

TITLE 5, CHAPTER 8, VARIANCES
ORDINANCE NUMBER 217

AN ORDINANCE OF DALTON GARDENS, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, REPEALING AND REPLACING TITLE 5, CHAPTER 8 OF THE DALTON GARDENS MUNICIPAL CODE TO PROVIDE FOR A PURPOSE, APPLICABILITY, ADD AND CLARIFY DEFINITIONS, REQUIREMENTS FOR GRANTING A VARIANCE, PROCEDURES FOR REQUESTING A VARIANCE, STANDARDS, AND PROCEDURES FOR VARIANCES UNLESS OTHERWISE SPECIFIED AND PROVIDING FOR SEVERABILITY, CONFLICTING ORDINANCE PROVISIONS AND AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and City Council of Dalton Gardens, Idaho:

SECTION 1: Title 5, Chapter 8 of the Dalton Gardens Municipal Code is hereby repealed and replaced by the following:

5-8-1: **PURPOSE:** The purpose of this chapter is to provide definitions, standards, and procedures for acting on requests for variances to the Dalton Gardens Municipal Code.

5-8-2: **APPLICABILITY:** This ordinance shall apply to all zoning districts unless otherwise indicated.

5-8-3: **DEFINITIONS:** Whenever the following words or phrases are used in this Chapter they shall have such meaning as herein ascribed to them, unless the context makes such meaning repugnant thereto:

ADJOINING PROPERTY: All properties within, or adjacent to, a line three hundred feet (300') from the property for which a variance is requested. Contiguous properties owned by the same party are all treated as one property.

SITE CHARACTERISTICS: The distinguishing physical characteristics of a property for which a variance is requested, including area, shape, soil and ground conditions, topography (slope), and access.

VARIANCE: A modification of or an exception to the bulk and placement requirements of this Title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, building height, or other ordinance provision of this

Title affecting the size of lots or the size or shape of a structure or the placement of the structure upon lots.

5-8-4: REQUIREMENTS FOR GRANTING A VARIANCE REQUEST: A variance, not being a right, may be granted to an applicant only if the following requirements for granting a variance request are satisfied. The burden of proof rests upon the applicant for a variance to establish the following:

- A. Submission of a completed application packet to the City;
- B. Proof through evidence provided by the applicant:
 - 1. That the site characteristics of the property for which the variance is requested cause undue hardship to the property owner when complying with specific provisions of this Title;
 - 2. That reasonable uses of the property are not possible without the requested variance; and
 - 3. That approval of the requested variance will not be in conflict with the public interest and will not create a nuisance, harm adjoining properties, or have an adverse effect on implementation of the comprehensive plan;
- C. A variance may not be granted if it is for the property owner's convenience or financial profit alone; and
- D. The granting of a variance must grant the minimum relief from the requirements of this Title necessary to allow a reasonable use of the property.

5-8-5: PROCEDURE FOR REQUESTING A VARIANCE:

- A. If a variance is determined to be necessary by the City, a property owner or applicant may apply for a variance. The burden of proof lies with the property owner or application to provide accurate and sufficient information within the variance application packet.
- B. A pre-application conference is required by a property owner or applicant to complete a variance application. The City shall provide the information

on the application requirements, criteria and process to obtain a variance from the City.

- C. A variance is requested by submitting to the City a complete application packet.
 - 1. An application packet shall consist of an application form provided by the City and attachments thereto that together include all of the following:
 - a. The name, address, and telephone number of the owner(s) of the property for which a variance is requested and of the applicant(s), if different. If the applicant is different from the owner, then the consent of the owner is required.
 - b. The legal description of the property for which a variance is requested.
 - c. At least six photographs of the property for which a variance is requested, taken from all sides at the property line. Photographs should try to depict the applicable site characteristics of the property.
 - d. A site plan of the property for which the property is requested. The Site plan shall meet the requirements of Title 5 Chapter 10, drawn to scale and also delineate the following:
 - i. All structures, both existing and proposed;
 - ii. All dimensions, including property lines and setbacks from property lines to structures; and
 - iii. All site characteristics that support the request for a variance.
 - 2. A written narrative is required that explains all of the following:
 - a. The purpose of the variance;
 - b. Which site characteristics, in the absence of a variance, cause undue hardship on the property owner;

- c. A detailed description of the reasonable uses of the property that are not possible without approval of the requested variance;
 - d. A statement that indicates how the approval of the variance will not be in conflict with the public interest and will not create a nuisance, harm adjoining properties, or have an adverse effect on implementation of the comprehensive plan;
 - e. A statement from the Applicant that he/she understands and agrees that the variance will not be granted if it is for the property owner's convenience or financial profit alone and
 - f. That the requested variance is the minimum relief from the requirements of this Title necessary to permit a reasonable use of the property.
 3. The Applicant shall provide a mailing list of the names and mailing addresses and two sets of completed mailing labels of all adjoining property owners within 300 feet of the subject property.
Note: The applicant bears the burden of proof to provide accurate information to the City to notify the adjoining property owners. If adjoining property owners are not notified, the hearing will not be held, the City will not be liable for the inaccurate information and the applicant will be responsible for any additional costs the City incurs to hold additional public hearings.
 4. The Applicant shall remit applicable fees to the City as determined by the City's fee resolution.
- D. Upon receipt of an application for a variance, the City staff shall check that it is complete, including fees paid. If an application is not complete the City staff shall so advise the applicant and a hearing shall not be scheduled.
- E. Upon determining that an application is complete, the City staff shall:
 1. Set the matter for a hearing before the Dalton Gardens Planning Commission, allowing for sufficient time to comply with all notice requirements.

2. Give notice of the hearing to the applicant and adjoining property owners.
- F. A public hearing will be held by the Dalton Gardens Planning Commission using the procedures found in Title 5 Chapter 10 of the Dalton Gardens Municipal Code. The Commission shall, after reviewing the application packet and taking any testimony and receiving any exhibits offered by the applicant and members of the public at a hearing for that purpose, make specific written findings as to whether the requirements for granting a variance request have been satisfied.
 - G. The Commission shall forward to the Council the Commission's findings, accompanied by its recommendation that the Council approve or deny the application. The Commission's recommendation may include its recommendations as to any conditions that should be attached to any approval of the application, including conditions designed to mitigate the impact of the variance in the event it is granted.
 - H. Upon receipt of the Commission's findings and recommendation, the City staff shall:
 1. Set the matter for hearing before the Council allowing for sufficient time to comply with all notice requirements.
 2. Give notice of the hearing to the applicant and adjoining property owners.
 - I. The Council, after reviewing the application and the findings and recommendation of the Commission and after taking any testimony and receiving any exhibits offered by the applicant and members of the public at a hearing for that purpose, shall decide whether the requirements for granting a variance have been satisfied.
 - J. The Council's decision shall be in writing and:
 1. Shall include its specific findings of fact, based on the evidence presented to it, that support its decision as to whether the requirements for granting a variance have been satisfied;
 2. Shall, based on its findings, approve or deny the requested variance application;

3. Shall be issued within sixty (60) days of the closing of its hearing on the matter; and
 4. May include conditions upon its approval of the variance application, including conditions designed to mitigate the impact of the granted variance. Violation of such conditions shall be deemed a violation of this Title.
- K. Under no circumstances may the Council grant a variance that permits a use of the property not permissible under the terms of this Title in the district involved or any use expressly or by implication prohibited by the terms of this Title in said district.
- L. The Clerk shall notify the property owner (and the applicant, if different) of the Council's decision within five (5) business days of its issuance.
- M. The Council's decision shall be the final decision of the City.

SECTION 2: SEVERABILITY

Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of the remaining portions of this Ordinance.

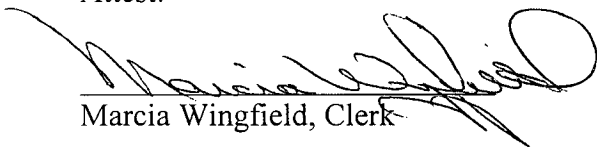
SECTION 3: CONFLICTING ORDINANCE PROVISIONS

If any conflict occurs between this Ordinance and provisions of the other City Ordinances, the more restrictive Ordinance shall take precedence.

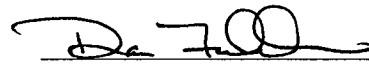
SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the Coeur d'Alene Press.

Attest:



Marcia Wingfield, Clerk



Dan Franklin, Mayor

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
County of Kootenai, } ss.

Madison Mahencu being first duly sworn upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The Legal Notice

of which the annexed is a printed copy, was published in the regular Friday issue of said newspaper for 1 consecutive Day commencing on the 11 day of May 20 12, and ending on the 11 day of May 20 12, and such publication was made as often during said period as said Daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice. Madison Mahencu On this 11 day of May in the year of 2012, before me, a Notary Public, personally appeared Madison Mahencu, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

SUMMARY OF CITY OF DALTON GARDENS, IDAHO ORDNANCE NO. 217

In accordance with Idaho Code §50-901A, the following is a summary of Ordinance 217 of the City of Dalton Gardens, Idaho;

1. An ordinance of Dalton Gardens, Idaho a political subdivision of the state of Idaho, repealing and replacing Title 5, Chapter 8 of the Dalton Gardens Municipal Code to provide for a purpose, applicability, and to add and clarify definitions; to add requirements for granting a variance, procedures for requesting a variance, standards, and procedures for variances; and providing for sererability, conflicting ordinance provisions and an effective date.

2. The ordinance was passed on May 3, 2012.

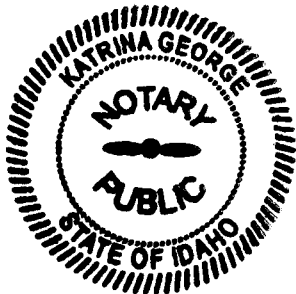
3. The ordinance takes effect upon publication of this Summary in the Coeur d'Alene Press.

4. the full text of Ordinance 217 is available at the Dalton Gardens City Hall. DATED this 3rd day of May, 2012.

/s/ Daniel Franklin, Mayor
ATTEST:

/s/ Marcia Wingfield, Clerk
Legal 5344
May 11, 2012

Katrina George
Notary Public for the State of Idaho,
residing at Coeur d'Alene, Idaho.



MY COMMISSION EXPIRES 8/29/17

DOLAN & JACOBSEN
ATTORNEYS AT LAW
LIBERTY BUILDING
118 N. 7TH ST. - P.O. BOX 1116
COEUR D'ALENE, IDAHO 83816-1116

May 3, 2012

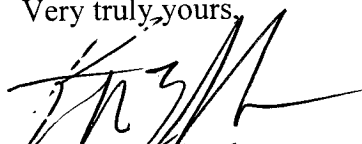
City of Dalton Gardens
Attn: Marcia Wingfield, City Clerk
6360 N.4th Street
Dalton Gardens, ID 83815

RE: Ordinance 217

Dear Marcia:

Pursuant to Idaho Code § 50-901A, this letter is to certify that the summary of Ordinance No. 217, VARIANCES, is true and complete and provides adequate notice to the Public of the contents of said Ordinance.

Very truly yours,



Kenneth T. Jacobsen
City Attorney

KTJ/rs