussion of these items unless a Board member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Board when the Consent Agenda is opened for Board action.

3.1) Minutes of the regular meeting of the Board of Adjustment of the City of Burnet, Texas held on **January 11, 2021**.

**4. PUBLIC HEARINGS:**

4.1) The Board of Adjustment of the City of Burnet, Texas shall conduct a hearing to receive public testimony and comment regarding a request for variance to the Zoning Code's rear yard setbacks as shown in City Code Chapter 118 chart one for property zoned "R-1. The property subject to the variance request is located at: 101 Cailin Court. Burnet, Texas.

**5. ACTION ITEMS:**

5.1) The Board of Adjustment of the City of Burnet, Texas will discuss and consider a request for variance to the Zoning Code's rear yard setbacks as shown in City Code Chapter 118 chart one for property zoned "R-1. The property subject to the variance request is located at: 101 Cailin Court.

**6. STAFF REPORTS.**

6.1) Report on proposed revisions to the Zoning Code relating to Board of Adjustment.

**7. REQUESTS FOR FUTURE AGENDA ITEMS**

**8. ADJOURN**

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Zoning Board of Adjustment of the City of Burnet, is a true and correct copy of said notice and that I posted a true and correct copy of said notice on the bulletin board, in the City Hall of said City, Burnet, Texas, a place convenient and readily accessible to the general public at all times, and said notice was posted on July 17, 2020 at or before 5 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said meeting.

**Dated this the 16<sup>th</sup> day of April 2021**

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Kelly Dix, City Secretary

***NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:***

This meeting site is wheelchair accessible. For disability access special needs call Kelly Dix, City Secretary, at 512-715-3209 at least forty-eight [48] hours prior to the meeting.



## ZONING BOARD OF ADJUSTMENT MINUTES

On this the 11<sup>th</sup> day of January, 2021, the Zoning Board of Adjustment of the City of Burnet, convened in Regular Session at 6:00 PM. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. A Zoom Webinar with toll free conference call capability has been established; the following subjects will be discussed, to-wit:

### **GUESTS:**

- 1) **CALL TO ORDER:** The meeting was called to order at 6:10PM by Chair, Joy Taylor

2) **ROLL CALL:**

**Members Present:** Joy Taylor, Paul Shell, Tommy Gaut, Kim Winkler, Cesar Arreaza and Calib Williams

**Members Absent:**

**Guests:** Taylor Dawson, Mark Vaclavik

**Others Present:** Jason Lutz, Director of Development Services  
Leslie Kimbler, Administrative Technician

3) **CONSENT AGENDA:**

Minutes of the Regular Meeting held September 23, 2020.

|                                   |                          |
|-----------------------------------|--------------------------|
| Motion to Approve Consent Agenda: | Paul Shell               |
| Second:                           | Cesar Arreaza            |
| Motion Approved:                  | 6 in Favor/ 0 opposition |

4) **PUBLIC HEARINGS:**

- 4.1) The Board of Adjustment of the City of Burnet, Texas will hold a public hearing for property located at 105 S. Boundary Street regarding the following requested variances to the City of Burnet Code of Ordinances Chapter 118 – “Zoning” and Chapter 98 – “Subdivisions”:

1. Sec. 118-47. - Heavy commercial—District "C-3", Subsection (C)(2) Site Development Regulations to waive the requirements for the construction of public sidewalks on all sides, adjacent to public rights-of-way.
2. Sec. 98-104. - Impervious cover, Subsection (e)(2) to allow more than 80% Impervious Cover.

**5) ACTION ITEMS:**

**5.1)** The Board of Adjustment of the City of Burnet, Texas will discuss and consider the property located at 105 S. Boundary Street regarding the following requested variances to the City of Burnet Code of Ordinances Chapter 118 – “Zoning” and Chapter 98 – “Subdivisions”:

1. Sec. 118-47. - Heavy commercial—District "C-3", Subsection (C)(2) Site Development Regulations to waive the requirements for the construction of public sidewalks on all sides, adjacent to public rights-of-way.
2. Sec. 98-104. - Impervious cover, Subsection (e)(2) to allow more than 80% Impervious Cover.

Motion to Approve request for variance: Paul Shell  
Second: Tommy Gaut  
Motion Approved: 6 in favor/0 in opposition

**6) STAFF REPORTS:**

**7) REQUESTS FOR FUTURE AGENDA ITEMS:**

**8) ADJOURN:**

There being no further business, Chair, Joy Taylor adjourned the meeting at 6:18PM.

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Joy Taylor, Chair  
City of Burnet Planning and Zoning Commission

**Attest:**

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Kim Winkler, Secretary



## Community Development Services

## ITEM 4.1 & 5.1

Leslie Kimbler  
Community Development Services  
Coordinator  
512-715-3206  
lkimbler@cityofburnet.com

### Agenda Item Brief

**Meeting Date:** Monday, April 19, 2021

**Public Hearing 4.1:** The Zoning Board of Adjustment will conduct a public hearing to receive public testimony and comments on the merits regarding a request for variance to the Zoning Code's rear yard setbacks as shown in City Code Chapter 118 chart one for property zoned "R-1. The property subject to the variance request is located at: 101 CAILIN COURT: L. Kimbler

**Action Item 5.1:** Discuss and consider action: The Zoning Board of Adjustment shall discuss and consider action regarding a request for variance to the Zoning Code's rear yard setbacks as shown in City Code Chapter 118 chart one for property zoned "R-1. The property subject to the variance request is located at: 101 CAILIN COURT.

**Background:** The subject property is an undeveloped lot in the Highland Oaks Subdivision in a cul-de-sac on Cailin Court. The property has a ten (10) foot utility and drainage easement on both sides of the lot as well as a 20-foot setback and utility easement in the front of the lot. Due to the shape and size of the lot, the drainage easements encroach on the side setbacks of the property.

Code of Ordinances, Section 118-20, Chart 1, establishes allowable setbacks based on the zoning district. The subject property (Exhibit A) is zoned Single-Family Residential – District "R-1" and has a required rear setback of 15 feet.

The applicant is requesting a variance to the rear setbacks of the subject property (Exhibit B) by four (4) feet, making the rear setback 11 feet. This would allow the contractor to better situate a single-family residential house with a minimum square footage of 1100 square foot.

**Information:** As discussed under staff analysis, the Zoning Board of Adjustment may authorize a variance to specified provisions of the zoning code if at least four member of the Board finds enforcement of the zoning code provision on the property would create an unnecessary hardship; authorization of the variance is not contrary to the public's interest; and by granting the variance substantial justice will be done.

**Staff Analysis:** The variance will allow the development of a single-family residential home on the lot. Without the variance the buildable space on the lot is constrained by drainage easements and the zoning ordinance's setback requirements. Applying the statutory findings the board must make to authorize to a variance to the facts in this case staff finds as follows:

- Would the literal enforcement of the ordinance result in unnecessary hardship?

Yes. Due to the area of the Property burdened with easements the literal enforcement of the zoning ordinance back yard setback requirements in this case would result in an unnecessary hardship.

- Is the variance contrary to the public interest?

No. As the properties abutting the Property to the rear are non-residential uses a variance to the rear yard setback requirements is not contrary to the public interest.

- By authorizing the variance will the spirit of the zoning ordinance be observed, and substantial justice be done?

Yes. Authorizing the variance will allow a property, that will otherwise probably remain dormant, to be developed.

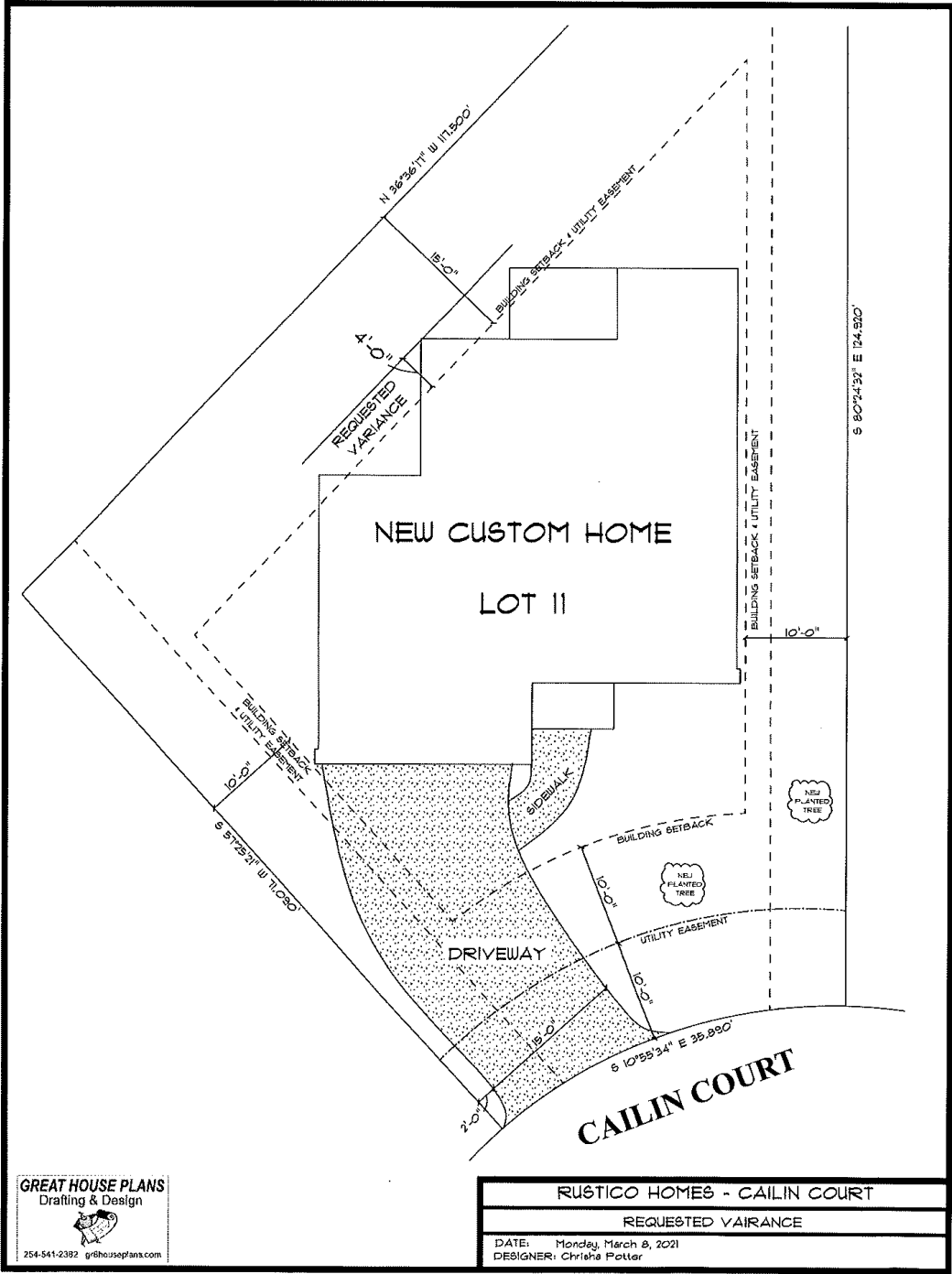
**Recommendation:** Staff recommends the board adopt the proposed order (Exhibit "C") authorizing a variance to allow three intrusions, up to 4 feet in length, in the rear yard setback as shown on Exhibit "B".

Exhibit "A"  
Subject Property





Exhibit "B"  
Requested Variance



**ORDER NO. 2021-04-19-01  
CITY OF BURNET ZONING BOARD OF ADJUSTMENT**

**Date:** April 19, 2021

**Property legal description:** SS207 Highland Oaks Subdivision  
Lot 11, Phase 1 Blk 8

**Property physical address:** 101 Cailin Court

**Owner:** SOUTHBAY GROUP LLC  
PO Box 3004  
Marble Falls, Tx 78654

**Whereas**, on this day, a quorum of the Zoning Board of Adjustment convened in a properly notice public meeting; and

**Whereas**, at said meeting came to be heard the Property's Owner's representative requesting a variance be authorized to the rear yard setback for the Property;

**Whereas**, after hearing the testimony of the Property's Owner's representative, the city's representative and members of the public, and the Zoning Board of Adjustment's own deliberations the Board by the affirmative vote of at least four of its members makes findings and conclusions as follows:

**A. Findings of fact:**

- 1) The Property is burdened with a ten (10) foot utility and drainage easement on each side yard, and a 20-foot setback and utility easement in the front yard; and
- 2) The two abutting properties to the rear of the Property are non-residential (one being used for stormwater drainage, the other classified as commercial).

**B. Conclusions of law:**

- 1) Due to the area of the Property burdened with easements the literal enforcement of the zoning ordinance back yard setback requirements in this case would result in an unnecessary hardship.
- 2) As the properties abutting the Property to the rear are non-residential uses a variance to the rear yard setback requirements is not contrary to the public interest.
- 3) By authorizing the variance the spirit of the zoning ordinance is observed and substantial justice is done.

It is thereby the **Order of the Zoning Board of Adjustment** that a variance to the backyard setback requirements be authorized to allow two intrusions into the backyard setback to depth of four feet, as shown on the map of the Property attached hereto.

Burnet Zoning Board of Adjustment

By: \_\_\_\_\_  
Joy Taylor, Chairperson

Attest:

\_\_\_\_\_  
Leslie Kimbler, ZBOA secretary



## Community Development Services

### ITEM 6.1

Habib Erkan Jr.  
Assistant City Manager  
512-715-3201  
herkan@cityofburnet.com

### Agenda Item Brief

**Meeting Date:** Monday, April 19, 2021

**Public Hearing 4.1:** The Zoning Board of Adjustment will receive a report from staff on proposed revisions to the zoning code related to the board of adjustment: H. Erkan

**Background:** The city's zoning regulations are codified in chapter 118 of the code of ordinances. Section 118-74, therein, addresses the board of adjustment. That section simply reads:

*Sec. 118-74. - Board of adjustments.*

*Established. A board of adjustments (hereafter in this section, the "board") is established in accordance with the provisions of V.T.C.A., Local Government Code § 211.008 and the Home Rule Charter of the City of Burnet, regarding the zoning of cities and with the powers and duties as provided in said code.*

Section 118-73 also references the board of adjustment: “(c) *Resolution of conflicting interpretations. Where there arises a question concerning the meaning or intent of a provision of this chapter, a written decision setting forth the manner in which said provision shall be interpreted and administered is encouraged. The zoning administrator shall write these interpretations and maintain them in a file available for public review. **In the event any interested party takes exception to such a decision the matter may be appealed to the board of adjustment and, as appropriate, to the council whose decision shall be final.***

**Information:** The attached proposed revision to Section 118-74 states the board's scope of authority and provides procedural matters related to membership, and term of office. Additionally, the amendment authorizes the board to adopt rules of procedure, subject to city council approval. A draft of proposed rules is also attached.

**Staff Analysis:** The proposed code amendment will allow the zoning code to be in line with state law with regards to the board of adjustment.

**Recommendation:** If city council approves the proposed code amendments, it is recommended that the board of adjustment conduct a workshop to discuss adoption of rules of procedure.

## Proposed Revision

Sec. 118-74. - Board of adjustments.

- (a) *Established.* A board of adjustments (hereafter in this section, the "board") is established in accordance with the provisions of Chapter 211 of the Local Government Code and the Home Rule Charter of the City of Burnet, regarding the zoning of cities and with the powers and duties as provided in said code.
- (b) *Members.* The board shall consist of five members appointed by City Council.
- (c) *Alternates.* City Council may appoint up to three alternate members to serve in the absence of one or more regular members at the request of the mayor or city manager.
- (d) *Term.* Members and alternate members shall serve two-year terms. Vacancies in the term of a member or alternate member shall be filled for the unexpired term. A member or alternate member may only be removed from the board, before the expiration of a term for cause, as found by city council on a written charge after a public hearing.
- (e) *Scope of Authority.* The board may hear and decide:
  - (i) *Special Exceptions.* In appropriate cases and subject to appropriate conditions and safeguards, the board may make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the zoning ordinance and in accordance with any applicable rules contained in the zoning ordinance.
  - (ii) *Appeals.* The board may hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by zoning administrator in the enforcement of Texas Local Government Code Chapter 211, subchapter A or the zoning ordinance.
  - (iii) *Variances.* The board may authorize in specific cases a variance from the terms of the zoning ordinance if the variance:
    - (A) is not contrary to the public interest; and
    - (B) is not contrary to the spirit of the zoning ordinance; and
    - (C) is necessary for substantial justice to be done; and
    - (D) is necessary due to special conditions, which causes a literal enforcement of the regulation to result in unnecessary hardship. To find unnecessary hardship exists the board must affirmatively find:
      - (1) The hardship is in no way the result of the applicant's own actions; and
      - (2) Special conditions exist of restricted area, topography or physical features that are peculiar to the subject property and are not applicable to other properties in the same zoning district; and
      - (3) the application of the regulation to the subject property deprives the applicant of rights commonly enjoyed by other properties in the same zoning district that are in compliance with the same regulation.
  - (iv) *Other matters.* The board may hear and decide other matters authorized by the zoning ordinance.
  - (v) *Airport Zoning Board of Adjustment.* Pursuant to, and in accordance with the requirements of, Texas Local Government Code Chapter 241, subchapter C, and City Code Chapter 18, article IV, the board shall serve as the Airport Board of Adjustment and hear and decide an appeal of an order, requirement,

decision, or determination of the airport's administrative agency; matters on which the board is required to pass under an airport zoning regulation; or a request variation in an airport zoning regulation.

(f) *Quorum*. Each case before the board must be heard by at least 75 of the members.

(g) *Rules*. The board, by majority vote, shall adopt rules in accordance with the zoning ordinance; City Code Chapter 18, article IV; Texas Local Government Code Chapter 211, subchapter A and Texas Local Government Code Chapter 241, subchapter C. The adopted rules shall become effective upon approval by City Council.

Burnet Zoning Board of Adjustment  
Rules of Procedure.

- 1) Preface. The Burnet Board of Adjustment (the "Board") is appointed by City Council to fulfill the duties prescribed in Texas Local Government Code Sections 211.008 through 221.011 and Section 14.01.004 of the City's Code of Ordinances. In the event of a conflict between these rules and the applicable statutory authority or city code, the statute or code shall prevail
- 2) Purpose and scope. These rules of procedure shall govern the operations of the Board in conducting the business authorized by state statute and the city code.
- 3) Election of officers.
  - a. The officers of the Board shall be a chairperson and vice chairperson. There is no limit on the number of terms an officer may serve. Officers shall serve for a term of \_\_\_\_ year(s).
  - b. Officer's terms shall run from \_\_\_\_\_ to \_\_\_\_\_. An officer may hold over until an election is held.
  - c. Officers shall be elected at the first meeting after the first day of \_\_\_\_\_. The chairperson shall ask for nominations for each office and close the nominations after all members have had an opportunity make a nomination. If there is only one nominee for an office the nominee shall be appointed unless an objection is raised and the objection is supported by a majority of the members. If there are multiple nominees for an office the vote shall be by written ballot; and by runoff ballot in the case of a tie between two or more nominees.
- 4) Airport. The board shall hear all matters authorized by Local Government Code Chapter 241 and City Code sections 18-109 through 18-111 as the Airport Zoning Board of Adjustment; and, matters considered by the board in such capacity shall comply with the requirements of Local Government Code Chapter 241 and City Code sections 18-109 through 18-111, in addition to the requirements of these rules.
- 5) Conflicts. In the event of a conflict between these rules and an enabling ordinance or statute the enabling ordinance or statute shall prevail.
- 6) Meetings. Meetings are held at the call of the chairperson, or acting chairperson, and at other times as determined by the board.
- 7) Records. The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions.
- 8) Office of the Board. The board's office shall be the office of the City Secretary, and minutes and records of the board shall be filed in the office of the City Secretary.
- 9) Witnesses. Pursuant to such authorization provided by Texas Local Government Code Chapters 211 and 241 the chairperson, or acting chairperson, may administer oaths and compel the attendance of witnesses.

- 10) Voting. The concurring vote of a 75% of the members of Board is required to (i) reverse an order, requirement, decision or determination of an administrative officer; (ii) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or (iii) authorize a variance from the terms of the zoning ordinance. The concurring vote of a majority of the members of Board is required to approve any other matter.
- 11) Application forms. An application for an appeal or variance shall be submitted on a form approved by the Board. An application for a variance shall include evidence supporting the findings the Board is required to make in order to authorize a variance. An application for an appeal must specify the grounds for the appeal. The application shall include the appropriate fee as set out in the City's fee schedule.
- 12) Time limit to submit an appeal. An appeal to the Board of a matter falling under the purview of Texas Local Government Code Section 211.010 must be made within 20 days of the date of the appealed decision of the administrator. The appeal shall be considered to be timely submitted upon the submittal of a complete application and appropriate fee to the City Secretary.
- 13) Formant for Appeal/Variance Hearing.
  - a. Presentation by appealing party or requestor for variance. Time limit 30 minutes. Presentation by City Staff.
  - b. Time limit 10 minutes. Presentation by members of the community opposed to the appeal or variance. Time limit 30 minutes. In addition members of the community supporting the appeal or variance may have up to 30 minutes to voice their support; provided members of the community opposing the appeal of variance are given additional time equal to the time allotted to supporters.
  - c. Rebuttal by applicant or requestor. Time limit 10 minutes.
  - d. At the conclusion of each presentation members of the board shall have an opportunity to ask questions. There shall be no time limit for members' questions.
  - e. By majority vote of the Board additional time may be given for the hearing of testimony; provided such additional time is equally extended.
- 14) Deliberation, Voting and Findings.
  - a. Board Deliberation. At the close of the hearing of witnesses the chairperson may call for deliberation of the board on the question. During deliberation a board member may call upon any witness for further questioning.
  - b. Disposition.
    - i. The Board may decide an appeal or variance at the conclusion of the hearing or at the next meeting for which notice can be given; provided, a final decision is defer action on an appeal or variance.
    - ii. The Board may dismiss or postpone an appeal or variance if it is found the matter was improperly filed.

- iii. When considering an appeal requesting a reversal or modification of an administrative decision the board shall make written findings as to the following:
  - A. Was the administrative decision erroneous?;
  - B. If the answer to the question above is the affirmative, the Board shall state the grounds for such finding and state the Board's determination as to what the correct decision should have been.
- iv. To authorize a variance to the application of regulation to a property the Board must make written findings affirming the following:
  - A. The variance is not contrary to contrary to the public interest; and,
  - B. The variance is consistent with the spirit of the zoning ordinance; and
  - C. By authorizing the variance substantial justice shall be done; and
  - D. Due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship. In order to find unnecessary hardship, the Board must determine the following:
    - 1. The hardship is in no way the result of the applicant's own actions; and
    - 2. Special conditions exist of restricted area, topography or physical features that are peculiar to the subject property and are not applicable to other properties in the same zoning district; and
    - 3. the application of the regulations to the subject parcel deprives the applicant of rights commonly enjoyed by other properties in the same zoning district that are in compliance with the same provisions.



These Rules of Procedure are adopted by the Burnet Zoning Board of Adjustment this  
\_\_\_ day of \_\_\_\_\_, 2020

BURNET ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
INSERT NAME, Chairperson

ATTEST

\_\_\_\_\_  
Kelly Dix, City Secretary