

**Cedar City Board of Adjustments Minutes**  
**March 7, 2016**

The Cedar City Board of Adjustments held a meeting on Monday, March 7, 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, Joe Sanders, Building Inspector Jeremy Severe, Assistant City Attorney Randall McUne, Executive Secretary Barbara Barrick.

**EXCUSED:** Steve Dodds. Chief Building Inspector Drew Jackson

**OTHERS PRESENT :** Marie Rhodes, Jared White.

**CALL TO ORDER :** Zurl called the meeting to order at 5:16 p.m. Jared White is still traveling to the meeting from northern Utah.

**APPROVAL OF MINUTES :** Motion to approve the minutes of the February 22, 2016 with changes by Ann. Second by Janet. Vote unanimous to approve.

**APPROVAL OF FINDINGS OF FACT:**

Motion to approve the Findings of Fact of February 22, 2016 with changes (Janet voted negatively on the Carlson application and it was not reflected in the Findings) by Jill. Second by John. Vote unanimous to approve with the change.

**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:** Tyler called and asked to have this item taken off the agenda this week. Zurl- We will not make a decision on this since it is already tabled.

**REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A BEAUTY SALON OUT OF A RESIDENCE LOCATED AT 47 SOUTH 1650 WEST/MARIE RHODES:**

Marie - I live at 47 South 1650 West. I want to have a home beauty salon with just one chair. The business will be conducted entirely within the dwelling and she will be the only employee. Jeremy - Drew looked at everything and it complies with all the requirements. She will not use additional buildings for the business. She won't use commercial vehicles. The use will be incidental to the use of the residence and won't change the character of the building. She owns the home. She has turned in the required notice to her neighbors (Drew had approved this). She doesn't intend to have a sign. The square footage and parking meet the requirements. She will obtain a business license upon approval of the Board of Adjustments. Randall - We don't have a site plan, so what are the consequences? Zurl - Can the inspection be considered to be the approval of the site plan? Jeremy - Drew looked at it and ok'd it. Randall - She has a total of eight parking spots. This is a single family dwelling so she has six parking spots to spare. Randall - In the end, without the site plan, Drew is satisfied with what is there. Usually we have a quick sketch of the site, but since we don't, you could deny the application tonight if there are questions. Ann made a motion to approve the application. Second by Joe. Vote unanimous to approve.

**ADMINISTRATIVE APPEAL FROM A STAFF DECISION REGARDING THE HEIGHT OF A PROPOSED CELL PHONE TOWER AT 2324 WEST 850 NORTH/JARED WHITE, VERIZON WIRELESS:**

Zurl read the letter included in the application packet. Janet - I noticed on the schematic that there is a lightning rod that is 8 feet high on top of the tower. Randall - This is not an application for a variance. The applicant is asking you to interpret the ordinance differently than the staff opinion. Janet - Was Drew the one that made the staff decision? Randall - Yes. He sent a letter to the applicant. According to the ordinance, if the tower is co-located with another carrier it can be 100 feet high. Zurl - They are planning (with FAA approval) to have a co-located antennae. Randall - The theory is that it would be better to have one taller tower than two shorter towers. This type of application is the closest you'll get to creating precedent. Janet - Does the design have the capacity for a future carrier? Jeremy - Yes. Joe - Wouldn't it be prudent to submit this for FAA approval before Board approval? Randall - Approval by this Board is an easier process. Janet - When we discussed the temple, they came here first and then went to the FAA. Randall - Verizon has come to the Board before for a variance but not for this same thing. Jill - Would a variance work for them? Randall - Possibly, but not today, because it wasn't published as a variance request. Today we will be hearing an administrative appeal. Joe - I thought we couldn't set precedent? Randall - You can interpret the ordinance differently than staff interpreted it. Your powers are interpreting the ordinance, but not changing the ordinance. But don't base your decision on whether you like the idea, or the ordinance, or not.

Zurl - Our interpretation would be the intent of the ordinance. Randall - You are interpreting the two sentences, because they intend to co-locate when another carrier comes in. Staff says no, we are going on what is going to be built when we approve it, not a future plan for the tower. If the two carriers came in at the same time, it would be okay. Janet - So Drew would have approved their building permit if there were two carriers coming in at once? Jeremy - Correct, but we have only one carrier. Janet - Is that how it's happened in the past, two carriers come in so they build a higher tower? Randall - I spoke to Kit and he said he's not had that happen. My assumption is that we have had two come in together in the past. If they came in together, there is no question that we would allow it. Verizon's interpretation is a broader one. John - Are there existing towers in Cedar that are in excess of 60 feet? Randall - I took what Kit said to me to mean that there are some, because he said some that were co-located had come in. It is possible some are old and could have come in prior to the current requirements. These date to 2001. We could go back and look and see if they were grandfathered or co-located. Staff's opinion was that we've always interpreted it this way.

Jared - I'm a contractor for Verizon, and I am a site acquisition consultant. I live at 1894 West, 1690 South, Woods Cross, UT. The language in your code is common language in ordinances throughout the state. If a co-location is available, we have lease agreements with each other because we know the City will require it. I look first for the opportunity to co-locate when I am looking for a new site. I have been doing this for 10 years and there is never ever a time that both entities would come in together. The only way that I would know about a co- location opportunity would be to go out and find them. The carriers don't share information. It is more expensive for those building the tower, but they have the advantage of being higher up on the tower. If you build a 60 foot tower, it won't be high enough to co-locate. One 80 foot tower is better than two 60 foot towers. If we build a 60 foot tower, it won't be strong enough to co-locate, and if another carrier comes in they will have build another 60 foot tower. It's better for the City to add 20 more feet than to have two or three towers. Many cities would require a 100 foot tower so that we could have three carriers. You can have two with 80 feet. Two independent competitors would not come in together to co-locate. It is proprietary information. It is highly unlikely.

Zurl - What are the advantages for you to have multiple carriers on the tower? Jared - They do pay us, but it's essentially a trade-off as we co-locate on each other's towers. Verizon's preference is to not have a second carrier. But we comply with each City's requirements. Zurl - You say you get a second carrier, is there a market incentive? Or could you get the higher tower and not get second carrier. Jared - What drives AT and T is their coverage need. If one of us needs it, the other one would need it as well. Competition drives the co-location. John - Why do you co-locate? What is the advantage? Jared - There's no advantage to us except height, other than the City wanting fewer towers. Randall - There is no limit to the number of towers, if it is in the proper zone. Ann - So A T and T could build their own 100 foot tower? Jared - Yes, but it is expensive and takes a lot of time. If you do a co-location you can get in and set up in three months. Zurl - So there is incentive for other carriers to take advantage of your tower. Jared - Especially some of the smaller companies, there is a tremendous amount of incentive as they don't have the budget to build towers. Ann - On other towers where you are the top entity, do you have co-location? Jared - Almost all are co-located. As you come in St. George there are seven towers, that is what people are trying to avoid. Randall - The City doesn't like the towers in residential areas. Jared - Once the tower is built, it is registered with the FAA. Prior to that, the other companies don't know where they are. Janet - This tower is 80 foot but will be higher with the lightning rod on the top. Jarod - We typically don't count that. The rod is very thin, but should be counted. Zurl - I think your argument is valid.

Jared - One of the concerns was the proximity to the Airport. We will have to submit to the longer FAA approval process. The tower will be on private property. Zurl - Does the City receive revenue from the tower? Jared - Just property taxes. Janet - Does the City perform an inspection when it is completed? Jeremy - Yes. Joe - How long has our code been in place? Randall - I wasn't able to verify that. In 2001 this rule existed, though. Joe - Are most of the other city codes like ours? Jared - Most are more detailed. Some require a conditional use permit and that we appear before the Planning Commission. Your code doesn't have the co-locate language but it appears that you want us to. In Centerville, the ordinance states the requirement is 60 feet for one carrier and 100 for a co-located tower and says you must co-locate if you can. Zurl - You said we don't set precedent, Randall, but if we interpret it this way, would it then set a precedent? Randall - Yes, for staff. They would have to use this same standard. Zurl - It would put us in the same league as other cities with that added language in the ordinance. Randall - Even if he is correct about the other cities, you need to decide if that is what you think our ordinance says. Joe - I think the ordinance should be looked at. Randall - Then it could go through the Planning Commission then to City Council. Again, that comes down to if you think the ordinance means what staff says it does, or what Verizon thinks it does.

John - We have to adjust to what technology is bringing to the marketplace. It's not a precedent. It's advancing with the times. Zurl - So it's two or one antennae. Jared - Because of the way the code is written, we could put a second array. Your code is vague, so we could divide our antennae but we would be doing the opposite of what we are trying to do. Randall - When we interpret an ordinance, the court is going to say what does the industry standard say? Do you know what the industry standard is? We don't have a whole lot of information. Do you feel you have enough information to base your decision on? Jared - The industry standard is not to split our antennas. But two different companies just do not come in at the same time. Zurl - So you can't accommodate this. Randall - The burden is on the applicant. He says it is unheard of. But can he pull some numbers to show this? Jared - I am not an employee of

verizon. I personally consider myself an expert as an employee of an acquisition company, and I have never seen it happen that way. The only way I could see that is on an RFP for building a tower and trying to get carriers to locate on it. I've done hundreds and hundreds of sites and I have never had a scenario where the carriers have come in at the same time. Everyone prefers sharing for the speed of getting the tower up and running. Zuri - If we feel persuaded as a Board we can interpret the ordinance this way. Randall - The intent cannot override the language of the ordinance. If you think the language is ambiguous then that's the direction you go. Zuri - I think the ordinance is always trying to manage the towers and limit their number. Janet - I think the co-located requirement could be proven by the fact that you have to have the structural integrity to have a co-located tower. And you have it on the specs. Jared - There has to be an existing structure to co-locate. Randall - When you look at these sentences purely grammatically it indicates past tense. Or you look at the industry standard and say we have received information that this is the industry standard. We have one expert in the room, so you need to decide if you think that is enough to justify interpreting those two sentences. Or you can ask for more information. Jill - Would it be better for the City to allow it, so we set the precedent? Ann - How do we change the language from now on? If we approve this and then go to the Planning Commission and have the ordinance changed? Jill - But if we interpret the ordinance this way, staff will always interpret it this way. Randall - Yes. Jared - Usually the domino effect happens and the City changes the ordinance. Randall - This is where one of the two parties would go to the Planning Commission and the City Council. So don't base your decision on what you think Council meant. Zuri - I think we'd rather see one tower than two. We have the opportunity to help staff for the benefit of the community. Janet - Co-located is in the past tense. Randall - We wouldn't have used co-located in writing the ordinance. We would have used capable of co-location. That's part of your question. Is it necessary to keep up with the times or to say is this what it really means? If you believe this is a fair reading of the statute you should.

Jared - What usually happens in smaller cities, when they write these types of ordinances, they are plagiarized from other city's ordinances. Those writing the ordinances are not experienced with this type of thing. Randall - They presented the proposal for the ordinance to the Planning Commission, but I couldn't find the meeting where it was discussed, so I don't know if they had an expert. You have to base it on what you think it means.

John made a motion to reverse the staff decision denying the request for an 80 foot tower, stating the Board's opinion that if the tower has the structural integrity to handle co-location, the tower can be up to 100 feet. Second by Janet. Majority vote to approve, with Joe Sanders and Jill Peterson opposed. Motion carries.

The meeting adjourned at 6:28 p.m.

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Barbara Barrick  
Executive Secretary