

City of Windcrest



AGENDA BOARD OF ADJUSTMENT MEETING October 16, 2019

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN

6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST BOARD OF ADJUSTMENT MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 16th DAY OF OCTOBER 2019, STARTING AT 6:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE BOARD OF ADJUSTMENT RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF OCTOBER 16, 2019, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY OCTOBER 17, 2019, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers is wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

- I. Call to Order**
- II. Roll Call**
- III. Pledge of Allegiance**
- IV. Citizens to be Heard.**
 - Citizens may address Board of Adjustment on topics not on the agenda for no more than three (3) minutes.
 - In addition to the foregoing, citizens shall also have the opportunity to address the Board of Adjustment during consideration of posted agenda items for no more than six (6) minutes.
 - A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.
- V. Items for Discussion and Action**
 - a) The Board of Adjustment Commission will review, discuss, and may take action on Board of Adjustments Applicants for Alternate Position A1.
 - b) The Board of Adjustment Commission will review, discuss, and may take action on Windcrest Code of Ordinances Chapter 103, Article III, Section 103-93 – “Fences”.
 - c) The Board of Adjustment Commission will review, discuss, and may take action on proposed Board of Adjustments Protocols and Procedures and provide a recommendation on adoption by ordinance of proposed Board of Adjustments Protocols and Procedures to the Windcrest City Council. .

VI. General Announcements & Future Agenda Items Requested

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

VII. Adjournment

The Board of Adjustment reserves the right to retire into executive session whenever it is considered necessary and legally justified under the Texas Government Code, Subchapter D, Sections 551.071 et. seq. including, but not limited to, consultation with attorney, real property, prospective gifts, personnel matters, exclusion of witness, security devices, and economic development matters.

It is anticipated that members of other city boards, commissions and committees may attend the meeting in numbers that may constitute a quorum of such other city boards, commissions and committees, so that notice is hereby given that the meeting is also a meeting of the other city boards, commissions and committees whose members are in attendance. The members of the other city boards, commissions and committees may participate in discussions which occur at the meeting, but no action will be taken by the other boards, commissions and committees whose members are in attendance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Board of Adjustment of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on October 16, 2019.

By:

Rachel C. Dominguez, City Secretary

**Application for
City Boards/Commissions/Committees**

PLEASE TYPE OR PRINT CLEARLY

NAME Deborah A. Dunlap

Personal Information

Home Address [REDACTED]

Telephone [REDACTED]

Fax: _____

E-mail: [REDACTED]

Windcrest Resident for 2 years

Occupational Information

Business Owner? Yes ☐ No ☒

Business Name: _____

Occupation: Retired - Special Ed Bus Driver

(If retired, please indicate former occupation)

Address: 128 LANE - ZION IL 60099

Telephone: _____

Fax: _____

E-mail: _____

Education (optional) _____

POSITION SOUGHT: (Please indicate choice with 1, 2 or 3) **(Choose no more than 3).**

Committees:

- ☐ Economic Development Corp. Board
☐ Parks and Recreation
☐ Ethics
☐ W.C.C.P.D

- ☐ Planning and Zoning Commission
☒ Board of Adjustment
☐ W.E.D.C.
☐ Other _____

If you currently serve on any other boards/commissions/committees, please list them here: NO

Please list any experience, qualifications or special interest that qualifies you to serve in the positions indicated:

Fundraising Chair - Windcrest Garden Club

Supervisory Experience - 5 years

Church Committees - 9 yrs.

Recognizing that Board and Commissions are often demanding on one's time and schedule, are you committed to attending the regularly scheduled meetings of the Board/Commission? Yes ☒ No ☐

How many hours can you commit to devoting to serve each month? Over

Mail or fax completed application to: City Secretary's Office, City of Windcrest, 8601 Midcrown Dr, Windcrest, TX 78239. Fax number 210-655-8776.

In compliance with Chapter 552, Government Code (Public Information Act), information provided on this application may be available to the public upon request.

Signature of Applicant Deborah A Dunlap

Date Sep 17, 2019

ARTICLE III. - FENCES

Sec. 103-93. - Definition.

As used in this article, the term "fence" means a permanent fence or wall constructed of chainlink metal, wood, brick, stone, or other similar material.

(Code 1986, § 22.101; Ord. No. 58F, 7-28-1971)

Sec. 103-94. - Permit required.

Applications for building permits for the alteration, repair, or reconstruction of permanently installed fences, when using the same material and placed in the same location, shall not be required. Applications for building permits required by this chapter for the erection, siting, and construction, of permanently installed new fences, or for the alteration, reconstruction, or enlargement of permanently installed existing fences, when using different material or when placed in a different location, shall contain the following:

- (1) A survey, drawn to scale, and in such form as may be prescribed by the city council, correctly showing the location and actual dimensions and location of the lot on which the fence is to be erected, sited, constructed, altered, reconstructed, or enlarged, the dimensions and location on the lot of the existing buildings;
- (2) Together with a true statement in writing, signed by the applicant that he will accept all responsibility and liability of any portion of the fence constructed on public property;
- (3) Survey pins shall be placed at the corners and angle points as set out in said survey; and
- (4) Furnishing such other information as said office may require in the enforcement of this article and this chapter.

(Code 1986, § 22.102; Ord. No. 58F, 7-28-1971; Ord. No. 58R, 5-13-1974; Ord. No. 208, 9-19-1988)

Sec. 103-95. - Dimensions (height regulations).

No fence shall be erected, sited, constructed, altered, reconstructed, or enlarged to an overall height of more than six feet except that this restriction shall not apply to privacy fences or walls separating or enclosing garden homes or similar units having a side line building setback of less than ten feet.

(Code 1986, § 22.103; Ord. No. 58F, 7-28-1971)

Secs. 103-96—103-118. - Reserved.

ORDINANCE NO. 2019-____(O)

AN ORDINANCE REPEALING SECTION 113, DIVISION 3, SECTIONS 113–68 THROUGH 113–78 TO REPLACE WITH A REVISED SECTIONS 113, DIVISION 3, SECTIONS 113–68 THROUGH 113–78 AND ADOPTING SECTIONS 113–79 113–80 TO INCORPORATE PROCEDURES ADOPTED BY THE WINDCREST BOARD OF ADJUSTMENT AND ENSURE COMPLIANCE WITH STATE LAW

WHEREAS, the Texas Legislature passed HB 2497 amending provisions of chapter 211 of the Texas Local Government Code applicable to the Board of Adjustment and relating rules and appeals to such board; and

WHEREAS, the Windcrest Board of Adjustment has approved procedures and rules for the administration of its functions; and

WHEREAS, such rules and procedures must now be approved by the Windcrest City Council; and

WHEREAS, Section 113 of the Windcrest Code of Ordinances establishing the Windcrest Board of Adjustment must be repealed and revised to incorporate state law changes and the rules and procedures applicable to the Windcrest Board of Adjustment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Section 113, Division 3, Sections 113–68 through 113–78 is repealed and replaced with a revised Section 113, Division 3, Sections 113–68 through 113–80 and is hereby adopted as follows:

DIVISION 3. - BOARD OF ADJUSTMENT

Sec. 113-68. – Definitions.

- (1) *The Board* in this division shall mean the Board of Adjustment of the City of Windcrest, which is a board established by the city council of the City of Windcrest pursuant to Subchapter A of Chapter 211 of the Texas Local Government Code and Article III, Section 3.03(7) of the City’s charter.
- (2) *City Secretary* shall mean the City Secretary of the City of Windcrest.
- (3) *Chair* shall mean the chairman of the Board of Adjustment.
- (4) *Officers of the Board* shall mean the Chair, Vice-Chair and Board secretary of the Board of Adjustment.
- (5) *Presiding Officer* shall mean the officer or Board member presiding over any meeting of the Board. By default, the Presiding Officer shall be the Chair.

(6) *Vice-Chair* shall mean the vice-chairman of the Board of Adjustment.

Sec. 113-69. - Establishment, Purpose, Organization, and Officers

(1) *Establishment*: A board of adjustment is hereby established pursuant to Section 9.02 of the Windcrest City Charter.

(2) *Purpose*: The Board's primary functions are to hear and decide:

- a. Requests for variances of regulations as authorized by law;
- b. Requests for special exceptions, where expressly authorized by the City Code; and
- c. Appeals of administrative decisions made in the enforcement and administration of City zoning regulations and decisions as authorized by law.

(3) *Organization*: Composition of the Board's membership and length of term are hereby established by City Charter. Each member shall be removable for cause by the city council upon written charges and after public hearing. Members of the city council shall not be appointed to said Board. The Board designates City Hall, located at 8601 Midcrown, Windcrest, Texas 78239, as its office and the City Secretary as its custodian of records. All records of the Board shall be filed with the City Secretary. The Board, through the assistance of the City Secretary, 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, which shall be stored in the Office of the City Secretary.

- a. The Board further designates the City Manager as its primary liaison with City administration.
- b. The Board designates the Chair of the Board as the primary officer responsible for communications on behalf of the Board and interaction with City administration.

(3) Officers

- a. The officers of the Board shall consist of a chair, vice-chair, and secretary as well as any other officers that are deemed necessary to the operation of the Board. Each officer position is for a term of one year. Elections for officer positions are to be held annually for officer positions, even if the positions were filled due to vacancy at a time prior to the annual election. Vacancies for officer positions shall be filled by an election from the Board membership by the Board.
- b. The election of officers shall occur by the Board membership by majority vote.
- c. The Chair shall serve as the Presiding Officer during all Board meetings at which the chair is present. Should the chair be unable or unwilling to serve at any particular time, the vice-chair shall be the presiding officer and shall

assume all duties of the chair during the time the chair is unable or unwilling to perform his/her duties.

- d. While not an officer of the Board, the City Attorney shall act as the Board's attorney by default. Should a conflict of interest arise, the City Attorney shall be recused from representing the Board for the matter which caused the conflict.

Sec. 113-70. Agenda, Meetings, and Procedures.

- (1) *Agenda.* Agenda items must be submitted in writing to the City Secretary by an authorized individual no later than forty-eight (48) hours prior to the required seventy-two (72) hour posting deadline for an agenda. This equates to a deadline of at least five (5) calendar days prior to a scheduled meeting.
- (2) *Board Members.* Any Board member can place an item on the agenda for a meeting which has already been scheduled. An item for the agenda must be submitted to the City Secretary in writing by the Board member within the required time period. Items may be submitted by electronic or paper form. The member seeking to add the item must include a clear description of the item, the member's name, and contact information of the member. Board members may place items only upon an agenda for a meeting which has already been called by the Chair. Board members cannot call special meetings by requesting agenda items. Only the Chair or City Manager may call a special meeting.
- (3) *City Staff.* The City Manager can place an item on an agenda by submitting the item to the City Secretary and copying the Chair. Such agenda items may be submitted by electronic or paper form. If the requested item will impact or involve multiple departments, those department heads may be consulted. A report must be attached with a clear description of the item and supporting documents.
- (4) *Citizens and Interested Parties.* Citizens and other interested parties are not permitted to place items on an agenda but may request items be placed by submitting an application for appeal, variance or special exception. Such application must be complete, submitted to the City Secretary, and a filing fee must be paid as listed in the City's policies or ordinances. The application must include a clear description of the action requested of the Board. In order for the request to be considered, the citizen or interested party must state their full name, phone number, and mailing address. If the applicant has an email address, such must also be provided in the application.
- (5) *Applications.* Once a request has been filed, applicants cannot directly contact any Board members regarding the application. Directly contacting Board members can be grounds for denial of the application in violation of these rules or may be penalized as authorized by City ordinance. Once an application is filed with the City Secretary, the City Secretary shall forward to the Chair and City Manager. Either the Chair or City Manager may place the application on an agenda of the Board. Either the Chair or City Manager may call a special meeting of the Board to hear an application.

- (6) *Meetings.* The board shall keep records of its examinations and other official actions, all of which shall be filed in the office of the City Secretary and shall be a public record. All cases to be heard by the board of adjustment shall always be heard by a minimum number of four members. The concurring vote of four members of the board shall be necessary to reverse any order requirement, decision, or determination of the city building permit officer, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.
- (7) *Procedures:* In general, the Board shall follow the below procedures. In the absence of an express procedure, the Presiding Officer is responsible for the orderly progression of any meeting. Meetings of the Board are held at the call of the Presiding Officer and at other times as determined by the Board. The Presiding Officer or acting presiding officer may administer oaths and compel the attendance of witnesses at any meeting.
- (8) *Call to Order.* Call the meeting to order.
- (9) *Roll Call.* Acknowledge the presence of members in the room for the purposes of quorum. However, for purposes of any cases before the Board seeking action, each case must be heard by at least four members of the Board.
- (10) *Citizens to be Heard.* If applicable.
- (11) *Business.* The Board shall hear any new or old business as designated by the Agenda and the Presiding Officer. It is within the Presiding Officer's discretion to allow presentations of agenda items by applicants before a motion is made.
- (12) *A Motion.* A motion must be made for each agenda item that is to be discussed. For example, "Motion to approve (or deny) [item as stated on the posted agenda]."
- (13) *Second to Motion.* A second to the motion must be made before discussion can occur on an agenda item. Seconding an item does not mean the member offering the second agrees with the motion. The second is an acknowledgement the motion should be discussed. If no second is made within a reasonable time of the motion as determined by the Presiding Officer, the motion will not be discussed.
- (14) *Discussion.* Members may discuss the motion on an agenda item once seconded. Discussion and deliberation are considered one-in-the-same for purposes of these rules.
- (15) *Call for Vote.* Once a motion has been made and seconded and discussion, if any, has been held, any member of the Board may call for a vote on the motion. The Presiding Officer shall restate the motion and call for a vote of the members on the motion. The Board members shall vote on the motion. Whether the motion passes or fails depends on the number of affirmative votes under state law and City ordinance.
- (16) *Adjournment.* Once no other business is present for a particular meeting, the Chair will adjourn the meeting and state the time for the record. No motion or second is necessary for adjournment. If business is still present from the agenda, any Board

member may still move to adjourn at any time, which would require a second and majority vote to pass.

Sec. 113-71. - Procedures applicable to Variances and Special Exceptions.

The Board shall meet as needed based on the proper submission of a request for a variance or special exception.

- (1) A person who seeks action or a decision from the Board must fill out the proper variance or special exception application and file it with the City Secretary's Office, as well as pay the appropriate filing fee.
- (2) An application is considered filed only if it is complete and the filing fee has been paid.
- (3) The Board may hear any application authorized by law within its jurisdiction. The Board's powers are limited pursuant to Chapter 113 of the Windcrest Code of Ordinances.
- (4) Upon hearing a request for a variance or special exception, the Board may grant the request, deny the request, grant-in-part and deny-in-part, and may place any reasonable restrictions or regulations upon any granted or partially granted requested which it is authorized by law to impose. The Board's authority to act upon an application shall be subject to federal, state, and local regulations.
- (5) Upon any decision of the Board regarding an application for variance or special exception, the Chair shall reduce the decision of the Board to writing and provide a copy to the applicant. A copy must also be placed in the Board's offices, by and through the Office of the City Secretary. Upon request by the Chair, the City Manager may assume the duty of reducing the decision to writing and providing all necessary copies to the appropriate persons. The individual facts considered under any decision are different per Board member. When a body, especially a governmental body, makes a decision based on a collective vote, each individual member may have their own reasons and facts supporting their vote. The Chair is not required to list the grounds or reason for any particular decision. The Chair is only required to reduce to writing the decision, based on the motion made at the meeting.

Sec. 113-72. - Appeals to the board.

- (1) Appeals from a decision made by an administrative official to the board of adjustment may be made by any person or by any officer, department or board of a municipality as stated in Section 211.010 of the Texas Local Government Code. Such appeal must be filed no later than the 20th day after the decision of the administrative official is made by filing a notice of appeal specifying the grounds thereof with the official from whom the appeal is taken and with the board of adjustment, in addition to paying the requisite filing fee as stated in the Building and Building Code section of the city's Master Fee Schedule. The filing fee must be paid at the time the notice is filed with the City Secretary. The fee shall be credited to the general fund of the City of Windcrest, Texas.

- (2) Upon the filing of an appeal and payment of the filing fee, the City Secretary shall transmit to the Chair, the City Manager and the official whose actions are being appealed a copy of the appeal. Upon receipt of the notice of appeal, the administrative official whose actions are the subject of the appeal shall forthwith transmit to the Board, by and through the City Secretary's Office, all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the official from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by court of record on application. The board of adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice thereof as well as due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall make its decision at the next meeting for which reasonable notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.
- (3) The Board reviews an appeal of an administrative official's actions based on state and local laws. The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken. The Board may also make the correct order, requirement, decision, or determination, and for that purpose only the Board has the same authority as the administrative official.
- (4) Upon the Board's decision, the Chair shall reduce the decision of the Board to writing and provide a copy to the appellant. A copy must also be placed in the Board's offices, by and through the Office of the City Secretary. Upon request by the Chair, the City Manager may assume the duty of reducing the decision to writing and providing all necessary copies to the appropriate persons. The City Secretary shall then forward the Board's decision to the appellant.

Sec. 113-73. - Powers of the board.

The board of adjustment shall have the following powers:

- (1) *Hearing of appeals.* To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the city building permit officer in the enforcement of this chapter.
- (2) *Granting variance for hardship.* The board of adjustment may approve a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the board shall prescribe only conditions that it deems necessary to or desirable in the public interest. In making the required findings, the board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who own property within 200 feet of the property of which the variance is requested and the probable effect upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. Provided, however, in no instance shall

such variance authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located. No variance shall be granted unless the board finds:

- a. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land; and
 - b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
 - c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
 - d. That the granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this chapter.
- (3) *Granting variance for special conditions.* The board may authorize a variance where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property of record at the time of the adoption of this chapter or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of a provision of this chapter would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of property and amount to a practical confiscation of property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this chapter.
- (4) Such findings of the board, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the board meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured, and substantial justice done. Pecuniary hardship to the sub-divider, standing alone, shall not be deemed to constitute unnecessary hardship.

Sec. 113-74. - Special exceptions.

When in its judgment the public convenience and welfare will not be substantially or permanently injured, the board of adjustment may in a specific case, after notice and hearing and subject to appropriate conditions and safeguards, authorize special exceptions to the regulations herein established as follows:

- (1) To permit a transitional use between a business and a dwelling district where the side of a lot in a one-family district or a two-family district abuts a lot zoned for business or industrial purposes as follows:
 - a. On a lot in a single-family dwelling district which sides upon a lot zoned for business purposes, the board may permit a two-family dwelling.

- (2) To permit the extension of a building or use into a more restricted district, immediately adjacent thereto, but not more than fifty feet (50') beyond the boundary line of the district in which such building or use is authorized.
- (3) To permit such modification of yard, open spaces, lot area or lot width regulations as may be necessary to secure an appropriate improvement of a parcel of land if such parcel is separately owned at the time of the original passage of this chapter or subsequent annexation of the city and is of such restricted area that it cannot be appropriately improved without such modifications.
- (4) To determine in cases of uncertainty the classification of any use not specifically named in this chapter.
- (5) To grant a permit for the extension of a use, height, or area regulation into an adjoining district, where the boundary line of the district divided a lot in a single ownership at the time of the adoption of this chapter.
- (6) To permit as an accessory use a parking area for passenger automobiles on a lot or lots in a single-family, duplex, or apartment house district adjoining or across a street of not more than 50 feet (50') in width from an "R-1" or "R-2" District, subject, however, to the following provisions:
 - a. The area shall be properly enclosed with a hedge, screen, fence, wall or other suitable enclosure having a height of not less than three feet nor more than six feet. Such fence or enclosure shall conform to the front yard regulations of the district in which it is located.
 - b. The area shall be paved.
 - c. No parking of vehicles shall be permitted, within six feet of any adjoining lot on which is located a single-family residence duplex or multiple dwelling.
 - d. One sign, not exceeding two and one-half square feet in area, may be erected identifying the lot.
 - e. No charges may be made for parking and no other business use may be made of the lot.
 - f. Any light used to illuminate said parking area shall be so arranged as to direct the light away from an adjoining premises used for residential purposes.
- (7) In any instance where a variance is sought to build or add to a structure to a height greater than 35 feet or two and one-half stories, the board of adjustment shall have the additional power of including, but is not limited to, requiring the installation of an automatic fire extinguishing (water) system in the structure.

Sec. 113-75. - Expiration of variance or appeal.

All variances or appeals granted by the board of adjustment shall lapse and be of no further force or effect, unless the construction authorized by said variance or appeal is commenced within 90 days from the day the variance or appeal was granted by the board of adjustment. In the event of a conflict with chapter 103 of the Code, the time limits set forth herein shall control.

Sec. 113-76. - Assignment prohibited.

A variance or appeal granted by the board of adjustment may not be assigned by the applicant without the prior written approval of the board of adjustment after a public hearing. The board of adjustment is not required to approve the assignment.

Sec. 113-77. - Time limitation for refiling of appeals.

Notwithstanding the above, it is further provided that the following time limitations shall be imposed so that no application for a variance or exception shall be received or filed with the board of adjustment:

- (1) If within the previous six-month period an application for a variance or exception was received, considered, and denied on the same lot, lots or blocks of land.
- (2) If within the previous six-month period an application for a variance or exception was withdrawn from consideration by the applicant or his representative before the board of adjustment.

The time limitations under this subsection may be waived only if new substantial evidence is presented to the board of adjustment and, then, only after the request for waiver has received four affirmative votes in support thereof. If granted, a new application shall be filed in the office of the city building permit officer in accordance with the procedures outlined in section 113-71.

Sec. 113-78. - Authority of board.

In exercising the aforementioned powers the Board may, in conformance with the provisions of Chapter 211 of the Texas Local Government Code, as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Sec. 113-79. - Duty of board.

In considering all appeals and all proposed variances under this chapter the board shall, before making any finding, in a specific case, first determine that the proposed variance will not impair an adequate supply of light and air to adjacent property, or materially increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of the City of Windcrest, Texas, or constitute any enlargement of the uses applying to the property affected as herein provided.

Secs. 113-80 – Judicial Review of Board Decision

- (1) Persons and entities authorized by state law may appeal a decision of the Board to a court of competent jurisdiction.
- (2) The deadline to file a petition for review is established by Tex. Local Gov't Code § 211.011.

- (3) Upon receipt of a writ of certiorari issued by a court of competent jurisdiction to the Board, the Chair shall determine if the item shall be placed upon a future agenda of the Board, or if the Chair will simply submit a verified Board Return pursuant to Texas Local Government Code §211.011.
- (4) If a writ of certiorari is issued to the Board, the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the Board the court which issued the writ may grant a restraining order if due cause is shown.
- (5) If a Board Return is submitted, the Chair shall issue the return. The Board Return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The Chair is not required to issue a single ground or reason for the decision, but the Chair must submit any material and pertinent facts presented to the Board upon which the Board could have made the decision. The return must also include certified or sworn copies of the pertinent and material documents, testimony, evidence, and/or information upon which the Board could have relied in making its decision.

DULY PASSED ON FIRST READING, on the _____ day of _____, 2019 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

DULY PASSED AND APPROVED, on the _____ day of _____, 2019 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

City Secretary, Rachel Dominguez

APPROVED:

City Attorney – Ryan Henry