

1 SPRINGDALE APPEAL AUTHORITY ADMINISTRATIVE HEARING

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ADMINISTRATIVE HEARING OFFICER:

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Bryan Pattison

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APPLICANT:

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Noel Benson

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August 8, 2024 * 10:00 a.m.

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Location: Canyon Community Center

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126 Lion Boulevard

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Springdale, Utah

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Reporter: Diana Kent, RPR, CRR (Via Zoom)

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Notary Public in and for the State of Utah

P R E S E N T

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APPLICANT:

Noel Benson

BUSINESS REPRESENTATIVE FOR FLANIGAN'S:

Cade Campbell

P R O C E E D I N G S

MR. PATTISON: Good morning. This is a public meeting to address a variance application. I'm Bryan Pattison, the town appeal authority. The applicant is Noel Benson. The affected property is parcel S-32-b located at 1067 Zion Boulevard.

The applicant seeks a variance from Section 10-18-1 Subsection 4 of the town code, which requires a minimum of 60 percent of the property to be landscaped or natural open space, and that 30 percent of that must be landscaped. The applicant seeks to allow a reduced quantity of landscape to redevelop the property.

Five elements are required to be established to obtain the variance, and the burden is on the applicant to demonstrate all five elements. For the applicant's benefit, I'll just quickly review those.

Number one is that literal enforcement of the ordinance would cause an unreasonable hardship.

Number two is that there are special circumstances attached to the property that do not apply to other properties in the same zone.

Number three is that granting the variance

1 is essential to the enjoyment of a substantial property
2 right possessed by other property in the same zone.

3 Number four is that the variance will not
4 substantially affect the general plan and will not be
5 contrary to the public interest.

6 And number five is that the spirit of the
7 land use ordinance is observed, and substantial justice
8 is done.

9 So with that, Mr. Benson, please come
10 forward. So, you know, I've received the town's report
11 which included your application and supporting
12 documents. So I've read that. But go ahead and tell
13 me what I need to know. How do you qualify for a
14 variance?

15 MR. BENSON: Sure. Before I start, I just
16 want to make one quick thing. Right here in this room
17 there's a few people. One of them is the mayor,
18 Barbara Bruno. Her and I have a strained relationship
19 and I believe it is wildly inappropriate that she is
20 present at this meeting.

21 MR. PATTISON: And that is noted, Sir, and
22 it's a public meeting, so anyone --

23 MR. BENSON: I get it.

24 MR. PATTISON: -- is welcome to attend.

25 MR. BENSON: I get it.

1 MR. PATTISON: But it's been noted, so
2 please proceed.

3 MR. BENSON: Thank you. So, you can see
4 in the application, there's a lot of iterations of the
5 overview for the footprint of the building and the
6 parking. And so I started working with the architect
7 and draftsman. We were working under the 40 percent,
8 where 60 percent needs to be landscaped. I know it
9 says "open space," but really it's landscaped because
10 there's no desirable open space to preserve on this
11 property.

12 So the requirement is really 60 percent
13 landscape, and when I tried to work the iterations of
14 it, I couldn't get enough parking; I couldn't get the
15 building to be big enough. And even in the current
16 drawings that are in front of you, I'm worried that one
17 or two of the spots that are currently on the outline
18 will be taken away from the fire marshal. That is a
19 distinct possibility. So I really need to maximize the
20 parking on this property, and there's just simply no
21 way to do it with the size of it.

22 So hopefully all those iterations sort of
23 spell out the idea that we tried many different things,
24 and they just didn't seem to work.

25 MR. PATTISON: And I've seen pictures.

1 The property right now is what? It's a home?

2 MR. BENSON: Yeah. It's a very dilapidated
3 home, and then behind that home are these two cabins
4 that used to be actually in Zion National Park. The
5 problem is they stuccoed over them, so they are not
6 that esthetically desirable. We have offered them to
7 the town historical society. If they want them, they
8 can have them. But they don't even have cooking
9 facilities inside of them, and they don't conform to
10 the property in many, many ways.

11 MR. PATTISON: So your plan is to tear all
12 of it out, have it removed, and build a restaurant. Do
13 I understand that correctly?

14 MR. BENSON: Yes, sir.

15 MR. PATTISON: Who currently owns the
16 property?

17 MR. BENSON: It's in my grandmother's
18 trust. She has passed.

19 MR. PATTISON: What's the name of the
20 trust?

21 MR. BENSON: It's the Margaret Benson
22 trust.

23 MR. PATTISON: So now you control the
24 property?

25 MR. BENSON: I control the land. I have

1 land use control, absolutely. There's a different
2 executor of that trust, so we submitted, with the
3 application, you know, a note that said that I have
4 authority for this appeal process and land use.

5 MR. PATTISON: Sure, and I'm not
6 questioning that. I'm just trying to generally
7 understand the background --

8 MR. BENSON: So the background of --

9 MR. PATTISON: -- of the property.

10 Go ahead.

11 MR. BENSON: -- the whole property, all
12 the properties around there, I'm pretty much related to
13 everybody in that sort of neighborhood. And my
14 grandparents bought a home at the very end of that
15 little lane, and they bought another home at the top of
16 the lane, and that's the property that we are talking
17 about. My aunt moved in there about 26, 27 years ago,
18 and the idea was for her to live there for a year or
19 two, but she ended up living there 26-plus years, and
20 she passed a few months ago. And so that's how all
21 this came about.

22 MR. PATTISON: So tell me about the
23 restaurant. If the town enforces the ordinance, the
24 landscape ordinance, are you still able to build a
25 restaurant, just a smaller one?

1 MR. BENSON: I really don't think so.
2 Because with a restaurant, you need a certain amount of
3 space. I can't have a multi-level kitchen
4 configuration, for instance. So there are certain
5 limitations when you're trying to build specifically a
6 restaurant where you couldn't just have certain things
7 on multi stories. So I don't really see a path if we
8 don't get the variance. I'm going to certainly try and
9 go back to the drafts person, the architect, and do what
10 I can and try to cantilever some things and different
11 ideas. But I'm -- it's pretty important, that 12
12 percent for development.

13 MR. PATTISON: Okay. You need -- what's
14 the standard per -- I know there is one. How many
15 parking stalls per square foot do you need? Is that
16 the standard?

17 MR. BENSON: Well, the basic way it works
18 out from a code standpoint is I need a minimum of two
19 employee parking, probably three, because once I hit a
20 threshold for dining space, then I'm required three
21 employee parking. I'm going have one handicapped, and
22 so right there there's four that are not just
23 traditional parking. And so just having two or three
24 more is just not -- it's not going to be adequate.

25 MR. PATTISON: Okay.

1 MR. BENSON: And even with that, I
2 wouldn't be able to use -- I wouldn't be able to have
3 enough dining anyway because you need one parking space
4 for every 200 square feet of dining. That includes
5 outdoor, as well. So even just something outside, a
6 table, would count towards that.

7 MR. PATTISON: Have you looked at -- I
8 mean, there are certainly other things you could do
9 with the property, right? And right now it's a home?

10 MR. BENSON: Well, it's a home that needs
11 a lot of work. So if we were to keep it a home, we
12 would put in high five figures, probably, just to make
13 it normally habitable.

14 MR. PATTISON: So it's not habitable right
15 now?

16 MR. BENSON: In my opinion, it's not. I
17 used to be in the business, and so I would not check
18 that box. It's subjective, but --

19 MR. PATTISON: Sure. You indicate, and I
20 don't know if this was the special circumstances
21 element or the hardship element, but you suggest that
22 the benefit to the community is this idea of a stand-
23 alone restaurant as opposed to a restaurant that's
24 attached to a hotel or lodging. Is that -- I mean, is
25 that the interest I should be looking at? Is it a

1 restaurant interest?

2 MR. BENSON: I think the town wants more
3 restaurants. So whether it is buried in a hotel or
4 not, I think it is still a benefit either way. My
5 point is that there's very, very few restaurants that
6 are not, in a way, subsidized by transient lodging in
7 our town. Pretty much -- there's a handful that don't
8 have it, but the vast majority of the restaurants do
9 have a subsidy of transient lodging.

10 So I'm suggesting that, hey, I'm just
11 doing a restaurant. I'm not asking for transient
12 lodging, I'm not asking for another business that the
13 town would not -- that would not be appealing to the
14 general public. So I'm saying there's no caveats, no
15 catches, it's just a restaurant. The public is going
16 to love it, the town folks are going to love it,
17 hopefully everybody does.

18 MR. PATTISON: So how do I balance --
19 assuming I agree with you, assuming that's right and
20 it's good for the community, how do I balance that with
21 what the code is telling me, which is the purpose of
22 this landscape requirement is to preserve this, as it
23 states "in the park" feel to the town? It seems like
24 this plan would be taking that away. Help me
25 understand how I would balance that out and how,

1 agreeing with you, granting the variance, would be
2 consistent with what the ordinance requires, this "in
3 the park" feeling.

4 MR. BENSON: So I think a couple of
5 things. The most recent building that was built is
6 just two doors down from us, and they were working with
7 about 35 percent landscape. And they just finished
8 recently. It's Zion Guru, it's just two doors down.
9 And the general consensus is people are pretty happy
10 with that building. And I think they did a terrific
11 job of maintaining the feel, and putting enough
12 landscaping in to do that.

13 We will have 18 percent -- or excuse me,
14 13 percent more landscape that we would be required to
15 do. And our setback, our front setback, is a full 30
16 feet. So we are going to be able to landscape that in
17 a way to make it really, really desirable for the town
18 and follow that village character, for sure.

19 You know, most of the places in town, most
20 of the businesses in town are at 30 to 35 percent
21 landscaped. So at 48 percent, we have a lot more
22 latitude to really follow the code and make sure that
23 the structure is something the town wants to have.

24 MR. PATTISON: When you say most are at 35
25 percent, what do you base that on?

1 MR. BENSON: Research. So, for instance,
2 there's a few standalone restaurants. One is called
3 Oscar's Café. They are working with 30 percent
4 requirement. I did the research on that. Zion Guru,
5 the building that just got built that I mentioned, they
6 were working with 35 percent landscape requirements,
7 just because I wanted to know. And if this property
8 was bigger, then the 60 percent would be workable. And
9 that's kind of the idea with this particular zone. We
10 are in the Village Commercial Zone. It's supposed to
11 be a transition from commercial to residential. But
12 the problem is that the town has not zoned the
13 properties accordingly. So we're sitting around all
14 other commercial properties. There's no transition.
15 There's no residentially zoned property that touches us
16 or is across the street from us. So it doesn't really
17 make a lot of sense that we are in a transition,
18 because we are not transitioning to residential.

19 In my mind, if we had -- like, for
20 instance, if the property behind was residential and
21 they didn't have all the B&B type activity going on, I
22 wouldn't be here right now asking for this variance,
23 because I want to build something that the town wants.
24 I don't want to build something that they don't want
25 and force it on them.

1 MR. PATTISON: Do you know, and maybe this
2 is a better question for the town, do you know when
3 this ordinance was adopted? Especially in relation to
4 these other businesses, Oscar's, for example. When
5 they developed their property, do you know if they were
6 subject to this ordinance?

7 MR. BENSON: They are in a different zone.
8 They are in the commercial, Central Commercial Zone,
9 which is slightly more dense. So they had to work with
10 less landscape requirements than I do, because I'm in
11 the so-called transitional zone, what's called Village
12 Commercial.

13 MR. PATTISON: All right. So they are not
14 even in the Village Commercial Zone; is that right?

15 MR. BENSON: They are in the Central
16 Commercial Zone.

17 MR. PATTISON: All right.

18 MR. BENSON: So the Central Commercial
19 basically starts at 40 percent landscaping and has a
20 graduated requirement easement as the property gets
21 smaller. So depending on the size of the property, it
22 can go down to 30 percent requirement. It just depends
23 on the square footage.

24 Ours, the Village Commercial, doesn't have
25 that graduated step-down. It's just solid at 60

1 percent.

2 MR. PATTISON: And from the -- am I right,
3 and maybe you just touched on it a few minutes ago, the
4 landscape you are proposing fronts the street, right?
5 It would be in the front setback?

6 MR. BENSON: Yeah. So I was just trying
7 to --

8 MR. PATTISON: With parking in the back?

9 MR. BENSON: Yes. Parking in the back,
10 building in front. We have a 30-foot setback that goes
11 the full 100 feet, or whatever the frontage is. And
12 all that is going to be landscaped. A hundred percent
13 of that is going to be landscaped, except for there's
14 going to be a couple square feet right in the very
15 front, possibly a pad for the sign that will be -- that
16 I was not able to make part of it. But the rest should
17 all be landscaped.

18 And when you are looking at the footprint,
19 the footprint is really not going to change, but I
20 might have to do a small cutout in the front where you
21 see that 80 feet or whatever going across. That can't
22 be a continuous roof line anyway, so I need a way to
23 beautify that and do a little cutout in that front
24 area. So it's not going to be one-hundred percent
25 that, but very, very close.

1 MR. PATTISON: All right. I think,
2 Mr. Benson, you've answered all the questions I had.
3 Is there anything else you want to tell me before I ask
4 the town a few questions? And then, of course, I'll
5 let you have the last word to conclude the hearing.
6 But anything else at this point?

7 MR. BENSON: I'll save it for the last
8 word.

9 MR. PATTISON: Okay.

10 MR. BENSON: Thanks.

11 MR. PATTISON: Mr. Connolly, over to you.
12 Maybe I'll start with the question of maybe when this
13 ordinance was adopted. Are there any properties in the
14 Village Commercial Zone that are not compliant with it?

15 MR. BENSON: Can I say one thing real
16 quick?

17 MR. PATTISON: Please.

18 MR. BENSON: I just wanted to point out
19 that this property was formed long before there was a
20 minimum mandate on the lot size. So the minimum lot
21 size for this zone is about double what we currently
22 have, and the only reason that we are allowed to have
23 that property and potentially develop it is because it
24 was created before that ordinance went into place of a
25 minimum lot size. Does that make sense?

1 MR. PATTISON: Yes, it does. Thank you.

2 Mr. Connolly, go ahead, please.

3 MR. CONNOLLY: Sure. So the current
4 ordinance, those sizes were adopted I believe 10 to 15
5 years ago. And prior to that, the Village Commercial
6 minimum landscape area was 70 percent. So it was
7 reduced to 60 percent 10 to 15 years ago.

8 Whether there are properties that are out
9 of compliance with that, I mean, in every zone there's
10 properties that are not compliant. However, I think
11 the majority of Village Commercial properties do comply
12 with that.

13 And then, I suppose just to -- I think you
14 already kind of got to this point, but the difference
15 in size, the 30 to 35 percent landscape area is in the
16 Central Commercial Zone, and this is Village Commercial
17 Zone. So that accounts for the difference between this
18 property and some of the other restaurants in town.

19 MR. PATTISON: Does the site, as it stands
20 now, is it currently in compliance with landscape
21 ordinance?

22 MR. CONNOLLY: I believe it is not, at the
23 moment, no.

24 MR. PATTISON: If I granted the variance,
25 and this is just a hypothetical, the town would still

1 have a say in what the actual landscape looked like,
2 correct?

3 MR. CONNOLLY: Yeah. That's correct.

4 MR. PATTISON: I'm not granting a
5 landscape plan, I'm just looking at this percentage
6 issue. Is that how the town sees it?

7 MR. CONNOLLY: Correct.

8 MR. PATTISON: Does the town have a
9 position on the variance?

10 MR. DANSIE: This is Tom Dansie. Sorry,
11 reporter. T-O-M, D-A-N-S-I-E. I'm the director of
12 community development.

13 To answer Mr. Pattison's question whether
14 or not the town has a position, the town's position is
15 if the five standards are met, then obviously the
16 variance needs to be granted. So we leave it in your
17 hands as to whether or not those five standards are
18 met. We are not going to advocate for or against the
19 variance from a staff position. We are going to
20 advocate that those five standards be justified and be
21 met.

22 MR. PATTISON: All right. Thank you.
23 That's all the questions I had for the town.

24 I know we had one member of the public
25 that wanted to be heard. Go ahead and step forward,

1 sir, and repeat your name, if you could, for the
2 benefit of the court reporter.

3 MR. CAMPBELL: Of course, this is Cade
4 Campbell. That's C-A-D-E, last name, C-A-M-P-B-E-L-L.

5 First, thank you, Mr. Pattison, for
6 letting me speak here. I'm representing a business
7 here in town, Flanigan's Resort and Spa. And I wanted
8 to keep it just very simple and voice my opposition to
9 the variance. I don't think that variances should be
10 granted. We have looked at the record in the past, and
11 it's not something that happens very often, and I don't
12 think that the variance in this case should be granted.

13 I feel that it more warrants a code
14 change, where Mr. Benson voiced some concerns that I
15 would like to address. He said justice and a few
16 things about property rights. And if we want to be
17 concerned about justice and property rights, it doesn't
18 involve a variance. It would be a code change, so then
19 it would be fair or just for all property owners within
20 that zone.

21 There's been a lot of effort, for decades,
22 put into these codes and ordinances, and there's a
23 reason why people feel that there is that park feeling,
24 that you can't determine when you are in the town or
25 not, because of the work that's been laid out

1 beforehand.

2 The second thing was that what the town
3 residents are crying for -- we have over 25 restaurants
4 in Springdale, and to my knowledge every single one of
5 them offers a local discount, and they cater to the
6 locals. So I don't see that aspect of it. What the
7 town people are really crying for is workforce housing.
8 And I think that that would be a prime location for
9 some workforce housing. And it would be -- Mr. Benson
10 would be a champion of the town if he were able to get
11 the town to have that type of a land use there, rather
12 than a restaurant. It is a transition zone, and there
13 should be fewer restaurants in that zone.

14 That's all I have to say. Thank you.

15 MR. PATTISON: Thank you.

16 Mr. Benson, I'll give you the last word to
17 respond to the town and to Mr. Campbell.

18 MR. BENSON: Thank you. Due to the size
19 of the property, we could put two units. It's a
20 commercially zoned property, we could put two units on
21 that property. If I had a residentially zoned property
22 of the same size, I could put two units on that
23 property. So there is no benefit to doing that.

24 The other thing I would say is that
25 Flanigan's does have a competing restaurant in town. A

1 very nice, good restaurant, but it is a competing
2 restaurant. So that's really all I've got for that.

3 MR. PATTISON: Okay. Thank you. That
4 will conclude, unless the town had anything in
5 addition.

6 MR. CONNOLLY: Nothing further. No.

7 MR. PATTISON: That will conclude your
8 hearing. I will take it under advisement and issue a
9 written ruling within seven to ten days. I've got a
10 lot to think about. We will adjourn.

11 (Proceeding concluded at 10:33 a.m.)
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REPORTER'S HEARING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Diana Kent, RPR, CRR, and Notary Public
in and for the State of Utah, do hereby certify:

That said proceeding was taken down by me
in stenotype on August 8, 2024, at the place therein
named, and was thereafter transcribed, and that a true
and correct transcription of said testimony is set
forth in the preceding pages;

I further certify that I am not kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 9th
day of August, 2024.



Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County

[10 - basically]

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[beautify - currently]

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[currently - grandmother's]

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[plan - rpr]

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[think - zoom]

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