

**Cedar City Board of Adjustments Minutes**  
**September 12, 2016**

The Cedar City Board of Adjustments held a meeting on Monday, September 12, 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, Janet McCrea, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, City Engineer Kit Wareham, Executive Assistant Barbara Barrick.

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

**OTHERS PRESENT:** Anot Morgan, Rick Sparkman, Cathy Sparkman, Tori Forsyth, Randy Forsyth, Ken Young, Jared West, Arlo Fawson, Darla Shedron-Easley, Scott Anderson.

**CALL TO ORDER:** Zurl called the meeting to order at 5:17 p.m.

**APPROVAL OF MINUTES:** Motion to approve the minutes of the August 1, 2016 meeting by Ann. Second by Jill. Vote unanimous to approve.

**APPROVAL OF FINDINGS OF FACT:** Motion to approve the Findings of Fact of the August 1, 2016 meeting by Jill. Second by Ann. 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:**

Drew - On items 4,5 and 6 we have not received all of the requirements as to neighbor notification. So we need to table them. Randall – With number 6 the applicant is here, as are some neighbors. Zurl – Shall we just table 4 and 5? Ann – The address is the same for 5 and 6. Randall – You can ask Ms. Shedron–Easley as she is here. Ann motioned to table #4; Second by John. Vote unanimous to table.

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

See below.

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

Darla – Agenda numbers 5 and 6 are related and the situation is that we are merging households. I'm the agenda item #6 and Tyler Anderson is as close to me as a son and will be living in the household as a member of the family. He had a business at 131 North 700 West, near SUU, called Kampus Kids and the owners wanted it back so he decided to come into my business. I had a home occupation permit at this address back in 2001. Tyler couldn't be here, as he is working, but his father is here. Tyler's intention is to continue a business, but we work together as a family. We were unclear as to how to proceed with the application, so we both applied. It's only one daycare and I am happy to be the responsible party. We didn't have a lot of time to turn in the application, so we erred on the side of caution. I previously had a permit in 2001 and nothing has changed in all this time, no additions to the house, no change in the parking. Back in 2013 I spoke Mr. McUne about whether I would need to appear again to do the business in my home as my daycare closed. I have in writing from Mr. McUne that it would not be necessary. We intend to use the backyard as the playground and it's not fenced due to erosion, but we will be putting the fence up tomorrow. It was my understanding that to appear again

wouldn't be necessary. Zuri – So we can't make a determination since she doesn't have her notice to the neighbors? Randall – She is asking for a determination as to whether she needs to be here. Kenon Savage is our license officer and we discussed the changes from 2014, which now includes the neighbor notification requirement. Our opinion is she needs to reapply. I emailed Mrs. Easley explaining how we came to that conclusion. In 2013 I sent an email which explained that we viewed the permit as still in place if we didn't see violations of our ordinances. We've now received information that she never put up the fence as she was required, and that she wasn't residing there. I've never gone out and inspected the residence, but I have information from the neighbors and Google Maps and also from City utility records. No one has been residing there and for 6 months, there was no water connection to the home, and the fence was never done. She never complied or she initially complied, but since the changes have come in she no longer complied. Under our ordinance if the applicant doesn't use a non-conforming use for a year they lose it. We have a whole new set of rules now. Zuri – How do you define occupy? Does it require utilities being turned on? Randall – There is a court case and an example of a woman who was gone a few months each year and Utah Supreme Court said that was adequate reason to not be residing there. Zuri – So it's the opinion of Counsel that she has not been residing there. Randall – Yes. Darla – I brought my payment history for utilities. Zuri – Have you been a continuous resident? Do you sleep there? Darla – I've been there and I've never left but where do I sleep? Zuri – Have you slept one night there? Darla – More than one night. Zuri – How many days? Without utilities? Darla – I've had utilities. I have proof. There was a period of time where the water was turned off and I called and said I hadn't had a bill. They had my account as turned off and I didn't authorize it being turned off. The lady at the City couldn't tell me who it was and I asked for a password on my account. Zuri – So you've had power and gas. According to the City the water wasn't turned on. Darla – And the person who can corroborate that I was surprised that I wasn't being billed is here with me tonight. And the bill is current. Randall – City records show next to zero use over the last three years and the water was turned off the last 6 months and neighbors have said no one is residing there.

Ann – I remember when you were here before and the fence wasn't up. Darla – There was a fence at the place I was requesting. To be Utah-licensed you have to have a fence if there are hazards, and I would have been cited. Anytime there was a licensed childcare going on there was a fence. But when no childcare was going on there were times that there was no fence. We want to do a retaining wall to prevent erosion. Ann – How long has it been since you've run a daycare in this home? Darla – 2004 or 2005. Ann – So you haven't for 12 years? So how long does a license last? Randall – We addressed this in 2013. We used to have some language in the ordinance that was vague, about registering with the business license office, so in 2014 the ordinance was changed to say the applicant shall apply for, receive, and maintain a Cedar City business license. She hasn't maintained the license, but it wasn't required when she started. So once a year passed after 2014, our grandfathering says it's done and she has to appear. Darla – But there will be a fence and my understanding is that it had to conform when being used for that purpose and we had a City and State license. Based on what I understand from Mr. McUne, is that if I was out of compliance I would lose the special exception. When it wasn't operating I assumed that I did not have to follow business rules or have a business license since I wasn't operating a business. In 2013 I asked if I had to appear before the Board again and I would like to read Mr. McUne's email. Based on his email I have in good faith done what I believed should be done. I've read the ordinance and I can't find anything for which we were not in compliance during the operation of the business. So I'm still not sure why I'm not in compliance except for the water bill. I wasn't asked how many days do I sleep there. I don't know how my sleep arrangements can be relevant. Whether I choose to travel and visit friends and sleep odd hours it doesn't change that it's my residence. Zuri – Are there any other concerns? Randall – I have three primary concerns. Residency, fencing, and the changes in 2014; the main one being the requirement to maintain a business license. The non-conforming use is discontinued after a period of one year. She relied on my statement in 2013 and there

is not a court in the country that will rely on a statement 5 years later, as laws change. Simply the licensing one by itself is a killer. Darla – It changed in April 2014. How did the change come about? Randall – The same day Ms. Easley was here, there was an accountant who wanted an employee so he got the ordinance changed and Council made a lot of changes that applied to employees, parking, etc. The daycare Mr. Anderson came from wouldn't comply now. Darla – I would assume maintaining a business license is continuous from the time you applied for it. And we didn't continue. Randall – That's the grandfathering part. Zuri – The question before us is whether she has to reapply or if the permit would still be valid and I think we're getting counsel that in Randall's opinion the permit is not valid. The other arguments aren't helping make this decision. Are there any questions from the Board relative to this? John – I think it's very clear. Jill – So how big a deal is it to go through the process again? Darla – There are people relying on 1 year for daycare as the business is 24/7. It is about how it affects people who are relying on myself and that's why the anxiety and frustration. I called the state property rights website to try to get clarification. I couldn't find special exception defined. Zuri – So why not go through normal process at this point? Is it the time involved? Are you providing childcare currently? Darla – I am watching the children for free as a kindness. They all pay for their care through the state and the state won't pay if I'm not licensed. Zuri – How many children are relying on you now? Darla – 5 families with variable schedules.

Ann – She says the home has not changed, but it is 15 years older and needs to be inspected. Darla – The Fire Department and the Health Department inspected it in August of this year. Drew – I have not inspected the home. Darla – We turned this in Friday before last and we were just under the deadline. Ann – Do we want to hear from the neighbors? Zuri – Anyone who wants to speak now can have one minute. Anota Morgan – Did you ever get a reply to your question? My concern is I don't know what business this is; she has several childcares under various names. Another question is occupancy. We've lived there five years and the last three years no one has been there overnight or during the day other than to collect mail. I have 10 or 12 neighbors who would be willing to sign an affidavit about this. She was evicted from the last place she did daycare. Zuri – So you are concerned about the legitimacy of the business? Anota – That was not an honest statement. And I know this isn't the venue, but my husband said I should call DCFS about some of the conditions there. Kathy Sparkman – She has not been there for the last 4 years as the house was foreclosed on. She got back in 4 weeks ago and the children started coming right after that. She is providing daycare there now. These are children and someone has to defend the children and in this case she hasn't followed the rules. She was supposed to notify neighbors within 300 feet and that wasn't done. I would hope that she wouldn't be given leniency as she needs to follow the rules. And, there has never been a fence up, ever.

John – I make a recommendation that we deny this as there is a big liability. Zuri – This is not an application at this point. Randall – What the Board is considering is if the 2001 home occupation permit is still valid.

Ann made a motion that the applicant will need to reapply for a home occupation permit as, in the Board's opinion, the former permit is not valid; second by John. Vote unanimous.

**REQUEST FOR A VARIANCE ON THE SIDE SETBACK ON A PROPERTY LOCATED AT 450 NORTH 400 WEST/JIM ANDRUS (WATSON ENGINEERING):**

Zuri – For the record, Tim is a friend and is a member of the Iron County Home Builders Association and I am the Director. Tim – The owner is out of town, so I am representing him in this matter. We are asking for a variance for a side setback for a PUD subdivision. We submitted this to the Sketch Committee. A PUD is Planned Unit Development. The majority of the improvements are owned by the developer itself and maintained by a home-owner's association. They will be tying in to public utilities. In the last several years the ordinance has changed. Mr. Andrus bought 6 properties and he also owns

the apartment complex near this proposed development. We rezoned 6 parcels recently and since then the City has come in and adjusted this to mixed-use so it can be residential and commercial. Zurl – Are there occupied homes there? Tim – We've demolished some and others are leased. 4 of the 6 are still in use. Our PUD will build out in different phases. This is a current look at the what the PUD looks like. The sheet in your packet is a little different than the one on the screen. We were proposing 4 units. There will be 6 buildings with 4 units and they will have townhomes. The new PUD ordinance requires a 20-foot setback off a dedicated street and it cuts the allowable units to 3 on the side because we don't have the 20 feet. We want a variance to put the original 4 units back in and cut the side setback down to 10 feet. If it was an apartment complex, we could build 10 feet from the property line. These are single family units. The owner has put a lot of time and money into this, and this is an area of town that could use a facelift.

The hardship is that we are now several months into this and this was brought up in July. I didn't catch the 20-foot setback requirement and it wasn't brought up by staff. We want to see if there's a way around it, and we want to build within 10 feet on 400 West and 300 West. Zurl – If it was an apartment complex it wouldn't be a problem. What is the difference between townhomes and an apartment complex? Tim – A townhome allows each unit to be sold off to different owners and apartments are owned by a one owner who rents them out. Each unit would be individually owned. Jill – I drove over there and there isn't a road there. Tim – We're measuring it from the side. The side setbacks come in at 20 feet. Janet – I don't quite understand. Tim – The front setback is 25 feet and we've done that. Drew – We're dealing with a PUD so the 100 foot rule is in effect due to the proximity of 300 West. Ann – Why is there a difference in apartments and a PUD? Janet – So the setback changes when you get 100 feet for the street. Tim – Correct. Zurl – So you propose 10 feet. Ann – So you can have the 4 units. Zurl – Was there a change in the setback due to an ordinance change? Tim – The last PUD I did was single family homes with a private street and it didn't have this. Randall – The change to the ordinance was made on February 11, 2015. Kit – Major changes were made 10 years ago. Zurl – You had several meetings and progressed through this. Tim – Yes, I didn't see that that last PUD I did was about 3 years ago and with the private road it didn't affect us. Kit – It was pointed out in the vicinity plan, which is the initial review. Jill – In looking at the area I think it might be a good thing since it's such a rundown area.

Kit – The Engineering Department administers the building ordinance. The reason we made the change is that a PUD can go any place in the City. They can be built next to an apartment or next to a million-dollar home and the setback is to protect the privacy of the adjoining property. That's the main purpose. The fear would be to have it happening in other areas. You need to understand that it might look alright down by the railroad tracks, but it could carry over to other developments in town. Zurl – We don't set precedent, but the court would ask why you would grant one and not the other. Jill – Would it be arbitrary to grant it here and not grant it in a nicer neighborhood? Randall – That's the question. Kit – There are single family residents there. Ann – If it was an apartment the setback would only be 10 feet, that's my problem. Kit – If you build a single family home in an R-3 zone you would expect that, but in other parts of town you wouldn't expect it. It's master planned as a mixed-use. Zurl – We're not bound by precedent. We can look at each application and make a decision based on what is reasonable. Kit – This will be two stories. Janet – You could put in an apartment and it would be worse. Drew – We have the regular zoning ordinance and then it totally changes when we go into PUD. If Tim or someone else decides to build a PUD there is a different set of rules. Janet – You would think the apartment would be the same. Kit – Apartments can only go in certain places and a PUD can go anywhere. Randall – By some miscommunication, this was brought up at City Council and they wanted to know if they could vote to tell you not to do it. Paul Cozzens thought we had eliminated PUD's. Council members were not excited about this. PUD'S and apartments are two different concepts and the Board's job is not to

determine if the ordinance is dumb. The application has to meet the five requirements. Ann – I had this conversation with Tim, and my son-in-law. His father may be the builder of this project, for the record. Zuri – This kind of redevelopment is welcomed in this part of town. My question is that this kind of latitude is important to the investor here. Will this encourage or discourage this type of development? Jim – Along with that, if I owned a home there I would welcome a change as it would improve property values. John – Is there a severe roadblock between 3 and 4 units that will stop the project from moving forward? Tim – The owner has spent over a million dollars on renovating the other homes and buying property. It may stop the development. I hate to point out a certain area of town, I would hope it would be looked at it is zoned mixed-use. If the owner wanted to in this area, he could put commercial units on the bottom and apartments on the top and build on the property line. John – That would be the owner's option. I'm still dealing with the arbitrary and capricious concept. Tim – We knew when we went to Planning Commission in July. We realized it wasn't ready to go to Council, it was put on agenda through an error. We were not there to discuss it and they had a discussion without us there to state our case. Janet – Why was it on the Council agenda? Randall – It's usually put on the Council agenda after it's approved by the Planning Commission, but through an error it was on the agenda and there was a discussion. Ann – Why don't they want it to go through? Randall – PUDs are unloved by our Council. I'm basing that on their comments during that meeting. There have been issues with PUDs in the past, though not necessarily Tim's. Roads, maintenance, law enforcement, all of these can become issues. Janet – So a townhome has to be in a PUD. Randall – According to our ordinance. It's different in some other places. Zuri – Many property owners prefer a townhome. There's a market. Kit – Council said do you have other options. Janet – What is the input from the Building Department? Drew – My concern is we are not following the rules if we grant the variance. Randall – Our ordinance wants us to default with a "no" and only grant the variance if we follow the 5 questions. Drew – It doesn't meet the ordinance, that's the thing.

1. Unreasonable hardship: Tim – We were going through the process and the City designates the vicinity plan, so that's where we go to meet the subdivision ordinance. But the document in your packet shows the 4 units and it is the same document that was included in the Project Review and there was no mention during that meeting of the side setback. If it was discussed at that meeting, we wouldn't have invested the time and effort. We hope you say this should have been brought up from the get-go. I'll take responsibility as I didn't read that section of the ordinance. We invested 6 months in this project and we're not farther ahead. Zuri – So you'll have to start over? Randall – No, the three unit plan was presented to the Council. Tim – I think we would start over and do apartments. He bought it as an investment. He could end up doing something else. Kit – Project Review is a very general meeting and we don't go over every detail of the zoning ordinance. John – Ignorance of the law is ignorance of the law. Whether it's your fault or their fault we're asked to grant a variance on something that was not addressed. Kit – It was addressed at the correct portion of the process. Randall – If you look at the ordinance the Board can't find there is an unreasonable hardship if it is self-imposed or economic, and he missed it. Zuri – What's the City's role in that? Randall – The City has followed its normal policies and procedures. It was at the stage of the process where it would normally happen. Tim – Kit said Project Review is very broad and if an apartment and if a commercial project would go through it's an extensive process but with a PUD it wasn't. Zuri – Does the Board feel there is an unreasonable hardship based on what we've heard? Janet – Is the ordinance on the website? Randall – Yes, under chapter 32. Kit – We also have a checklist for PUDs. Randall – There is a lot of case law on vesting. It basically says when someone vests you can't now change the rules. We didn't get to that point. Do you want make a decision giving a vesting right before it is required by law? Ann – The money part is a big part even though it's not stated. Tim – The hardship is that we weren't aware. An apartment complex doesn't go through Council and the

Building Department and doesn't have the vesting. Randall – The rules are not the same for PUD's as Drew said. Janet – But it is published on the City website. Does that constitute public knowledge? Randall – It is considered public knowledge if it's published. Zurl – Is it reasonable for us to expect individuals to be experts on the ordinances? Janet – I come from the public sector, as I worked for the city of Bakersfield. It's the citizen's responsibility to check the requirements. Jill – So the side setback is okay in the middle of your property, but not on the two ends? It seems like such a little thing. Zurl – But ordinances are made up of little things. For the privacy issue there aren't homes that would be intruded on. There will be a limited number of property owners impacted with a smaller setback. Randall – Whether it affects the neighbors is a factor for question number 4. We have to get past this hardship question. Janet – There is no point in moving on if can't get past number 1. John – I'm concerned about the fact that we have this long space and it's okay here, but not here. But I live down the road and don't want to impact who-knows-what in the future. Randall – We're not deciding that the ordinance is unreasonable; but if there is an unreasonable hardship here. Tim – Both existing houses have been demolished and other houses renovated. If we'd known this before, the owner wouldn't have moved ahead. Whether it was my fault or not I will take responsibility. Janet – The ordinances are very well indexed and could be looked up. It still seems like your justification is financial and we can't consider that. Randall – If someone spends money prior to vesting, they don't have a legal right at that point. According to the law he doesn't vest until he fully vests.

Zurl – Should we poll the Board members and see if we all think it meets the criteria? I think it's an unreasonable hardship here. Ann – What do you see? Zurl – The process was managed in a way that created assumptions to give the owner support in going a certain direction. This ended up with an outcome that is not as good for the community. Whoever is responsible, certainly the engineer missed it looking on-line. If a PUD is laid out with City staff it should have been obvious. John – I agree. Ann – I agree as well. Jill – I want to be totally honest. I think this is a good thing for the City. But I don't feel like it's the City's fault that this was not caught. So we can't grant this because we think it's best for the City? Randall – No. Janet – It's getting to the point that we don't agree with the ordinance and we can't make a decision regarding that. Randall – If it's the owner's fault and Tim's fault before vesting, then it is a self-imposed hardship. Jill – Can't we come up with a new hardship? Randall – We can't do it based on it's a good idea. Zurl – I think it's reasonable to say we're giving it the same setback as an apartment because of where it's located and what it will bring to the community. Do we want apartments or townhomes? Randall – The attorney in me cringes at that. Zurl – In this case I don't think it's a big deal. Randall – You could consider the apartment part on number 4, but it's not a hardship. Zurl – We're talking about just a 10 foot variance. Randall – If this is based on what was discussed at Sketch meeting then we may stop having them. If you make that meeting binding on the City, I would recommend getting rid of that meeting, because that would be a valid unreasonable hardship as you would have created a much higher standard for that meeting.

Janet – I don't think there is a hardship and think this is a slippery slope creating a higher standard for the City. It is not our responsibility to say that the ordinance doesn't make sense. Zurl – It's a small setback and it's unreasonable to not grant it. Janet – I would be interested to hear from the property owners about their lack of privacy. Zurl – I'd feel differently if it was in my neighborhood or was an R-1. Tim – We could put in a commercial development in this zone. Janet – Maybe that's the avenue to proceed. Jill – The private owners would probably rather have something like this. Zurl made a motion to proceed to number 2. Second by John. Ann and Janet opposed. Jill – Phrase your hardship for me? Zurl – I just say proceed and see if there are other barriers. Ann, I change my vote and let's move to question number 2.

2. Special circumstances: Ann – I would say this fits because although it's a PUD it is in a mixed-use area. Janet – Where are PUD's usually? Randall – They can be anywhere. Are the circumstances unique to this property? John – I think it is a special circumstance. Kit – We've expanded multi-use to many other areas. There is an area out at the south interchange.
3. Granting the variance is essential to a substantial property right: Zurl – Are there other properties where they can build or have built in the past? John – Is there a blanket mixed-use area in that section of town and how far does it extend? Kit – From 1100 West to the railroad tracks. John – So we could have developer come in and take down some homes.
4. Granting the variance won't substantially affect the general plan: Zurl – Would this have a substantial effect on the General Plan? No.
5. Spirit of the ordinance is observed and justice done: Yes.

Motion to approve a 10 foot variance on 300 and 400 West by John; second by Ann. Vote:

Zurl – Aye

John – Aye

Ann – Aye

Jill – Aye

Janet – Nay

Motion passes, variance granted.

**REQUEST FOR A VARIANCE ON THE MINIMUM WIDTH REQUIREMENTS ON A PROPERTY LOCATED AT 270 SOUTH 100 EAST/JARED WEST:**

Jared – I represent small town capital. It's a rental business. I'm asking for something similar but on a smaller scale. I'm looking for a variance on the width. There is currently an old home on this property and there is a lot of room for a couple of units. The minimum frontage should be 70 feet and I'm at 66. That is for two units to happen. If I built multiple units I can go to 55 feet, but we would like to do separate units, either single family, or duplexes. We don't have the funds right now, but would like approval as we make our plans. Jill – You own this property currently? Jared – We close in two days. Janet – We can't rule if he doesn't own it, right? Randall – He has to have some ownership interest. If they have a contract, or purchase agreement it's okay. Ann – And he's not sure what he's going to put on there. Do we need to know? Randall – We've had them before and if we grant the variance, we do it with conditions. And you use the number of units as part of your limitation. Jared – I'm looking for the approval of the building envelope of this property. There are single family residences on two sides and a hotel. It is an R-3 zone. I'm acquiring the property and want to make a higher and better use of it. For the time being I can use it this way. I would like to not take out the home. Janet – Does the 70 feet come in because it's the second structure? Jared – Yes. I have back up plans, but I think this is the best use for the property. This would be a triplex. There would need to be 10.3 parking spots. We would be the only owner. Zurl – To build that building you're short 4 feet but it doesn't meet the frontage requirements. Randall – We're not worried about the length, purely the width. Jared – I could do three or five units but I think it pushes the limits too much. Janet – Do you plan to rent the front house? Jared – Yes, it is not currently rented and we want to refurbish it before renting it. Randall – The existing residence is currently a non-conforming use, so the problem is with the expansion of a non-conforming use. That is an issue here. Janet – How is it non-conforming? Randall - The current set back is 3 feet and should be 6. Our ordinance says land areas of non-conforming use can't be increased. But the language is vague. If you argue that this is a land area that is only the section of the area that is non-

conforming he could build. John – So you could say they own the entire property and consign a particular portion as a buildable lot. Randall – If you want to go that route call it an area, not a lot, as it is a gray area. Zurl – The non-conforming building creates a hardship. Randall – I wouldn't want to go too far but this is a deep property. This is not an uncommon width. Ann – I imagine that there are some in the older areas that are long and skinny. It may have been the standard. Zurl – So we have an unreasonable hardship just because of where the house is built. Randall – If he attached to the building, he wouldn't need approval even with the non-conforming use. The interesting thing on the flip side of the non-conforming is that his new building will conform.

1. Unreasonable hardship: Ann – I think this fits. The house is existing. The ordinances are different and the lot is huge, something needs to be done with it.
2. Special circumstances: Zurl – It's a deep lot and needs to be used.
3. Granting the variance is essential to a substantial property right: It's the best use of the property.
4. Granting the variance won't substantially affect the general plan: no.
5. Spirit of the ordinance is observed and justice done – yes.

Motion to approve a four foot width variance with the conditions of setback requirements contingent on any additional building being 20 feet back from the current building (as viewed from the front of the lot) by Jill. Second by Ann. Vote unanimous to approve..

**REQUEST FOR A VARIANCE TO BUILD WITHIN A 15 FOOT WATER EASEMENT ON A PROPERTY LOCATED AT 2318 SILVERCREST CIRCLE/RANDY & TORI FORSYTH:**

Zurl – For the record, we had two homes on Silvercrest Circle in the Parade of Homes this year, so I was up there all the time. Jill – And I know Randy and Tori.

Arnold Fawson with Go Civil Engineering – The applicant would like to put a garage close to their side yard but they have a 15 foot drainage easement entirely on their lot. It is a City drainage gutter. It would encroach into the easement by 5 feet but would not impede the drainage at all, or cause a problem in accessing it for repairs. Zurl – So except for the easement it would be within the requirements? Arnold – The separation from the side property line would be the same as within the subdivision. Drew – I spoke with Public Works and the reason for the 15 feet is for heavy equipment access and they need the entire 15 feet. Randy – If you look at the southeast property line, I go 15 feet into this property and there is only 10 feet between that house and the center of the ditch. Why should I assume the whole 15 feet when the other guy has 10? He also has a block wall on the easement. Janet – So the ditch was built after you bought? Randy – The problem came when there was an administration change. I want to build an RV garage and I don't want to build my house if I can't build the garage. I am going to build a stem wall so it will divert the drainage better than the drainage easement.

Randall – You can only vary what is in our zoning ordinance. You can use the property however you want, as a general rule, except as it interferes with the easement. In this case it's the City's easement. If they build on that and the City has to access it, the City has every right to knock it down. If it's a drainage easement he can build at his own risk. Or we'll take him to court and make him take it down. This Board has no authority over the City's easement. Randy – The owner above me has already built a block wall and the City said he would have to tear it down if there was a problem with getting equipment in there. Randall – Our setbacks are distances from property lines. John – So we don't have a choice? Randall – He could go to City Council and ask if they want to give up the easement. Zurl – Can the Building Department give them a permit and allow them to assume the risk? Zurl – The other property may have assumed the risk and got a building permit. Randall – I can't find anything anywhere that would allow the Board to grant a variance. Zurl – What would cause heavy equipment to be brought in? Randall – The danger is by building a garage they can't restrict the City to 10 feet. Randy – The reason for a 15 foot easement is the corner of my property is 15 feet and as it angles to the front of

property it's 10 feet. KANDAN – My point is we can't do it. It's a conversation you can have with Public Works and maybe approach the City Council or the Mayor. KANDY – Wayne Stubbs said they told him they'd let him build the fence but he would have to knock it down if the City needed to use it.

Since the Board of Adjustments has no jurisdiction over a City easement, the Board will be unable to approve or deny the variance.

**ADJOURN:** The meeting adjourned at 8:12 p.m.

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Barbara Barrick  
Executive Assistant