



**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 **Thursday, March 28, 2024, at 2:30 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 **May 17, 2023**.

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: 600 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

4.2) 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 site development regulations for property zoned District "C-1" as shown in City Code Chapter 118-4(c)(2). The property subject to the variance request is located at: 5388 South US Hwy 281, 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 March 25, 2024 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 25th day of March 2024,

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, **May 17, 2023**, at **6:00 p.m.** at the City of Burnet's Council Chambers located at 2401 S Water Street, 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 6:00PM by Chair, Tommy Gaut

2) **ROLL CALL:**

Members Present: Tommy Gaut, Kim Winkler, and Linda Freitag

Members Absent: Calib Williams and Derek Fortin

Guests: James Rudel, Aubrey & Amy Hart, Robert Payne, Clint Collier

Others Present: Carly Pearson, Director of Public Works and Development Services
Leslie Kimbler, Planning Manager

3) **CONSENT AGENDA:**

Minutes of the Regular Meeting held July 11, 2022.

There being no objections, Chairman Tommy Gaut approved the minutes as presented.

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

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

Property owner, James Rudel, spoke in favor of his request for the variance stating he was willing to do whatever necessary to bring the property into compliance and feels the variance is necessary because the building cannot be relocated.

Motion to Approve request for variance: Tommy Gaut
Second: Linda Frietag
Motion Approved: 3 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 6:16PM.

Tommy Gaut, Chair
City of Burnet Zoning Board of Adjustment

Attest:

Derek Fortin, Secretary



Development Services

ITEM 4.1

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

Agenda Item Brief

Meeting Date: March 28, 2024

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: 600 Buchanan Drive, Burnet, Texas: L Kimbler

Background: The subject property (Exhibit A) is zoned Medium Commercial – District "C-2"; in the past, the site has operated as a gas station and, most recently, as a drive-thru beverage barn. According to survey provided by the applicant (Exhibit B), the property was platted in 2012; at this time, the property was platted with a 40-foot setback which meet the minimum requirements of the code. In 2020, the City of Burnet amended the zoning setbacks for all commercial properties. The City of Burnet's Code of Ordinances, Sect. 118-20 Chart One states properties zoned as Medium Commercial – District "C-2" are required to have a 50-foot front setback. According to the survey, the building sits 43.6 feet from the property line.

The building is currently vacant. Sect. 118-66 "Commercial and Industrial Nonconforming Uses" states: "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 tenants 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: The applicant has requested a variance to Section 118-20 Chart One for the front yard setback to be reduced to 43.6 feet to ensure the current buildings on the property may continue to exist (Exhibit C).

The Zoning Board of Adjustments 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 regulations.

Section 211.009 of the Texas Local Government Code requires a concurrence 75 percent of the members (4 members) of the Zoning Board of Adjustment is required to authorize a variance from the terms of a zoning ordinance.

Staff Analysis: By applying the statutory findings that the board must make to authorize a variance, it is staff's opinion that the applicant has met the burden of proof based on the information provided. The applicant provided evidence that the building complied prior to the zoning ordinance amendment which changed the front setback to 50-feet. The literal enforcement of the ordinance would result in unnecessary hardship that were in no way the result of the applicant's own actions; additionally, the Board has approved similar variances for previous properties in similar situations. Staff is of the opinion that this is not contrary to the public interest, is not contrary to the spirit of the zoning ordinance and is necessary for substantial justice to be done.

Exhibit "A"
Subject Property

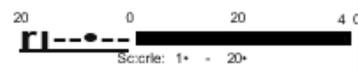


Exhibit "B" Applicant's Survey

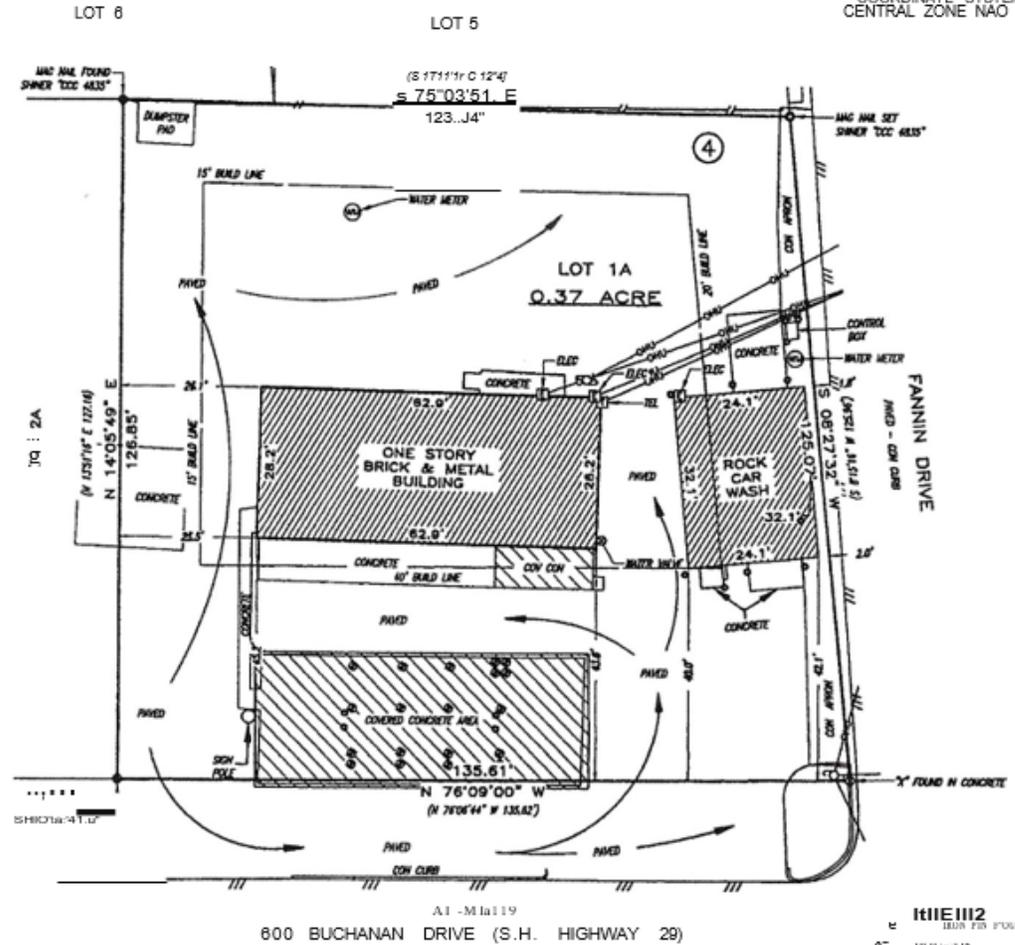
LOT 1-A AMENDED PLAT OF LOTS 1 AND 2 AND PART OF LOTS 5 AND 8 BLOCK HAMILTON CREEK ADDITION, CITY OF BURNET, BURNET COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED AS DOCUMENT NO. 20120363, BURNET COUNTY, TEXAS.

DRAWN: J. Fou
 E.C. 008
 PAGE 1 OF 1

- 1. Restrictive Covenants Volume 97, Page 348, Volume 101, Page 78 and Volume 104, Page 635, Deed Records, and Clerk's File No. 201205363, Official Public Records of Burnet County, Texas.
- 10a. Easement and right of way granted to Texas Power and Light Co., recorded in Volume 3, Page 283, Deed Records of Burnet County, Texas.
- 10c. Easement set out in Volume 140, Page 325, Deed Records of Burnet County, Texas. (unable to determine location)
- 10d. Electric transmission and distribution line easement and right of way granted to Lower Colorado River Authority, recorded in Volume 4, Page 54, Miscellaneous Deed Records of Burnet County, Texas.
- 10f. Building setbacks shown on plat recorded under Clerk's File No. 201205363, Official Public Records of Burnet County, Texas. (shown)



BEARINGS BASED ON
 TEXAS STATE PLANE
 COORDINATE SYSTEM
 CENTRAL ZONE NAD 83,



600 BUCHANAN DRIVE (S.H. HIGHWAY 29)

- 1. ILLUSTRATION
- 2. ILLUSTRATION
- 3. ILLUSTRATION
- 4. ILLUSTRATION
- 5. ILLUSTRATION
- 6. ILLUSTRATION
- 7. ILLUSTRATION
- 8. ILLUSTRATION
- 9. ILLUSTRATION
- 10. ILLUSTRATION

THIS AREA IS SHOWN NOT TO BE IN A FLOOD ZONE PER THE FLOOD INSURANCE RATE MAP... (COB&G DATE: 0 NOV 2010) ... (NOV 2011); HOWEVER AT PRESENT TIME, NO INUNDATION, DRAINAGE OR FLOOD STUDIES YET BEEN CONDUCTED AND THE INFORMATION IS BASED SOLELY ON SAID MAP. THE SUBMITTER DOES NOT ASSUME RESPONSIBILITY AS TO ANY INFORMATION PROVIDED BY SAID MAP. THIS STATEMENT DOES NOT IMPLY THAT THIS PROFESSIONAL SURVEYOR HAS CONDUCTED A FLOOD STUDY OR FLOOD ZONE DETERMINATION.

STATE OF TEXAS
 COUNTY OF LAMPASAS
 I, CLYDE C. CASTLEBERRY, JR., FOR TRIPLE C SURVEYING CO., HAVE THIS DATE CAUSED TO BE PERFORMED AN ON-THE-GROUND SURVEY UNDER MY SUPERVISION OF THE FOREGOING PLATTED TRACT OF LAND AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THERE ARE NO DISCREPANCIES, CONFLICTS, SHORTAGES OF AREA, ENCROACHMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY EXCEPT AS SHOWN HEREON.



TRIPLE C SURVEYING Co.
 P.O. Box 144 - Lampasas, Texas 78645
 Phone: 817-531-1111
 www.triple-c-surveying.com Firm No. 1019391e

Witness my hand and seal this 8th day of January, 2021

Exhibit "C" Applicant's Request

CARLOS A. HERNANDEZ - APPLICANT for OWNER
HDZ DESIGN/BUILD, LLC
174 S. GUADALUPE ST., STE. 104
SAN MARCOS, TX. 78666
(512) 214-4750
hdzbuilders2020@gmail.com

DECEMBER 12, 2023

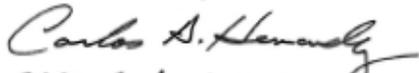
SUBJECT: VARIANCE # PZ-APP-2806

TO: BURNET PLANNING & ZONING BOA

DEAR LADIES & GENTLEMEN,

ON BEHALF OF MY CLIENT, MUBASHIR ANWAR, WE
SUBMIT THAT WHEN THE FRONT BUILDING SETBACK
LINE WAS AMENDED FROM 40' TO 50', THE MAIN
BUILDING ON THE PROPERTY (THE CONVENIENCE
STORE) ENDED UP ENCRDACHING INTO THE
SETBACK LINE. HE REQUEST THAT PLANNING
AND ZONING COMMISSION ALLOW THE EXISTING
STRUCTURES ON THE SUBJECT PROPERTY REMAIN
AS IS WITHOUT HAVING TO DEMOLISH THE PARTS OF STRUCTURES
THAT ARE NOW ENCRDACHING BECAUSE OF THE
AMENDED FRONT SETBACK LINES. THANK YOU
FOR YOUR TIME AND CONSIDERATION GIVEN TO
THIS REQUEST

REGARDS,


CARLOS A. HERNANDEZ
HDZ DESIGN/BUILD, LLC

IN RE: 600 Buchanan Drive,
Burnet, Texas

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§
§
§
§

CITY OF BURNET
COUNTY OF BURNET
STATE OF TEXAS

ZONING BOARD OF ADJUSTMENT

ORDER

On March 28, 2024, the Zoning Board of Adjustment of the City of Burnet, Texas acting pursuant to authority vested therein by Section 118-74 of the City’s Code of Ordinances and Chapter 211 Subchapter A of the Texas Local Government Code, held a public hearing with respect to an application for variance from certain requirements of the City of Burnet Zoning Code codified as Chapter 118 of the City’s Code of Ordinance.

A quorum of the Board of Adjustment was present at the public hearing and received testimony and evidence from **APPLICANT** on behalf of the applicant and Leslie Kimbler, City Planner, on behalf of the City. At the conclusion of the public hearing the Zoning Board of Adjustment deliberated and made its determination on the merits of the application. By this Order the Zoning Board of Adjustment makes findings of facts and conclusions of law as follows:

FINDINGS OF FACTS

- (a) The subject property is located at 600 Buchanan Drive, Burnet, Texas.
- (b) The building is currently vacant.
- (c) The subject property is classified as Medium Commercial – District “C-2”.
- (d) Section 118-20 Chart One of the City’s Code of Ordinances provides setback requirements for all properties in the City of Burnet.

(e) The applicant seeks a variance to the 118-20 Chart One front yard setback requirement of 50-feet.

(f) The Applicant proposes a front yard setback of 43.6-feet.

CONCLUSION OF LAW

(a) Authorizing the variance (is) (is not) contrary to the public interest; and,

(b) Authorizing the variance (is) (is not) contrary to the spirit of the zoning ordinance;
and

(c) Authorizing the variance (is) (is not) necessary for substantial justice to be done;
and

(d) Authorizing the variance (is) (is not) 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) (is not) in no way the result of the applicant's own actions;
and

(2) Special conditions (do) (do not) 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 (does) (does not) deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that are in compliance with the same regulations.

Section 211.009 of the Texas Local Government Code requires a concurrence 75 percent of the members of the Zoning Board of Adjustment is required to authorize a variance from the terms of a zoning ordinance. As to this application the vote to authorize the requested variance to 118-

20 Chart One of the City Code of Ordinances allowing the applicant to utilize a gravel driveway was:

Board Member	In favor	Opposed
Tommy Gaut		
Calib Williams		
Kim Winkler		
Derek Fortin		
Vacant		

As 75 percent, or more, of the members of the Zoning Board of Adjustment are in favor of authorizing the variance from the terms of the zoning ordinance specified in the application, it is hereby **Ordered** the variance **is authorized** for a 43.6-foot front yard setback; and the conclusion of law stating that the variance **meets the requirements** of Section 118-74(e)(iii) are adopted and made part of this Order of the Board of Adjustment.

As less than 75 percent, of the members of the Zoning Board of Adjustment are in favor of authorizing from the terms of the zoning ordinance specified in the application, it is hereby **Ordered** the variance **is not authorized** and the conclusion of law stating that the variance **does not meets the requirements** of Section 118-74(e)(iii) are adopted and made part of this Order of the Board of Adjustment.

SIGNED AND ORDERED on this the 28th day of March 2024.

CHAIRPERSON

ATTEST:

City Secretary



Development Services

ITEM 4.2

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

Agenda Item Brief

Meeting Date: March 28, 2024

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 site development regulations for property zoned District "C-1" as shown in City Code Chapter 118-4(c)(2). The property subject to the variance request is located at: 5388 South US Hwy 281, Burnet, Texas: L Kimbler

Background: The subject property (Exhibit A) was a single-family residential structure built in 1996, according to the Burnet Central Appraisal District records. In 2002, the property was annexed into the city limits. In 2014, the property was zoned for Light Commercial – District "C-1". Per Section 118-65(c) nonconforming uses may be continued if it remains otherwise lawful. The property continued to be utilized as a nonconforming residential use until 2022. At this time, the property was purchased by the current owner who has requested a Certificate of Occupancy for an educational facility for 50 or fewer children. Section 118-65(c)(2) states: "A nonconforming use shall terminate upon the use ceasing for 90 days or if the use is changed to another use."

At the time of development, the property was developed with a gravel driveway to the structure. Code of Ordinances Section 118-45(c) provides site development regulations; item 2 states: Paved sidewalks, driveways, and parking areas. This means that properties zoned District "C-1" are required to have paved sidewalks, driveways, and parking areas.

It should be noted that, in addition to the zoning code, the 2015 International Fire Code Section D102 REQUIRED ACCESS D102.1 Access and loading, states: "Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds." Regardless of the action on the zoning variance today, the property must still be compliant with the fire code.

Information:

The applicant has requested a variance to Section 118-45(c)(2) for the requirement of the paved driveways (Exhibit B).

The Zoning Board of Adjustments 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 regulations.

Section 211.009 of the Texas Local Government Code requires a concurrence 75 percent of the members (4 members) of the Zoning Board of Adjustment is required to authorize a variance from the terms of a zoning ordinance.

Staff Analysis:

By applying the statutory findings that the board must make to authorize a variance, it is staff's opinion that the applicant has not provided sufficient evidence to authorize a variance to the zoning regulations.

Exhibit "A"
Subject Property



Exhibit "B"
Applicant's Request

City Council of Burnet
1001 Buchanan Drive
Burnet, Texas 78611

Dear Members of the Commission and the City Council,

I am writing to formally request a variance from the zoning code requirement to install a paved concrete or asphalt driveway for the fire lane at the development site located at 5388 S US 281, Burnet, Texas. This request aligns with the City of Burnet's Code of Ordinances Section 118-74 and is supported by a professional engineer's letter confirming our compliance with the fire code.

Our proposed compacted aggregate driveway fulfills the fire code's "all-weather driving capabilities" and load-bearing requirements for fire apparatus access, as endorsed by a qualified civil engineer. Thus, we seek a variance solely from the zoning code requirement for a paved surface, not from any life safety requirements under the fire code.

(1) Public Safety, Health, and Welfare:

Granting the variance will not be detrimental to public safety, health, or welfare. The proposed compacted aggregate driveway meets the necessary safety standards and is in line with the previously accepted practices within the city, ensuring the orderly development of the property without compromising safety.

(2) Unique Conditions:

The conditions upon which the request for a variance is based are unique to the property for which the variance is sought. The topographical conditions and historical agreements made with city officials indicate that the strict letter of the regulations would create a particular hardship for this specific property, distinguishing it from a mere inconvenience.

(3) Property Owner's Hardship:

The particular physical surroundings, shape, and topographical conditions of the property at 5388 S US 281 present a unique hardship in adhering to the strict paving regulations. The change in the city's regulatory interpretation post-purchase has led to an unforeseen burden. Implementing a paved driveway would significantly increase the impervious cover, triggering additional water retention and runoff management

requirements. This situation transcends a simple financial impact, encompassing broader environmental and regulatory challenges, thus creating a significant hardship for the property owner in terms of environmental compliance and practical land use.

(4) Compliance with Zoning Ordinances:

The variance will not vary the provisions of the zoning, land use, or subdivision ordinances. It aligns with the city's own precedents and does not conflict with the comprehensive plan or any other adopted plans or ordinances of the city.

(5) Alternative Design Achieving the Same Result:

An alternate design, specifically the proposed compacted aggregate driveway, achieves the same result and intent as the standards and regulations prescribed in the city's ordinances. It ensures all-weather driving capabilities, safety, and accessibility, fulfilling the purpose of the regulations.

Argument 1: Confirmation of Compacted Aggregate as Acceptable Pavement

During the forced pre-development meeting, it was affirmed by the city staff, particularly City Engineer Eric Balaj, that compacted aggregate was an acceptable form of pavement according to the city standards. It was explicitly discussed and affirmed at that time that the only required all-weather surface would be the ADA parking space. This understanding was reached collectively and was in alignment with the city's regulations and policies. The assurance of compacted aggregate as an acceptable form of pavement should serve as a valid basis for granting a variance from the requirement of a paved concrete or asphalt driveway for the fire lane.

Argument 2: Verbal Confirmation and Financial Hardship

On November 21, 2022 at 9:30 am, during the due diligence phase of the project and before the property purchase, I met with the then Fire Marshal, John Erskine, for a pre construction walkthrough. During this meeting, Mr. Erskine provided verbal instructions, which I diligently noted. He specifically outlined the rules, requirements, and standards related to health, safety, and building codes for the project. It is important to note that, in the absence of a staffed building official in the City of Burnet, Mr. Erskine acted in this capacity, a role he had performed on numerous occasions for the city and on other projects within the city.

During this crucial meeting, Mr. Erskine informed me that a compacted TXDOT road base material was not only acceptable but also met the city's requirements for the commercial driveway and fire lane. Relying on the information provided and the determination made during this meeting, I proceeded to create a comprehensive renovation plan and budget for the project.

The recent requirement imposed by the city to "pave" the driveway represents a significant deviation from the initial guidance provided by Mr. Erskine. This sudden change places an unjust and unexpected financial burden on the project, with an estimated additional cost of \$60,000 or more. This unforeseen expense creates a severe financial hardship, jeopardizing the viability of the project and my ability to fulfill the development's potential as planned.

Argument 3: Interpretation of Fire Code and Professional Engineer Approval

Following the pre-development meeting, a site visit was conducted by the present Fire Marshal, Johnny Caraway. Subsequently, Fire Marshal Caraway provided city staff with Fire Code "503.2.3 Surface," specifying that fire apparatus access roads must be designed and maintained to support the loads of fire apparatus and shall provide all-weather driving capabilities. In response, city staff interpreted this code, differentiating between "all weather driving conditions" and "all weather driving surface." City staff concluded that the city's definition of an "all weather surface" was limited to materials such as concrete, asphalt, paving stones, or similar solid impervious surfaces.

During our discussions with Fire Marshal Caraway and City Manager David Vaughn, it was collaboratively determined that a letter from a professional civil engineer, endorsing the use of compacted aggregate for the driveway, would meet the International Fire Code's performance-based requirements. The International Fire Code is inherently performance-oriented, allowing for alternative solutions that achieve the same safety objectives. The engineer's endorsement provides the necessary performance acknowledgement for the material we are utilizing, confirming its capability to support the load of fire apparatus and maintain all-weather driving conditions. This solution aligns with the Fire Code's intent and the city staff's interpretation, justifying the variance and offering a cost-effective, environmentally responsible alternative.

Argument 4: Precedent of Gravel Driveways and Fire Lanes within the City

The City of Burnet has established a precedent by permitting gravel driveways and fire lanes within its incorporated limits. Numerous businesses within the city have been

granted approvals for gravel surfaces without the imposition of a paved concrete or asphalt requirement. Below is a comprehensive list of businesses along with their addresses and the absence of fire lanes, demonstrating the city's consistent practice:

Gibraltar Global

Address: 1208 Houston Clinton Drive

- No Fire Lane
- Gravel Side parking lot
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

Cold Copper Commodities

Address: 1100 S Water St.

- Change of Occupancy 2023
- All gravel drive, parking, access
- No Fire Lane

J&B Pavelka

Address: 1103 S Water St.

- Change of Occupancy 2023
- All gravel drive, parking, access
- No Fire Lane

Burnet County Maintenance

Address: 601 Coke St.

- New Build 2023
- No Fire Lane
- Access less than 20' wide
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

Loftis Auto

Address: 200 S. Coke St.

- Change of Use 2023
- No Fire Lane

Hill County Hay & Feed

Address: 1801 E Polk St.

- Gravel Drive
- No Fire Lane

Premium Landscape Supply

Address: 1799 E Polk St.

- No Fire Lane
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

Burnet County Annex

Address: 120 CR 250

- New Build 2023
- No Fire Lane

Warehouse BBQ

Address: 305 N Water St.

- Change of Use 2022
- No Fire Lane

Eric's Plumbing

Address: 201 9th St.

- No Fire Lane
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

Premier Portable

Address: 1206 Buchanan Dr.

- Change of Occupancy
- No Fire Lane
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

Torres Metal Buildings

Address: 2337 W. Highway 29

- Change of Use 2022
- No ADA parking space
- No Fire Lane
- Gravel Yard Access to the rear of the building, loading dock, equipment bays

This comprehensive list underscores the acceptance of gravel surfaces for various commercial properties, including those undergoing changes of occupancy, new builds, and changes of use. It reflects a consistent city practice of allowing gravel driveways and fire lanes, supporting our request for a variance from the paved concrete or asphalt requirement.

Argument 5: The Unique Position of the Property and Financial Feasibility

This property stands as an existing structure with well-established access, and our intention is to utilize the property in its current condition with minimal improvements necessary to meet health and safety standards. It's crucial to understand that this property was purchased as an investment, with the future plan to sell it to a developer once city services are extended to this location. At present, the lack of developed city services makes it financially unfeasible to meet all the new standards and design requirements.

The unique position of this property further complicates the situation. Originally built as a residential property and later zoned for commercial use, it finds itself in a distinctive category. Situated as the gateway to the city of Burnet, its prime location naturally supports upscale developments such as office parks, professional services, or retail spaces. However, the absence of city utilities hampers our ability to fully realize these development possibilities.

Our primary goal at this moment is to generate revenue sufficient to maintain the property and cover property taxes. While we fully appreciate the city staff's desire to uphold a certain standard, especially concerning paved fire lanes in new developments, we urge for consideration of existing properties like ours. Creating a balance between the city's standards and the financial realities of existing property owners would not only be fair but also encourage responsible and sustainable property development in Burnet.

Argument 6: Precedent of Approval for Non-Paved Driveways

In the fall of 2021, the City of Burnet staff approved the use of crushed stone for parking and

driveway surfaces in project 2021-PZ-143. This decision underscores the city's flexibility in material choice for development projects. Importantly, no revisions to the city's Code of Ordinances concerning paved driveways have been made post this approval. This precedent is significant in demonstrating the city's acceptance of alternative materials that align with its developmental goals without compromising public safety or welfare. Hence, we request a similar variance for our project, emphasizing that our proposal is consistent with past city approvals and adheres to current regulations.

Argument 7: Variability in City Staff's Interpretation and Application of Regulations

The administration and interpretation of the City of Burnet's regulations have exhibited notable variability, creating a challenging environment for development projects. This inconsistency is particularly evident in the shifting stance on acceptable materials and standards for driveways and fire lanes. Our project, initially aligned with previously understood and communicated guidelines, now faces a significant shift in requirements due to the evolving interpretation of these regulations by city staff. This change not only impacts our project's financial feasibility but also illustrates the difficulties in planning and executing development projects under fluctuating regulatory interpretations. The need for a variance in our case is underscored by this unpredictability, where our reliance on past approvals and guidance from city officials has led to unforeseen challenges, threatening the viability of our development. This situation highlights the importance of a more consistent and transparent approach in the application of city regulations to support sustainable development and investment in the community.

In light of the evidence presented and the specific facts surrounding this case, I respectfully request the City Council's approval for the variance, allowing the use of compacted aggregate as a suitable alternative to the paved concrete or asphalt driveway requirement for the fire lane at 5388 S US 281, Burnet, Texas.

The unique circumstances of this property, coupled with the precedence set by similar cases within the city, support the issuance of this variance. Your consideration of these points is essential in ensuring substantial justice and securing the public interest while recognizing the property owner's rights and the city's own established practices.

I am available to provide any additional information or address any questions you may have. Thank you for your time and consideration.

David Jamar
Chief Executive Steward
J Bar Enterprises, LLC
Pinky and the Brain, LLC
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830.385.2643

IN RE: 5388 South US Hwy 281,
Burnet, Texas

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CITY OF BURNET
COUNTY OF BURNET
STATE OF TEXAS

ZONING BOARD OF ADJUSTMENT

ORDER

On March 28, 2024, the Zoning Board of Adjustment of the City of Burnet, Texas acting pursuant to authority vested therein by Section 118-74 of the City’s Code of Ordinances and Chapter 211 Subchapter A of the Texas Local Government Code, held a public hearing with respect to an application for variance from certain requirements of the City of Burnet Zoning Code codified as Chapter 118 of the City’s Code of Ordinance.

A quorum of the Board of Adjustment was present at the public hearing and received testimony and evidence from David Jamar on behalf of the applicant and Leslie Kimbler, City Planner, on behalf of the City. At the conclusion of the public hearing the Zoning Board of Adjustment deliberated and made its determination on the merits of the application. By this Order the Zoning Board of Adjustment makes findings of facts and conclusions of law as follows:

FINDINGS OF FACTS

- (a) The subject property is located at 5388 South US Hwy 281, Burnet, Texas.
- (b) The applicant is seeking a Certificate of Occupancy for the structure located on the subject property to be used as an educational facility for 50 or fewer children.
- (c) The subject property is classified as Light Commercial – District “C-1”.

(d) Section 118-45(c) of the City's Code of Ordinances, provides site development regulations as follows:

(1) Development of any use permitted in the "C-1" district shall conform to the site development regulations established for that district.

(2) Paved sidewalks, driveways and parking areas are required.

(3) Screening of loading and storage facilities is required.

(e) The applicant seeks a variance to the 118-45(c) (2) that the subject property's driveway be paved.

(f) The Applicant proposes to utilize a gravel driveway.

CONCLUSION OF LAW

(a) Authorizing the variance (is) (is not) contrary to the public interest; and,

(b) Authorizing the variance (is) (is not) contrary to the spirit of the zoning ordinance; and

(c) Authorizing the variance (is) (is not) necessary for substantial justice to be done; and

(d) Authorizing the variance (is) (is not) 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) (is not) in no way the result of the applicant's own actions; and

(2) Special conditions (do) (do not) 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 (does) (does not) deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that are in compliance with the same regulations.

Section 211.009 of the Texas Local Government Code requires a concurrence 75 percent of the members of the Zoning Board of Adjustment is required to authorize a variance from the terms of a zoning ordinance. As to this application the vote to authorize the requested variance to 118-45(c) of the City Code of Ordinances allowing the applicant to utilize a gravel driveway was:

Board Member	In favor	Opposed
Tommy Gaut		
Calib Williams		
Kim Winkler		
Derek Fortin		
Vacant		

As 75 percent, or more, of the members of the Zoning Board of Adjustment are in favor of authorizing the variance from the terms of the zoning ordinance specified in the application, it is hereby **Ordered** the variance **is authorized** and the applicant may utilize a gravel driveway; and the conclusion of law stating that the variance **meets the requirements** of Section 118-74(e)(iii) are adopted and made part of this Order of the Board of Adjustment.

As less than 75 percent, of the members of the Zoning Board of Adjustment are in favor of authorizing from the terms of the zoning ordinance specified in the application, it is hereby **Ordered** the variance **is not authorized** and the conclusion of law stating that the variance **does not meets the requirements** of Section 118-74(e)(iii) are adopted and made part of this Order of the Board of Adjustment.

SIGNED AND ORDERED on this the 28th day of March 2024.

CHAIRPERSON

ATTEST:

City Secretary