

Tentative Agenda for the Board of Adjustment Meeting to be held on July 23, 2024 at 5:30 PM. This meeting will be held at the Waverly City Office Building, 14130 Lancashire, Waverly, NE 68462. A current Agenda shall be readily available for public inspection at the office of the City Clerk during normal business hours.

1. **Call to Order**
 - 1.a) Roll Call
 - 1.b) Acknowledgement of the "Open Meetings Act" poster that is posted by the south entrance
2. **Approval of Minutes**
 - 2.a) Minutes of the February 20, 2024 Board of Adjustment Meeting
3. **Public Hearings**
 - 3.a) Public Hearing: Variance Request 24-01: To allow for the building of a wet-floodproofed agricultural structure in the floodway at 13050 Waverly Road.
4. **Adjournment**

The Governing Body reserves the right to go into Executive Session at any time for the reasons outlined in State Statute 84-1410.

The following rules are established for audience members and participants at a Council meeting:

- (1) Any person wishing to address the Council shall first state their name and address.
- (2) Public comments may be for agenda or non-agenda items.
- (3) Remarks shall be limited to five (5) minutes.

CITY OF WAVERLY

BOARD OF ADJUSTMENT MEETING

MEETING MINUTES

FEBRUARY 20, 2024

**WAVERLY CITY OFFICES COMMUNITY MEETING HALL
14130 LANCASHIRE STREET**

CALL TO ORDER

Tony Larson called the meeting to order at 5:30 pm. Members responding to roll call were: Calvin Weeks, Tony Larson, Ron Dubas, Melissa Brown, and Aaron Delahoyde. Sonny Fankhauser (Designated Alternate member was absent). Larson acknowledged the Open Meetings Act poster available in the offices and electronically. Notice of the meeting agenda was given to all members of the Board of Adjustment prior to and at the meeting. Notice of the meeting was posted at Russ's Market Express, the US Post Office, the Waverly City Office and The Voice News as well as the Waverly community website.

APPROVAL OF MINUTES

Motion to approve the minutes of the January 23, 2023, meeting was made by Dubas and seconded by Weeks. Motion passed unanimously.

ELECTION OF OFFICERS

CHAIR: Motion to elect Tony Larson as Chair was made by Delahoyde, seconded by Weeks. Motion passed unanimously.

SECRETARY: Motion to elect Aaron Delahoyde as Secretary was made by Weeks, seconded by Brown. Motion passed unanimously.

ALTERNATE: Motion to appoint Sonny Fankhauser as Designated Alternate was made by Brown, seconded by Dubas. Motion passed unanimously.

PUBLIC HEARING

None.

REVIEW BOARD OF ADJUSTMENT REGULATIONS & STATE STATUES

Information was provided to the Board by Mike Palm that included the Board of Adjustment By-Laws and the Waverly Board of Adjustment Variance Request Approval or Denial Document. A brief update on the city zoning was provided by Palm and City Administrator Stephanie Fisher.

ADJOURNMENT

Motion was made by Dubas and seconded by Weeks. Motion passed unanimously at 5:41 pm.

Respectfully Submitted,

Aaron Delahoyde, Board of Adjustment Secretary



P A I D
7-1-24 MF
CHCK 5049

CITY OF WAVERLY	
VARIANCE REQUEST	VR <u>24-01</u>
FEE: \$ 100.00	Date: <u>7-1-24</u>

REQUEST FOR VARIANCE FROM ZONING ORDINANCE

Applicant: Randal Colton

Applicant address: 13050 Waverly Nebr

City: Waverly State: Nebr Zip: 68462 Phone: 402-432-6783

Legal Property Description: Lot: Block: Addition: S8, T11, R8, 6th PM, Lot 22 3/2

Zoning District: AG

Intended Use (Need for Variance): Rebuilding damaged shed in Floodway

BOARD OF ADJUSTMENT PROCEDURE

The Board of Adjustment shall hear and decide upon petitions for variances, and subject to such standards, principals, and procedures provided in this Ordinance, to vary the strict application of the height, are, parking, sign, or other requirement to the extent necessary to permit the owner a reasonable use of his/her land.

Only upon receipt of a written response to the following conditions shall a meeting of the Board of Adjustment be scheduled: (Additional sheets may be attached).

- A. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district or vicinity and is not created by an action or actions of the property owner or applicant.
- Yes (Means your property has a quality unique to itself which makes this request necessary)
 - No (Means every lot is like yours)
- B. The granting of the permit for the variance will not be a substantial detriment of the adjacent property, and the character of the district will not be changed by granting the variance.
- Yes (Means your request will not harm your neighbors or the community)
 - No

C. Strict application of the provisions of the zoning regulations to this request will constitute undue hardship upon the owner of the property named above.

- Yes (Means you think you will be harmed and unfairly limited by denial of this request)
 No

D. Granting of this requested variance is based on reason and demonstrable , exceptional hardship, as distinguished from convenience, profit, or caprice.

- Yes (Means you think you will be harmed and unfairly limited by denial of this request)
 No

By signing below the applicant hereby agrees with the rules and procedures for filing a Variance request with the City of Waverly.

Applicant Signature: Randal Colton Date: July 1-2024

Ownership Parcels

1 of 2

☆ Ownership Parcels

Parcel ID: 2408400013000

Site Address: 13050 WAVERLY RD, WAVERLY, NE 68462

Legal Description: S8, T11, R8, 6th Principal Meridian, LOT 22 S1/2

Owner Information:

COLTON FAMILY TRUST

13050 WAVERLY RD

WAVERLY, NE 68462

2024 Assessed Value: \$564,800

[Assessor Property Details](#)

Property Photo:



[Add to Results](#)

[View Additional Details](#)

12950

13050

12572

WAVERLY RD

WAVERLY RD

Section 08-11-08

Section 08-11-08

Waverly Board of Adjustment
Variance Request Approval or Denial Document
Meeting Date: _____

Owner of property: _____

Address of property: _____

A motion should be moved to use this document to assist approving or denying a variance request. Each individual question should be discussed and agreed upon by the board. If the discussion does not lead to a unanimous decision per question, a vote will be needed to decide that question.

1. Do the current zoning regulations produce undue hardship?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

2. Is this hardship **not** shared by other properties in the same vicinity?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

3. Will the approval of this variance **not** harm the neighbors or the community?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

4. Is this request based on exceptional hardship and not on convenience or profit?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

5. Is this hardship **not** so general or recurring to be fixed by a variance rather than changing the current zoning regulations?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

6. Will the granting of this variance **not** substantially impair the intent and purpose of any ordinance or resolution?

Yes ___ No ___ Vote (if necessary) Yes ___ No ___

If all six questions are answered "Yes," the variance request is approved. If one or more of the questions is answered "No," the request is denied.

**MOTIONS FOR GRANTING OR DENYING A VARIANCE
BOARD OF ADJUSTMENT**

CITY OF WAVERLY, NEBRASKA

Case Number: _____ Applicant's Name: _____

Date of Hearing: _____

This sheet is a record of the decisions of the Waverly Board of Adjustment regarding this case and is to be considered filed in the Office of the Board of Adjustment at 8:00 AM on the first day following this action. Appeals of these decisions may be made by any affected party to District Court within 15 days of the time this action is filed in the Office of the Board of Adjustment.

In order to grant a variance from the zoning regulations, the Board must find that:

- A. The strict application of the regulations would produce undue hardship;
- B. Such hardship is not shared generally by the other properties in the same zoning district and the same vicinity;
- C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship, as distinguished from variations for the purposes of convenience, profit, or caprice (whim, notion, impulse, fad).

The Board also must find that:

- E. No variance shall be authorized unless the Board finds that this condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Alternative Motions to Deny a Variance:

- A. I move that this variance be denied because of the Board finding that statement(s) __A, __B, __C, and/or __D, is/are not true and that it would be improper and illegal for this board to grant this variance.

Motion by: _____ Second by: _____

Votes in Favor:

Votes Opposed:

Votes Abstaining:

B. I move that this variance be denied because the condition or situation is of such general and recurring nature and that a recommendation be sent to the Waverly Planning Commission requesting that they consider appropriate changes in the zoning regulations.

Motion by: _____ Second by: _____

Votes in Favor:	Votes Opposed:	Votes Abstaining:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Motion to Approve a Variance:

I move that all of the conditions exist for granting the following variance (state the variance to be granted): _____

_____.

This motion to approve this application for a variance is based on the findings that the following demonstrable and exceptional hardship does exist: _____

_____.

Further, statements A, B, C, and D on the preceding page have been found to be true, and the Board also finds that this request is not of such a general and recurring nature that changes should be made to the zoning regulations.

Motion by: _____ Second by: _____

Votes in Favor:	Votes Opposed:	Votes Abstaining:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**City of Waverly
Building and Zoning Department
Variance Request Report**

Date: July 10, 2024

To: Waverly Board of Adjustment Members
Melissa Brown, Calvin Weeks, Aaron Delahoyde, Tony Larson, Ron Dubas, Sonny Fankhauser

CC: Bill Gerdes, Stephanie Fisher, Megan Frye

From: Mike Palm, Zoning Administrator

Subject: **Board of Adjustment Meeting – Variance Request Details**

Variance Request 24-01:

1. Randy Colton's (applicant) property is located at 13050 Waverly Rd., Section 8, Township 11, Range 8 of the 6th Principal Meridian, South ½ of Lot 22. The property is in an Agricultural (AG) Zoning District and located in a designated floodway.
2. On April 26, 2024, a building on Randy's property was destroyed by the tornado that passed just west and north of Waverly's corporate limits. Randy is proposing rebuilding the structure to its original footprint.
3. Waverly's Zoning Regulations currently require the lowest level elevation of any non-habitable structure built in the floodway to be 1 foot above the base flood elevation. The city also requires proof that any development in the floodway will not cause a net rise in the base flood elevation.
4. Per State law, any structure located in the floodplain, and is substantially damaged, must be brought into compliance with the current regulations, if the structure is to be improved or rebuilt due to damage. To be considered substantially damaged, the construction costs of improvements to the structure are more than 50% of the assessed value, prior to any damage.
5. On June 25, 2024, the city council performed the first reading of Ordinance 24-04. The second reading passed on July 9, 2024. The ordinance provides definitions for agricultural and accessory structures, as it relates to the floodplain. It also provides language and criteria to allow for the wet-floodproofing of agricultural structures by variance (see sections 4 & 5 of the attached Ordinance 24-04). Criteria listed in the ordinance will be reviewed during the building permitting process.

The third and final reading of the ordinance is scheduled for Thursday, July 25, 2024.

6. Attachments:
 - A copy of the Variance Request
 - An aerial screenshot of the property, showing the location of the existing building
 - A copy of Ordinance 24-04

ORDINANCE 24-04

AN ORDINANCE OF THE CITY OF WAVERLY, NEBRASKA TO AMEND THE WAVERLY ZONING REGULATIONS, ARTICLE 5, RELATING TO SPECIAL AND OVERLAY DISTRICTS, FP SALT CREEK VALLEY FLOODPLAIN/FLOODWAY OVERLAY DISTRICT.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WAVERLY, NEBRASKA:

Section 1. Whereas, that section 11.531, a., contained within Article 5 of the Waverly Zoning Regulations be amended to read as follows:

- a. This ordinance shall apply to all lands within the jurisdictions of the City of Waverly identified on the Flood Insurance Rate Map (FIRM) panels 31109C0216F dated February 18, 2011 and 31109C0210G, 31109C0215G, 31109C0217G, 31109C0218G, 31109C0219G, and 31109C0240G dated April 16, 2013 as Zones A, A1-30, AE, AO, or AH and within the Zoning Districts FW and FF established in Section 11.533 of this ordinance. In all areas covered by this ordinance, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator or the governing body under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 11.534, 11.535, and 11.536.

Section 2. Whereas, that section 11.533, contained within Article 5 of the Waverly Zoning Regulations be amended to read as follows:

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: A floodway overlay district (FW) and a flood fringe overlay district (FF) as identified in the Flood Insurance Study 31109CV001B, 31109CV002B, 31109CV003B dated April 16, 2013 and on accompanying FIRM panels as established in Section 11.531. Within these districts all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited.

Section 3. Whereas, that section 11.534, c., contained within Article 5 of the Waverly Zoning Regulations be amended to read as follows:

- c. Until a floodway has been designated, no development or substantial improvement may be permitted within the floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown in the Flood Insurance Study or on base flood elevation determinations.

Section 4. Whereas, that section 11.535, b., 8. & 9., contained within Article 5 of the Waverly Zoning Regulations be amended to read as follows:

8. Wet-floodproofing for Agricultural Structures by Variance

- a. When owners elect to wet floodproof agricultural structures, the structure shall:
- (1) Be anchored to resist flotation, collapse, and lateral movement.
 - (2) Have flood damage-resistant materials below the base flood elevation in compliance with the definition in Section 11.540 "Flood damage resistant materials"
 - (3) Have mechanical, electrical, and utility equipment elevated to or above one (1) foot above the base flood elevation or floodproofed so that below one (1) foot above the base flood elevation they are:
 - (a) Watertight and substantially impermeable to the passage of water; and,
 - (b) Capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy

A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 11.532.

- (4) Have flood openings in compliance with the requirements below:
 - (a) The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - 1) A minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space,
 - 2) The bottom of all openings shall not be higher than one (1) foot above grade, and
 - 3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.
- (5) If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

9. Accessory Structures

- a. Structures accessory to a principal building may have the lowest floor below one foot above base flood elevation provided that the structure complies with the following requirements:
- (1) The structure shall not be used for human habitation.
 - (2) The use of the structure must be limited to parking of vehicles or storage of items readily removable in the event of a flood warning.
 - (3) The floor area shall not exceed 800 square feet.

- (4) The structure shall have a low damage potential.
- (5) The structure must be adequately anchored to prevent flotation, collapse, or other lateral movement.
- (6) The structure shall be designed to automatically provide for the entry and exit of floodwaters for the purpose of equalizing hydrostatic forces. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a net area of not less than one (1) square inch for every one (1) square foot of enclosed space,
 - (b) The bottom of all openings shall not be higher than one (1) foot above grade, and
 - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they allow the automatic entry and exit of floodwaters.
- (7) No utilities shall be installed except electrical fixtures in the structure, which must be elevated to or above one (1) foot above the base flood elevation or floodproofed so that below one (1) foot above the base flood elevation they are:
 - (a) Watertight and substantially impermeable to the passage of water; and,
 - (b) Capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy

Section 5. Whereas, that section 11.537, 3., 4. & 5., contained within Article 5 of the Waverly Zoning Regulations be amended to read as follows:

3. Agricultural structures:

- a. A variance is authorized to be issued for the construction or substantial improvement of agricultural structures provided the requirements of this section and the following are satisfied:
 - (1) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.
 - (2) Has low damage potential (amount of physical damage, contents damage, and loss of function).
 - (3) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.
 - (4) Complies with the wet floodproofing construction requirements of paragraph 5.2(C) of this ordinance.

4. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 19-912, R.R.S. 1943.
5. In passing upon such applications, the Waverly Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Section 6. Whereas, that section 11.540, contained within Article 5 of the Waverly Zoning Regulations be amended to add definitions to read as follows:

ADD: **“Accessory Structure”** means a structure on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure. Also shall be known as *“appurtenant structure.”*

ADD: **“Agricultural Structure”** for floodplain management purposes, means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

ADD: **“Flood Damage Resistant Material”** means any building product [material, component or system] capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage.

Section 7. That any ordinance in conflict with this ordinance is hereby repealed.

Section 8. This ordinance shall be in full force and take effect from and after its passage, approval, and publication according to the law.

PASSED AND APPROVED THIS _____ DAY OF _____, 2024.

William D. Gerdes
Mayor

ATTEST:

Megan K. Frye
City Clerk/Deputy Treasurer

(Seal)