ORDINANCE NO. 2007-09

AN ORDINANCE OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH PROVIDING FOR A BOARD OF ADJUSTMENTS

RECITALS

A. The City has previously enacted a zoning ordinance, and under Chapter 5 thereof, created a Board of Adjustments; and

B. In recent years, legislation governing boards of adjustments in the State of Utah has changed the requirements for such boards; and

C. The City Council has deliberated on the amendment of its ordinances governing the Board of Adjustments and desires to adopt a new ordinance; and

D. The City Council deems it reasonable, appropriate, desirable and necessary, and to provide for appeals procedures that are consistent with law, to adopt a new Board of Appeals Ordinance, to be codified as Chapter 5 of the City's Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF WENDOVER, COUNCIL OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH THAT:

1. Adoption of Ordinance. Attached hereto as Exhibit "A" is an Ordinance entitled: "CHAPTER 5 – BOARD OF ADJUSTMENT." Said Ordinance, consisting of sections 5-101 through 5-107, is hereby approved by the City Council and adopted by this reference.

2. Repeal. The prior ordinance governing the City's Board of Adjustment, consisting of Sections 5-1 through 5-12, is repealed.

3. Severability. The provisions of the ordinance adopted herein are severable. If any provisions thereof if found unenforceable, for any reason, the remainder shall remain in full force and effect.

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July 18, 2007

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3. Effective Date. This Ordinance shall become effective 20 days after publication or posting, or 30 days after final passage by the Governing Body, whichever is sooner.

PASSED and ADOPTED this 18th day of July, 2007

The City of Wendover, Utah

By: Brett Shelton
Its: Mayor

ATTEST:

Glenn Wadsworth – City Administrator

Seal:

Date of first publication/posting: October 17, 2007

CHAPTER 5 – BOARD OF ADJUSTMENT

Sections:

5-101. Board Membership.
5-102. Organization and Meetings of Board.
5-103. Duties and Powers of the Board.
5-104. Zoning Administrator's Determinations.
5-105. Appeals to the Board of Adjustment.
5-106. Nonconforming use of Buildings, Structures and Land.
5-107. Variances.

5-101. BOARD MEMBERSHIP.

(1) The Board of Adjustments shall consist of five members and such alternate members as the Mayor deems appropriate. Each member and alternate shall be appointed by the Mayor with the advise and consent of the City Council.

(2) Each member is appointed for a term of five years unless otherwise provided in this Chapter. The terms of the members of the Board shall be staggered such that the term of one member expires each year. Terms of each of the members and the alternates shall expire on July 1, of the last year of their term.

(3) Alternate members shall serve in the absence of a member or members of the Board of Adjustment under rules established by the City Council. No more than two alternate members shall sit at any meeting of the Board at one time.

(4) The Mayor may remove any member of the Board for cause if written charges are filed with the Mayor against the member. The Mayor shall provide the member with a public hearing if requested in writing by the member.

(5) Any vacancy occurring on said Board for whatever reason shall be filled by appointment as provided in this Section for the unexpired term of such member or alternate member whose office becomes vacant.

(6) All members of the Board shall be residents of the City of Wendover, Utah.

5-102. ORGANIZATION AND MEETINGS OF BOARD.

(1) The Board shall elect a Chairperson and Vice-Chairperson from among themselves for a one year term. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson or, in the case of the absence of the Chairperson, the acting Chairperson, may administer oaths

And compel the attendance of witnesses. All meetings of the Board shall comply with the requirements of Chapter 4, Title 52, UCA, Open and Public Meetings. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, members absent, members failing to vote, a record of the Boards examination of evidence and othe official actions. The records of the Board shall be filed with the City Recorders and shall be public records

(2) The Board may adopt rules of policy and procedure consistent with this Chapter or State law. Said rules shall be submitted to the City Council for approval and may be altered, amended or changed in the same manner.

(3) Decisions of the Board shall become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.

5-103. DUTIES AND POWERS OF THE BOARD.

The Board shall have the duty and power to decide:

(1) Appeals – Hear and decide appeals from any order, requirement, determination or decision of the Planning Commission and /or Zoning Administrator's application of the zoning ordinance. The Board shall hear and decide appeals from Planning Commission decisions regarding conditional use permits. The Board may not hear or decide upon an appeal of any zoning ordinance amendment. An appeal may not be used to waive or modify the terms or requirements of the zoning ordinance.

(2) Special Exceptions – Hear and decide special exceptions to the terms of the zoning ordinance where the City Council has granted jurisdiction to the Board to do so. The Board may hear and decide special exceptions only if authorized to do so by the zoning ordinance and base only upon the standards contained in the zoning ordinance.

(3) Variances – Hear and decide all applications for variance from the terms of the City Zoning Ordinance other than allowing a use in a zone which is not listed as a permitted or conditional use. Such decisions shall be made in accordance with State law, Section 5-107 of this Chapter and the rules adopted by the Board.

(4) Nonconforming Use – Hear and make determinations regarding the existence, expansion, or modification of nonconforming uses.

5-104. ZONING ADMINISTRATOR'S DETERMINATIONS.

The Zoning Administrator (who is hereby defined as the Wendover City Administrator) may decide certain matters as designated by the Board, and consistent with guidelines established by this Chapter and State law and the rules adopted by the Board. Pursuant to that authority, the Zoning Administrator is authorized to decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, are primarily brought about by recent changes in the Zoning Ordinance creating a large number of nonconforming structures or uses and which the Board has granted on almost a routine basis. The specific types of decisions the Zoning Administrator is authorized to make shall include:

(1) Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents, including any written correspondence, receipts, permits, or documents issued by a public body or agency thereof, etc. that may establish the truth of the matter asserted by the applicant.

(2) Consider additions or alterations to existing buildings and structures which are nonconforming as to height, area, or yard regulations provided the addition follows the existing wall lines and no additional dwelling units are added to the building or structure.

(3) Change in status of a nonconforming use to a less intense use than that immediately preceding the propose use.

(4) Consider additions to existing residential buildings that maintain the zoning standards which were in place when the home was originally constructed.

(5) Consider building expansions to residential non-conforming uses where the expansion maintains all of the current setback standards and no additional dwelling units are created.

(6) Final review and approval on plans where the Board has required that a final plan be submitted for special approval. Showing that all the requirements imposed by the Board in granting the original approval have been complied with. All decisions of the Zoning Administrator made under this section may be appealed to the Board.

5-105. APPEALS TO THE BOARD OF ADJUSTMENT.

Appeal may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance. All appeals shall be made as follows:

(1) The appeal shall be made within 10 days of the action or decision being appealed from by filing a notice of appeal with the City Recorder.

(2) The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specify the grounds for appeal may be summarily dismissed by the Board of Adjustment with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.

(3) All papers constituting the record upon which the action appealed from was made shall be transmitted to the Board of Adjustment.

(4) The Board of Adjustment shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least seven days before the appeal hearing date. After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order requirement, decision or determination appealed form 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 or body from which the appeal is made.

(5) The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Board of Adjustment. Said stay shall exist unless the Planning commission or Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril of life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by District Court on application, notice and due cause shown.

(6) The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission, or agency or to decide in favor of the appellant.

(7) The City, or any person adversely affected by any decision of the Board, may petition the district court for a review of the decision, provided the petition in filed with the Court within 30 days after the Board's decision is final. In the petition, the appealing party may only allege that the Board's decision was arbitrary, capricious, or illegal. The Board may, after finding that it is in the best interest of the City to do so, stay its

Decision pending district court review.

5-106. NONCONFORMING USE OF BUILDINGS, STRUCTURES AND LAND.

Except as otherwise provided in this Title, a nonconforming use of land or a structure may be continued.

(1) Determination of Nonconforming Buildings and Uses. All matters regarding the nonconforming use of buildings and land shall be determined by the Board. Upon application, after public hearing on the matter, the Board shall determine if the use or building is nonconforming with respect to the current provisions of this Chapter. The Zoning Administrator may determine routine and uncontested requests to verify nonconforming uses as provided in Section 5-104 and the rules adopted by the Board.

(2) Alteration of Modifications to Nonconforming Buildings and Structures. Nonconforming building and structures with respect to setbacks or height may be continued. Additions, enlargements or structural alternations may be made to the extent that they comply with all requirements of the West Valley City Code or conform to the provisions of Section 5-104 of this Chapter. In addition, the Board, after a public hearing, may allow an enlargement or structural alteration provide the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not impose any unreasonable impact or burden upon land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility. If any such nonconforming building is removed, every future use of the land on which the building was located shall conform to the provisions of this Chapter.

(3) Nonconforming Use of Land. A nonconforming use of land lawfully existing on the effective date of this Chapter may be continued provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the nonconforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

(4) Nonconforming Use of Building and Structures. The nonconforming use of a building or structure lawfully existing on the effective date this Chapter may be continued and may be expanded or extended throughout such building or structure provided no structural alterations, except those permitted by law, are proposed or made for the purpose of extension. The addition of a solar energy device to a building shall not be considered a structural alteration. If such nonconforming use is discontinued for

Continuous period of more than one year it shall constitute an abandonment of the use and any future use of the building or structure shall conform to the provision of the zone in which it is located.

(5) Change in Status of Nonconforming Use. If a nonconforming use is abandoned, it may be succeeded, upon approval of the Zoning Administrator, by an equally restrictive or more restrictive nonconforming use, provided such change is effected within on year from the first day of abandonment. After a change to a less intensive use occurs, the use may not change back to a more intensive use.

(6) Alterations of Modifications to Nonconforming Use. A use which has been declared nonconforming shall not be enlarged or moved except as provided in this Section. The Board, after a public hearing, may allow an enlargement or modification provided the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not impose any unreasonable impact or burden upon the land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility.

(7) Reconstruction of Nonconforming Building or Structure Partially Destroyed. In the event a nonconforming building or structure is damage or destroyed by calamity or act of nature, the occupancy or use of such building or structure, or part thereof which existed at the time of the destruction, any be continued or resumed provided that such restoration is in compliance with all building codes. Any repair or reconstruction shall be in accordance with approvals by the City Building Official and other requirements imposed during site plan review and, or Conditional Use review. Buildings that become nonconforming as to set backs due to a governmental action such as a roadway widening can be fully restore at the original setback. Occupancy or use of such building, structure, or part thereof which existed at the time of such partial destruction may be continue subject to all the provisions of this Title.

(8) Amortization of Nonconforming Uses. The Board, under authorization of State statute, may provide for the timely modification or removal of a nonconforming structure or use of land. A maximum of a five-year period may be granted in which the nonconforming use shall be modified or removed in order to comply with the General Plan and Zoning Ordinance. The Board may provide for a shorter time period by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of any investment in the nonconforming use or structure, in any, if any.

(9) The Board may terminate the legal nonconforming status of school district property upon a finding that the property has ceased to be used for school district purposes.

5-107. VARIANCES.

(1) Definitions. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished for a mere inconvenience or a desire to reduce financial difficulties.

(2) Variance Criteria. Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits.

(a) The Board may grant a variance only if:

(i) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and
(ii) There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and
(iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and
(iv) The granting of the variance will not substantially affect the general plan and will not be contrary to the pubic interest; and
(v) The spirit of the zoning ordinance is observed and substantial justice done.

(b) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find an unreasonable hardship unless the alleged hardship:

(i) Is located on or associated with the property for which the variance is sought; and
(ii) Comes form circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(c) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find unreasonable hardship if the hardship is self-imposed or economic.

(d) In determining whether or not there are special circumstances attached to the property under this section, the Board may find that special circumstances exist only if the special circumstances:

(i) Relate to the hardship complained of; and
(ii) Deprive the property of privileges granted to other properties in the same district.

(e) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(f) Variances, once granted, shall run with the land.

(g) Use variances may not be granted by the Board and any other body.

(h) In granting a variance, the Board may impose additional requirements on the applicant that will:

(i) Mitigate any harmful affects of the variance; or
(ii) Serve the same or similar purpose of the standard requirement that is waived or modified.