SECTION 9 ZONING BOARD OF ADJUSTMENT (ZBA)

9.1 CREATION

There is hereby created a Board of Adjustment to be composed of five (5) members and four (4) alternate members who shall be residents and qualified voters of the City of DeSoto and shall serve without compensation.

9.2 MEMBERS AND TERMS OF OFFICE

The Board of Adjustment shall consist of five (5) regular members and four (4) alternate members who shall be appointed by the City Council in accordance with subchapter 211.008 through 211.011 Vernon's Texas Local Government Code as amended. The members shall serve for a period of two (2) years and until their successors are duly appointed and qualified. Three (3) regular board members and two (2) alternate members shall be appointed to serve for the two (2) year term on the odd numbered years, and two (2) regular board members and two (2) alternate board members shall be appointed to serve for the two (2) year term on the even numbered years and on each succeeding year thereafter, the Council shall select replacements for the Board of Adjustment members whose terms have expired. All members will be appointed by a majority vote of the City Council. Members may be removed by a majority vote of the members of the City Council, for cause on a written charge after a public hearing. Board members may be appointed to succeed themselves. Vacancies shall be filled by an alternate member for the unexpired term of a member whose term becomes vacant. Any member absent from three (3) regular consecutive meetings shall be deemed to have vacated such office unless such absences were due to sickness of the member or the member's family with leave being first obtained from the Chairman. Vacancies of an alternate member shall be filled by appointment of the City Council by majority vote.

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. Four (4) members of the Board shall constitute a quorum for the conduct of business. All cases to be heard by the Board of Adjustment will always be heard by a minimum number of four (4) members. The members of the Board shall regularly attend meetings and public hearings of the Board and shall serve without compensation.

9.3 AUTHORITY OF BOARD

The Board of Adjustment shall have the authority, subject to the standards established in Sections 211.008 to 211.011 of the Texas Local Government Code and those established herein, to exercise the following powers and perform the following duties:

A. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance;

B. Authorize the expansion or continuation of a nonconforming structure; and

C. Authorize in specific cases a variance (see Section 9.5) from the terms of this ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of this ordinance is observed and substantial justice is done.

D. In exercising its authority under "A" above, 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 and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.

E. The concurring vote of four (4) members of the Board is necessary to:

1. Reverse an order, requirement, decision, or determination of an administrative official;

2. Decide in favor of an applicant on a matter on which the Board is required to review under this zoning ordinance; or

3. Authorize a variation from the terms of this zoning ordinance.

9.4 LIMITATIONS ON AUTHORITY OF BOARD

A. The Board may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought except as provided in Section 9.6.

B. The Board shall have no power to grant or modify specific use permits authorized under Section 35 of these regulations.

C. The Board shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment.

D. The Board shall not grant a variance (except as stated in "E" below) for any parcel of property or portion thereof upon which a Site Plan, Preliminary Plat, or Final Plat, where required, is pending on the agenda of the Planning and Zoning Commission and, where applicable, by the City Council. All administrative remedies available to the applicant shall have been exhausted prior to hearing by the ZBA.

E. If a proposed site does not conform to the zoning district standards and a variance has been requested, the Planning and Zoning Commission and/or the City Council may defer its actions until the Zoning Board of Adjustment has acted on the variance requests.

9.5 VARIANCES

A. In order to grant a variance from these zoning regulations, the Board of Adjustment must make written findings that an undue hardship exists, using the following criteria:

1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district;

3. That the relief sought will not injure the permitted use of adjacent conforming property; and

4. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

B. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship on another parcel of land.

C. The applicant bears the burden of proof in establishing the facts justifying a variance.

9.6 NONCONFORMING USES AND STRUCTURES

A. The ZBA shall have the authority to authorize the expansion or enlargement of a nonconforming use, or the expansion, enlargement or structural alternation to a structure

containing a nonconforming use, when such an expansion, enlargement or alteration would not tend to prolong the life of the nonconforming use. Upon review of the facts, the ZBA may establish a specific period of time for the occupancy to revert to a conforming use; and

B. To authorize the reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use, where such structure has been damaged by fire or other causes to the extent of more than sixty percent (60%), but less than the total, of the replacement cost of the structure on the date of the damage. Such action by the Zoning Board of Adjustment shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property; and

C. To authorize the enlargement, expansion or repair of a nonconforming structure in excess of sixty percent (60%) of its current value. In such instance, current value shall be established at the time of application for a hearing before the ZBA.

If such expansion or enlargement is approved by the ZBA, all provisions of the district in which such structure is located shall apply to the new construction on the lot or parcel.

D. To authorize a change of use from one nonconforming use to another nonconforming use, provided that such change is to a use of a more restrictive classification, the building or structure containing such nonconforming use shall not revert to the former lower or less restricted classification. The ZBA may establish a specific period of time for the conversion of the occupancy to a conforming use. Any change of a nonconforming use consistent with this Section shall be in accordance with the provisions of Section 7 of this ordinance.

E. To authorize the occupancy of an abandoned nonconforming structure. Such action by the ZBA shall have due regard for the property rights of the person or persons affected, and shall be considered in regard to the public welfare and safety, character of the area surrounding such structure, and the conservation, preservation and protection of property.

9.7 PROCEDURES

A. Application and Fee

An application for granting a variance by the Board of Adjustment, other than an appeal, shall be in writing using forms provided by the City and shall be accompanied by a fee.

B. Notice and Hearing

The Zoning Board of Adjustment shall hold a public hearing no later than 45 days after the date the application for action or an appeal is filed. Notice of a public hearing shall be provided to all property owners within two hundred feet (200') of the affected property ten (10) days prior to the public hearing and also published in the official local newspaper ten (10) days prior to the public hearing.

C. Appeals

1. An appeal may be taken from the decision of an administrative official by an applicant for the permit on which the decision is rendered, by any person or persons directly aggrieved by the decision or by any officer, department, board or office of the municipality affected by the decision.

2. The appellant must file with the Board and the official against whom the appeal is taken a written notice of appeal specifying the grounds for the appeal within fifteen (15) days after the decision has been rendered. The officer to whom the appeal is made shall forthwith transmit to the Board all papers constituting the record of the action that is appealed.

3. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certified in writing to the Board that facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the official, if due cause is shown.

4. The appellant party may appear at the appeal hearing in person or by agent or attorney.

5. The Board shall decide the appeal within four (4) weeks after placement on its agenda after which time the request shall be deemed automatically approved. 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, and make the correct order, requirement, decision, or determination.

D. **Vote Required for Board Decisions**

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under these zoning regulations, or to effect any variance to the zoning regulations granted by the Board.

E. **Judicial Review**

Any person or persons, jointly or severally, aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, or Board of the City may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the date the decision is filed in the Planning and Zoning office.