Chapter 2. BOARD OF ADJUSTMENT

2-1 Board, Number of Members, Appointment, Term and Removal, Vacancies.

The board of adjustment shall consist of five (5) members, each to be appointed by the legislative body for the term of five (5) years, provided that the term of one (1) member shall expire each year. Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Not more than two (2) members of the planning commission shall be members of the board of adjustments.

2-2 Duties and Powers of Board

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of this Ordinance upon which such board is required to pass under provisions of this Ordinance.

3. To authorize upon appeal such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:

    a. The variance will not substantially adversely affect the comprehensive plan of zoning and that adherence to the strict letter of this Ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the zoning plan.

    b. Special circumstances are attached to the property covered by the application which do not generally apply to other property in the same district.

    c. That because of said special circumstances, property covered by application is deprived of privileges possessed by other properties in

the same district; and that the granting of the variance is essential to the enjoyment of a substantial property right that is possessed by other property in the same district.

2-3 Vote Necessary for Reversal

The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the provisions of this Ordinance.

2-4 Decision on Appeal

In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, 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.

2-5 Rules

The board shall adopt rules for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this Ordinance or of the state law. Such rules, to become effective, shall first be approved by the town board.

2-6 Judicial Review of Board's Decision - Time Limitation

The town or any person aggrieved by any decision of the board of adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the town board.