

BEFORE THE PLANNING COMMISSION, CITY OF DALTON GARDENS, IDAHO
Staff Report on Fence Height Variance

**IN THE MATTER OF THE APPLICATION
OF AVISTA CORPORATION FOR A
VARIANCE TO THE FENCE HEIGHT
LIMITATION OF SECTIONS 5-4-4 AND
5-3-11**

**COURSE OF PROCEEDINGS,
FINDINGS OF FACT, APPLICABLE
LEGAL STANDARDS, STAFF
ANALYSIS, CONCLUSIONS OF
LAW AND DECISION**

I. COURSE OF PROCEEDINGS

- 1.01 An application for a fence permit was submitted by Aaron Henson from Avista Corporation on or about December 2, 2019. Upon review of the application, it was determined the requested fence exceeded the height requirements for fences in the Utility zoning district. Mr. Henson was advised that the fence would need to be reduced in height, or a variance would be required.
- 1.02 An application for a variance was subsequently submitted to the City by Aaron Henson on or about December 16, 2019.
- 1.03 The City Clerk issued a notice of Public Hearing on this application with the hearing to be held on January 16, 2019. It was published in the Coeur d'Alene Press and adjacent property owners were notified by the City.
- 1.04 Files and exhibits relative to this application were available for review at the Planning Commission meeting and are available for review at the City Hall during office hours.

II. FINDINGS OF FACT

- 2.01 **Applicant/Owner.** Aaron Henson, on behalf of Avista Corporation is the applicant. The County Assessor's records show the property to be owned by Washington Water Power Co., 1411 E. Mission Ave., Spokane, WA 99202. Washington Water Power Co. was renamed Avista Corp. several years ago.
- 2.02 **Request.** The Applicant is requesting a variance to the 7-foot maximum height limitation for fencing in the Utility zoning district that is surrounded by the Commercial district. In such circumstances the commercial fencing standards in Section 5-3-11 apply. The applicant is requesting a variance to construct a fence with a total height of 9.5 feet. That fence height is required by the Federal Energy Regulatory Commission (FERC) for security at this type of facility. (See Exhibits – Variance application, fence permit application, construction plans).
- 2.03 **Location / Parcel No. / Legal Description.** The property is located at 84 E. Prairie Ave. The parcel number is D-0000-025-3200 and the parcel is described as Tax No. 7498 and Tax No. 474, except the western 185 feet thereof, and excepting road right of way in the NW ¼ of Section 25, Township 51 North, Range 4 West, Boise Meridian, Kootenai County, Idaho.

- 2.04 **Physical Characteristics and Lot Size.** The parcel has approximately 265 feet of frontage on Prairie Avenue, just east of the intersection with Government Way. It is approximately 1.825 acres in size and has little topographical relief.
- 2.06 **Existing Structures / Property History.** The property has been used for an Avista electrical substation for many years and contains electrical equipment and a small un-manned building consistent with that use.
- 2.07 **Site Plan / Setbacks.** Section 5-3-11 A.3. of the code requires fences to be set back at least 15 feet from the front property line. The requested fence is set back 20 feet at the front.
- 2.08 **Zoning and Building Site Dimension Requirements.** The lot is zoned Utility and has Commercial zoning to the south and west. East of the site is another parcel in the Utility district owned by Dalton Gardens Water Association Inc. East of the Dalton Water parcel, the zoning is Residential. There are no building site dimension requirements for parcels in the Utility zone.
- 2.09 **Surrounding Land Use.** The site is in an area of commercial development. The parcel to the west is vacant. The parcel to the southwest is currently being developed as an office and storage building. The parcels to the south and southeast are developed with commercial uses. To the east, Dalton Water has property that is used by their water association. Property to the north is developed with commercial uses in the City of Hayden.
- 2.10 **Comprehensive Plan.** The property is within the “Utility” designation of the City’s recently adopted comprehensive plan. There are no policies in the plan that are directly applicable to this type of variance request.

III. APPLICABLE LEGAL STANDARDS

- 3.01 Dalton Gardens Municipal Code, Section 5-4-4 requires that fencing comply with the requirements of the Commercial zoning district, when the property is surrounded by or within the commercial district.
- 3.02 Dalton Gardens Municipal Code, Section 5-3-11 contains requirements for fencing materials, fence height and setbacks for fencing. Fence height is limited to 7 feet, unless specifically allowed in conjunction with a special use permit.
- 3.03 Dalton Gardens Municipal Code, Title 5, Chapter 8 defines a variance as 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. This Chapter also includes procedures and requirements for requesting and granting variances.

IV. REQUIRED FINDINGS TO APPROVE A VARIANCE

Dalton Gardens Municipal Code Section 5-8-4 contains the following required findings which are necessary to approve a variance request:

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.

V. STAFF ANALYSIS

This is a fairly unique case where federal requirements dictate the appropriate fence height for security purposes. The applicant has provided a copy of the review which was conducted to classify this facility and determine the physical security requirements. The Applicant has no option other than to comply with the federal requirements.

Given that the fence complies with all other aspects of the city code, and there is no alternative, staff strongly encourages planning commission approval of this request.

VI. CONCLUSIONS OF LAW

6.01 The proposal as presented **does / does not** warrant approval for the following reasons:

1. That the site characteristic of the property for which the variance is requested **does / does not** cause undue hardship to the property owner when complying with specific provisions of this title;

2. That reasonable uses of the property **are / are not** possible without the requested variance; and

3. That approval of the requested variance **will / will not** be in conflict with the public interest and **will / will not** create a nuisance, harm adjoining properties, or have an adverse effect on implementation of the comprehensive plan;

4. The request for the variance **is / is not** for the property owner's convenience or financial profit alone; and

5. The granting of a variance **does / does not** grant the minimum relief from the requirements of this title necessary to allow a reasonable use of the property.

VII. DECISION BY THE COMMISSION

Based on the Findings of Fact and Conclusions of Law set forth in this document, the Commission hereby **APPROVES with conditions / DENIES** the application for a variance to the fence height requirements of Title 5, Chapter 4, Section 4, and Title 5, Chapter 3, Section 11 of the Dalton Gardens Municipal Code.

VIII. CONDITIONS IF APPROVED:

1. Reserved for Planning Commission, if needed

If DENIED

Per Idaho Code 67-6535, the Applicant has the following options regarding any denial of a request for a site specific application:

1. The applicant has a right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.
2. The commission's decision may be appealed to the City Council under Title 5, Chapter 10, Section 4 of the Municipal Code, where the decision after a proper appeal shall then be the final decision of the city.
3. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code.

If denied, the applicant shall have 60 days to remove any portion of the fence that exceeds the height requirements.

Respectfully submitted,



Rand Wichman
City Planner