

Cedar City Board of Adjustments Minutes
June 6, 2016

The Cedar City Board of Adjustments held a meeting on Monday, June 6th, 2016 at 5:15 p.m., in the City Council Chambers, 10 North Main Street, Cedar City, Utah.

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

EXCUSED: Steve Dodds, Joe Sanders.

OTHERS PRESENT : Tim Watson, Daryl Brown.

CALL TO ORDER : Zurl called the meeting to order at 5:18 p.m.

APPROVAL OF MINUTES : Motion to approve the minutes of the May 2nd, 2016 meeting by Janet. Second by Zurl. Vote unanimous to approve.

APPROVAL OF FINDINGS OF FACT: Motion to approve the Findings of Fact of May 2nd, 2016 by Janet. Second by Zurl. Vote unanimous to approve.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A DAYCARE AT A RESIDENCE LOCATED AT 237 NORTH 400 WEST/ASHLEY VANCE : This item has been pulled due to lack of neighbor notification.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A MASSAGE THERAPY BUSINESS AT A RESIDENCE LOCATED AT 161 NORTH 800 WEST/LINDA MASON WILLIAMS : This item has been pulled due to lack of neighbor notification.

REQUEST FOR A VARIANCE ON THE SETBACK ON A PROPERTY LOCATED AT 2273 WEST 460 SOUTH/MARK WEBSTER/WATSON ENGINEERING : Tim - Last month I was out of town. We tabled this. I would like a further discussion. We are requesting a variance for the side setback on the attached garage. We would like to build within one foot of the property line adjacent to the home. The variance would be on the 6 feet behind the house and the offset. I have met with Drew. We have photos showing evidence of detached garages built the same as we are requesting. We have to provide proof of the five reasons for the variance. I request you consider the spirit of the law and not the letter. Each of the homes that we show in the documents is within a third of a mile of the home that we are requesting. I don't know if these other properties obtained building permits or not. I would hate for Mr. Webster to have more strict building restrictions implemented because he followed the correct process than those who arbitrarily built.

Tim - Regarding the criteria of literal enforcement would cause an unreasonable hardship; this is not a financial hardship for Mr. Webster. He does have a sloping property to the back of his lot. There is 8 to 10 feet of vertical elevation. Zurl - I drove by the property and the home already has a three car garage built into the home. There is a driveway adjacent and I assume the detached garage will be next to that. Ann - I want to state that Mark Webster is my kids' orthodontist. Are there CC and R's? Tim - Mark is not aware of any. Dr. Nakken across the street has the same type of garage and would be in violation of the ordinance. Mr. Webster has landscaping and a pool in the back yard. He would like to build the garage in the back. I'm

not sure how large it will be. But he wants to build up to a foot from the property line. The block wall that is next to where the proposed garage is could be classified as a fire wall.

Zurl - We have restrictions behind the house for the set back as well. Tim - He has 24 feet and I think the garage would be around 20 feet wide. I don't know yet for sure. He has to be 6 feet back and 6 feet over to build within 12 inches of the property line. Randall - It is just 6 feet back. Zurl - How much room behind the structure will there be if they build it the way they want? Tim - 30 to 40 feet. Drew - What is the slope? Tim - I'm not sure of the exact measurement, but it starts behind the gate.

Janet - How did they build a pool with a slope on the property? Tim - There is a rock retaining wall. I'm not sure how they built it. Ann - All of those properties are terraced. Tim - He does have a walk-out basement. He is 10 to 12 feet above the street line. John - How do we build a building 12 inches from the wall and accommodate a roofline? Tim - the 12 inches would extend out from the face of the wall. I'm not sure where the property line is in relation to the wall. Drew - Any water coming off the garage would have to be self-contained. Second, the "fire wall" being 12 inches, he would have to have fire protection in the eave or cut off the eave. Tim - They could lay it from the inside if they had to. Zurl - So the hardship is they would have to place it so the floor of the garage is the level of the driveway and they couldn't do it with the lower area and the walk out basement. Janet - So does the ordinance read that it has to be within 12 inches of the property line? Randall - If it is set back the 6 feet. Drew - Let's get through the ordinance thing first and then see about the code, such as the fire and the water retention. John - Some of the other garages in the area were built without regard for the ordinance. Drew - We addressed this last month and we were unable to find a building permit on these other properties. I don't want to imply that a permit wasn't pulled, but it is a paper system, and so it's sometimes difficult to locate some permits. Randall - Last time we talked about the focus on question number 3, which is the one that states that granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. Other properties in the area have done this, likely without the City's consent. Zurl - You can't say that they didn't get a permit for sure. Randall - On the other application similar to this one, the hardship was the problem with granting the variance. Question number 5 is the spirit not the letter of the zoning ordinance. Number 4 is the effect on the general plan. Those may have arguments. But what is the unreasonable hardship? The 8-foot drop, how does it save on the land? Tim - You might be a couple of feet in there. The majority of the drop is after the retaining wall. By pushing up the garage he could eliminate the retaining wall and have the foundation of the garages as his retaining wall. Drainage control would be the big issue. We have to be able to control the water that will drain without compromising the integrity of the detached garage. Zurl - There doesn't appear to be as much room behind the home from the Google map. I think we should consider that. But for an unreasonable hardship, I can see an argument for that because of the lot itself.

Janet - Regarding all of those who have built similarly, but not according to ordinance. You said you couldn't find an approval. Is it your opinion that they were not submitted for your approval? I know you say your system is paper but wouldn't it be likely you could find at least one? Drew - I would assume at least one has been permitted. I think most of the people in that area try to do the right thing. It's hard to say. Janet - I would think you could find one. Drew - We didn't scour the archives due to time constraints. Tim - I show five in the area. Randall - It's impossible to know. When something comes in later, there is no way to predict if they came through us or not. Zurl - A general contractor would be required to have a permit. Drew - We do have contractors that skirt the system. John - I have a problem with the denial on a garage

that we did a couple of months ago. We are talking about a high-end area in this one where we denied the same thing in a lesser area and now we are talking about precedents in a high-end area. Tim - we have a total of 8 and 3 compiled and 5 denied. I hope you understand that we are not doing this according to the type of neighborhood. Zurl - we don't consider precedent, just having the same property right. Randall - The courts would want to know why this is treated differently. We had another I don't recall the location. It had a 20 to 30 foot drop. We have had one that we approved but it was a more extreme slope. The hardship cannot be financial. The Supreme Court usually denies if it is financial. It's like they are saying that if you bought the lot this way and decided to build it this way you can't then obtain a variance. If it's a hardship that you bought into, it's not been considered a hardship by the courts. And I think with Dr. Nakken's property and the landscaping the garage might be permitted without a variance, but I don't know where the property line is. Ann - That home is not very old so it had to be permitted. Randall - I couldn't tell where the lot line was. The burden of proof is on the applicant. My emphasis is that rationale is great for question number 3, but what about the hardship question?

Janet - I have issue with not building according to the ordinance and then we use that as a precedent and it becomes the standard. We are comparing this application to something that wasn't approved by the City. Zurl - When Council creates an ordinance it's an average because lots, homes, and streets have a lot of variation. We are here to be a way to help the owners negotiate and enjoy property rights. Janet - We all understand that, but the ordinance was approved for a fire code issue and we need to uphold the rights of the people close by. Tim - The homeowner has that responsibility. If you grant the variance they have to figure out how to build with fire protection. Janet - So it would be more expensive to move it back, so it is feasible to move back but more expensive. John - Our judgment can't be what it's going to cost. Randall - But if there is a feasible other building option it is not a hardship. The setback requirements in the R-1 zone are not just for fire protection. In reading the zone characteristics they want a buffer in between the homes. This involves fire code, aesthetics, etc. Janet - And as far as it being a hardship; he already has a three-car garage. Tim - That is the personal preference of the applicant, whether it's a ten- or a one-car. Zurl - It's his right to enjoy his property. Janet - But the neighbor has a right to enjoy some space between residences. Randall - It can't be a hardship just because he wants to do it. The property owner has a right up to what the ordinance allows. It's a hardship if you can't have what you want, but it has to be a reasonable hardship. Ann - The drainage worries me. Randall - We don't know exactly where the slopes are. Tim - But we do have the information that you can consider. I would hope that as a Board you have stood on this side of the table to understand how frustrating it is to have people tell you what to do with your property. You are the appeals court. Are we trying to break new ground? No. We are asking and going through the proper process. I think we've provided enough information to show that there is a hardship and that there is precedent and the spirit of the ordinance needs to be taken into consideration. Zurl - Is it an unreasonable hardship? Ann - We can't think just about the homeowner. We have to think about the neighbors and the ordinances. There is a reason why we have the ordinances. We would love to grant everything and let everyone do whatever they want on their property. Tim - I've been before the Boards 8 to 10 times and not all the requests have been granted. Ann - Can we table this and get some more information? I want to know how deep the drop off is and are you going to have drainage problems. Randall - And how many feet we are granting? It's important to know how much we are really giving him. The greater the variance, the greater the hardship usually is. Janet - And how it infringes with the neighbor's view and his right to enjoy his property. Zurl - But he could build 6 feet back? Janet - But he would have the space.

John - we don't have any type of proportion and we also need the topography. Drew - regarding the drainage, there might be a way to pipe the drainage out and the Board could look at that. John - I would think Mr. Webster would want to look at the drainage since he has a pool there. Ann - I would like to see some plans. We are going on assumptions. Tim - You are asking him to incur additional costs. Ann - which we can't consider. Tim - Is this something you do on a regular basis or just on this one? Ann - we don't have the opportunity on the other homes to have the information. Tim - why is that my client's responsibility? He is trying to follow the ordinance. There is a system where the building can be stopped and forced to follow the ordinances. We need to assume these others are in violation. Why is it the responsibility of Mr. Webster to incur these additional costs? He ultimately could have done what his neighbors did and not gotten permission. Randall - I hear this all the time. Everyone else was speeding too. It's not a defense. This goes to question number 3. But we can't ignore the ordinance. This Board doesn't have the authority. Ann - in January we denied a carport even though others in the neighborhood had them. Randall - The only hardship I've heard in this meeting is the slope. We need more details. The one we granted in the past was a 20 foot slope not 8 feet. It is vital for this Board to know these details to make the decision. I think it's a fair statement to say we don't have enough information. Zuri - This hinges on that. The slope is the hardship. John - I think we need to know what the gradient is, and if it's affecting other properties. Tim - it only affects his own. Zuri - Ann prefers more info. Janet - I don't see the need, we can vote now, but I don't have a problem with getting additional information. John - I think we can vote now with the drainage affecting only his property. Tim - Other than the slope, what other information would you like? Zuri - Can the garage be put further back? How does drainage affect the property? Ann - I want to know exactly how much of a variance you need. Tim - I can get that information if that's what you would like to do to be comfortable. We could generate a basic site plan, but this is what we have right now. Ann - I want to know how much variance he wants and what the slope is. Zuri - If they go to the trouble to produce this, is this the only thing keeping us from approving it? Ann - I wouldn't approve it right now I would push it back to the edge of the home. I would hate to vote, I may be the only one. Zuri - would you be inclined to approve if the information is given to the Board? Janet - I'm not inclined to approve I think it should be set back according to the ordinance. John - I agree. Zuri - we can deny it or table it and you come back with a site plan that gives us some options and that show the drainage and the gradient. We can either deny it or table it until we receive more info. Ann - with no guarantee of approval. Tim - Could this information change your decision? John - I'm not going to say for sure, but it could. Tim - I don't want to spend my client's time and money if you are just going to deny it in the end. Janet - I would be interested to know what the neighbors think about this idea. Ann - There are at least two neighbors that have detached garages. I don't know that the neighbors care. Randall - it can be dangerous to assume the neighbors don't care because they don't come to the public meeting. One example is the application where they wanted a treenhouse in the front yard. Zuri - The Board approved this but the treenhouse is now gone. Randall - But there is no direct notice to the neighbors for variances as there is for some occupations. The next meeting will be on July 11th.

Motion to table the application by Ann. Second by John. Vote unanimous to table.

The meeting adjourned at 6:30 p.m.

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Barbara Barrick
Executive Secretary