



## 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 **Regular Meeting of the Zoning Board of Adjustments** of the City of Burnet, Texas will be held on **Wednesday, May 17, 2023, at 6:00 p.m.** at the City of Burnet's Council Chambers located at 2401 S Water St., 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 **July 11, 2022**.

**4. ACTION ITEMS:**

4.1) The Board of Adjustment of the City of Burnet, Texas shall discuss and consider action regarding a request for variance to the Zoning Code's building setback requirements as shown in City Code Chapter 118 - Chart One. The property subject to the variance request is located at: 616 Buchanan Drive, Burnet, Texas: L Kimbler

- a) Staff presentation of the variance request
- b) Applicant's presentation to the board
- c) Allow members from the public to speak for or against the variance request
- d) Board deliberations and action

**6. STAFF REPORTS:**

6.1) None

**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 May 12, 2023 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 12<sup>th</sup> day of May 2023,**

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Leslie Kimbler, Asst. City Secretary

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

This meeting site is wheelchair accessible. For disability access special needs call Leslie Kimbler, Assistant City Secretary, at 512-715-3215 at least forty-eight [48] hours prior to the meeting.



## ZONING BOARD OF ADJUSTMENT MINUTES

Notice is hereby given that the **Regular Meeting of the Zoning Board of Adjustments** of the City of Burnet, Texas will be held on Wednesday, **July 11, 2022**, at **5:15 p.m.** at the City of Burnet's Council Chambers located at 2401 S Water St., Burnet, Texas 78611 at which time the following subjects will be discussed, to-wit:

1) **CALL TO ORDER:** The meeting was called to order at 5:15PM.

2) **ROLL CALL:**

**Members Present:** Tommy Gaut, Calib Williams, Cesar Arreaza,  
Derek Fortin and Linda Freitag

**Members Absent:** Kim Winkler

**Guests:** Jason Davis

**Others Present:** Leslie Kimbler, Planning Manager

3) **ELECTION OF OFFICERS:**

**CHAIRMAN: Tommy Gaut**  
Unanimous vote

**VICE-CHAIR: Calib Williams**  
Unanimous vote

**SECRETARY: Herve Derek Fortin**  
Unanimous vote

4) **CONSENT AGENDA:**

Minutes of the Regular Meeting held November 15, 2021.

Motion to Approve Consent Agenda:	Derek Fortin
Second:	Cesar Arreaza
Motion Approved:	6 in Favor/ 0 opposition

5) **ACTION ITEMS:**

5.1) The Board of Adjustment of the City of Burnet, Texas shall discuss and consider action regarding a request for variance to the Zoning Code's parking requirements as shown in City Code Chapter 118 chart three offices. The

property subject to the variance request is located at: 203, 205, and 207 South Water., Burnet, Texas: L Kimbler

- a) Staff presentation of the variance request
- b) Applicant's presentation to the board
- c) Allow members from the public to speak for or against the variance request
- d) Board deliberations and action

Planning Manager, Leslie Kimbler, gave staff's presentation on the request for variance.

Motion to Approve request for variance: Cesar Arreaza  
Second: Calib Williams  
Motion Approved: 6 in favor/0 in opposition

5.2) The Board of Adjustment of the City of Burnet, Texas 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 "C-1". The property subject to the variance request is located at: 205 S Vanderveer St., Burnet, Texas: L Kimbler

- a) Staff presentation of the variance request
- b) Applicant's presentation to the board
- c) Allow members from the public to speak for or against the variance request
- d) Board deliberations and action

Planning Manager, Leslie Kimbler, gave staff's presentation on the request for variance.

Applicant, Jason Davis, spoke to the board in support of his request.

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

**5) STAFF REPORTS:**

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

**7) ADJOURN:**

There being no further business, Chair, Tommy Gaut adjourned the meeting at 5:42PM.

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Tommy Gaut, Chair  
City of Burnet Zoning Board of Adjustment

**Attest:**

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Derek Fortin, Secretary



## Development Services

### ITEM 4.1

Leslie Kimbler  
Planning Manager  
512-715-3215  
lkimbler@cityofburnet.com

## Agenda Item Brief

**Meeting Date:** May 17, 2023

**Action Item:** The Board of Adjustment of the City of Burnet, Texas shall discuss and consider action regarding a request for variance to the Zoning Code's building setback requirements as shown in City Code Chapter 118 - Chart One. The property subject to the variance request is located at: 616 Buchanan Drive, Burnet, Texas: L Kimbler

**Background:** The subject property (Exhibit A) is zoned Light Commercial – District “C-1”; the site previously operated as a bar-be-que restaurant known as Bar-B-Q Shak. According to the Burnet County Central Appraisal District, the building was built in 1940, prior to the City adopting any zoning codes.

Several years ago, TxDOT widened State Highway 29 through the City of Burnet. This negatively impacted several businesses that front along the highway by minimizing their front setbacks and, in some cases, reducing the number of parking on each of the properties.

The City of Burnet's Code of Ordinances, Sect. 118-20 Chart One states properties zoned as Light Commercial – District “C-1” are required to have a 50 foot front setback and a 15 foot rear setback. Currently, this building sits 20 feet from the back of the highway curb but abuts the TxDOT rights-of-way. The building is also less than 10 feet from the rear property line. The applicant is asking to reduce the setback to Zero feet in the front of the building and Eight feet to the rear of the building (Exhibit B).

The owner has entered into a new lease agreement with new tenants who plan to continue the use of the building as another bar-b-que restaurant. All though the property has previously operated as the same use, Sect. 118-66 “Commercial and Industrial Nonconforming Uses” any legal nonconforming use that is discontinued or abandoned or ceases for a period of 90 days shall terminate, and thereafter shall comply with all applicable zoning regulations.” Due to the use of the previous restaurant ceasing for over a period of 90 days, the applicants must seek approval of the setback variance in order to comply with zoning regulations and therefore be able to operate the existing structure once again.

**Information:** As discussed under the staff analysis, the Zoning Board of Adjustment may authorize a variance to specified provisions of the zoning code if at least four members 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:**

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. At the time the building was built, the city had not adopted the current zoning ordinance; therefore, allowing the building to be built with much smaller front and rear setbacks. Thus, the literal enforcement of the ordinance would prohibit the use of the building as it currently sits creating an unnecessary hardship.

- Is the variance contrary to the public's interest?

No. By approving the variance, this would allow the building to continue to be utilized and provide a public service to members of the community.

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

Yes. All other requirements of the zoning ordinance shall be complied with and allows the structure to continue to be utilized ensuring substantial justice is done.

**Recommendation:**

Staff recommends the board adopt the proposed order approving a variance to the Light Commercial – District “C-1” setback requirements to allow for a Zero-foot front setback and an Eight-foot rear setback for the existing structure currently utilized as the main restaurant facility; such variance shall cease upon destruction or demolition of said structure.

**Exhibit "A"**  
**Subject Property**



## Exhibit "B" Applicant's Request

City of Burnet Development Services


4/24/2023

To whom it may concern:

Please consider my zoning variance application for the property at 616 Buchanan Drive Burnet Texas 78611. I am asking for a variance to Sec. 118-66(b) for the setback of the building setback to be 0 feet, 8 feet for the rear, the side set backs are already at or more than required. This building and property will be used for the same purpose as it has been for the last several decades, so it is not contrary to the public interest. The zoning ordinance was imposed in 2012 after the building was established as a restaurant so the property placement precedes the rule.

Because of the age of this building and size of the property it is unrealistic to propose moving of the building so it would be impossible to correct the placement of the building to make it fall into the zoning setback guidelines. There is only 25 feet on the West side of the property from the state right of way to the back of the property so front set back of 50 feet could not happen. The variance is necessary for the certificate of occupancy application to be considered so that the building can once again be open to the public. Thank you for your consideration to this matter, please reach out if there is any further questions or information needed. Contact information below.

Thank you,



James Rudel Jr.

(281)507-3858

[jmrjr2@gmail.com](mailto:jmrjr2@gmail.com)

2615 Wembley Way

Rosenberg Texas 77471

**ORDER NO. ZBA2023-01**  
**CITY OF BURNET ZONING BOARD OF ADJUSTMENT**

**Date:** May 17, 2023

**Property legal description:** ABS A0405 John Hamilton, Tract  
162, .325 acres

**Property physical address:** 616 Buchanan Drive

**Owner:** James Rudel, Jr.  
2615 Wembley Way  
Rosenberg, TX 77471

**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 building setback requirements 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 located along South Highway 281 and was developed prior to the City adopting zoning codes; and
- 2) TxDOT has widened the highway which reduced the front setbacks of properties that abut the highway; and
- 3) The City Code requirements for Light Commercial – District “C-1” building setbacks is 50 ft in the front and 15 ft in the rear.

**B. Conclusions of law:**

- 1) The current zoning ordinance is more stringent than any regulations in place at the time the building was built allowing the building to be built with smaller setbacks. The literal enforcement of the zoning ordinance setback requirements in this case would result in an unnecessary hardship.
- 2) Authorizing the variance would allow the building to continue to be utilized and serve members of the community; therefore, a variance to the setback requirements is not contrary to the public's 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 Light Commercial – District “C-1” setback requirements be authorized to allow for a Zero-foot front setback and an Eight-foot rear setback for the existing structure currently utilized as the main restaurant facility; such variance shall cease upon destruction or demolition of said structure.

Burnet Zoning Board of Adjustment

By: \_\_\_\_\_  
Chairperson

Attest:

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