

**Tentative** Agenda for the Board of Adjustment Meeting to be held on January 27, 2025 at 5:00 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. **Public Comments**
3. **Approval of Minutes**
  - 3.a) Minutes of the July 23, 2024 Board of Adjustment Meeting.
4. **Election of Officers**
  - 4.a) Chair
  - 4.b) Secretary
5. **Designate Alternate Member**
6. **Public Hearings**
7. **Review Board of Adjustment Regulations & State Statutes**
8. **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

JULY 23, 2024

WAVERLY CITY OFFICES COMMUNITY MEETING HALL  
14130 LANCASHIRE STREET

Tony Larson called the meeting to order at 5:30pm. 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 Offices, The Voice News, and the Waverly community website.

#### APPROVAL OF MINUTES

Motion to approve the minutes from the February 20<sup>th</sup>, 2024, meeting was made by Delahoyde and seconded by Dubas. Motion passed unanimously.

#### PUBLIC HEARING

Meeting was opened to public comments regarding a variance request submitted by Randy Colton, owner of property located at 13050 Waverly Rd, Section 8, Township 11. Randy shared with the Board of Adjustment the circumstances of a building (non-habitable structure) on his property being damaged by the tornado on April 26<sup>th</sup>, 2024. Due to the structure's location in the floodplain, he has requested a variance to be able to rebuild the building in its previous location.

Based on current regulations the building would need to be 1 foot above the base flood elevation and proof that any development or building up of the site would not cause a net rise in the base flood elevation would be required.

Concurrently of the process to rebuild his building, the City of Waverly City Council has approved two (2) readings of a change in the floodplain ordinance, 24-04. Randy spoke of these changes to the ordinance and his intent to comply with the new requirements of wet-floodproofing the proposed structure to meet compliance.

#### PUBLIC HEARING CLOSED

At 5:41pm the public hearing was closed to further comment.

#### ACTION BY THE COMMITTEE

Weeks made the motion to vote on the variance as it reads "Move to approve the variance requested by Randy Colton for the rebuilding of his non-habitable structure at 13050 Waverly Road conditionally based on the passing of the final reading and approval by the Waverly City Council of the proposed ordinance 24-04. Motion was seconded by Brown. Motion passed unanimously.

#### ADJOURNMENT

Motion was made by Brown and seconded by Dubas. Motion to adjourn passed unanimously at 5:44pm.

Respectfully submitted,  
Aaron Delahoyde, Board of Adjustment Secretary

## **Board of Adjustment**

3 Year Term

5 Regular Members

1 Alternate Member

### **Members**

### **Term Expires**

Ron Dubas (ETJ)

Dec-25

Melissa Brown (Planning Commission)

Dec-26

Sonny Fankhauser (Alternate)

Dec-26

Kelly Sears

Dec-27

Joseph Poole

Dec-27

Andrew Cockerill

Dec-27

## ADMINISTRATION AND PROCEDURES

### 11.1208 Board of Adjustment

#### a. Establishment

1. A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this Section. The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.
2. Each member shall be appointed by the Mayor with the approval of the City Council for a three-year term and is removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board shall be appointed from the Planning Commission, and the loss of membership on the Commission by such member shall also result in his/her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board.
3. The Board of Adjustment shall adopt rules and regulations in accordance with these regulations and the laws of the State of Nebraska pursuant to Sections 19-901 to 19-914 of Nebraska State Statutes. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. Such chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. A majority of the Board shall constitute a quorum for the transaction of business.

#### b. Procedure for Appeals

1. Appeals shall be made to the Board of Adjustment through the office of the Zoning Administrator in written form as determined by the Zoning Administrator. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Zoning Administrator certifies to the Board that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property.
2. The Board shall provide a minimum of ten days notice of a public hearing on any question before it. Notice of the hearing shall be by publication in a newspaper of general circulation in the City of Waverly; by written notice to the appealing party, and may be posted in a conspicuous place on or near the property on which the application has been made.
3. Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four out of five members of such board as so composed shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such regulations.

### 11.1209 Powers and Duties of the Board Of Adjustment

The Board of Adjustment shall have only the following powers and duties:

- a. Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Zoning Administrator, or his/her

## ADMINISTRATION AND PROCEDURES

designee in the enforcement of these regulations or any regulation relating to the location or soundness of structures

b. Interpretation of Zoning Map: To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.

c. Variances to Relieve Hardships Relating to Property: To authorize, upon appeal, variances from the strict application of these regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the zoning regulations; or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.

1. Requirements for Grant of a Variance. No such variance shall be authorized by the Board unless it finds that:

(a) Strict application of the zoning regulations will produce undue hardship.

(b) Such hardship is not shared generally by other properties in the same zoning district and in 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.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

2. Findings by Board. The Board of Adjustment shall make findings that the requirements of Section 1209c(l) have been met by the applicant for a variance.

3. Conditions for Grant of Variance.

(a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Section 1214 of these regulations.

(b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.

(c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

## ADMINISTRATION AND PROCEDURES

### d. Board has Powers of Zoning Administrator on Appeals: Reversing Decisions of Zoning Administrator

In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of these regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under these regulations, or to effect any variation in the application of these regulations.

#### **11.1210 Appeals from the Board of Adjustment.**

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review of such decision by the District Court for the County in the manner provided by the laws of the State and particularly by 19-912 R.R.S. 1943 (Reissue 1991), and amendments thereto.

**ADMINISTRATION AND PROCEDURES**

**11.1211 Duties of Zoning Administrator, Board of Adjustment, City Council, and Courts on Matters of Appeal.**

- a. It is the intent of these regulations that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of Board of Adjustment shall be to the courts as provided by law.
- b. Under these regulations the City Council shall have only the duties (1) of considering and adopting or rejecting proposed amendments, or the repeal of these regulations as provided by law, (2) of establishing a schedule of fees and charges as stated in Section 12 of these regulations, and (3) of directing a city officer to appeal a decision of the Board of Adjustment.

**11.1212 Severability Clause.**

Should any section or provision of this resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the resolution as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**11.1213 Complaints Regarding Violations.**

Whenever a violation of this resolution occurs, or is allowed to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He/she shall record properly such complaint immediately, investigate, and take action thereon as provided by this resolution.

**11.1214 Penalties for Violation.** *(Amended by Ord. 07-03; 4-2-07)*

- a. Any person, firm, corporation violating any provision of the Zoning Regulations of the City of Waverly, Nebraska, shall be deemed guilty of a misdemeanor. Misdemeanors are divided into three (3) classes, which are distinguished from one another by the following penalties, which are authorized upon conviction.

Class I misdemeanor	Maximum: Five hundred dollar (\$500) fine.
	Minimum: One hundred dollar (\$100) fine.

- b. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- c. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

## Nebraska State Statutes – Board of Adjustment

### **19-907. Board of adjustment; appointment; restriction on powers.**

Except as provided in section [19-912.01](#), the local legislative body shall provide for the appointment of a board of adjustment. Any actions taken by the board of adjustment shall not exceed the powers granted by section [19-910](#).

#### **Source**

Laws 1927, c. 43, § 7, p. 184;  
C.S.1929, § 19-907;  
R.S.1943, § 19-907;

Laws 1975, LB 410, § 16;  
Laws 1978, LB 186, § 5;  
Laws 1998, LB 901, § 1.

### **19-908. Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.**

The board of adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the board of adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the board of adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections [19-901](#) to [19-914](#). Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

#### **Source**

Laws 1927, c. 43, § 7, p. 184;  
C.S.1929, § 19-907;  
R.S.1943, § 19-908;

Laws 1967, c. 92, § 5, p. 285;  
Laws 1975, LB 410, § 17;  
Laws 1995, LB 805, § 1.

#### **Annotations**

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

### **19-909. Board of adjustment; appeals to board; record on appeal; hearing; stays.**

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board 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 officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have 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 case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

#### **Source**

Laws 1927, c. 43, § 7, p. 185;  
C.S.1929, § 19-907;

R.S.1943, § 19-909.

#### **Annotations**

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

## **19-910. Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.**

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section [19-929](#); (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections [19-901](#), [19-903](#) to [19-904.01](#), and [19-908](#) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) No such variance shall be authorized by the board unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by 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 reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the 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.

(3) In exercising the powers granted in this section, the board may, in conformity with sections [19-901](#) to [19-915](#), 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. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

### **Source**

Laws 1927, c. 43, § 7, p. 185;  
C.S.1929, § 19-907;  
R.S.1943, § 19-910;  
Laws 1967, c. 92, § 6, p. 286;

Laws 1969, c. 114, § 1, p. 526;  
Laws 1975, LB 410, § 18;  
Laws 1978, LB 186, § 6;  
Laws 2004, LB 973, § 1.

### **Cross References**

**For other zoning boards acting as a zoning board of adjustment for a municipality, see section [19-912.01](#).**

## **Annotations**

Due to the similarity between section 14-411 and this section when *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955), was decided, Frank is applicable to decisions rendered under both statutes. *Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals*, 261 Neb. 969, 628 N.W.2d 677 (2001).

The district court's granting of a zoning variance was not erroneous where the strict application of the subject zoning regulation would, because of the higher elevation of the movant's property, result in undue hardship, which is not of the type generally shared by other properties in the same zoning district and vicinity. Furthermore, the variance sought would not create a substantial detriment to the adjacent property, the character of the district would not be changed, and the variance would not produce a substantial detriment to the public good or substantially impair the intent of the zoning regulation. *Barrett v. City of Bellevue*, 242 Neb. 548, 495 N.W.2d 646 (1993).

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. *South Maple Street Assn. v. Board of Adjustment of City of Chadron*, 194 Neb. 118, 230 N.W.2d 471 (1975).

Variance from zoning ordinance requires concurring vote of four members of board of zoning adjustment. *City of Imperial v. Raile*, 187 Neb. 404, 191 N.W.2d 442 (1971).

Request for rezoning may be presented to board of adjustment. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

A variance should be granted only if strict application of the regulation, due to the unusual characteristics of the property existing at the time of the enactment of the regulation, would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner. Any grant of a variance must be supported by evidence relating to each of the four factors enumerated in this section. *City of Battle Creek v. Madison Cty. Bd. of Adjust.*, 9 Neb. App. 223, 609 N.W.2d 706 (2000).

**19-911. Board of adjustment; legislative body of village may act; exception; powers and duties.**

Notwithstanding the provisions of sections [19-907](#) and [19-908](#), the legislative body of a village may, except as set forth in section [19-912.01](#), provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections [19-901](#) to [19-905](#) may provide that as such board of adjustment it may exercise only the powers granted to boards of adjustment by section [19-910](#). As such board of adjustment it shall adopt rules and procedures that are in harmony with sections [19-907](#) to [19-910](#), and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

**Source**

Laws 1927, c. 43, § 8, p. 186;  
C.S.1929, § 19-908;  
R.S.1943, § 19-911;

Laws 1975, LB 410, § 19;  
Laws 1978, LB 186, § 7;  
Laws 1998, LB 901, § 2.

**Annotations**

The city council of a first-class city is not authorized by this section to sit as a board of adjustment. *Staley v. City of Blair*, 206 Neb. 292, 292 N.W.2d 570 (1980).

City council may sit as a board of adjustment. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

## **19-912. Board of adjustment; appeal; procedure.**

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within fifteen days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the board of adjustment shall file an answer to said petition which shall admit or deny the substantial averments of the petition, and shall state the contentions of the board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Said appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

### **Source**

Laws 1927, c. 43, § 9, p. 186;  
C.S.1929, § 19-909;

R.S.1943, § 19-912;  
Laws 1963, c. 89, § 3, p. 301.

### **Annotations**

There is nothing in this section which requires one to either seek and obtain a restraining order or forgo any challenge to a variance. On the contrary, this section merely provides that a challenger who wishes to incur the cost of obtaining a restraining order may do so in order to temporarily protect himself from the consequences of the variance during the pendency of the appeal. *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (1992).

Appeal allows a full review of both law and facts. *City of Imperial v. Raile*, 187 Neb. 404, 191 N.W.2d 442 (1971).

Appeal may be taken from order of board of adjustment permitting rezoning. *Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958).

An appeal to the courts from decision of city council is authorized. *Kelley v. John*, 162 Neb. 319, 75 N.W.2d 713 (1956).

Provision for appeal contemplates a review of facts as well as law. *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955).

A city council, under a zoning ordinance, cannot restrict the use of property in an unreasonable or arbitrary manner. *Coulthard v. Board of Adjustment of City of Neligh*, 130 Neb. 543, 265 N.W. 530 (1936).

## **§ 32.002 BOARD OF ADJUSTMENT.**

(A) The Mayor shall appoint, with the consent of the City Council, a Board of Adjustment which shall consist of 5 regular members plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member shall be appointed for a term of 3 years and shall be removable for cause by the Mayor and City Council upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by that member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. If the Board does not include a member who resides in the extraterritorial zoning jurisdiction of the City, the first vacancy occurring on the Board of Adjustment after the effective date of this section shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the City at such time as more than 200 persons reside within that area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the City but within its extraterritorial zoning jurisdiction. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment. (Neb. RS 19-908)

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties. The Board shall organize at its first meeting each year after the City Council meeting when appointments are regularly made and elect from its membership a chairperson and secretary. No member of the Board of Adjustment shall serve in the capacity of both chairperson and secretary of the Board.

(C) The Board shall adopt rules in accordance with the provisions of Neb. RS 19-901 through 19-914. Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. Special meetings may be also held upon the call of any 3 members of the Board. A majority of the Board shall constitute a quorum for the purpose of doing business. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. It shall be the duty of the secretary to keep complete and accurate minutes of all Board meetings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and to keep records of the Board's examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall be responsible for making those reports and performing those other duties as the Mayor and City Council may designate. (Neb. RS 19-908)

(D) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the City affected by any decision of the administrative officer. This appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice

of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board 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 officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. (Neb. RS 19-909)

(E) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers: (1) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section Neb. Rev. Stat. 19-929; (2) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (3) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under Neb. Rev. Stat. 19-910 and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(F) No such variance shall be authorized by the board unless it finds that: (1) The strict application of the zoning regulation would produce undue hardship; (2) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (3) 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 (4) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the 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.

(G) In exercising the powers granted in this section, the board may, in conformity with Neb. Rev. Stat. 19-901 to 19-915, 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. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to affect any variation in such regulation.

Appeals from a decision by the Board may be taken as provided in Neb. RS 19-912.  
(Neb. RS 19-910)