

**Cedar City Board of Adjustments Minutes**  
**February 22 , 2016**

The Cedar City Board of Adjustments held a meeting on Monday, February 22, 2016 at 5:15 p.m., in the City Council Chambers, 10 North Main Street, Cedar City, Utah.

**PRESENT**: Chair Zurl Thornock, Ann Powell, Janet McCrea, John Ashby, Jill Peterson, Chief Building Inspector Drew Jackson, Assistant City Attorney Randall McUne.

**EXCUSED**: Joe Sanders, Steve Dodds.

**OTHERS PRESENT** : Rhean Carlson, Tyler Brown.

**CALL TO ORDER** : Zurl called the meeting to order at 5:14 p.m. This is a meeting in place of the one on February 1<sup>st</sup> , which was called off due to the major snowstorm.

**APPROVAL OF MINUTES** : Motion to approve the minutes of the January 4, 2016 meeting by Jill. Second by John. Vote unanimous to approve.

**APPROVAL OF FINDINGS OF FACT:**

Motion to approve the Findings of Fact of January 4, 2016 by Ann. Second by Jill. Vote unanimous to approve.

**REQUEST FOR A VARIANCE OR A SPECIAL EXCEPTION FOR PARKING FOR AN INTENDED DUPLEX ON A PROPERTY LOCATED AT 31 EAST 820 SOUTH/BART AND RHEAN CARLSON** :

Rhean - I would like a variance to recognize this property as a duplex, because that definition will give some leniency for the parking. Drew - The zone is R-2. I'll let Rhean speak about her expectations as to what is going to be allowed. Rhean - When we were going to purchase the home we wanted to use it as a rental. We were going to live upstairs and rent out the basement. To us it looked like a duplex. I asked the former building inspector, and he said it was a duplex. That is what was there and I asked if we could rent it out and have a separate address and was told yes, so we purchased the property. We lived in the basement and rented out the upstairs and I didn't realize we needed a business license. When I came to work for the City, I realized I needed a license and checked into other things and found it wasn't a duplex, it was a single family dwelling. There is parking for five and a separate entrance, but according to the ordinance, we need another parking space if it is a duplex. It was built in 2008 or 2009. Zurl - Are there complete units upstairs and down? Rhean - Yes. Drew - When they applied for a business license, we checked on the parking, etc. Rhean had an expectation from Larry that it wasn't going to be an issue. So here we are. Zurl - So what is the exception here? Rhean - We would like it to be considered a duplex, as we want to rent it out. Zurl - So do we need a variance? Drew - According to the building code, there needs to be a separation between the upper and lower units. Right now they communicate, don't they? They'd have to take out the door and make them separate. It is okay to have a duplex in the zone. Their proposal is to do that, but the problem is the parking. Zurl - So the variance would be on the parking. Ann - And it's just one spot. Randall - When she takes out the door, the property qualifies as a duplex, so it's just the parking that's an issue. Rhean - There are two spaces in the garage and three in the driveway, but we need an additional three feet for another space. Zurl - If part of it is not a rental do they need the space? She is living in part of the unit. Randall - It says two parking spaces for each dwelling unit. The three bedrooms would be 3.9 rounding to 4. Is there anything that stops her from expanding the three feet? Rhean - There is a foot high concrete wall and there is some gravel that we

could concrete. There is a utility spot on one side. Zurl - Are you going to stay in the other unit? Knean - we have rented out both units. Jill - Is the parking adequate for the residents that are there? Knean - Yes. Drew - There are two elements to the front driveway. On the east side is the utility box. Even if we put a post out there I don't see anyone negotiating around that, so it's not a good option. But on the west side, there's the potential to put in the gravel and there might be some room there. Knean - we would prefer not to have to do that if we don't have to. Randall - when Knean filed out the application, she marked it as a variance, so you would have to go through the five reasons for a variance. A special exception that could apply is to reduce the amount of on-street parking required if acquisition of land would cause a hardship. Ann - The power box prohibits her from expanding, would that fit? Randall - You are looking for a space that is readily available. If you think it isn't available you could approve the special exception. Knean - when we bought the home we put a lot of money in the basement and we added things that weren't there initially. We've made it a home. We would put in additional parking if we had to, but if we didn't have to it would be nice. Zurl - It's important to remember that there was a misunderstanding when you bought the property. This is unfortunate. Randall - A variance can't consider the financial issues. But that language is not in the special exception portion of the ordinance. Jill - That sounds like what we should do. Janet - Are five spots sufficient, Drew? Drew - It is enough, but that is subjective. There is the recent parking ordinance change with the .85 number of parking spots. This is based on proximity to SUU. She is just outside that zone, though. Zurl - If it was .85, how many spots would she need? Randall - That doesn't include visitor parking, but she is not in that area anyway. Zurl - I sense support for granting a special exception. Jill - I always worry about setting a precedent. Randall - How would you separate it out? In this case, various things like the utility box, and the city employee that gave the nod of approval before they purchased the property would be factors. John - She has a space that she can do it. Drew - The on-street parking is on the property. She could open up the drive approach. Ann made a motion for a special exception on this application for the five parking spaces. Janet - My recommendation would be to widen the driveway, so that we don't create a precedent. Second by John. Vote: All except Janet vote to approve the special exception. Motion carries.

**REQUEST FOR A VARIANCE ON CURB AND GUTTER ON THE EAST SIDE OF A PARCEL LOCATED AT APPROXIMATELY 600 SOUTH BETWEEN 1020 WEST AND 1100 WEST/TYLER BROWN**

Zurl - Tyler is a friend of mine, for the record. I looked at this property several weeks ago. Ann - I also spoke with Tyler about this, and we are long-time friends. Jill - I also spoke with Tyler and I live in this area. Tyler - I live at 420 South 940 West, a block northeast of this property. We bought this about six months ago and hope to build a home here. The other property owner is willing to sell his portion. We were told we might have to put in the road and curb and gutter. The problem on this end is that the ditch is on the property line and we would have to move the ditch to the west. By moving the ditch it will be impossible to water the property all that way down. The road would go right through the center of the farms. If we buy it and do nothing it won't trigger putting in the improvements. But the home on the property has been flooded a few times. I would like to subdivide and bring the water through the whole property. We could move the barns, but I can't get the water to flow uphill. Zurl - You also said you'd have to get rid of the willow trees that offer shade to the horses. Tyler - I'd like a variance to delay putting in curb and gutter until the building permit is pulled on the other piece of property. We are not stopping anyone from tying into the road. Zurl - When you build your home you will put in curb and gutter? Tyler - I have approached the other people and asked them if they want to put it in and they might. Janet - Did you tell us the person has to have an interest, or be the owner to make

an application of this kind? Randall - Some beneficial interest is not defined. Tyler - we have a purchase agreement dependent on this. He's agreed to sell and I've agreed to buy. Janet - Does this apply? Randall - In Idaho, verbal agreements don't apply. It's not defined. Tyler - It's a gentlemen's agreement at this point. We've been working back and forth for about four months. I will put earnest money down now or tomorrow, I could have a paper in front of you within the next day if needed. Randall - we just want to know there's a legally binding agreement. We've had this type of thing before. But in this case this is a lot right next to one he already owns. There are lots of ways to have interest in a property without a contract. Tyler - I'm ready to go to the title company. Zurl - Can we approve subject to obtaining an agreement? Randall - It is a question of jurisdiction to me. Technically you can't make the decision until it is in place. You could express your informal opinion. Jill - Let's talk about the five questions since he has to meet that requirement. Zurl - So you're saying we can't approve it tonight? Randall - we can address all of the issues and then you can approve it at the next meeting, if it meets the requirements. Tyler - I can come back in the couple of weeks. Zurl - So if we grant the variance, he can subdivide. Tyler - If I work it this summer, I will sell it off and keep it in pasture if it's a good risk.

**Literal enforcement would cause an unreasonable hardship** : Zurl - Watering would be an issue. Jill - That is with the property. Tyler - I can't water uphill. And the stand of willows kind of hides the horses. We got into this to get a horse for my boy with autism. It's amazing what it's done for this child. It will be a better use and an improvement of the property. Moving the ditch over would make it impossible to water the property. Zurl - You also mentioned the barns and that the curb and gutter would disrupt the watering. Tyler - I'd like to have a little mini-farm, but also be respectful of the people around me. Zurl - Would it be fair to refer to these animals as service animals? Tyler - It is very helpful for him. He's come a long way. Zurl - If the Board didn't grant the variance, you could lose some of the value of the property in providing a therapeutic environment for your son. Tyler - I could do this on less property, but it would be better with this plan. It shouldn't hinder anyone. Janet - Is subdividing under the purview of the BOA? Zurl - Is there a special exception? Randall - No. I don't see it on this one. Jill - I am okay with the water issue and the slope of the property. Zurl - It's easier to grant the special exception. Randall - Notice that on your map, one of the owners has an actual contract with the City. When we granted that variance, we said as long as you get a contract with the City we could approve it. But this Board doesn't do contracts. Staff will probably ask for a condition like that. The concern is regarding the interior lots. Tyler is going to improve the road. We are only talking about the south end. Janet - Does the contract require the Jones's to put in the road when improvements go in? Randall - "Deemed necessary by the City" is the language. So I think when one of the south lots pulls a building permit it would have to be improved. Janet - So the contract would be additional to granting the variance. Randall - Yes. It would be contingent on a contract with the City. That will be something we will ask for as we have asked for it in the past in other applications and also in this area. Janet - But the reality for this evening is that we can't grant it. But we could give you a really good idea if we can. Zurl - So we run through the five questions and ask him to come back. Randall - We would table for lack of jurisdiction. He would need the earnest money and written contract for the packet before the next meeting. Randall - If you have questions get them out now so he can bring the information to the next meeting. Zurl - So we agree there is a hardship.

**There are special circumstances attached to the property that do not apply to other properties in the same district:** Zurl - And we have discussed slope and water. Randall - We've used slope before as a circumstance.

**Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district:** Zurl - We have discussed this as a therapeutic option. John - I have a grand-daughter who has used horses in this way.

**The variance will not substantially affect the general plan and will not be contrary to the public interest :** There were not concerns with this issue.

**The spirit of the zoning ordinance is observed and substantial justice is done :** Zurl - I think there is general agreement that we would most likely approve this request. Janet - It is looking good.

Motion to table by Jill. Second by Ann. Vote unanimous to table this application until proof is offered of a beneficial interest in the property with a written agreement including a consideration. Randall - And we won't pick apart the contract. At the next meeting we could summarize the application quickly. If something new comes up we will have to consider it.

**ADJOURN:**

The meeting adjourned at 6:20 p.m.

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Barbara Barrick  
Executive Secretary