

**Cedar City Board of Adjustments Minutes
October 3, 2016**

The Cedar City Board of Adjustments held a meeting on Monday, October 3, 2016 at 5:15 p.m., in the City Council Chambers, 10 North Main Street, Cedar City, Utah.

PRESENT: Chair Zurl Thornock, Ann Powell, Jill Peterson, John Ashby, Joe Sanders, Janet McCrea, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, Executive Assistant Barbara Barrick.

OTHERS PRESENT: Bob Platt, Barry Gray, James Jackson, Pamela Redington, Cindy Lovell, Tom Morgan, Nathan Lovell, Darla Shedron-Easley, Anota Morgan, Scott Anderson, Cathy Sparkman, Rick Sparkman, Joe Ellis, Kim Ellis.

CALL TO ORDER: Ann called the meeting to order at 5:15 p.m. (Zurl arrived a few minutes later).

APPROVAL OF MINUTES: Motion to approve the minutes of the September 12, 2016 by Jill, with changes in the last agenda item to reflect that the Board had no jurisdiction in the matter and therefore was unable to make a decision on the variance request. Second by Janet. Vote unanimous to approve.

APPROVAL OF FINDINGS OF FACT: Motion to approve the Findings of Fact of the September 12, 2016 meeting by Ann. Second by John. Vote unanimous to approve.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A DAYCARE AT A RESIDENCE LOCATED AT 985 SOUTH 1850 WEST/BRIGHID PORTER:

Brighid is not here. Zurl – We received information from the property owner that she is not allowed to have a business there. She has to either own the property or have permission from the owner and the lease prohibits operation of a business at that location. Randall – It is the burden of the applicant and since she is not here, I think the Board has enough information to make a motion.

Motion to deny the home occupation permit to operate a daycare by Ann. Second by Janet. Vote unanimous to deny.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A CHILDCARE BUSINESS AT A RESIDENCE LOCATED AT 20 SOUTH 2380 WEST/TYLER ANDERSON:

Darla – I am speaking again for Tyler as he is working his day job. This is a combined effort. We just double-applied to make sure we covered our bases. I live at the same address as Tyler Anderson. Zurl – So these two will be heard simultaneously? Randall – The voting will have to be different. The notice doesn't have Tyler's name anywhere on there. Darla – On the notice I delivered it had Tyler's name on there. Randall – When you consider that there are two applications, then you need to decide whether to approve one or both. Darla – Can it be an and/or issuance? Randall – From the legal side you can't grant two to the same place. As long as both of you reside there, you only need one. Darla – Then I would ask for it to be me. We are merging our households. We overkilled with the two separate applications. Joe – I did drive by and look at it. Randall – A neighbor just brought me their notice and it does have both names on it. There are neighbors here. I sat down and organized my thoughts and looked at the neighbor notification. Darla's property sits on the corner and she has notified all property owners except one, S.Y. Corporation, which owns a large adjoining parcel. I don't show it's been notified. Darla – There is no development there. It is a corporation and I did not give them notice as I didn't think of it. I spoke with Drew and he highlighted only had properties with houses. I brought up if the undeveloped property should be get notice, but I may have misunderstood. Randall – It is one large undeveloped lot. It's only one owner, but it's ¾ of the land area. Zurl – And you need permission.

Kandall – NOT permission but notification. I have not gone through this but since I received a list of people objecting I realized it was missing. It is a problem. If you don't think she has met the notification requirements, then you can't vote on this item. Zuri – Is it our discretion? Kandall – She either did or didn't meet the requirement. You have to decide. Zuri – What is the intent of the notification requirement? Kandall – We require notification on a lot of land-use issues every time it impacts neighbors. In making the change, part of the discussion on the ordinance was traffic and property values. We want the neighbors to tell us what's important. I don't want to create a precedent where someone intentionally doesn't give notice. It's not the case here. Darla – Having spoken with Drew, I thought I'd gone beyond the expectation as it seemed appropriate. My understanding was that he had had a dialogue with Kandall about this. I don't know if that was reasonable or not. It is totally my mistake I can't tell you why I didn't. Zuri – At this point I'd recommend that we table any motion because obviously this can be remedied by giving Ms. Easley another period to get that notification and then we'd be back. But we have a number of people here today. Can we go ahead? Kandall – You can't vote today and tell them what you're going to decide in a month. They're all going to want to come back anyway. Darla – I can re-notify. Can we include these testimonies in another meeting? Ann – So we should table this, but listen to the thoughts? Kandall – We could do an informal poll. These neighbors want to address this application even if it is tabled. Zuri – Do we have any questions for Darla?

Darla – My concern is false statements that may be made. We have already gone through two state health inspections and two state fire licensing and we've passed those. The State has determined to issue us a license, and has given a period of time for us to obtain a City license. At a prior meeting a comment was made. I don't have a criminal record and if I did, I couldn't watch children. If I had a history with DCFS, I couldn't watch children. There is a nationwide system. Many people don't like me because they owe me money or were let go. But there are many who think highly of me. I didn't ask them to come today as I don't think they need to be involved.

Zuri – Is there a fence? Darla – Yes, Drew's done the inspection. I've complied with all he required. Drew – The fence is in, but parking is an issue. Darla – I have a 2-car driveway and garage and dirt on the side of the cul-de-sac. There are never more than 2 vehicles there at a time, so I don't see a problem. Randall – This is not a complete killer to the application, but the changes in 2014 were made to parking. Drew has to go and see what the parking requirement is. Section 26-5-5 goes through the required parking. The ordinance doesn't list a daycare requirement so the most similar requirement is parking for schools. And appeals may be to the Board of Adjustments. You could grant a special exemption to approve the parking if it would cause hardships. Drew says she should have 5 parking spots. If you grant this application, you have to make sure you address the issue of parking. We had an application in 2015 and the Board addressed the lack, and said that under that particular scenario it was okay. I only mention it because some of the complaints will involve traffic, etc. The Board will also need to address if there is sufficient room for off-street parking. In that other incident we added that inserting a round-about could be a possible solution.

Darla – We have a dirt cul-de-sac to the south. I have a yard to the south, and we are built into the side of the hill, so I can't do a circle driveway. Adding gravel on the south side to park would meet the requirement. I had the impression that so long as it wasn't next to a street that gravel on the side could be a parking option. Drew – The parking needs to be hard surface--asphalt or concrete.

Cindy Lovell – I live at 21 South 2380 West. She has applied for a business and the business has now been changed to a nursery school. The ordinance says she can have more children. If she is able to have that many children, we need more parking. She has slipped in nursery school now, and we are looking

beyond child care and there is not adequate off-street parking. It is so busy now, I can't get out of my driveway. Kids are being dropped off 24-7. This daycare has gone on since she moved back in three months ago. She has not lived in that home for five years. Myler has been there three times. He lives on Beacon Circle with his father. He is not a member of the family. It is fraudulent. She knows how to play the system. Zurl – The number of children she can have is stipulated. We are more interested in the testimony about your specific concerns. Cindy – The property to the south is owned by the City and it is where the snowplows turn around and she has junk there. Cathy Sparkman - I live at 22 North, 2380 West, and I have lived there since 1994. We bought the home because it was on a cul-de-sac so there would be less traffic. But there is constant traffic going up and down the street to her home. We didn't have this before she moved in. This is an interruption to living in a quiet R-1 neighborhood. They are dropping off children 24 hours a day. I won't even let my grandkids play in the front yard anymore as these cars go fast. Zurl – Is there a daycare in the home right now? Cathy – Yes. This is a dead end street and we take care of each other. We just don't want this business on this street. Nathan Lovell – I live at 21 South, 2380 West. Her driveway is very steep and there are no stairs on the side of it. You can't even turn around the snowplow in that area, it gets stuck. Her property has two tiers of stacked block that are four feet tall. If a kid falls off who's liable? If someone gets hurt there, do they go back to the entity that licensed the daycare? I've lived there 25 years. There is a daycare going on right now.

Zurl – How long has she lived there? Nathan – She moved back in 3 or 4 months ago. Joe – How much traffic is on the road on a given day associated with the day care? Nathan – I don't know. The other night there were 4 cars and a dumpster parked in front. The driveway is too steep for parking in the winter. Mornings are the worst for traffic. Tom Morgan – I live at 9 South, 2380 West. We are newer residents as we have only lived there for 5 years. I'm the executive director of Headstart and Early Intervention at SUU so I have professional expertise in this area. No state license will be granted unless the City grants one first. So no matter what inspection goes on it won't be until it's made official by the City. It is not a safe place for children. There is not a good ratio of employees to children. Speaking as a neighbor, we want a quiet neighborhood. But as a child care professional it is not safe. Janet – What safety issues do you see? Tom – The playground is just rocks and dirt. There are boulders, rocks, and we've seen kids on Big-wheels going down the drive way into the road. There is much more traffic now. We also see this at Headstart. Mom and dad are late for work and are in a hurry, so they speed. During both the morning and afternoon pick up that's going on. The area we live in now is dangerous for our grandchildren. We have nothing against her, but we want the best for our neighborhood. Maybe have this in another area? We purchased our home there because it was a quiet place. Janet – How many kids are in the daycare currently? Tom – I don't know.

Richard Sparkman – I bought my house in 1994. I have nothing against Darla, but the traffic is terrible and unsafe for the other kids in the neighborhood, especially with the dead end the way it is. We are on the lower corner. Joe – I'm just wondering how many cars travel on the street. Richard – The cars have tripled, and on Saturdays it's the same thing. Anota Morgan – I live at 9 South, 2380 West. I was grateful that my husband didn't bring up things he hadn't seen himself. I realize the things that go on with the children there are not your venue. But I've seen children in the front yard with no supervision with a pick axe. I saw a child on the roof and a child climb out of an upstairs window on the roof area above the garage. I know you are about enforcing the city ordinances but our concern is that it's a 24-7 day care. With a nursery school you can have more children. Currently there are children dropped off there at 3 a.m. We have neighbors who are not property owners who were excited to rent there because of the cul-de-sac, and now they can't have their children playing out there because there is so much traffic. We have asked the individuals to slow down with no response. The description of the R-1 zone is "quiet residential zone." Home occupations are "strictly limited." This one has to do with the 24-7

childcare and I suggest that an R-1 zone is not where that should take place. That is not the purpose. Please consider that.

Pam Redington – I live at 22 South Cove Drive. With the temple going in, lots of people want to build homes in this area. When they drive up on that street, though, they don't want to due to the children in the street and vehicles coming and going. I'm worried about property values. This residence has toys and vehicles parked haphazardly in the driveway. We want it to be a good neighborhood and we also care about the children being put at risk.

Zurl – A number of people say you're having a daycare currently. Do you have a business license?

Darla – We were given 30 days and we are not receiving funds yet. Zurl – Is there a provision that they get a 30-day trial period while awaiting approval? Randall – When the applicant applies for a business license, they get a 30-day temporary license, but that time frame has expired. Zurl – How do we weight that? Randall – I'm not sure you should be too concerned about it, as this Board doesn't act as a judge or a cop. Because she has the kids there, though, we can hear from the neighbors about the impact. A lot of times we'll send a notice but I think we were holding off. Obtaining a license can be a drawn out process. Ann – Since this is going to be tabled, maybe we should move on. John – I think we are going nowhere. Ann – She can come next month. Darla – We have only three families coming and dropping off their kids. The traffic is from the temple.

Motion by Ann to table items 5 and 6 until the next meeting. Second by Jill. Vote unanimous to table these items.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A CHILDCARE BUSINESS AT A RESIDENCE LOCATED AT 20 SOUTH 2380 WEST/DARLA SHEDRON-EASLEY:

See above item.

REQUEST FOR A VARIANCE ON THE REAR SETBACK ON A PROPERTY LOCATED AT 1374 N. KNOLL STREET/JOE ELLIS:

Bob – This is a situation in Canyon Ridge Phase 3. Zurl – For the record, Bob and I are friends and serve in church callings together. Bob – The Ellis' are the owners and they have plans to build a home. To place the house on the property they are asking for a 2-foot encroachment on the rear setback for about a third of the house. The property behind their house is platted as a common area and drainage access. The Cedar Ridge Homeowners Association basically granted the use of that common area for the use of the adjoining property owner so the HOA wouldn't have to maintain it. Ann – And no one can build there? Bob – No. John – Is it an easement? Bob – It says common area and drainage access. Behind the house is a street that goes to the lots to the east and this is an open area. It is on the slope of the hill and is native vegetation. John – So they can encroach if they wish? Bob – They just want more space. Zurl – The purpose of a setback would be to create space? Drew – In my view. Bob – There is no amended plot. Joe E. – They said it was ours to take care of. John – What is difference between a common area and an easement? Randall – The difference is ownership. If they are abandoning an easement they could relinquish it without much work, but for property you would need to go through the process. Zurl – So it's not decided? Jill - So they need the two feet for the house plans? Bob – Yes to make it work with the slope. Randall – Is the slope of the driveway too steep? Bob – The driveway will have some slope to it and this is a safety concern.

1. Unreasonable hardship: The slope and safety issues are a hardship. Janet – They have been given the responsibility to maintain the common area.
2. Special circumstances: The strip behind the house that the HOA asked them to maintain. There is the slope and there are no neighbors for space issues.
3. Granting the variance is essential to a substantial property right: Zurl – Being able to have a safe home with the size they need relative to the lot would be the property right.
4. Granting the variance won't substantially affect the general plan: It's only two feet.
5. Spirit of the ordinance is observed and justice done: All agree the application meets this requirement.

Motion to approve a 2-foot variance on the rear setback by Ann, contingent on if the Ellis' are ever are deeded the common area, they will add it to their current lot. Second by Janet. Vote unanimous to approve.

REQUEST FOR A VARIANCE ON THE FRONTAGE OF PROPERTIES LOCATED AT 164 SOUTH 200 EAST AND 166 SOUTH 200 EAST/BARRY GRAY:

Barry – I now live in Mesquite and this property has been for sale for couple of years. We needed an R-2 lot when we bought so we could build a home for my father-in-law. But when it came time to get permits, we found it was two separate lots. We found out we had put our garage on the property line so we deeded it to my father-in-law. You don't plan on losing people, but he passed away and now we've had offers on the property once or twice but the separate lots are a problem. This one was split at 50 and 82 and we want to move the property line. Zurl – Does this Board have authority to move the property line? Randall – No. He wants to see if you would extend a non-conforming use. Zurl – What is the process? Barry – We'll get it surveyed and then go to the Planning Commission. Randall – You have almost enough for 66 feet and many of the other lots in the area are 66 feet. Barry – There are lots that are 42 and some that are 22. It's an older area of town. Zurl – So you bought a big lot thinking it was one lot and found it was two, and you'd already built across the property line. Barry – It's right on the line. Randall – Larry used to say the easiest way to combine two lots was to build on the property line. If he combines them it would be 130 feet. We had one last month that was allowed that because it was a really long lot. Barry – People can't qualify for the second lot. Randall – The unreasonable hardship justification always assumes there's not a reasonable alternative. Zurl – What is the procedure to combine lots? Randall – It's in the subdivision ordinance. Jill – The Planning Commission could approve combining the two lots. Ann – Looking at the lot I think it would be the wisest thing. Barry – But I need to be able to sell each house separately. Randall - A lot of times people build on the property line and it combines the lot effectively. Under the current rules we wouldn't allow anyone to build that close. Barry – We own the whole thing, but want to move the line for the convenience of the person coming in. John – What does your deed say? Barry – Dan Roberts just checked out if it was R-2. We didn't know it was two lots. Joe – What about taxes? Barry – After we bought it and were building the second home, we got the two separate tax bills. Zurl – So there was a permit issued for the second home. So where do we stand with this application Randall? Barry – If you look at the paperwork there is a common driveway. Ann – It is a unique property. The old house covers part of the new house. Barry – And hopefully there will be a family that could do as we did. There is a family interested but they want the distance off of the patio. Randall – Maybe send it to the Planning Commission to combine the lots. These minor lot changes are within the Planning Commission's authority. It has to be common

ownership, they can't be adding more property into it. I'm not seeing that it will run into a problem, but I can't make a 100 percent prediction. Ann – What if he combines the lots and the next owner wants to sell the back house? Randall – He couldn't. If he could convince the City to divide it again, we could grant a variance on the frontage in the front. You also run into problem of adding on to the back house because it would be non-conforming. If there is a reasonable alternative then it doesn't fit the unreasonable hardship criteria. Jill – It seems like it could be combined but if they tried to split it again, it would come back here. Zurl – Until it's combined, we couldn't grant a change? Randall – It's a catch-22 situation. If the Planning Commission can't combine the lots and then they come back to the Board and say there is no reasonable alternative, then we could say it's an unreasonable hardship. Then the Board of Adjustments could possibly grant a variance and then give it back to the Planning Commission who would now have authority because there is a variance on the property. Barry – So I combine the lots and then ask for a variance, and it's a long process. Jill – So you do want it split? Combining it would help. Ann – It's already split. Jill – So if the Planning Commission did combine the lots, your problem is solved? Barry – Because both are for sale we want to sell one to one buyer and the other to another. Jill – So you would like it split. Zurl – But a different split than he has now. Randall – You can't grant a property line change but could grant a variance on the width on one property and send it to the Planning Commission. If you believe there is a reasonable alternative that allows him to use the property, it won't meet requirement number one. And it doesn't have to be his preference. It would solve the banking aspect because it was only one property.

Joe – I'm hung up on the self-imposed wording. I'm still curious about when you first bought the property. When did you find out there was a problem? Barry – When my father-in-law went in to get a building permit. We didn't see tax notices until later. Joe – And what about the title company? Zurl – In my experience it would show both property descriptions. If a person is not an expert, though, they wouldn't understand it was two. And a building permit was issued for the garage but before you found it was two pieces of property. I think it's hard to argue that this is self-imposed when he got a building permit, etc. Randall – What he was misled to believe is that it was one property, which he wanted at the time, and he could get that now if it was combined. If it was combined it would let him have what he had in the first place, which is one lot. This starts with Engineering and then he would go through the process. Kit will walk you through that. If it snags up, then there is no reasonable alternative. We can save him \$25 and table the application so he doesn't have to pay the application fee a second time. Or you can have the Board vote and if they say no you could appeal to the District Court and pay their fees. Ann – If there is no other alternative, it is more likely to meet the unreasonable hardship criteria. Barry – I'd rather have a vote to know where we're at. Randall – The closest thing this Board can do is grant a variance of width on 166 South 200 East. The other lot is fine. If the Board grants a variance of 10 feet of the width and then he would still have to get approval for the actual lot line. Zurl – And what is the purpose? Barry – To make the front home more enhanceable and a better piece of property. Zurl – And this is just a step toward moving the property line. Randall – We need to focus on the purpose. All I've heard is he wants to sell and the justification can't be economic. Zurl – Do we see an unreasonable hardship that would justify a variance? Randall – You have jurisdiction if you think it meets the five requirements. Janet – Doesn't it imply that the line be adjusted if we approve this? Randall – No it says you are okay with it. Joe – I don't see a reason to vote. Randall – If the Board is not convinced you can say he hasn't met the burden of proof. You don't have to vote. By denying it now you don't say no forever. Barry – My next step if you deny would be to go to Engineering? Zurl – Yes. Randall – There's a good chance if he wants to combine the two lots he should be able to. Then there's no longer a need for a variance. If he sticks with what he wants no one can grant that in one shot. The Board of Adjustments could grant him a variance and then he could go to the Planning Commission to split the lots. Janet made a motion to table this application until it goes to the Planning Commission and

Engineering. Second by Joe. vote unanimous to table the application.

REQUEST FOR A VARIANCE ON THE SIDE SETBACK ON A PROPERTY LOCATED AT 471 E. HILLVIEW DRIVE/JAMES JACKSON:

James – I would like to build a garage on the property and it backs up to hole 15 on the fairway. According to the ordinance, the garage would have to be 6 feet behind the back of the home and go up to one foot on the side yard. Zurl – So you want to build a detached garage? James – Yes. I want a 14 x 30-foot garage but could go smaller. Instead of the 6 feet in back of the home I would like to suggest 6 feet off of the side of my home. Because my home backs to the fairway it's going to block my neighbor's views if I build it according to the requirements. I don't feel that's the proper place to be in compliance in that neighborhood. That side of my home is technically useless to me. My uphill neighbor and downhill neighbor wouldn't even see it. Zurl – On the other side of the home you have a large space that would create access to your backyard. Drew – He wants to build it 6 feet in the rear so the proposed garage would not be in compliance. Zurl - But if you put it back there it interferes with the neighbor's views? James – Yes. I wouldn't do that to my neighbors. Janet – How have we recently decided on similar cases? Randall – We've had two different ones. One of them was a carport and they wanted to change it to a garage. Another one wanted a detached garage and the Board denied the application. The question I have now is what stops a person from attaching the garage to the house and therefore meeting the setback requirements? Janet – Is there an option to attach the garage to the house? James – That is correct if I wanted to attach it I could. I've talked to a couple of builders. Zurl – You'd have to change your rooflines. Ann – What about on the other side of the home? James – It would be the same issue. I understand the 6 foot behind the house and that's why I'm asking for the 6 feet on the side. Janet – I think our concern is the fire safety. Randall – Yes that was one problem in the other similar applications and spacing is an issue in those zones. The City would rather have more space on the side yard. James – The HOA has approved it on either side.

1. Unreasonable hardship: Janet – I don't think it applies because you have other places to build the garage and you could attach it. James – But my neighbors would hate me. Ann – I agree, but I don't feel like there is a hardship, unfortunately. Joe – I don't see it either. James – I don't either honestly. If I can do it, great, but I want to do it the right way. Ann – And unfortunately we've got to go by the five requirements.

Janet – your consideration for your neighbors is commendable.

Motion to deny by Janet. Second by John. Vote unanimous to deny.

Discussion:

Zurl – What about the neighbors' problems with Ms. Shedron-Easley? Do we consider those?
Randall – The neighbors' concerns can't make you deny the application, but their reasoning can if you agree with it. Is the use contrary to the zone? Does it change the character of the residence? You need to decide what weight to give those concerns and then you can see if Shedron-Easley has met her burden of proof. There are problems with parking there. If you follow the strict interpretation, she doesn't have enough parking. But if you think the parking is adequate and won't cause problems, you could approve it. Or the Board could say you don't think there's enough parking. Janet – It sounds like the driveway slope is not accessible in winter. Randall – You can't count that. Even if it's difficult, it's not impossible. From what we've seen there are trailers there all the time. Joe – I went by and I couldn't see a fence. Drew – You have to go in the back to see it. It's 10 x 15 or so. John – Is that adequate for a daycare? It's hard to ignore the situation she is putting

nerse II in. Randall – She could have 10 kids with the current square footage. Ann – Myler resides there, but he is not family. Randall – You can ignore whether he is family or not if he resides there. The definition of family is quite loose. I told Maria to bring proof he resides there. If not, he is an employee and they will need more parking.

Janet – What about the safety issues? To me it doesn't that change the character of the R-1 zone.

Randall – The increased traffic fits. But other than fencing and the fire code we can't address the safety issues. That is up to the State and her insurance provider. Her temporary license has expired, so keep that in the back of your head. The State shouldn't be paying her until her license is approved. So this delay is hurting her financially and she won't want it to drag on.

ADJOURN: The meeting adjourned at 7:40 p.m.

Barbara Barrick
Executive Assistant