

Cedar City Board of Adjustments Minutes
July 11, 2016

The Cedar City Board of Adjustments held a meeting on Monday, July 11, 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, Joe Sanders, Jill Peterson, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, City Recorder Renon Savage.

OTHERS PRESENT: Heath Oveson, Larry Palmer, Spencer Jones, Robert Jensen, Alissa Starnes, Bradley Rehkop, Cindy Rehkop.

CALL TO ORDER: Zurl called the meeting to order at 5:15 p.m.

APPROVAL OF MINUTES: Motion to approve the minutes of the June 6th, 2016 meeting by Jill. Second by Janet. Vote unanimous to approve.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A DAYCARE AT A RESIDENCE LOCATED AT 390 NORTH 900 WEST/ALISSA STARNES: Alissa Janell Starnes 390 N. 900 W., Cedar City. I would like to open a daycare in my home. I have someone coming to do a final inspection this week. Drew – we did not have a phone number on the application so we were not able to confirm items 1-13. Zurl – can we proceed. The applicant needs to complete 1-13, including permission from the neighbors. Alissa – I went to all doors within 300 feet and left flyers on all doors. Drew – you need certificate for certified mail or signatures. Once you get that information we can follow up and make sure we are good to go. Zurl – we will table until next month.

REQUEST FOR A HOME OCCUPATION PERMIT TO OPERATE A MONTESSORI PRESCHOOL AT A RESIDENCE LOCATED AT 372 WEST 970 NORTH/AMANDA HANSON: Drew – that one has been tabled. They did not have their information and will be on next months meeting.

REQUEST FOR A VARIANCE ON THE SETBACK ON A PROPERTY LOCATED AT 1003 SOUTH RIDGE ROAD/BRADLEY AND CINDY REHKOP: Heath Oveson, Brad and Cindy Rehkop. Heath – Mr. Rehkop has done owner building on his home, got footings ready to pour and through communications the setback was told it would be 25' from sidewalk. The setback actually starts 1' behind the sidewalk, the problem is they have their footings poured. The house jogs, and there is a portion on the garage that is 24' for a few feet. Having the foundation in we would like a variance for that few feet. Zurl – it is because of a bay window. Drew – 25' was given as the front setback requirement. It is vague where that property line establishment is. I was not able to get staff to say it was back of sidewalk. Typically, it is 1' back of sidewalk. So yes on the 25' feet is vague on where it is referenced. Zurl – you understand the misunderstanding and the permit was issued? Drew – correct. Zurl – it was found at inspection that the set-back was not met. Janet – tell us what you mean by the back of sidewalk. Drew – 25' setback is established; people will typically go 26' feet from back of sidewalk because the property line is 1 foot behind sidewalk. We are talking the side where your grass begins. Heath – ordinance says front yard setback. People that don't know think they own up to the sidewalk. Mr. Rehkop laid everything out and checked to see if it was all correct, but did not know it is 1 foot behind the sidewalk. He had called for an inspection, but there was a communication error. His lot is on an arch so a corner of the house is in the setback only a few feet. We know the setbacks are dictated more than anything by the gas company. The gas line is normally placed a foot behind sidewalk and you cannot have a foundation closer than 10 feet from a gas line, so the City has a 25'

setback. Approving the variance keeps us well out of the safety area. The problem was not self-imposed, but does have a hardship and it doesn't impact the ordinance, the safety issue is covered. Another consideration, if they have to tear everything out the back of the house is on a steep incline that represents a bigger problem from an engineering standpoint. Zurl – do you want to add anything. Bradley Kenkop – on the City website it said we would have a setback inspection, I called, they said they don't do that anymore. We called for a footing inspection and left a message to be notified, but I was not notified, and it did pass the footing inspection. Joe – what alerted you to the problem? Bradley – when I set back to 25', the guy I hired to do the cement got it off and I called and told him he had to move it. They told me they moved and we checked and said we are 5' off, he said the wall is still 25 feet from the street, they passed inspection, it was poured and I showed up and they said they didn't move all of it back so the foundation did not fit on footings and you will have to stretch it. So they said to call the City to see if they can be 24.5 feet, I called Denise and she said no 25 feet. I left a message for Drew, they didn't wait and poured the footings before I was able to talk with Drew. I questioned the concrete pour. Out of frustration, I tried to get a hold of Drew. Drew listened and assured that Heath would be able to verify and Heath said it was 26 feet. Jill – is this a new home or remodel? Bradley – it is a new home and it will have a home business in it. Janet – how did we get here? Drew – we try to get the best information we can. AM and PM inspections can be requested but are not guaranteed. We cannot call everyone on our way out to the job site. He did do his due diligence, he did try and in his mind he had a 25' setback, and was on the job site. It is tough for us to do setback without a house totally strung out. We are obligated to the best we could with the resources we have. Bradley tried his best and unfortunately it did not work out. Janet – from Building Department would it be a problem to give a variance for that small portion. Drew – we need to go over the five ordinance requirements.

Literal enforcement would cause an unreasonable hardship: Yes.

There are special circumstances attached to the property that do not apply to other properties in the same district: Zurl – we heard the special circumstances in the story.

Granting a variance is essential to the enjoyment of a substantial property right possessed by other property in the same district: Zurl – we can see the circumstances have created the hardship.

The variance will not substantially affect the general plan and will not be contrary to the public interest: There are not any concerns.

The spirit of the zoning ordinance is observed and substantial justice is done: Yes.

Motion to approve the variance at 1003 South Ridge Road was made by Ann; second by Joe; vote unanimous.

REQUEST FOR A ZONING MAP INTERPRETATION AND/OR A VARIANCE REGARDING A REAR SETBACK FOR PROPERTIES LOCATED AT 625 WEST 200 NORTH AND 657 WEST 200 NORTH/SPENCER JONES: Randall – the zoning interpretation should be tabled. Without having the owner here at the meeting, but you can address the variance. They will talk about it, but you cannot approve it.

Zurl – I need to declare that I am an acquaintance with Spencer and we did meet and discuss this circumstance.

Spencer Jones – I am looking to do something with two of these properties. I will turn time over to Robert Jensen and Larry Palmer to go over some of the issues.

Robert Jensen, 3190 Swaps Drive, St. George, 84790. Larry Palmer, 11 N. Cove Canyon Dr, Cedar City.

Robert – I tried to give you a packet to address some of this. Larry – right now Velocity is located there and Simple Life and Bristlecone Chiropractic. Robert – we are dealing with is a straight line or lot line zoning, often times you have enormous zones that follow lot lines. In HS zone they try to maximize the zone. To stabilize and protect the HS zone the ordinance says that we discourage any use to thwart use other than HS zone. Janet – what is a HS Zone? Larry – Highway Service (HS) is set up for the traveling public, around the interchanges. Also allows offices and retail, it is getting broader, generally for the traveling public. Janet – to leave room for roadwork? Larry – no, several years when they widened 200 North they took property on that side of the road to widen it out. Ann – 200 North probably won't do that again. Drew – that would be unlikely. We are talking about intended uses. Larry – easy access for the traveling public. Robert – if you look at the land use map you would see little spots of purple (HS) at freeway exits. HS aligns 200 North coming off the freeway. The ordinance says they want to discourage other uses, but stabilize the central characteristics of the HS zone. We want to maximize the use of the area. When they drew the zone, there are two different types, lot line zone or straight line. If you look at the 1981 zoning map you would see in the particular lot we are dealing with, the zone line cut through and went straight. It has an interesting effect on the use of the lot. In order to facilitate the best use of the HS zone the statute says there will be no rear setbacks if there is not R-2 or R-3 behind it. If it was lot line zoning it would have followed it and the lot behind was R-2 or R-3. they did straight line zoning, so building on the property they can build to the lot line because the zoning shadows over, there is a lot more detail in the ordinance. With the overshadowing the lots can build to the lot line. Each block cuts straight across and it accommodates trying to preserve every square inch of a building lot and keep the rear set-back minimal. It allows property to come back as far as they can. The zoning the City chose is important; in 2009 we had an ordinance, it is in your packet. We don't want to go back and interpret that ordinance. When lot 105 zoned R-3 it was approximately 1/5 HS and the rest R-3, allowing the properties to build to the edge and honor the restrictive zoning which is R-3. As we review the ordinance it never mentions the HS zoning, maybe they didn't think about it, maybe they didn't understand the affects, maybe the owner wanted to build a four-plex. Jill - that happened in 2009? Robert - Yes, if we read the ordinance someone interpreted it as the whole lot, but the ordinance didn't address the HS. Not important to the R-3, but it is to the HS zone, which hurt the two lots which went against the HS plan. The practical problems with these lots, lots 100 and 101 they are the shallowest lots and made more shallow if we go by the rezoning map so it decreases the buildable portion by 20 feet. The land use map appears to continue straight across. Inadvertently the two lots were cut 20 feet short. UDOT also took 5 feet across the front of the property. We are trying to develop the property, bring in something favorable to Cedar City, up-scale commercial. We believe the intent of the HS zone is to protect the HS zone. Jill - what is on lot 105? Larry – a duplex being converted into a four-plex. Robert it has circular parking around it. Janet – the square is R-3 do you need the 20' setback? Larry – yes, that is the point of contention. Robert – we withdraw the ordinance interpretation because if you read the ordinance it doesn't mention the R-3. The argument is if we interpret the purple line should be straight, but the map shows all of lot 105 to be R-3. Joe – that was done in 2009? Robert – yes. The land use map shows that it is purple straight across. Zurl – you are asking a variance on the setback to enjoy the spirit of the HS zone? Robert – yes, exactly right and we think the statute is intended to do that.

Janet – what will that do to that property? Robert – if we interpreted the ordinance not the map then it would be straight across and it would have no effect to lot 105, the effect is that we would be able to build to the lot line. The ordinance also makes it clear that the walls need to be fire rated. Larry – zoning ordinance requires fire rated construction that meets with building code and it is require to have masonry fence. Zurl – changing it doesn't mean that he would build on the property, they are not. We want to paint the property purple to show HS zoning, but we cannot build on it, nothing would affect the property owner. Robert – the ordinance might require us to go back 20 feet, but I think it should be zero. The plan is to go with a 3-foot setback, asking for a 17 foot variance. The variance is it purple or brown, we think it is intended to be purple, land use map shows purple. Larry – they are two different maps, zoning tells us the uses, land use map is a guideline for the entire City for the Planning Commission and the City Council to follow.

Zurl – they want the same property rights other property is enjoying along 200 North and they have a hardship because of what has happened. They want to use the property the same way others are using it. Robert – we discussed the issues to meet the five elements. Jill - we have had similar things happen, what has been done in the past. Randall – if it were purple, we talked with Kit and they would be able to build to lot line. What this board has done, I don't think we have dealt with an issue like this. In 2009 minutes from Planning Commission in regards to this change, Bryan Maxfield was confused, they never said they addressed the zone, they just wanted to build residential. You have one portion that didn't say anything and another that give a description of the entire property. Joe – Drew, what is your feeling? Drew – we spent a few hours, it is interesting, we brought Kit down to go over it and it still came down to the intentions of the ordinance, it is not crystal clear. We still need to look at the five parameters. Jill – it is not as big of a deal where it is a four-plex as if it was a single family dwelling. Randall – it acts as a buffer. Larry – the ordinance allows 50% commercial and residential and we will meet the ordinance with the design. Robert – we also talked about in an effort to protect the residential, if you put parking in the back they have more impact from that traffic, if we build back all the traffic is in the front. Janet – any legal issues? Randall – what it does to their buildable area of around 26-28 feet. On the legal part, if you go through the 5, Building will make sure everything is fire rated. Up to the 20 feet it would have fit perfectly before 2009. Janet – does it matter when the lots were purchased? Randall – if the two lots were owned by the same person it would have been self-imposed, but it was not owned by the same person. It was completely outside of his power. You will get through the five, the picture I showed you, you have buildings already within the 20 feet, we don't know when it was done, but it is there. You can't use grandfather because they will expand the use. Robert – when the rezone was done, the parties thought it was HS, and Mr. Nakken still thinks it is HS so it won't affect anyone.

Literal enforcement would cause an unreasonable hardship: Yes.

There are special circumstances attached to the property that do not apply to other properties in the same district: Yes.

Granting a variance is essential to the enjoyment of a substantial property right possessed by other property in the same district: Yes.

The variance will not substantially affect the general plan and will not be contrary to the public interest: No.

The spirit of the zoning ordinance is observed and substantial justice is done: Yes.

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Motion to approve the setback variance was made by Jill; there was discussion and the motion was withdrawn.

Motion to approve the variance zero setback on lots 100 & 101 (625 & 627 West 200 North) was made by Joe; second by Jill; vote unanimous.

ADJOURN: The meeting adjourned at 6:30 p.m.

Renon Savage, MMC
City Recorder