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**APPEAL AUTHORITY  
IN AND FOR TREMONTON CITY, STATE OF UTAH**

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IN RE:

APPLICATION FOR VARIANCE OF  
JACOB SHIRK

**FINDINGS AND DECISION**

Appeal Authority: Dalton Smuin, *City  
Attorney*

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This matter comes before the City Attorney, acting as the Appeal Authority for the issuance of a variance pursuant to Tremonton City Code 1.29.30B. Jacob Shirk (“Applicant”) has filed an application—pursuant to UTAH CODE ANN. § 10-9a-702<sup>1</sup>—for variance to allow placement of storage units at 426 N 2300 W, Tremonton, UT 83252. After reviewing the application, the proposed plat map, the current recorded plat, holding a public hearing on March 13, 2026, and utilizing Google Maps, the Appeal Authority hereby enters the following decision.

**BACKGROUND**

The subject property, located at 426 N 2300 W, Tremonton, UT 84337, is zoned Highway Commercial District (CH), with permitted uses listed in Tremonton City Code 1.08.010. Applicant requests that he be granted variance to allow storage units to be built on the property, which is not currently permitted under the applicable zoning.

Applicant argues strict application of the land use ordinance creates an unreasonable hardship, that the property is unique that is not applicable to other properties in the same zoning district, that strict application of the zoning regulation impairs a substantial property right, that there is no substantial detriment to the public interest, and the spirit of the ordinance is observed if a variance is granted.

In support of his arguments, Applicant notes the uses surrounding the subject property, including a helicopter landing zone, a welding shop, existing storage units, and townhome development, purportedly limiting the reasonable option for property uses.

At the hearing on March 13, 2026, public comment largely related to the adequacy of the notice of the hearing. The public was concerned that the entire application was not included in

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<sup>1</sup> Utah Code Ann. § 10-9a-702 has been renumbered to Utah Code Ann. § 10-20-1102.

the public notice and, while parts of the application were provided upon request, certain portions of the application had not been reviewed by the present public members.

### **STATUTORY STANDARDS**

Pursuant to UTAH CODE ANN. § 10-20-1102(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 appeal authority may not grant a use variance. *See* UTAH CODE ANN. § 10-20-1102(5). A use variance is seeking to allow a use that is prohibited in a particular zone.

### **NOTICE REQUIREMENTS**

Tremonton Code 1.29.025 includes the requirements of the public notice, stating, “The Zoning Administrator shall cause all property owners within three hundred (300') feet of the boundaries of the parcel of property which is subject to the Variance to be notified by first class mail of the date, time and place of the public hearing and other relevant information associated with the hearing public hearing at least ten (10) days prior to the hearing. A copy of the public notice of the hearing shall also be posted in three (3) public places within the City, or posted on the City website and the Utah Public Notice website at least ten (10) days prior to the hearing. Twenty-four (24) hour notice of a public meeting shall be posted in three (3) public places within the City or posted on the City website and the Utah Public Notice website.”

Public members raised concerns not that the notice was not made, but rather the notice lacked all of the application materials. The notice requirements state that the notice must contain “the date, time and place of the public hearing and other relevant information. . .” The Appeal Authority finds that the notice contained the date, time and place of the hearing. Moreover, the notice provided the general purpose of the public hearing. Therefore, the notice adequately complied with the requirements of Tremonton Code 1.29.025. Any objection to the notice is therefore without merit.

## FINDINGS AND CONCLUSION

The Appeal Authority finds as follows:

Pursuant to UTAH CODE ANN. § 10-20-1102(5), an Appeal Authority may not grant a use variance. A use variance is a variance to allow a use in a particular zone that is prohibited. The Applicant seeks to allow storage units in a zone where storage units are not permitted. Therefore, the application seeks a use variance from the Appeal Authority. Because the Appeal Authority is statutorily prohibited from granting a use variance, the variance application must be denied.

In addition to the foregoing, the Appeal Authority finds that the Applicant has failed to meet his burden of persuasion required under UTAH CODE ANN. § 10-20-1102(2)(a). There is nothing unique that makes literal enforcement of the ordinance unreasonably burdensome. The property is similarly situated in the zoning as other properties within the zone. The issuance of a variance is also not essential to the enjoyment of a substantial property right. While the property owner is not able to use the property as he would like, to build storage units, other properties within that zone are similarly restricted. On the other hand, allowing the property to be used for storage units likely does not substantially affect the general plan nor would allowing storage units in this zoning violate the spirit of the zoning ordinance. Notwithstanding, the application must be denied for failing to meet the requirements of UTAH CODE ANN. § 10-20-1102(2)(a)(i-iii).

The Applicant may appeal this decision to the City Council within 10 days of the date of this Decision.

Dated March 16, 2026.

**DAINES & JENKINS, LLP**

/s/ Dalton J. Smuin

Dalton J. Smuin