

**TOWN OF DANIEL, UTAH
MUNICIPAL ORDINANCE**

Number: DO 2023-11-06

Appr. Date: November 06, 2023

Effect. Date: Effective after publication and posting and no later than 12/07/2023

Short Title: Changes to the Daniel Town Code Titles 1, 3, and 8

Purpose: To further clarify language in the current Town of Daniel Code as well as update Daniel Town Code to align with current State of Utah Codes

Ordinance: The Town of Daniel seeks to update the current Town Code to better align with the Utah State Code, to clarify inconsistent wording, make changes consistent with current Town of Daniel Policies, add a water conservancy title to the Town Code, and better clarify the title, role, construction and, responsibilities of the Board of Appeals.

Complete changes to the Town of Daniel Code to be attached

D0-2023.11.06

Passed and adopted by the Mayor and Town Council of Daniel, Utah, this
6th day of November, 2023 by the following vote:

	Yes	No	Abstain	Absent
Mayor Scott Kohler	<u>SK</u>	_____	_____	_____
Councilmember Jon Blotter	<u>JB</u>	_____	_____	_____
Councilmember Merry Duggin	<u>MD</u>	_____	_____	_____
Councilmember Barry Dixon	<u>BD</u>	_____	_____	_____
Councilmember Robyn Pearson	<u>RP</u>	_____	_____	_____

APPROVED:

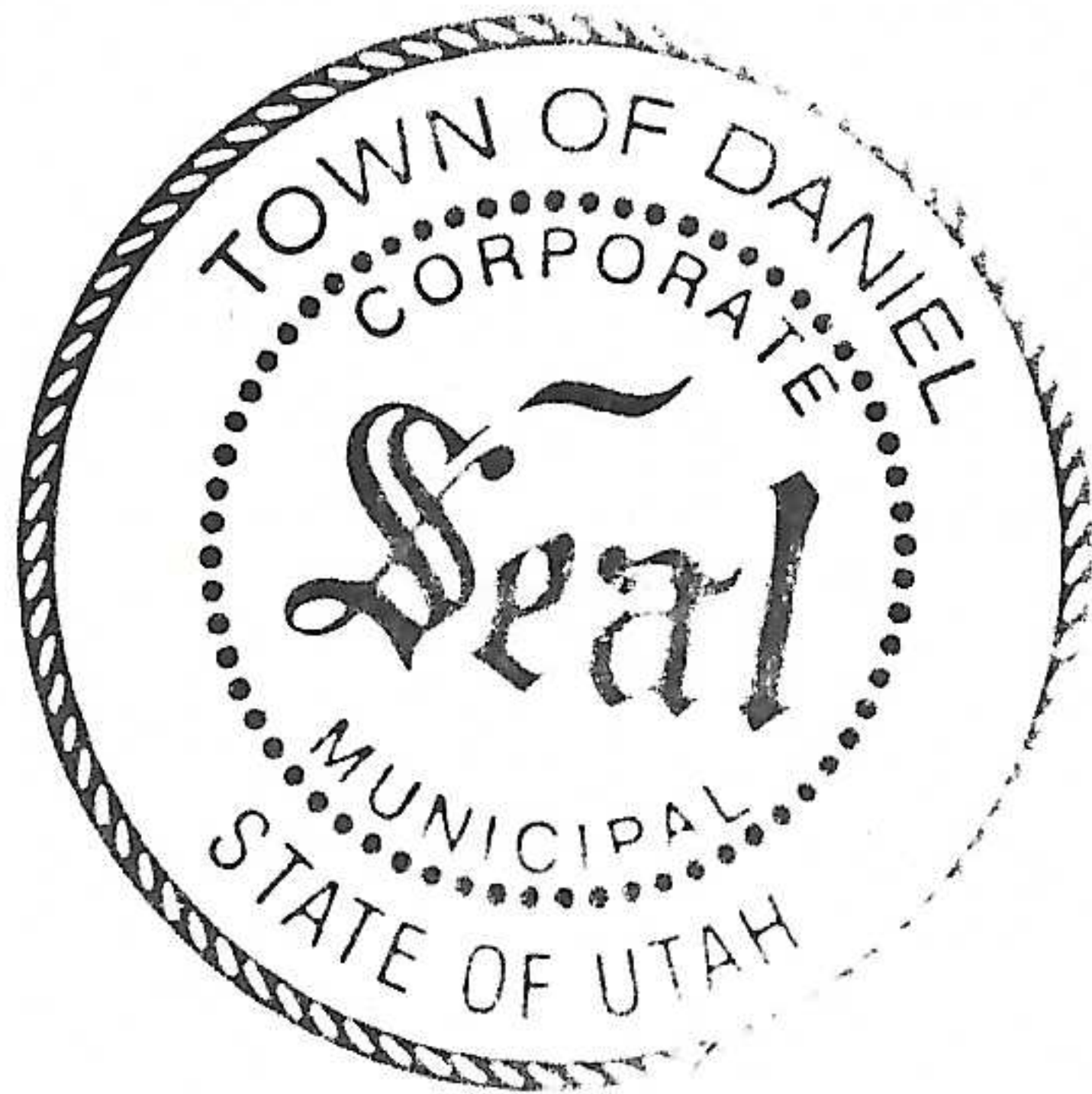
Scott Kohler

Mayor or Acting Mayor

ATTEST:

Merry Duggin
Recorder or Acting Recorder

(SEAL)



Section 8.02.08 Board of Appeals--Variances – Procedure

- (1) **Applications.** Applications for variance shall be filed with the Planning Office. Applications shall contain the following information:
 - (a) A description of the requested variance together with a designation of that section of the Town of Daniel Land Use and Development Code from which relief is being requested;
 - (b) An accurate ~~plat~~ plan, if appropriate, indicating the manner in which the variance will be applied and its effect upon adjacent properties; and
 - (c) A filing fee as established by ordinance resolution.
- (2) **Public Hearing.** Upon receipt of a complete application as determined by the Planning Staff, a public hearing shall be set with the Board of ~~Adjustment for the next available meeting date~~ Appeals in the time frame established by State code.
- (3) **Burden of Proof.** The applicant for a variance shall bear the burden of proving that all of the foregoing conditions are satisfied as determined by the planning department.
- (4) **Findings Required.** The Board of Adjustment Appeals may authorize variances from the requirements of this Title, only when those variances serve the public interest, and are consistent with State law. In addition the Board of Adjustment Appeals may not grant use variances. The concurring vote of not less than ~~four (4)~~ three (3) members of the Board of Adjustment Appeals shall be necessary to grant a variance.
- (5) **Requirements for Granting a Variance.** The Board of Adjustment Appeals may grant a variance only if all of the following conditions are met:
 - (a) Literal enforcement of the Land Use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use ordinance;
 - (b) There are special circumstances attached to the property that do not generally apply to other properties in the same districts;
 - (c) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 - (d) The variance will not substantially affect the General Plan and will not be contrary to the public interest; and
 - (e) The spirit of the Land Use ordinance is observed and substantial justice done.
- (6) **Unreasonable Hardship.** In determining whether or not enforcement of the Land Use ordinance would cause unreasonable hardship, the Board may not find an unreasonable hardship unless the alleged hardship:
 - (a) Is located on or associated with the property for which the variance is sought; and
 - (b) Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - (i) In determining whether or not enforcement of the Land Use ordinance would cause under Subsection Five (5)(a), the Board of Adjustment Appeals may not find an unreasonable hardship if the hardship is self-imposed or economic.

(ii) In determining whether or not there are special circumstances attached to the property under Subsection Five (5)(a), the Board of Adjustment Appeals may find that special circumstances exist only if the special circumstances;

(A) Relate to the hardship complained of; and

(B) Deprive the property of privileges granted to other properties in the same district.

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

(8) **Variance Applicability.** Variances run with the land.

(9) **Use Variance.** The Board of Adjustment Appeals and any other body may not grant use variances.

(10) **Additional Requirements.** In granting a variance, the Board of Adjustment Appeals may impose additional requirements on the applicant that will:

(a) Mitigate any harmful effects of the variance; or

(b) Serve the purpose of the standard or requirement that is waived or modified.

Section 8.02.09 Board of Appeals -- Appeals – Procedure

Appeals to the Board of Adjustment Appeals shall be made as follows:

- (1) **Standing to appeal.** Any person or entity (including a Town of Daniel department or elected official) affected by an administrative decision applying the Land Use ordinance may appeal that decision to the Board of adjustment Appeals by alleging that there is an error in any order, requirement, decision, or determination by an official.
- (2) **Deadline for Filing Notice of Appeal.** Notice of Appeal and all supporting documents shall be filed within thirty (30) days of decision or action taken by the official. Notice of Appeal shall be filed with the Planning Staff.
- (3) **Contents.** Notice of Appeals shall state the administrative order, requirement, decision or determination from which the person or entity appeals, and shall specify the grounds for the appeal and circumstances related thereto. Any filings shall include copies of any documentary evidence or written arguments intended to be presented to the Board of Adjustment Appeals. A written appeal failing to specify grounds of appeal may be summarily dismissed by the Board of Adjustment Appeals, with or without prejudice. The brief should address all issues to be brought before the Board of Adjustment Appeals. Any new issues not addressed in the brief that are put forth at the hearing, shall be grounds to continue the matter to allow for adequate time to respond to the new issues.
- (4) **Determination of Hearing Date.** ~~Within five (5) business days of receipt of a Notice of Appeal, t~~ The applicant will be informed of a date for the hearing before the Board of Adjustment Appeals, which shall be not sooner than thirty (30) days thereafter, and no later than seventy five (75) days thereafter. The hearing date will be dependent upon and scheduled upon availability of seating a quorum of the Board members.
- (5) **Record Sent to Board of Adjustment Appeals.** The official responsible for the administrative decision being appealed shall refer to the Board of Adjustment Appeals all papers constituting the record upon which the action appealed from was taken, at least seven (7) days prior to the hearing.
- (6) **Appeal Stays Action.** An appeal stays all proceedings unless the Planning Staff certifies to the Board of Adjustment Appeals that a stay would cause imminent peril to life or property, or irreparable harm.
- (7) **Burden of Proof.** The person or entity making the appeal has the burden of proving that an error has been made.
- (8) **Actions of Board of Adjustment Appeals.** In exercising its powers, the Board of Adjustment Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, condition, decision or determination as ought to be made. ~~The concurring vote of not less than four (4) members of~~

~~the Board shall be necessary to reverse any order, requirement, decision or determination applying the Land Use ordinance. The Board may act only on the majority vote of the quorum in attendance, but not less than 3 concurring votes.~~

(9) Appeal of Decision of Board of Adjustment Appeals. Any person or entity aggrieved by a decision of the Board of Adjustment Appeals may petition the district court for a review of the decision as permitted by Utah State Law.

platted/recorded subdivision or development, an engineered plan shall be submitted for review and approval by the Building Official and/or Daniel Planning Commission, or other Town of Daniel departments that are responsible for approving developments in Daniel.

Section 8.21.39 Grading Permit in Platted Subdivision. No land within the Town of Daniel may be disturbed, including construction, grubbing, grading, cutting, filling or excavating without a grading permit or building permit issued by the Town of Daniel. This provision does not apply to agriculture activity or to disturbances of an area less than one thousand (1,000) square feet.

Chapter 8.22

NON-CONFORMING USES AND STRUCTURES

Sections:

8.22.01	Purpose of Nonconforming Use and Structures Provisions.
8.22.02	Definitions.
8.22.03	Non-Conforming Uses-Continuation And Abandonment.
8.22.04	Non-Conforming Structures.
8.22.05	Change in Status of Non-Conforming Use.
8.22.06	Reconstruction of Non-Conforming Structure Partially Destroyed.
8.22.07	Non-Conforming Use of Open Land.
8.22.08	Non-Conforming Lot of Record Determination.
8.22.09	Non-Conforming Lot of Record.
8.22.10	Non-Conforming Subdivision.

Section 8.22.01 Purpose of Nonconforming Use and Structures Provisions.

The purpose of this chapter is to control and gradually eliminate those uses of land or structures, which although legal at the time of their establishment or erection, do not now conform to the Land Use regulations of the district within which they are situated. Such uses and structures shall be deemed nonconforming. Any structure or use which was a permitted use or structure built prior to enactment of this Title, but which is now designated by this Title as a conditional use, shall not be considered a nonconforming use, and shall not be subject to the provisions of this chapter.

Section 8.22.02 Definitions.

(1) **"Non-conforming structure"** means a structure that legally existed before its current zoning designation, and because of subsequent zoning changes does not conform to the setback, height restrictions, or other regulations governing the use.

(2) **"Non-conforming use"** means a use of land that legally existed before the current Land Use regulations, and has been maintained continuously since the time the Land Use regulation governing the land became effective, and because of subsequent zoning changes does not conform to the Land Use regulations that govern the land.

(3) **"Non-Conforming Lot of Record"** A lot or parcel of land lawfully established and maintained but which no longer conforms to the width and area requirements of the zone in which it is located.

Section 8.22.03 Non-Conforming Uses-Continuation And Abandonment.

A non-conforming use lawfully existing on the effective date of this Title may be continued. A nonconforming use may be extended throughout the existing building provided no structural alteration of the building is proposed or made for purposes of the extension. A person engaging in a non-conforming use may not expand the character of that use to include new or additional uses. If a non-conforming use is discontinued for a continuous period of more than twelve (12) months, any future use of such land shall conform to the provisions of the zone in which it is located.

Section 8.22.04 Non-Conforming Structures.

8-5 RA-2 Residential Agricultural Zone

8-5-1 Intent

The specific intent in establishing this zone is:

- A. to provide the most appropriate location in the unincorporated part of the County for residential development,
- B. to facilitate the provision for essential services needed by the residents within urbanizing areas of the County, particularly sewerage and culinary water service district, and
- C. to facilitate payment for services rendered to residential development for street maintenance, fire and police protection, health and sanitation service, etc., through the instrumentality of County urban service areas.

In order to accomplish the objectives and purpose of this Code and to carry out the foregoing, the following regulations shall apply in the RA-2 Residential Agricultural Zone.

8-5-2 Use Requirements

The following buildings, structures, and uses of land shall be permitted in the RA-2 Residential Agricultural Zone upon compliance with requirements set forth in this Code.

- A. One-family dwellings and buildings accessory thereto, including a private garage, private swimming pool, and tennis courts.
- B. Home occupations and premises occupations.
- C. Schools, churches, public agency parks and playgrounds, arboretums, public buildings.
- D. The raising, care and keeping of domestic animals and fowl for personal or family use and consumption, but not for sale or barter, provided that no cattle, sheep, horse or pig shall be kept on lots containing less than one (1) acre of land.
- E. Farm machinery, storage sheds.
- F. Barns, corrals, pens, coops, sheds and feed storage buildings for the keeping of animals and fowl and

the storage of farm products, provided uses for the care and keeping of livestock and fowl are located at least one hundred (100) feet from the front property line.

- G. Small animal hospitals without outside runs.
- H. Day-care nurseries and foster, family and youth care homes, which have been approved by the County and State Health Department.
- I. Planned residential developments and planned subdivisions subject to applicable large scale development standards as set forth in Chapter 9 of this Code.
- J. Fences, walls, and hedges. Also, mobile home parks subject to provisions of Paragraph 10-41.
- K. Water reservoirs, water wells, ponds, dams, water pumping plants, flood control structures, water transmission lines and buildings accessory thereto.
- L. Accessory signs not exceeding fifteen (15) square feet in area pertaining to the sale of property or produce raised on the premises, also name plates not exceeding 226 square inches in area.
- M. Temporary buildings and yards for the storage of construction materials and equipment incidental and necessary to construction of uses otherwise permitted in the zone, subject to requirements set forth in Paragraph 10-33 of this Code.
- N. Cemeteries, public and private, subject to the laws of the State of Utah when approved by the Board of Adjustment.
- O. Electrical power transmission lines under 260 KVA.
- P. Electrical power transmission lines having a capacity of 260 KVA and over, oil and gas transmission lines, subject to review and approval of the Planning Commission as set forth in Paragraph 10-26 of this Code.
- Q. Sewage treatment plants subject to review and approval by the State Division of Health.

8-5-3 Area and Density Requirements

The minimum building site area shall be one recorded lot or parcel of land not less than one acre in area for

each one-family dwelling, day care center, foster, family or youth care home. Notwithstanding the foregoing area requirements, the density within a planned residential development in this zone shall conform to the density requirements set forth in Section 9-2E4a.

8-5-4 Width Requirements

The minimum width requirements for any one-family dwelling shall be two hundred (200) feet on a public street, except when a building site is included in an approved planned subdivision.

8-5-5 Building Location Requirements

- A. Front Setback--All buildings and structures shall be set back at least thirty (30) feet from the front lot line, or sixty (60) feet from the center line of the road right-of-way, whichever is the greater distance, except as required in Paragraph 10-11 of this Code.
- B. Side Setback--All dwellings shall be set back from the side property line a distance of at least ten (10) feet, and the total distance of the two side setbacks shall be at least twenty-four (24) feet. The minimum side setback for accessory buildings shall be the same as for main buildings, except that a three (3) foot side setback shall be required for accessory buildings which are located more than one hundred (100) feet from the front lot line and at least twelve (12) feet in the rear of any dwelling. On corner lots, the side setback from any street shall not be less than thirty (30) feet for both main and accessory buildings.
- C. Rear Setback--For interior lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least thirty (30) feet. Accessory buildings on interior lots shall be set back not less than ten (10) feet from the rear property line, except that no rear setback shall be required for accessory buildings having fire-resistive walls of two (2) hours or more. For corner lots, all dwellings and other main buildings shall be set back from the rear property line a distance of at least thirty (30) feet. Accessory buildings on corner lots shall be set back from the rear property line a distance of not less than three (3) feet.

8-5-6 Height Requirements

The maximum height of any dwelling shall be twenty (20) feet and the minimum height of any dwelling shall be eight (8) feet. Chimneys, flag poles, television antennas, church towers and similar structures not used for human occupancy are excluded in determining height, except as required in Paragraph 10-14 of this Code.

8-5-7 Special Provisions

The following special provisions shall apply in this zone in order to carry out the intent of this Code.

- A. For the purpose of determining front, side, and rear setback requirements, any separate building situated within twelve (12) feet from a dwelling or other main building shall be considered as a part of the main building and not as an accessory building.