

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

DINKS

Robert Thompson *Administrator* 

DIVISION OF WELFARE AND SUPPORTIVE SERVICES Helping people. It's who we are and what we do.

### NOTICE OF PUBLIC HEARING

ZION LUTHERAN CHURCH DBA ZION LUTHERAN CHURCH PRESCHOOL, 3205 N. HIGHLAND DRIVE, WINNEMUCCA, NV 89445, IS REQUESTING A VARIANCE, VARIANCE NUMBER 792, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN THAT ZION LUTHERAN CHURCH DBA ZION LUTHERAN CHURCH PRESCHOOL, located at 3205 N. Highland Drive, Winnemucca, NV 89445, has requested a variance from Nevada Administrative Code (NAC) 432A.250.

A public hearing will be conducted on September 5, 2025, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online and at physical locations, listed below.

#### **Physical Locations:**

Southern Nevada Health District (SNHD)

Red Rock Trail Rooms A and B

280 S. Decatur Boulevard; Las Vegas, Nevada 89107

Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way; Carson City, Nevada 89706

## Virtual Information: Meeting Link:

https://teams.microsoft.com/l/meetup-

<u>Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.</u>

Join by Phone: 1-775-321-6111

Phone Conference ID Number: 402 212 427#

ZION LUTHERAN CHURCH DBA ZION LUTHERAN CHURCH PRESCHOOL, located at 3205 N. Highland Drive, Winnemucca, NV 89445, is requesting a variance from NAC 432A.250 which states:

- 1. Except as otherwise provided in this subsection, subsection 3 and NRS 432A.078, in each facility there must be:
- (a) At least 35 square feet of indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used.
- (b) At least 37 1/2 square feet of outdoor play space for each child, as determined by the maximum number of children stated on the license for the facility. An accommodation facility need not provide outdoor play space.
  - 2. Each facility shall:
  - (a) Ensure that each room of the facility which is used by children is:
- (1) Maintained free of drafts and at a temperature that is not less than 65 degrees Fahrenheit and not more than 82 degrees Fahrenheit during the months of October through March and at a temperature that is not less than 68 degrees Fahrenheit and not more than 82 degrees Fahrenheit during the months of April through September; and
- (2) Heated, cooled and ventilated to maintain the temperatures required in this paragraph and to avoid the accumulation of odors and fumes;
- (b) Ensure that electrical devices or electrical apparatuses which are accessible to children are not located near any type of water source, including, without limitation, any sink, tub, shower area or wading pool; and
- (c) Install nonflammable barriers, including, without limitation, permanent guards or shields to cover heating units, including, without limitation, hot water heating pipes and baseboard heaters with a surface temperature that is hotter than 100 degrees Fahrenheit, to ensure that those heating units are inaccessible to children.
  - 3. A facility that provides care for ill children must have:
- (a) At least 50 square feet of indoor space for each child, as determined by the maximum number of children stated on the license for the facility, exclusive of bathrooms, halls, kitchen, stairs and storage spaces.
  - (b) A separate ventilation system if the facility is attached to another building.
  - 4. The play area of each facility must:
- (a) Be fenced or enclosed in a manner that prevents the unsupervised departure of children from the area:
  - (b) Have an adequate drainage system;
  - (c) Be free of hazards, debris and trash;
- (d) If it is an outdoor play area, provide, during the months of April through September, a shade area or shade areas that are at least equal in size to the product of 5 square feet multiplied by the total number of children in the outdoor play area;
- (e) Have appropriate, as determined by the Division, depths and perimeters of resilient surfacing underneath and surrounding any elevated play equipment;
  - (f) Have adequate safety barriers around any elevated platforms;
- (g) Not have any dangerous or poisonous plants or other vegetative matter located within the boundaries of the play area or in an area that is accessible to children from the play area;
  - (h) Not be in a location where any bodies of water are accessible to children; and
  - (i) If it has playground equipment, have only equipment that is:
    - (1) In good repair;
    - (2) Designed and constructed to minimize injury;
    - (3) Compatible with the age of the children in the care of the facility;
    - (4) Spaced to reduce accidents; and
    - (5) Securely anchored.

- 5. If a facility that provides care for ill children is a component of a child care center and provides outdoor play space, the play space must:
  - (a) Be separate from the play space for well children;
  - (b) Meet the requirements of paragraph (b) of subsection 1; and
  - (c) Meet the requirements of subsection 4.

See, NAC 432.250.

ZION LUTHERAN CHURCH DBA ZION LUTHERAN CHURCH PRESCHOOL current standards require at least 35 square feet per child of indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used. Applicant claims they have operated previously with 10-12 children per classroom with no major incidents. The facility was remeasured in 2024, and it was determined that the space only allowed for 8 children per classroom. This has resulted in a financial strain to the program.

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health Division of Public and Behavioral Health 4150 Technology Way, Suite 300 Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

DHHS

Robert Thompson *Administrator* 

DIVISION OF WELFARE AND SUPPORTIVE SERVICES Helping people. It's who we are and what we do.

### **MEMORANDUM**

August 6, 2025

To: Jon Pennell, DVM, Chairperson

State Board of Health

From: Robert Thompson, Administrator

Division of Welfare and Supportive Services

RE: Variance Request # 792, for Zion Lutheran Church DBA Zion Lutheran Church Preschool Variance

Request to increase allowed capacity space

<u>Subject:</u> Request for Variance to Nevada Administrative Code (NAC) 432A.250 Building and Grounds useable square footage per child

### **REGULATIONS**

Nevada Administrative Code ("NAC") 432A.250 states as follows:

- 1. Except as otherwise provided in this subsection, subsection 3 and NRS 432A.078, in each facility there must be:
- (a) At least 35 square feet of indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used.
- (b) At least 37 1/2 square feet of outdoor play space for each child, as determined by the maximum number of children stated on the license for the facility. An accommodation facility need not provide outdoor play space.
  - 2. Each facility shall:
  - (a) Ensure that each room of the facility which is used by children is:
- (1) Maintained free of drafts and at a temperature that is not less than 65 degrees Fahrenheit and not more than 82 degrees Fahrenheit during the months of October through March and at a temperature that is not less than 68 degrees Fahrenheit and not more than 82 degrees Fahrenheit during the months of April through September; and
- (2) Heated, cooled and ventilated to maintain the temperatures required in this paragraph and to avoid the accumulation of odors and fumes;

- (b) Ensure that electrical devices or electrical apparatuses which are accessible to children are not located near any type of water source, including, without limitation, any sink, tub, shower area or wading pool; and
- (c) Install nonflammable barriers, including, without limitation, permanent guards or shields to cover heating units, including, without limitation, hot water heating pipes and baseboard heaters with a surface temperature that is hotter than 100 degrees Fahrenheit, to ensure that those heating units are inaccessible to children.
  - 3. A facility that provides care for ill children must have:
- (a) At least 50 square feet of indoor space for each child, as determined by the maximum number of children stated on the license for the facility, exclusive of bathrooms, halls, kitchen, stairs and storage spaces.
  - (b) A separate ventilation system if the facility is attached to another building.
  - 4. The play area of each facility must:
- (a) Be fenced or enclosed in a manner that prevents the unsupervised departure of children from the area;
  - (b) Have an adequate drainage system;
  - (c) Be free of hazards, debris and trash;
- (d) If it is an outdoor play area, provide, during the months of April through September, a shade area or shade areas that are at least equal in size to the product of 5 square feet multiplied by the total number of children in the outdoor play area;
- (e) Have appropriate, as determined by the Division, depths and perimeters of resilient surfacing underneath and surrounding any elevated play equipment;
  - (f) Have adequate safety barriers around any elevated platforms;
- (g) Not have any dangerous or poisonous plants or other vegetative matter located within the boundaries of the play area or in an area that is accessible to children from the play area;
  - (h) Not be in a location where any bodies of water are accessible to children; and
  - (i) If it has playground equipment, have only equipment that is:
    - (1) In good repair;
    - (2) Designed and constructed to minimize injury;
    - (3) Compatible with the age of the children in the care of the facility;
    - (4) Spaced to reduce accidents; and
    - (5) Securely anchored.
- 5. If a facility that provides care for ill children is a component of a child care center and provides outdoor play space, the play space must:
  - (a) Be separate from the play space for well children;
  - (b) Meet the requirements of paragraph (b) of subsection 1; and
  - (c) Meet the requirements of subsection 4.

See NAC 432A.250.

### **STAFF REVIEW**

On May 20, 2025, Katherine L. Hall, on behalf of Zion Lutheran Church Preschool (hereinafter Applicant") submitted an application for a variance from Nevada Administrative Code (NAC) 432A.250, relating to the useable square footage for each child in Zion Lutheran Church Preschool, a childcare facility, located at 3205 N. Highland Drive, Winnemucca, NV 89445. Applicant asserts its current capacity of 8 children per preschool classroom based on useable square footage is causing a financial hardship. Ms. Hall asserts that prior to the

school being remeasured, they operated with a class size of 10-12 students per preschool classroom without major incidents.

In review of the Application, the findings the circumstances are unique to the Applicant. The State of Nevada currently licenses 641 child care facilities, 447 of those are child care centers such as Zion Lutheran Church Preschool. All of these child care facilities have been successful utilizing the current 35 square feet of useable space for each child. These regulations are applicable to all licensed child care facilities and thus, do generally affect other persons subjected to the regulations.

Applicant's issue of complying with current usable square footage space for each child should not be construed as unduly burdensome as the facility may utilize other building space located on the property so that the facility may maintain current child enrollment numbers. Further, Applicant provides no evidence of circumstances that cause a hardship to and abridge a substantial property right of the applicant in relation to the licensed childcare facility.

Granting the variance is not necessary to render substantial justice to Applicant and would pose danger to the safety of the children. NAC 432A.250 sets standards for usable square footage space for each child within a licensed facility and helps to reduce risk of illness and injury of children. Varying these standards to allow a facility to provide services beyond the capacities set in regulation contemplates allowing the operation of other childcare facilities in the State of Nevada without meeting the standards for usable square footage space for each child.

The applicant states that the regulation causes financial hardship, and that the program ended this last fiscal year (July 2024-June 2025) at a \$21,000.00 deficit due to the change in their allowed class sizes. The State of Nevada Child Care Licensing offered solutions to better utilize existing space and to add additional space that is shared with the church in order to allow for more usable square footage space and more child enrollment numbers, but the facility chose not to follow recommendations.

### **EXCEPTIONAL AND UNDUE HARDSHIP:**

The financial hardship as described by Applicant is specific to three classrooms within one building located within the licensed childcare facility property. There are three buildings within the licensed childcare property that allows for more useable square footage space and a total capacity of 69 children.

### **DEGREE OF RISK TO PUBLIC HEALTH AND SAFETY:**

Allowing services to be provided for children that exceeds the useable square footage space of the licensed childcare facility creates a potential for increased risk of illness and injury of children and thus related safety concerns.

#### INTENT OF REGULATION

The intent of the regulation is for each childcare facility to have at least 35 square feet of indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used because these requirements are necessary to provide an environment that is highly functional for program delivery and to encourage strong, positive staff-to-child relationships; to accommodate the recommended group size and staff-to-child ratio, and to efficiently use space and incorporates ease of supervision.

Studies have shown that the quality of the physical designed environment of early childcare centers is related to children's cognitive, social, and emotional development. In addition to meeting the needs of the children, caregivers/teachers require space to implement programs and facilitate interactions with children. Child behavior tends to be more constructive when sufficient space is organized to promote developmentally appropriate skills. Crowding has been shown to be associated with increased risk of developing upper respiratory infections. Also, having sufficient space will reduce the risk of injury from simultaneous activities. (Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, Third Edition) ("hereinafter referred to as "Caring for Our Children").

The State of Nevada Child Care Licensing square footage requirements for childcare facilities are at or below National Health and Safety Performance Standards based on what children need for quality nurturing care. Historically, a standard of 35 square feet was used; however, *Caring for Our Children* now recommends a minimum of 42 square feet of usable floor space per child, with 50 square feet per child being preferred.

Further, when the State of Nevada Child Care Licensing remeasured Zion Lutheran Church Preschool in July 2024 due to concerns that the previous capacity was inaccurate, the facility was found to have a total capacity of 69 children. Upon reviewing previous inspections from 2019-2024, the facility never reached the total capacity of 69 children. The State of Nevada Child Care Licensing met with representatives from Zion Lutheran Church Preschool in December 2024 and provided possible solutions to utilize existing licensed space differently or to add the regular use of a multipurpose room that is shared with the church to increase usable square footage space and the facility refused to make the recommended changes.

### **STAFF RECOMMENDATION:**

Staff recommend that the Board of Health deny the request for variance for the following reasons:

- 1. Less useable square footage space per child would be a risk to child health and safety.
- 2. Zion Lutheran Church Preschool has additional building space that may be utilized to maximize their useable square footage for each child.
- 3. Nevada's NAC regulation regarding useable space meets the qualifications of the Federal Child Care Development Block Grant needed for funding.

### PRESENTER:

Latisha Brown, Social Services Chief II Division of Welfare and Supportive Services

### **ATTACHMENTS:**

None



### **APPLICATION FOR VARIANCE**

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration (NAC 439, 441A, 452, 453	3A, & 629)	Health Care Quality & Compliance (NAC 449, 457, 459 & 652)	
Child, Family & Communi (NAC 392, 394, 432A, 439)  Public Health & Clinical S (NAC 211, 444, 446, 447,	, 441A, & 442) Services	Office of State Epidemiology (NAC 440,450B, 452, 453, 453A, & 695C)	
Date: 5 / 2 0 / 2 0 2 5			
Name of Applicant: Zion Luthera	ın Church	Phone: 775-623-3796 x 3	
Mailing Address: 3205 N. High	hland Dr.		
City: Winnemucca	State: NV	V Zip: <u>89445</u>	
We do hereby apply for a variance to chapter/section 432A of the Nevada Administrative Code (NAC). (For example: NAC 449.204)  Title of section in question:			
Statement of existing or proposed conditions in violation of the NAC:  A facility must have 35 square feet per child indoors, not including hallways, bathrooms,			
or kitchens.			

### **APPLICATION FOR VARIANCE**

Date of initial operation (if existing): 02/04/1994

### ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

- 1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
  - (a) There are circumstances or conditions which:
    - (1) Are unique to the applicant;
    - (2) Do not generally affect other persons subject to the regulation;
    - (3) Make compliance with the regulation unduly burdensome; and
    - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
  - (b) Granting the variance:
    - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
    - (2) Will not be detrimental or pose a danger to public health and safety.
- 2. Whenever an applicant for a variance alleges that he/she/they suffers or will suffer economic hardship by complying with the regulation, they must submit evidence demonstrating the costs of compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supporting your variance request.

Statement of degree of risk o	f
health	The quality of our program, and the existence of our program is at risk.
Zion Preschool has ended th	is last fiscal year (July 2024 – June 2025) at a \$21,000.00 deficit due to the change
in our allowed class sizes.	



### **APPLICATION FOR VARIANCE**

### Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:
We were informed just before the start of our preschool program in 2024 that our
rooms were not big enough to accommodate the number of children we have had in
our program. We have operated for over 30 years with class size of 10-12 students per
classroom. Since we were forced to operate at 8 students per classroom we are in
serious financial strain and will not be able to continue our program at these numbers.
We have had a successful program for several decades and this will shut us down.
<ul><li>2. The variance, if granted, would <u>not:</u></li><li>A. Cause substantial detriment to the public welfare.</li></ul>
We have provided an exceptional Preschool and Pre-K education program in our rural
community for over 30 years. We have never had any major incidents with our typical
class size of 10-12 students. We have a great reputation with the public teachers and our
community.
B. Impair substantially the purpose of the regulation from which the application seeks a variance. The regulation which we seek a variance if for an existing preschool program that has
been in operation for over 30 years. We have a large building with other areas that are
used for the children's education.
The bureau may require the following supporting documents to be submitted with and as a part of this application:
Specific Request:
Zion Lutheran Preschool is requesting a variance on students allowed in each of our 3 classrooms to 12 students.

### **APPLICATION FOR VARIANCE**

1.	Legal description of property concerned
_ 2.	General area identification map
_ 3.	Plot map showing locations of all pertinent items and appurtenances
_ 4.	Well log (if applicable)
_ 5.	Applicable lab reports
_ 6.	Applicable engineering or construction/remodeling information
_ 7.	Other items (see following pages)
This application	on must be accompanied by evidence demonstrating the costs of your compliance with
regulations or	specific statutory standards. Your request will be placed on the Board of Health agenda 40 days
or more after i	receipt in this office if accompanied by the required fee (NAC 439.210). The application and
supporting doc	umentation will form the basis for the Division of Public and Behavioral Health staff report and
recommendation	on(s) to the Board. Failure to respond to the above statements may cause the Board to deny
consideration of	of the application at the requested Board meeting.

I am/we are requesting this variance request be placed on the next regularly scheduled Board of Health agenda. It is understood that I/we can attend in person at either physical location in

Carson City or Las Vegas or we may attend virtual.

Signature:



### **APPLICATION FOR VARIANCE**

# PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING ANY OF THE FOLLOWING METHODS:

### **MAIL TO:**

Secretary, Nevada State Board of Health

Division of Public and Behavioral Health 4150 Technology Way, Suite 300 Carson City, NV 89706

**FAX:** 

775-687-7570

**EMAIL:** 

<u>DPBH@health.nv.gov</u> StateBOH@health.nv.gov



### **APPLICATION FOR VARIANCE**

Please check the app	propriate box that pertain	ns to the NAC	for which you a	are requesting a variance.
Division Adm (NAC 439, 44	ninistration 41A, 452, 453A, & 629)		1	uality & Compliance 7, 459 & 652)
	& Community Wellness 4, 432A, 439, 441A, & 4	42)		e Epidemiology 0B, 452, 453, 453A, &
	& Clinical Services 44, 446, 447, 583, & 585	)		
Date: 5/20/2025				
Name of Applicant:	Zion Lutheran Chu	urch	Phone:	775-623-3796 x 3
Mailing Address:	3205 N. Highland	Drive		
City: Winnemu	State:	NV	Zip:	89445
Title of section in			e Nevada	
question:				
Statement of existing or proposed conditions in violation of the NAC:  A facility must have 35 square feet per child indoors, not including hallways, bathrooms, or kitchens.				

### APPLICATION FOR VARIANCE

Date of initial operation (if existing): 02/04/1994

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

- 1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
  - (a) There are circumstances or conditions which:
    - (1) Are unique to the applicant;
    - (2) Do not generally affect other persons subject to the regulation;
    - (3) Make compliance with the regulation unduly burdensome; and
    - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
  - (b) Granting the variance:
    - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
    - (2) Will not be detrimental or pose a danger to public health and safety.
- 2. Whenever an applicant for a variance alleges that he/she/they suffers or will suffer economic hardship by complying with the regulation, they must submit evidence demonstrating the costs of compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supporting your variance request.

Statement of degree of risk of health	
The quality of our progran	n, and the exsistence of our program is at risk.
Zion Preschool has ended	this last fiscal year (July 2024 - June 2025) at a
\$21,000.00 deficit due to 1	the change in our allowed class sizes.



### **APPLICATION FOR VARIANCE**

#### Please state in detail the circumstances or conditions which demonstrate that:

We were informed just before the start of our preschool program in 2024 that our rooms were not big enough to accommodate the number of children we have had in our program.

We have operated for over 30 years with class size of 10 -12 students per classroom. Since we were forced to operate at 8 students per classroom we are in serious financial strain and will not be able to continue our

program at these numbers. We have had a successful program for several decades and this will shut us down.

1. An exceptional and undue hardship results from a strict application of the Regulation:

- 2. The variance, if granted, would not:
  - A. Cause substantial detriment to the public welfare.

We have provided an exceptional Preschool and Pre-K education program in our rural community for over 30 years. We have never had any major incidents with our typical class size of 10-12 students.

We have a great reputation with the public teachers and our community.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

The regulation which we seek a variance if for an exsisting preschool program that has been in operation for over 30 years. We have a large building with other areas that are used for the childrens education.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

Specific Request:

Zion Lutheran Preschool is requesting a variance on studens allowed in each of our 3 classrooms to 12 students.

### **APPLICATION FOR VARIANCE**

- Legal description of property concerned
- \_ 2. General area identification map
- \_ 3. Plot map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- \_ 5. Applicable lab reports
- \_ 6. Applicable engineering or construction/remodeling information
- \_ 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

I am/we are requesting this variance request be placed on the next regularly scheduled Board of Health agenda. It is understood that I/we can attend in person at either physical location in Carson City or Las Vegas or we may attend virtual.

Signature:	
Printed Name:	Katherine L Hall
Title:	Director of ECE/ Treasurer of congregation
Date:	5/20/2025



### APPLICATION FOR VARIANCE

# PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING ANY OF THE FOLLOWING METHODS:

### MAIL TO:

Secretary, Nevada State Board of Health

Division of Public and Behavioral Health 4150 Technology Way, Suite 300 Carson City, NV 89706

**FAX:** 

775-687-7570

**EMAIL:** 

<u>DPBH@health.nv.gov</u> <u>StateBOH@health.nv.gov</u>

#### BEFORE THE STATE BOARD OF HEALTH

IN THE MATTER OF	)
ZION LUTHERAN CHURCH PRESCHOOL	)
VARIANCE REQUEST: CASE # 792	)

The Nevada State Board of Health ("Board"), having considered the application for Zion Lutheran Church for a variance and all other related documents submitted in support of the application in the above referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

#### **FINDINGS OF FACT**

- 1. On May 20, 2025, the Division of Social Services ("Division") received a request for variance from Nevada Administrative Code (NAC) 432A.250 (1a).
- 2. NAC 432A.250 (1a) states:
  - In each facility there must be at least 35 square feet of indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used.
- 3. Zion Lutheran Church Preschool has requested a variance from the requirements of NAC 432A.250 (1a). The Zion Lutheran Church Preschool is requesting a variance from the code that there be at least 35 square feet of useable space for each child. This regulation exists to reduce the potential risk of illness and injury of children. The National Health and Safety Performance Standards for square footage requirements are necessary to provide an environment that is highly functional for program delivery and to encourage strong, positive staff-to-child relationships; to accommodate the recommended group size and staff-to-child ratio; and to efficiently use space and incorporates ease of supervision.
- 4. NAC 432A.250(1a) allows for each childcare facility to have at least 35 square feet indoor space for each child, exclusive of bathrooms, halls, kitchen, stairs, storage spaces, multipurpose rooms and gymnasiums that are not regularly used. *Caring for Our Children:*National Health and Safety Performance Standards; Guidelines for Early Care and

Education Programs, Third Edition ("hereinafter referred to as "Caring for Our Children") recommends a minimum of 42 square feet of usable floor space per child, with 50 square feet per child being preferred. In addition to meeting the needs of the children, caregivers/teachers require space to implement programs and facilitate interactions with children. Child behavior tends to be more constructive when sufficient space is organized to promote developmentally appropriate skills. Crowding has been shown to be associated with increased risk of developing upper respiratory infections. Also, having sufficient space will reduce the risk of injury from simultaneous activities.

5. In July 2024, the State of Nevada Child Care Licensing remeasured Zion Lutheran Church Preschool and the facility was found to have a total capacity of 69 children. Upon reviewing previous inspections from 2019-2024, the facility never reached the total capacity of 69 children. In December, 2024, the State of Nevada Child Care Licensing met with representatives from Zion Lutheran Church Preschool and provided possible solutions to utilize existing licensed space differently or to add the regular use of a multipurpose room that is shared with the church to increase usable square footage space and the facility refused to make the recommended change.

### **CONCLUSIONS OF LAW**

- 1. This matter is properly before the board pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the board.
- 2. NRS 439.200 provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

- a. Strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and
- b. The variance, if granted would not:
  - 1. Cause substantial detriment to the public welfare; or
  - 2. Impair substantially the purpose of the regulation.
- 3. The Board finds that granting this variance would cause substantial detriment to the public welfare or impair substantially the purpose of the regulation.

4.	. Allowing services to be provided for children that exceeds the useable square footage of			
	space of the licensed childcare facility creates a potential for increased risk of illness and			
	injury of children and thus related safety concerns.			

### <u>ORDER</u>

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the variance to NAC 432A.250(1a) be DENIED as presented.

DATED this	day of	, 2025
		Jon Pennell, DVM, Chairperson
		Nevada State Board of Health

### **CERTIFICATE OF MAILING**

I hereby certify that I am employed by the	ne Department of H	ealth & Human Services,
Division of Socia Services, and that on the	day of	, 2025, I served the
foregoing FINDINGS OF FACTS AND DECISION by	y mailing a copy the	ereof to:
Zion Lutheran Church	n Preschool	
C/O: Katherine L. Hal	I	
3205 N. Highland Dri	ve	
Winnemucca NV 894	45	