



118 Lion Blvd • PO Box 187 • Springdale, UT 84767 • (435) 772-3434

## SPRINGDALE APPEAL AUTHORITY NOTICE AND AGENDA

THE TOWN OF SPRINGDALE ADMINISTRATIVE HEARING OFFICER HAS ISSUED A WRITTEN  
DECISION CONCERNING THE ITEM BELOW.

THIS DECISION WILL BE ANNOUNCED IN A PUBLIC MEETING

ON TUESDAY, AUGUST 20, 2024 AT 3:00 PM

AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH

*A live broadcast of this meeting will be available to the public for viewing and listening only.*

**\*\*Please see the electronic login information below.**

**A. Issuance of Written Decision:**

1. **Variance:** Noel Benson requests a variance to allow a reduced quantity of landscape than is required by section 10-18 of the Town Code, on the redevelopment of 1067 Zion Park Blvd. Parcel S-32-B. Staff contact: Niall Connolly

**B. Adjourn**

**\*To access the live stream for this public meeting, please visit or click the  
YouTube link below:**

**<https://www.youtube.com/@SpringdaleTownPublicMeetings>**

This notice was posted at the Springdale Town Hall on 8/16/24 at approximately 2:45  
am/pm by R. Emerson.

**NOTICE:** In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting should contact Town Clerk Aren Emerson (435.772.3434) at least 48 hours before the meeting.

The official Agenda and Packet Materials for this meeting will be available at: <http://www.springdaletown.com/AgendaCenter>



**MINUTES OF THE SPRINGDALE APPEAL AUTHORITY  
TUESDAY, AUGUST 20, 2024  
AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH**

The Meeting convened at 3:00 pm.

**PRESENT:** Director of Community Development Tom Dansie, and Deputy Town Clerk Robin Romero. See the attached list of those in attendance.

**A. Issuance of Written Decision**

**1. Variance:** Noel Benson requests a variance to allow a reduced quantity of landscape than is required by section 10-18 of the Town Code, on the redevelopment of 1067 Zion Park Blvd. Parcel S-32-B.

The Administrative Hearing Officer held a meeting on this item on Thursday, August 8, 2024, and has now issued a written decision. Director of Community Development Thomas Dansie read aloud the written decision as authorized by the Appeal Authority Hearing Officer, Bryan Pattison.

The request was for a reduction in the required amount of landscape required to 48%. The Hearing Officer listed the five standards of variance established by the Utah Code section 10-9A-702(2)(A)

*The appeal authority may grant a variance only if:*

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;*
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and*
- (v) the spirit of the land use ordinance is observed and substantial justice done.*

The Hearing Officer analyzed the variance request relative to each of the five standards and found that the variance failed to meet the first, second, and third variance standards. Therefore, the variance application was denied.

The written decision was dated August 13, 2024, by the Town of Springdale Appeal Authority Hearing Officer, Bryan Pattison.

The issuance of the written decision is available at the Town Hall, by visiting [www.springdaletown.com](http://www.springdaletown.com) or by contacting the Community Development Department.

The meeting adjourned at 3:03 pm.

Aren Emerson

Aren Emerson, Town Clerk

DATE 08/29/24



A recording of the public meeting is available by accessing the Town's YouTube channel at <https://www.youtube.com/@SpringdaleTownPublicMeetings>.

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BEFORE THE APPEAL AUTHORITY  
TOWN OF SPRINGDALE, UTAH

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Application for Variance re Parcel S-32-B,  Noel Benson, Applicant	RULING ON VARIANCE APPLICATION
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This matter is before the Administrative Hearing Officer (“AHO”) on an application for variance under Springdale Ordinance Section 10-6-5. The variance seeks relief from Section 10-18-4 of the Springdale Town Code.

A hearing on the application was held on August 8, 2024. Applicant Noel Benson appeared on his own behalf. The AHO has considered the statements and presentation at the hearing, and reviewed and considered the application, the documents submitted with the application, and the memorandum dated July 25, 2024 from the Town’s Principal Planner. Based thereon, the AHO makes the following findings and ruling.

**FACTUAL BACKGROUND**

The property at issue is Parcel S-32-B (the “Property”), which is located at 1067 Zion Boulevard. The Property is owned by the Margaret Benson Trust. The applicant, Noel Benson, has authority to submit the application on behalf of the Property owner. The Property is in the Town’s Village Commercial (“VC”) zone. Presently, it consists of a home and some old cabins. The Property has been used for primarily residential purposes for over 20 years. Mr. Benson seeks to re-develop the Property into a restaurant.

As part of this re-development effort, Mr. Benson seeks a variance from Section 10-18-4. Section 10-18-4 contains minimum landscape requirements. Specifically, properties located in a VC zone must have at least 60% of the property area as natural open space or landscaped. *See* Springdale Code § 10-18-4(A).<sup>1</sup> To ensure that his restaurant has adequate parking, Mr. Benson seeks a variance from these minimum requirements and has submitted various plans through which he seeks to reduce the required landscaping on the Property to 48%. Otherwise, Mr. Benson explained, he will likely not have sufficient area on which to develop the restaurant.

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<sup>1</sup> Under Section 10-18-4(A), at least 30% of the open space must be landscaped. Here, because of prior development of the Property and the lack of natural open space, the landscape requirement is 60%.

## **LEGAL STANDARD**

Utah Code § 10-9a-702(2)(a) sets forth the five standards that an applicant must meet to obtain a variance:

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the land use ordinance is observed and substantial justice done.

Utah Code § 10-9a-702(2)(a)(i)-(v). *See also* Springdale Code § 10-6-5(B). The burden is on the applicant to meet all five standards. *See* Springdale Code § 10-6-5(C).

## **ANALYSIS**

### **I. Literal Enforcement Causing an Unreasonable Hardship.**

The first standard requires the applicant to show that “[l]iteral enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.” Utah Code § 10-9a-702(2)(a)(i). In addition, this hardship must be “located on or associated with the property for which the variance is sought;” and “come[] from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” *Id.* § 10-9a-702(b)(i). Moreover, the hardship cannot be self-imposed or purely economic. *See id.* § 10-9a-702(b)(ii).

In his written application, Mr. Benson identifies his hardship as the ability to provide the community with a restaurant that is not attached to tourist lodging. This described hardship, however, is not a hardship specific to the applicant, but instead describes a hardship Mr. Benson believes impacts the public generally. By statute, the hardship is specific to (“for”) the applicant. *See* Utah Code § 10-9a-702(2)(a)(i). Thus, “[a] general hardship to the neighborhood, or to the community as a whole, cannot support the approval of a zoning variance.” *4890 Main St., LLC v. Bridgeport Zoning Bd. of Appeals*, No. CV176065356S, 2018 Conn. Super. LEXIS 685, at \*11-12 (Conn. Super. Ct. Mar. 16, 2018). For that reason alone, the first standard is not met.

Moreover, even if the AHO considers the hardship specific to the applicant, as explained above, the AHO may not grant a variance for hardships that are self-imposed or economic. This variance request appears to touch on both.

The AHO appreciates Mr. Benson's desire to bring a restaurant to the Property and to maximize the space for that restaurant and associated parking, but this re-development decision which necessitates the variance is self-imposed. Put differently, the hardship requiring the variance stems from the use to which Mr. Benson desires to put the Property rather than from the character of the Property itself. This is not a situation, for example, where an owner cannot build a home on a residential lot because of set-back restrictions. Rather, here, on top of its current use as a residence, a restaurant is only one of many different permitted uses for this Property under its current VC zoning designation. *See* Springdale Code § 10-7A-2 (listing permitted uses in a VC zone). Mr. Benson has simply chosen a use and design which has caused the hardship.

It also appears to the AHO that the need for the larger building footprint and associated parking are driven by economics: a larger restaurant would bring in more customers. Again, that is not a hardship which qualifies for a variance. *See* Utah Code § 10-9a-702(b)(ii). *See also, e.g., Warner v. Jerusalem Twp. Bd. of Zoning Appeals*, 63 Ohio Misc. 2d 385, 392, 629 N.E.2d 1137, 1142 (Ct. Com. Pl. 1993) (explaining that "the mere fact that one's property can be put to a more profitable use does not, in itself, establish an unnecessary hardship where less profitable alternatives are available within the zoning classification") (cleaned up); *Wawa, Inc. v. New Castle County Bd. of Adjustments*, 929 A.2d 822, 834 (Del. Super. Ct. 2005) ("The fact that the site could be put to a more profitable use does not establish unnecessary hardship when less profitable alternatives are available within the zoning classification.").

For these reasons, the first variance standard is not met. Because an applicant must meet all five standards to receive a variance, failing to meet the first standard is determinative. Still, for the parties' benefit, the AHO will briefly address the remaining variance standards.

## **II. Special Circumstances Applicable to the Property.**

Under the second standard, the applicant must show that "[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone." Utah Code § 10-9a-702(2)(a)(ii). Special circumstances exist only if they "(i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone." Utah Code § 10-9a-702(2)(c).

Mr. Benson describes the special circumstance as the odd shape of the Property and the fact that it was subdivided before there were half-acre minimum requirements for properties in the VC zone. But under the second standard, "[i]t is not enough to show that the property for which the variance is requested is different in some way from the property surrounding it. Each piece of property is unique." *Xanthos v. Bd. of Adjustment of Salt Lake City*, 685 P.2d 1032, 1036 (Utah 1984). Instead, "[w]hat must be shown by the applicant for the variance is that the property itself contains some special circumstance that relates to the hardship complained of and that granting a variance to take this into account would not substantially affect the zoning plan." *Id.*

As explained above, the identified hardship at issue results from the self-imposed desire to re-develop the Property into a restaurant. To that end, Mr. Benson identified several other restaurants in Springdale that have less existing landscaping than Mr. Benson's proposed 48%.

But, to his credit, Mr. Benson noted that these properties are not in the VC zone. In fact, there was no evidence presented that other owners in the VC zone are not required to work within Section 10-18-4's landscaping requirements when determining how to develop their properties. To accept Mr. Benson's assertions would mean that mere application of a particular zoning regulation presents a special circumstance if it hampers the owner's sought-after development plans. That is not the law.

A municipality adopts zoning ordinances in furtherance of its police powers and a property owner holds its property subject to those zoning ordinances. *See Patterson v. Utah Cty. Bd. of Adjustment*, 893 P.2d 602, 607 (Utah Ct. App. 1995). Thus, granting a variance from existing zoning ordinances should be the exception, not the rule. Hence the "special circumstances" requirement in the Utah Code. *See* Utah Code § 10-9a-702(2)(a)(ii).<sup>2</sup> And here, for the reasons explained above, Mr. Benson has not carried his burden of showing special circumstances.

### **III. Granting the Variance as Essential to the Enjoyment of a Property Right.**

The third standard requires a showing that "[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone." Utah Code § 10-9a-702(2)(a)(iii). Mr. Benson explains that "[w]ithout [the variance], the substantial right of being able to have a restaurant cannot be fulfilled." While the denial of the variance may result in Mr. Benson's inability to build a restaurant of a particular size, no evidence was presented that this equates to a loss of any property right enjoyed by others in the same zone. Rather, all lots in the VC zone are subject to the same landscaping requirements and each property owner must decide how best to develop their property consistent with the applicable zoning ordinances. And in all events, as explained above, a restaurant is only one of many different uses one can make of their property in a VC zone. The third standard is not met.

### **IV. Impact on the General Plan and Protection of the Public Interest.**

Fourth is the public interest standard. It requires a showing that the "variance will not substantially affect the general plan and will not be contrary to the public interest." Utah Code § 10-9a-702(2)(a)(iv). The General Plan identifies two competing interests at issue here.

First, Springdale's location at the entrance to Zion National Park makes it unique. Springdale's Ordinances reflect and seek to preserve this uniqueness. To that end, Section 10-18-1's stated purpose is "[t]o preserve and enhance the natural environment and aesthetic qualities of the Town; to create the desired 'in the park' visual impression;" as well as to "[t]o minimize the visual impact of developed parking areas." Springdale Code § 10-18-1(A)(1), (3).

This ordinance thus furthers the Town's General Plan, which leads out with its vision as the gateway to Zion Canyon and a general goal to "manage the type, size, scale, intensity (e.g.,

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<sup>2</sup> This is not a feature unique to Utah law, but applies to variances generally. *See Kane Props., L.L.C. v. City of Hoboken*, 30 A.3d 348, 355-56 (N.J. Super. Ct. App. Div. 2011) ("The grant of a ... variance is the exception not the rule because legislative policy favors land use planning through ordinances not variances.").

density), and appearance of new growth and development to enhance the unique character of Springdale's built environment, preserve views of the natural landscape, reduce impacts on existing residents and businesses, and protect the natural and cultural resources." Springdale General Plan 1.0 (ver. July 3, 2022). As for new development, like that proposed here, the General Plan seeks to "[e]nsure new development is compatible with the Town's setting at the entrance to Zion National Park, consistent with Town's architectural heritage, and complements the existing development in the area." Springdale General Plan 1.0, Sub-Goal B (ver. July 3, 2022).

Against these stated goals, Mr. Benson points to the General Plan's express goal of encouraging "the development of more restaurants, and more diverse style and price-point of restaurants, to benefit both residents and tourists." Springdale General Plan 4.0, Sub-Goal B.2 (ver. July 3, 2022). This stated goal supports Mr. Benson's proposed development.

Where the General Plan points in both directions, the AHO must balance these competing interests in a manner not contrary to the public interest. To that end, Mr. Benson's application does not seek to eliminate all landscaping on the Property: only a 12% reduction. And, as proposed, the design appears to put the landscaping at the front of the Property along Zion Boulevard. In addition, even if the variance were granted, the Town would still get to approve the ultimate landscape plan and is thus positioned to ensure that the "in the park" goals would be maintained with the proposed landscaping. For these reasons, the AHO concludes that the fourth variance standard is met.<sup>3</sup>

## **V. Preserving the Spirit of the Ordinance and Doing Substantial Justice.**

The final standard requires that "the spirit of the land use ordinance is observed and substantial justice done." Utah Code § 10-9a-702(v).

On this standard, Mr. Benson explains that "[e]ven if granted the variance, we still have a lot of landscape/open space to consider and work with. Designing a property that meets the Town appearance goals will be a priority." He also welcomed the Town's input at each stage of the development process. (And welcome or not, by Code, the Town would be involved at each stage of the process.) In addition, the evidence showed that the Property, in its current state, is in generally an unkempt state of disrepair. The Property is also not currently in compliance with Section 10-18-4.

Given this, the AHO concludes that the 48% landscaping proposed for the Property, even if 12% less than mandated, would be an improvement to the Property and more consistent with the spirit of the ordinance than leaving the Property in its current state. This is particularly true

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<sup>3</sup> The AHO received one public comment at the variance hearing from a local restaurant owner that the Property could be put to a better use to benefit the community. For the reasons explained in this Ruling, that comment was ultimately unpersuasive and had no impact on the AHO's evaluation of whether the variance standards have been met.



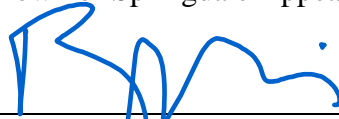
given the General Plan's stated purpose of bringing more restaurants to the Town, as explained in Point IV above. The AHO thus concludes that the applicant meets the fifth standard.

**RULING**

For the reasons stated above, the variance application is denied for failure to meet the first, second, and third variance standards.

DATED: August 13, 2024.

Town of Springdale Appeal Authority



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By: Bryan Pattison  
Administrative Hearing Officer



118 Lion Blvd PO Box 187 Springdale, UT 84767 435-772-3434

## ATTENDANCE RECORD

Please print your name below.

Meeting Appeal Authority Issuance Meeting Date 08/20/24

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