

BOARD OF ADJUSTMENT STAFF REPORT

SUBJECT: The applicant requests a variance to reduce minimum parking requirements and landscape requirements.

SUMMARY: Fusion All-Stars; 9902 South 6150 West; M-1 Zone District; Variance application requesting the reduction of required parking from 65 stalls to 17 stalls, and related landscape requirements; Emily Morgan/Utah Fusion All-Stars (applicant) [Lisa Elgin #22662; parcel 26-11-326-008]

STAFF RECOMMENDATION: Staff recommends that the Board of Adjustment deny the variance for Fusion All-Stars, located at 9902 South 6150 West.

MOTION RECOMMENDED: “Based on the findings set forth in this staff report, I move that the Board of Adjustment deny the variance for Fusion All-Stars, located at 9902 South 6150 West requesting the reduction of required parking from 65 stalls to 17 stalls and related landscape requirements.”

Prepared by:

Lisa Elgin

Lisa Elgin (Nov 25, 2020 08:12 MST)

Lisa Elgin
Associate Planner

Reviewed by:

Larry Gardner

Larry Gardner (Nov 25, 2020 08:49 MST)

Larry Gardner, AICP
City Planner

Reviewed by:

Duncan Murray

Duncan Murray (Dec 2, 2020 14:40 MST)

Duncan Murray
Assistant City Attorney

I. BACKGROUND:

A pre-construction meeting was held on July 16, 2018 for the Short Smith Flex-space Warehouse Building and was then released for construction. During the construction phase on April 9, 2019 staff was notified by a neighbouring business that a cheer studio was planned for the building rather than the flex-space warehouse use for which the building was approved. Staff immediately contacted the owner and the project engineer via email and phone message with information regarding necessary changes which would have to be made to the site to accommodate the new use. On April 25, 2019 the project engineer responded to the email stating that they were going to move forward with the new use and sent a proposed revised site plan and floor plan. The floor plan was prepared by the applicant's architect. This plan was based on Fusion All-Stars only using 5,319 square feet of the building. They are currently using 12,984 square feet. The emails are included with this staff report as Exhibit D, and the proposed revised site plan and floor plan are included as Exhibits E and F. The proposed floor plan is no longer valid as the applicant is using approximately 12,984 square feet instead of the 5,319 shown on the floor plan.

Staff was later informed by the project engineer via telephone call that the owner had decided not to enter into a lease agreement with Fusion All-Stars and was not going to change the site plan because it would be too expensive.

A final inspection was completed on the building and permanent occupancy based on flex-space warehouse was granted on November 15, 2019.

On January 7, 2020 the building owner was granted an administrative conditional use permit to have outside storage and operations on the back side of the lot to accommodate the other tenant in the building who had already been using the area without a permit. While the area is being used for outside storage, it cannot be used as parking or as a drop-off/loading area for Fusion All-Stars.

On March 10, 2020 a Notice of Violation for operating without a business license was completed and sent to the property address, the property owner, and the registered agent via USPS. A compliance due date was set for March 28, 2020.

On July 16, 2020 a default hearing notice was posted on the property. A hearing with an Administrative Law Judge was set for September 4, 2020. The hearing was continued until October 9, 2020 and then continued again until December 18, 2020.

II. GENERAL INFORMATION & ANALYSIS

The subject property's surrounding zoning and land uses are as follows:

	Future Land Use	Zoning	Current Use
North	Light Industrial	M-1(Light Manufacturing)	Wholesale and warehousing, limited
South	Light Industrial	M-1(Light Manufacturing)	Data Center
East	Light Industrial	M-1(Light Manufacturing)	Data Center
West	Light Industrial	M-1(Light Manufacturing)	Manufacturing

Per §13-7G-4 the burden of proving that all the conditions justifying a variance have been met falls on the applicant. Included as Exhibit G are the applicant's written responses from their application packet.

Per §13-7G-5 a granted variance runs with the land, meaning that this use and any other personal instruction use that may generate an even greater need for parking would be able to take place on this parcel forever.

Per §13-7G-6 Neither the Board of Adjustment nor any other body may grant use variances.

Parking for personal instruction use is calculated by dividing the gross floor area by 200. In this case $12,984 \text{ sq ft} / 200 = 64.92 = 65$ parking stalls required. Currently there are 21 stalls in the lot with four of them counted toward required parking for the other unit in the building which is a flex-space warehouse unit, leaving 17 stalls for Fusion All-Stars.

Parking lot landscape is calculated by one of two methods. Either the applicant can provide one shade tree per seven stalls, or 6% of the interior of the parking lot shall be landscaped. Currently the site provides 6.48% of the parking lot area under landscaping. If the variance is granted and the subsequent conditional use permit is approved, a part of the landscape island near the door must be removed to accommodate a drop-off/loading area required by §13-5F-4B.

Staff has observed the overall conditions of the site and immediate off-site area on three occasions; Thursday November 12, Wednesday November 18, and Thursday November 19. Each time the parking lot was full when staff arrived or filled shortly thereafter, always full before 5:00. Cars were parked in areas of the lot that are not designated for parking. Cars were parked on both sides of the street in front of the building, some with parents in them waiting for their children to come out. Each time, there were adults (appearing to be parents) inside the building watching. Staff observed none of the younger children as part of a carpool, but oftentimes the older students who were driving themselves had a couple students per car. A few parents pulled over to the curb on the opposite side of the street and let their children out from there, causing the children to run across the street, through the landscape area, and across the busy parking lot to get to the door.

On one occasion staff arrived just before 6:00 p.m. as a class was about to start departing. Cars were parked lining both sides of the street in front of the building, around the knuckle and up 9930 South. Cars were lined up in the parking lot and out into the street, slowing through traffic. Cars were parked on the side of the building in undesignated areas. Parents were waiting in cars parked at the business to the north, Audio Enhancement, waiting for their students to walk through the traffic to meet them there.

Only one streetlight exists near the site and that is on the very south end of the parcel at the corner.

Staff has had internal discussions regarding the possibility of a shared parking agreement with the business to the north, Audio Enhancement, but their lot appears to stay mostly full until about 5:30. Costly pedestrian safety measures would also have to be installed on both properties for that to happen.

III. FINDINGS OF FACT

13-7G-3: Variance Criteria

Before approving a request for a variance, the Board of Adjustment shall make the following findings:

Criteria 1: *Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title. The board of adjustment shall not find an unreasonable hardship if the hardship is self-imposed or economic. To determine whether or not enforcement of this title would cause unreasonable hardship, the board of adjustment shall not find unreasonable hardship unless the alleged hardship:*

1. Is located on or associated with the property for which the variance is sought; and

2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood;

Discussion: The owner and applicant were aware of and had sufficient time during the construction phase to implement the changes required of the personal instruction use within the M-1 Zone District before the parking area was poured. With full knowledge of the requirements for the personal instruction use, the owner received an administrative conditional use permit to allow outside storage and operations in the area that would need to be used to accommodate Fusion All-Stars at this site, self-imposing their own hardship. Further staff was informed before the final inspection and occupancy that the owner was not going to make the necessary improvements due to expense.

There are no circumstances peculiar to this property that would have kept this use from being approved. The site plan drawn by the owner's engineer depicts that the requirements could have been easily met.

Finding: Literal enforcement of this title would not cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title.

Criteria 2: *There are special circumstances attached to the property that do not generally apply to other properties in the same district and relate directly to the hardship complained of:*

Discussion: There are no special circumstances attached to the property. The applicant has stated in their written comments that because the other occupant of the building now occupies the rear area, they can not provide the required parking. This is not a special circumstance of the property as it is not caused by an odd size, shape or topography. There is simply not enough outdoor space for all the uses the property has been leased for.

Finding: There are no special circumstances attached to the property that do not generally apply to other properties in the same district and relate directly to the hardship complained of.

Criteria 3: *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district:*

Discussion: Granting this variance would give a much greater property right than other properties in the same district. This would give one property owner the right to impose traffic congestion and parking created by their tenant businesses onto the public right-of-way; shifting the owner's burden of providing ample parking and pedestrian safety to the public.

Finding: Granting the variance will give a substantially higher property right to this property over those possessed by other property in the same district.

Criteria 4: *The variance will not substantially affect the general plan and will not be contrary to the public interest:*

Discussion: Light Industrial Goals and Policies of the General Plan, Goal 1, Policy 1, Implementation Measure No. 3 states "Establish stringent architectural and site planning standards for all industrial areas in order to prevent:...•inadequate parking and poor circulation..." Approval of the requested variance will allow for the exact opposite of this goal by allowing a use which has created a substantial need for parking and circulation to transfer this burden to the public right-of-way, slowing through traffic and creating a health and safety risk.

Finding: The variance will substantially affect the general plan and will be contrary to the public interest.

Criteria 5: *The spirit of this title is observed and substantial justice done:*

Discussion: This application does not observe the spirit of this title as it requests a permanent variance to allow inadequate parking and create poor circulation in an industrial area.

Finding: The spirit of Title 13, Chapter 5B, Section 3 is not observed and substantial justice is not done.

III. CONCLUSION:

The applicant does not meet the findings required for approval of a variance to reduce required parking by 74% and reduce landscape area by an unknown percentage.

IV. ATTACHMENTS:

- Exhibit A – Aerial Map
- Exhibit B – Zoning & Future Land Use Map
- Exhibit C – Current Site Plan
- Exhibit D – Email between staff and owner’s engineer
- Exhibit E – Proposed Revised Site Plan
- Exhibit F – Proposed Floor Plan
- Exhibit G – Applicant’s Written Responses
- Exhibit H – Application and Owner Affidavit



Aerial Map

Exhibit A

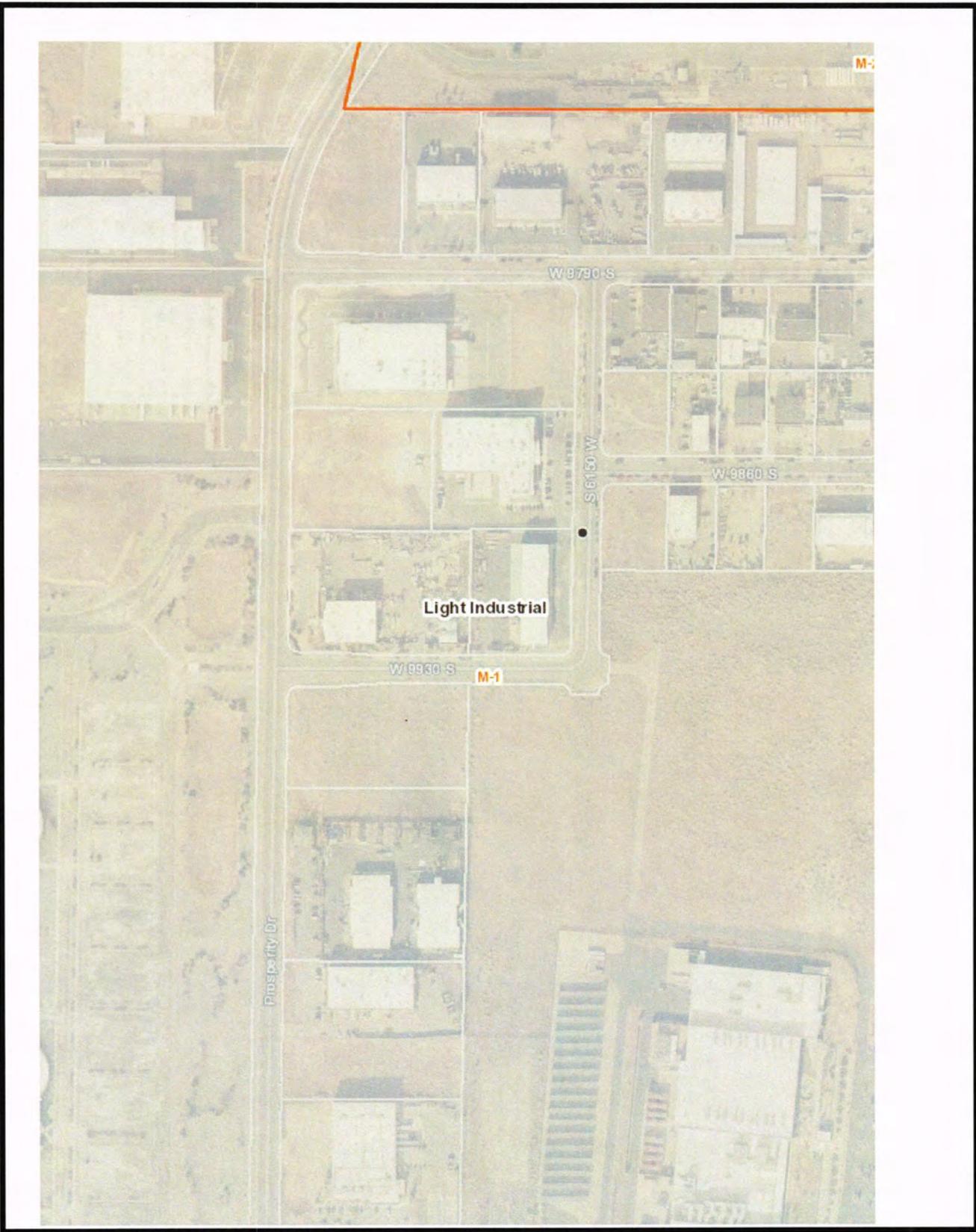
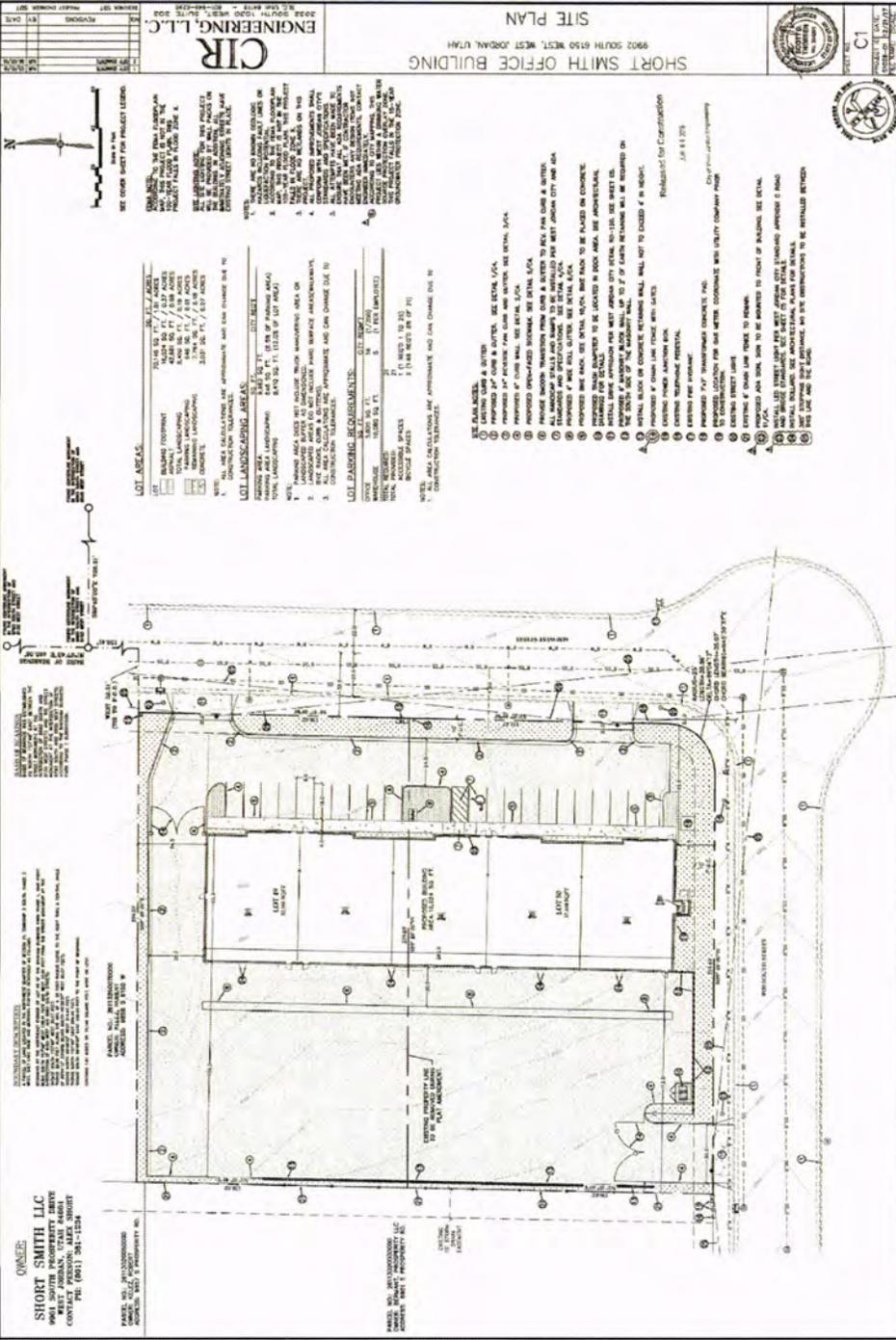


Exhibit B **Zoning & Future Land Use Map**



Site Plan

Exhibit C

Lisa Elgin

From: Scott Thorsen <scott@cirengineering.com>
Sent: Thursday, April 25, 2019 4:18 PM
To: Lisa Elgin; alex@akmasonryllc.com
Subject: RE: Short Smith Office Site Plan
Attachments: Site Layout 6150 W 9930 S--TI Revised-C1-ST1A.pdf; ae2019-037 - main floor plan 24x36 (1).pdf

Hello Lisa,

I received your voice mail the other day regarding Alex Short's project. I appreciate you looking into those items we talked about.

In talking with Alex, we are going to proceed with making the necessary improvements to meet the City code. I requested from the architect an area breakdown for the uses in the building including the TI for the cheer company, which I've attached. We have also updated the site layout to include more parking in the back with landscape islands. This is very similar to your original recommendation. In the attached pdf of the updated site layout I've shown the proposed parking stalls in the back, with landscape islands and also shown fire department turning radius's through the back area. We've also eliminated any gates.

Will you please review this update and let me know if you see any problems with what we're proposing? If this looks good we'll proceed with updating civil plans, landscape plans and also provide an updated photometric plan.

Thank you,

Scott Thorsen, PE
CIR Civil Engineering, LLC
801-949-6296
scott@cirengineering.com

From: Lisa Elgin <lisa.elgin@westjordan.utah.gov>
Sent: Tuesday, April 9, 2019 3:15 PM
To: scott@cirengineering.com; alex@akmasonryllc.com
Subject: Short Smith Office Site Plan

Gentlemen:

It has been brought to my attention that a tenant is planning on moving into the building. The land use we used to approve the Site Plan and determine the required amount of parking was Office/Warehouse. The information I have recently received is that it will be Personal Instruction Service. I am emailing you today as a courtesy to you in hopes of saving you some time in process. Personal Instruction Service in the M-1 Zone District requires a conditional use permit. Also the required parking is significantly higher with the Personal Instruction Service land use. For you to proceed in the direction you seem to be headed, significant site improvements will need to be made, specifically, but not limited to, parking, circulation, lighting, and pedestrian safety.

There has been a number of recent applications for this type of use in the M-1 Zone District and staff is being careful to be consistent with each application. I offer a suggestion to contact me regarding the additional site requirements before you wish to obtain a certificate of occupancy. The conditional use process requires a public hearing and noticing which can be time consuming.

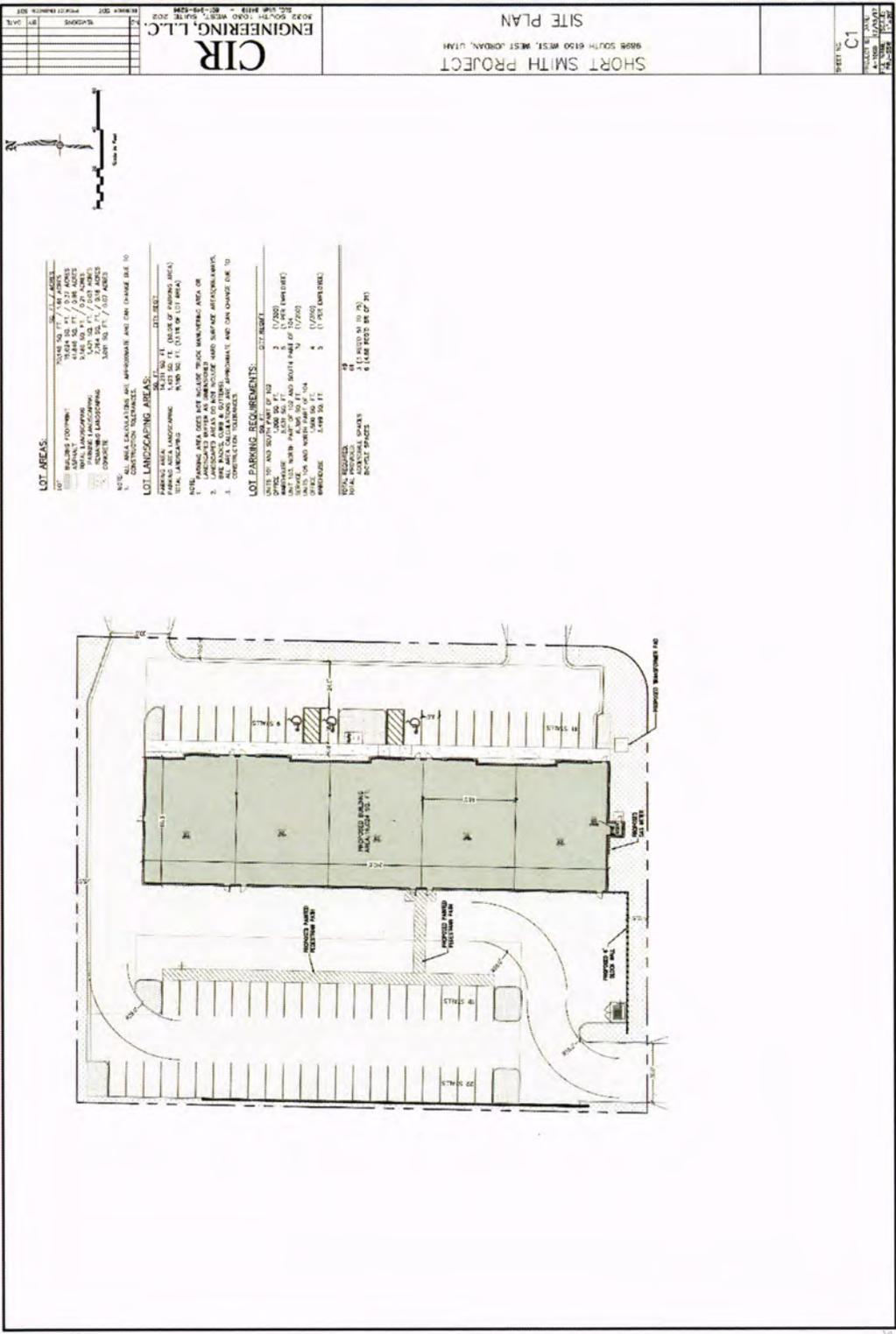
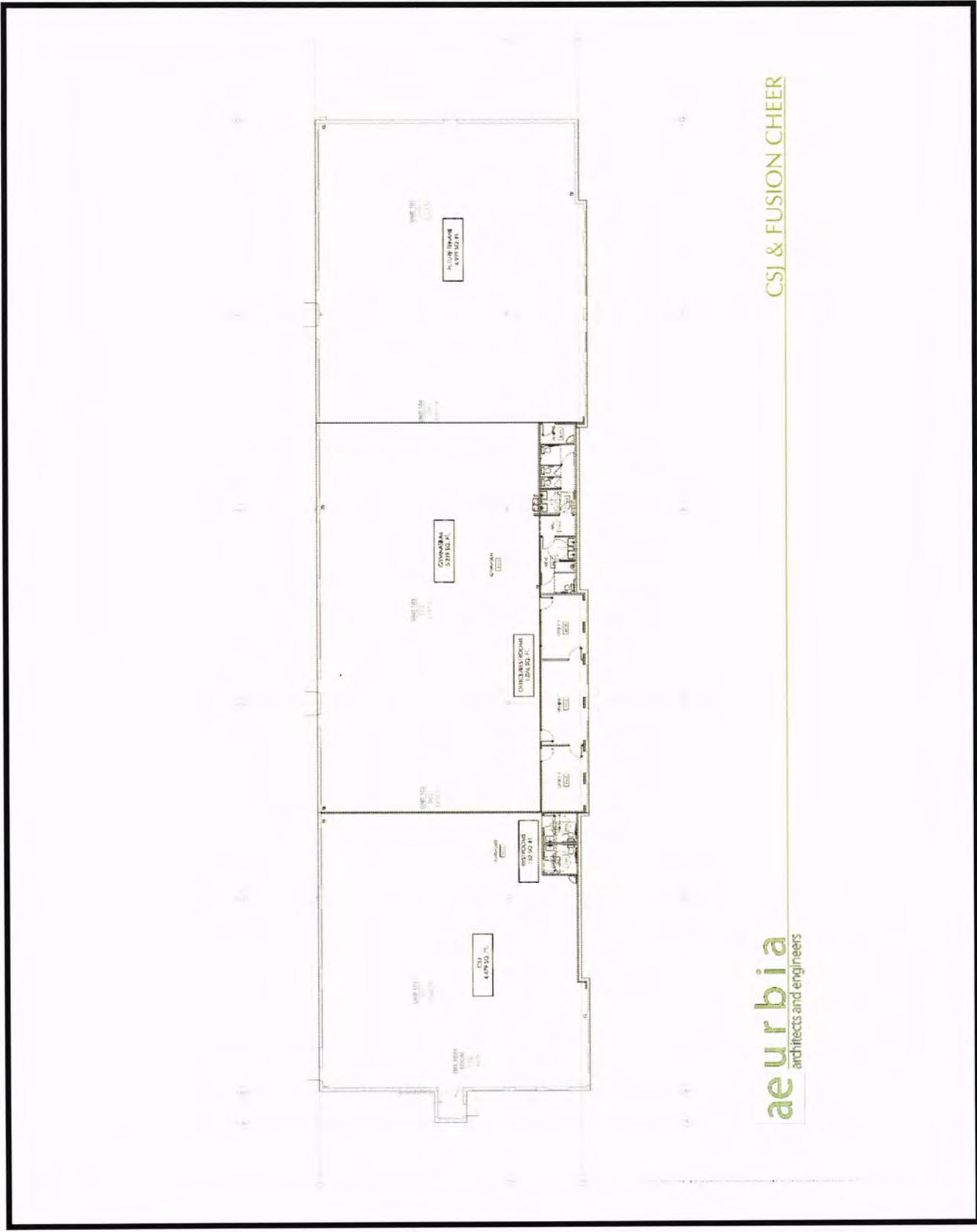


Exhibit E Proposed Revised Site Plan



ae urbia
architects and engineers

CSJ & FUSION CHEER

Exhibit F Proposed Floor Plan

Please answer the following questions to the best of your knowledge in legible writing. If you do not understand a particular question, please contact a member of the West Jordan Planning Division at (801) 569-5060.

1. Describe your proposed construction and how it does not meet the City's Zoning Ordinance.

Utah Fusion All-Stars ("All-Stars") provides youth cheerleading clinics and training. Parents typically drop off their children for classes, and return later to pick up the kids. Many parents also carpool when bringing children in from various neighborhoods around the area. All-Stars has leased part of the building's warehouse space for a Personal Instruction Service to be operated when adjacent warehouse and businesses would not typically be operating. The space provided by the building owner, Short Smith LLC was zoned M-1 by West Jordan City would include use for an Office/Warehouse. Part of the building always has been and is now used as an Office/Warehouse. The building has ample parking, egress and lighting for its use as an Office/Warehouse.

Allstars doesn't require a change in structure of the property to operate our business, however, our business does require a conditional use permit when operated in a M-1 Zone District location. The conditional use permit, without a various, would require significant site improvements for a Personal Instruction Service, primarily increased parking, in order to conform with a use within office/warehouse area.

Since construction of the building and related improvements had already been completed based on approval for an Office/Warehouse, before we began renting space, it is now prohibitively expensive and/or structurally impossible to complete the site improvements requested by the City to operate our business in this building. For instance, the requested parking lot modifications, just to operate our business in the afternoon and evening hours, would impede the existing parking lot and storage usage designed by the owner to satisfy the building's other tenants.

2. Cite the section of the Zoning Ordinance that prevents your proposed construction from meeting the zoning requirements.

West Jordan City Zoning Regulations 13-12-3: REQUIRED NUMBER OF PARKING SPACES, requires 1 space per 200 square feet of GFA. Utah Fusion All-Stars occupies approximately 12,984 square feet of GFA, which requires a minimum of 65 spaces.

As the land use was approved for and construction was completed based on parking requirements for Office/Warehouse, the property has only 21 existing spaces. The outdoor area behind the building is leased and used by other building tenants, so we are not able to add the required 44 additional spaces with required drive aisles, loading spaces, landscape islands, lighting, and pedestrian crossings. Further, requiring 65 parking spaces, when our business only needs 5-10 spaces, is not reasonable or

necessary specific for our individual business.

3. **What special circumstance(s) associated with the property prevent you from meeting the zoning requirements? *Note: the reasons for your request may not be economic.**

West Jordan City Zoning Regulations 13-12-3: REQUIRED NUMBER OF PARKING SPACES, requires 1 space per 200 square feet of GFA. Utah Fusion All-Stars occupies approximately 12,984 square feet of GFA, which requires a minimum of 65 spaces.

As the land use was approved for, and construction was completed based on parking requirements of, an Office/Warehouse, the property has only 21 existing spaces. Our lease agreement with Short Smith LLC does not include the building's rear area, only the front parking area and interior warehouse space. The building's other tenant occupies the rear area for their operations. For these reasons it is impossible for us to comply with West Jordan City's Zoning Requirements for Personal Instruction Service in our existing M-1 Zone.

Not only is it impossible for us to comply with this specification, it is not reasonable or necessary. Our business does not require significant parking. We typically need only 5-10 parking spaces for our instructors. The parents do not require parking just to drop off and pick up children for their lessons. This business is not like a school where all of the children are picked up and dropped off at the same time. We have smaller groups of children who are being picked up or dropped off at various times.

4. **Explain how literal interpretation of the Zoning Ordinance causes an unreasonable hardship.**

While West Jordan City's definition of Personal Instruction Service as outlined in 13-2-3: DEFINITIONS is most applicable to All-Stars, our building usage exclusively for youth cheerleading instruction is significantly different from other Personal Instruction Service businesses in West Jordan City.

Unlike dance or gymnastic studios, we require a disproportionately large amount of open square footage to accommodate multiple competition-size all-star cheer floors, each of which measures 2,268 square feet (42'x54'). Each floor accommodates only one team per multi-hour practice session; teams range in size from 10 to 25 individual athletes.

All-Stars conducts business in the evenings Monday through Thursday from 4:00 - 10:00 PM. Because we require so much floor space for each team at practice, the total number of individuals on site is limited. We have very little space inside the building that isn't covered by a cheer floor, so **parents/guardians are not allowed to stay and observe practices.**

Consequently, All-Stars has a long-established drop off/pick up policy for our clients. We have enforced this policy for more than 9 years of doing business in West Jordan City in M-1 Zones without a problem. Our athletes range in age from 4 to 19 years old; so only a handful of athletes are old enough and/or able to drive to/from practice. Our West Jordan City business has 8 part-time employees who alternate practice days/times; only half are typically on site at any single time. The existing 21 parking spaces at the building have been more than sufficient to accommodate all of our off-street parking needs in addition to the other tenants in the building.

For these reasons, West Jordan City's Zoning Requirement regarding minimum parking spaces for all Personal Instruction Service businesses causes an unreasonable hardship on our ability to conduct business.

5. **Explain what special circumstances exist on the property, which do not generally apply to other properties in the same zoning district. *The law requires that the Board of Adjustment identify that a property-related hardship exists before granting a variance. Justifiable property related hardships may be related to a lot of unusual size, shape and/or topography.**

The special circumstances of All-Stars' use of the building's gross square footage, relative to its demand for off-street parking, is different from other Personal Instruction Services in the same zoning district. Further, there isn't sufficient space or money to modify or add parking given the size of this parcel. It also would be a waste of time to add dozens of additional parking spaces that would just sit empty and unused.

6. **Will granting the variance be essential for the enjoyment of a substantial property right possessed by other property in the same area?**

Yes. All-Stars' need for a large amount of interior warehouse floor space without outdoor yard space uniquely benefits the building's owner, its other tenant, and AK Masonry next door. There are also other small businesses within this same vicinity. Most of these businesses operate from the early morning until early afternoon. We are not operating a business which would add additional traffic, congestion and infrastructure costs for the area. On the other hand, we are operating after the large majority of neighboring businesses have already closed business for the day, and have obtained affidavits from our neighbors supporting our business. Our business creates a small amount of mixed use that improves the balance in the area.

7. **How will granting a variance not substantially affect the general plan and not be contrary to the public interest?**

As described, All-Stars' business operations, building use, and general impact at 9902 S 6150 W are minimal relative to similarly-classified businesses in more congested zoning

areas, and will be harmonious in this M-1 Zone. Granting the variance will not substantially affect the general plan and will positively serve West Jordan City residents by making our business more accessible and convenient in a location that avoids traffic and is conveniently accessible off the Mountain View Corridor road.

8. Explain how granting a variance will meet the intent of the Zoning Ordinance and how substantial justice has been achieved.

The intent of the Zoning Ordinance is generally to encourage and facilitate the orderly growth and development of the city and implement the goals and policies to serve the needs of our citizens. More specifically to our case, it seeks to place compatible uses together in the city, prevent overcrowding of the land, and lessen congestion on the streets.

As we have outlined, our use of the building at 9902 S 6150 W and our presence in this M-1 Zone is not only compatible with our neighbors and other businesses in the area, it's beneficial. The location is safe, convenient, and accessible to West Jordan City residents and our neighbors. Our business at this location meets the intent of the Zoning Ordinance, and granting a variance based on our unique services and needs will achieve substantial justice for all involved.

On a personal note, Utah Fusion All-Stars has been doing business in West Jordan City for nearly a decade. Since 2015, we've been selected every year for the Best of West Jordan Awards for Business Services, and we're proud to have qualified for the West Jordan Business Hall of Fame. As with our dedicated young athletes, we're always striving to learn, improve, and be better. We're committed to this community and we hope to have a positive, long-lasting impact in West Jordan City.



WEST JORDAN CITY
BOARD OF ADJUSTMENT
VARIANCE APPLICATION

#22662

8000 South Redwood Road
West Jordan, Utah 84088
(801) 569-5060

Date: 10/07/2020 Sidwell #: 26-11-326-008 Zone: M-1 Existing Land Use: _____

Address of Subject Property: 9902 South 6150 West, West Jordan, UT 84081

Name of Applicant: Emily Morgan, Utah Fusion All-Stars

Address: 289 Summer Leaf Dr

City: Draper State: UT Zip: 84020

Telephone: 801-856-2110 Cell: 801-856-2110

E-mail: fusioncheer@gmail.com

Property Owner (if different): Short Smith LLC Phone: 801-381-1234

A variance is defined as a modification, granted by the Board of Adjustment, of a zone's requirement for height, bulk, area, width, setback, separation, or other numerical or quantitative requirement for a building or structure or other site improvements which are set forth in Section 13-7G of the West Jordan City Zoning Ordinance and Section 10-9a-702 of the Utah State Municipal Code. The Board of Adjustment may grant a variance only if:

1. 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 Zoning Ordinance;
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and,
5. The spirit of the Zoning Ordinance is observed and substantial justice done.

The Board of Adjustment typically meets on the second Tuesday of the month, as needed.

Please submit an application, required materials and an \$800.00 (non-refundable) filing fee at least 30 days prior to the public hearing date.

Signature of Applicant Emily A Morgan Owner, Utah Fusion All-Stars 10/07/2020
Or Authorized Agent Title of Agent Date

Signature of Property Owner [Signature] Owner 10/27/2020
If different from Applicant Date

Fee Paid: <u>\$825.00</u>	Project #: <u>22662</u>	Receipt #: _____
Application Received by: <u>Planning Larry</u>	ODA <u>Kristi</u>	Date: _____

Nov 2014

Exhibit H Application and Owner Affidavit

AFFIDAVIT

PROPERTY OWNER

STATE OF UTAH }
 } ss
COUNTY OF SALT LAKE }

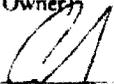
I (we), Alex Short, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property(s) located at 9902 South 6150 West, West Jordan, UT 84081

My (our) signature below attests that I (we) have reviewed the proposal by Emily Morgan, Utah Fusion All-Stars requesting review and approval of Utah Fusion All-Stars Business License by the City of West Jordan for the following process(s):

(Project Name)

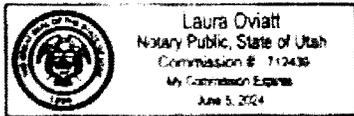
- General Land Use Map Amendment Rezone Conditional Use Permit
- Temporary Use Permit Variance Lot Line Adjustment
- Subdivision (Minor, Major, Amendment or Condominium)
- Site Plan (Multi-family, Commercial/Industrial or Amended)
- Other: _____

My (our) signature below attests the I (we) consent to the statements and information provided in the attached plans and exhibits for the requested process(s) as checked above, and that all information presented to me (us) is true and correct to the best of my (our) knowledge.

(Property Owner)


(Property Owner)

Subscribed and sworn to me this 27 day of October, 2020.





(Notary)
Residing in Salt Lake County, Utah

My commission expires: June 5, 2024

Nov 2014

Exhibit H Application and Owner Affidavit