

**Cedar City Board of Adjustments Minutes
February 3rd , 2020**

The Cedar City Board of Adjustments held a meeting on Monday, February 3rd , 2020 at 5:15 p.m. in the City Council Chambers, 10 North Main Street, Cedar City, Utah

PRESENT: Chairperson Ann Powell, Jill Peterson, Roger Thomas, Phil Schmidt, Joe Sanders, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, City Planner Don Boudreaux, Executive Assistant Onjulee Pittser.

EXCUSED: Janet McCrea, John Ashby

OTHERS PRESENT: Ryan Daniels, Daniel Anderson, Misty Anderson, Jeff Barney, Tom Jett

CALL TO ORDER: Ann welcomed everyone. Jill led everyone in the pledge.

APPROVAL OF MINUTES: Jill motions to approve. Joe seconds. All in favor for unanimous vote.

APPROVAL OF FINDINGS OF FACT: Joe motions to approve Findings of Facts. Roger seconds. All in favor for unanimous vote.

REQUEST FOR HOME OCCUPATION FOR BUSINESS AT 392 W. 1045 N./RYAN'S

WRENCHES/RYAN DANIELS: Ann: Tell us what you're trying to accomplish. **Ryan:** I am trying to get a city license for Ryan's Wrenches at my home. Temporarily for about a year. We're looking at that time frame. Then, we'll be able to move into a shop somewhere. We're just trying to get off the ground. **Ann:** What is Ryan's Wrenches? **Ryan:** We're specialized in marine repair. There's not one in Cedar City and we have a large body of water locally. There are a few boats and the need is great in Cedar City. Some people have approached me and asked me to start up a business. **Ann:** Does anybody have questions before we go through the questions? Is there anyone here who wants to oppose this business?

1. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling. – **Ann:** Will you have employees.? **Ryan:** No. **Ann:** I know you said you'll be using your garage. How does that work Randall? **Drew:** Your garage is attached, correct? **Ryan:** Yes. **Randall:** The requirement is that it can't be in any accessory building and that by our definitions is a separate building. It can be used. We don't measure it in the sense of the total allowable space, but it is allowed to be used as part of the business. **Drew:** Not the driveway. **Phil:** We don't have room, do we? There's already boats there. This is right next door from lady does yard sales; 2 houses up from that house. If you're doing marine repair, there's no parking, unless you're on the road.
2. The home occupation does not involve the use of any accessory buildings. – **Ryan:** Correct.
3. No commercial vehicles are used except one delivery truck which does not exceed one-ton capacity. – **Ryan:** No. Not at this point.
4. The home occupation does not include a drive thru. – **Ryan:** Correct.
5. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes. – **Ryan:** Correct.
6. Do you intend to have a sign for the business? – **Ryan:** Yes, I do. I believe it's 10' and 4' off the ground. Is that correct? **Ann:** What's the exact number? **Drew:** We'll have to look at that and get you that information. **Ann:** It's fairly small. **Randall:** It's only about 6 sq. ft.
7. Not more than equivalent of 25% of the ground floor area of the dwelling is devoted to the

home occupation. – **Ryan:** Correct. **Drew:** We've been on site and calculated the main level at 1,500 sq. ft., the garage at 300 sq. ft. and we talked about the area of the project that would be used to do the work and he's saying entirely in the garage. **Ryan:** Yes. Most of it. It has to be if it's not in the driveway, correct? **Drew:** We'll still get the parking but he's saying that's where he'll do the work is inside the garage. **Phil:** There'll be no other boats parked anywhere around the lot. **Drew:** It wouldn't be allowed in this case. **Phil:** It's a tight spot and it's a corner lot too. It's where all the kids come out for soccer. We already had one issue there. We had another incident up the road with the guy wanted to be a mechanic and we said no to him. I don't see a whole lot of difference. **Ann:** Let's keep going through the questions and then we'll address these concerns we have.

8. The home occupation shall apply for, receive, and maintain a City business license. - **Ryan:** Correct.
9. The activities in connection with the home occupation are not contrary to the objectives and characteristics to the zone in which the home occupation is located. – **Ann:** And that's where we have our concern. Maybe it's not the best thing to have in a neighborhood.
10. Off-street parking will be provided. – **Ann:** How much parking space does he need? **Drew:** We've calculated it to 3 off-street spaces required for each service bay plus the home itself requires 2, since it's a single-family home for a total of 5 required. If the work commences in the garage, then that would take the garage out of the equation. It would only leave 2 spots, max 3, if you were only going to use one of those spaces in the garage. You could only have one at a time. You're going to need 2-3 more spaces on site. You can't back out on those arterial access roads, which both are. It's going to be tough to get that parking in place. I understand that you've explored the NE side corner of the property, which will be tough since you can't back out onto Northfield Road. **Ryan:** There's somebody from the planning department that put a dip in the sidewalk for reason. Did somebody design it that way? **Drew:** Is there a curb cut there? **Ryan:** Yes. **Drew:** I don't know that the City did that. Perhaps the previous owner. That's what we're faced with, as far as parking. **Phil:** That's why you have to be back from the corner because he's on a corner lot. **Drew:** That's one of the constraints and the biggest one for me is backing out onto Northfield Rd. The only way he could do it would be with a 24' access and parking be on that, so you could go in face forward, turn around inside his backyard, and come back out. That's the only way you could do it. **Phil:** I think the idea is great and none of us here would want to hamper you, but we've had a few incidents like this. There was another guy in a cul-de-sac up the road that wanted to do a mechanics place and we told them no because it's a commercial business. Another person we said no, and on this one, there's never just one boat to be repaired. You have to have a place to store them. I strongly encourage the business, but this is an extremely busy intersection both ways. You don't have the adequate parking that you need. There's other places for rent right now. **Ryan:** The overheads are expensive. It's pretty costly. **Ann:** We do have a parking problem. That alone changes the characteristics of the zone. Any thoughts? **Joe:** I know, Ryan, there's been parking across the street where you live. What's the City's stance on something like that? **Drew:** Everything is based on off-street parking. It would have to be on sight. That's how our ordinance is written. **Joe:** If he were to park a vehicle or two across the street. **Drew:** On someone else's lot? **Joe:** No. It would be on 1045 N. **Drew:** That's the challenge because to me, that's on street. That's what they're trying to avoid and get those vehicles off the street. The numbers that I am giving are based on off-street numbers. **Ann:** They have to provide their own parking on their own property. **Joe:** That particular ordinance hasn't been enforced; I don't believe. **Randall:** We don't prohibit people from parking on the street. The difference is what stage of planning you're in. When we do approvals for home occupations or any other businesses, we require a certain amount of

parking that's available off street. We don't go out and make sure they're never using it. Our calculations are based on off-street with the hopes of discouraging too much on-street use. We don't prohibit the use of the street. We just make sure they have enough off-street. Drew: It's a trigger point we use for permitting. **Ann:** Parking has been what kills a lot of home occupations, but it is an important piece.

Phil motions that the application be denied for insufficient parking per City ordinance. Roger seconds. All in favor for unanimous decision.

REQUEST FOR ADMINISTRATIVE APPEAL FOR RECATEGORIZATION OF BUSINESS LOCATED AT

151 S. MAIN ST./IRON AXE LLC: Daniel Anderson, Jeff Barney, Misty Anderson. **Daniel:** Right now, as far as our parking goes, you are parking us as though we are an indoor shooting range, which requires 2 parking spaces per lane. We have 10 lanes. In our operations, we haven't noticed that we need 20 parking spaces. Very rarely have we been filled, or even close to that. We did some research up North with other axe throwing places and for the most part, they're on a parody; one parking spot lane per. We were hoping to be able to add it to the City code, but to get axe throwing facility put into it for a 1:1 ratio per parking spot per lane. **Ann:** Which side of the building do you have parking? **Daniel:** On the South side, we have some lanes there and if you continue past the storage unit, there are more there. **Jeff:** There's also 2 in the front, 8 diagonal one-way parking and 5 parallel parking in the back. **Phil:** Who's parking is that? From the alleyway, there's a retaining wall and there's parking spots right there. Is that all part of Ace Hardware or is part of the gas station or a parking area that they can use? **Drew:** Are you on 100 East, Phil? **Phil:** No. Main Street. **Jeff:** Ace has that parking lot. **Phil:** Is your door on Main Street? **Daniel:** Yes, and there's 2 parking spots out front. **Phil:** Then the alleyway. **Jeff:** We have parking in front of the garage bays in the back. **Phil:** Across the alleyway, isn't there a concrete wall and asphalt parking too? **Daniel:** That's Ace, from what we understand. We talked to them about it and they said they can't. **Phil:** The pizza cart place used to put his cart there. **Jeff:** A lot of our patrons do park there, but we can't get written consent from Ace because they say it's an insurance thing. **Daniel:** We've talked to them and they're fine with it because none of their customers ever park there. They said their insurance wouldn't allow them to have anything written down as far as other people using the parking. **Phil:** Have you talked to the owner? **Jeff:** To Jason Hurst. **Phil:** That would work perfectly. **Randall:** The property does shrink a bit all the way to 100, so they do have available land, it's just not hard surfaced. **Jeff:** That's why we have the parallel parking in the back, instead of the diagonal. **Joe:** Where do your customers park? **Daniel:** Typically, in the Ace parking lot. **Jeff:** Or Pizza Factory. We can't control where they park. **Ann:** what they're asking for is to recategorize. That's what we need to address. **Drew:** It says in the ordinances that "required off-street parking for any building, structure or use of land of a type that is not listed herein shall be determined by the City building official, who shall be guided by comparisons with similar uses that are listed. Appeals may be taken to the Board of Adjustments". I looked at this with our City planner. As close as we could get with the list that we currently have is a bowling alley, but that's quite a few. It says 5 spaces for each lane, so that's not going to help. Indoor shooting ranges was as close as we could get. 2 spaces for each shooting lane plus one space for every 250 sq. ft. of sales. When we take these projects to project review, we'll ask to have their design professional categorize it. We started working with them, but I don't think we ever got a design professional to give us any additional input. **Jeff:** We focused on the building. **Drew:** That's why they're here. They're hoping that the Board of Adjustments could see it differently. If we're going to reclassify it and add it to the list, that would be a proposed ordinance change, which would have to go through the entire process of project review, planning commission, then City

council. Specifically, we do not have axe throwing on that list. **Ann:** We can't add that to the ordinance. **Randall:** You can't add it to the ordinance. You do have the authority to determine if staff made the correct interpretation of what it is most comparable to. If you go into the special exception authority, there's a sentence that reads "also to decide the number of off-street parking spaces which shall be required when the number is not specifically set forth in the ordinance". Essentially, you can make the same decision that Drew can and say what it is closest to of what is already here. Your authority could be to override Drew if you don't think he's picking the closest thing to what it is. You would have the authority to say if they came in with certain measurements, we think this is what a lane is or how much the square footage is, staff would look at that to determine if they agree or disagree and we think this is what we're going to measure for additional square footage, but I don't think we ever got exact measurements to make a staff decision on that. I think the only decision you can make today is if you think it's closest to a shooting range or something else that's in here. In which case, we can compare and make those measurements.

Ann: Let's say that it's close to a shooting range. How many parking spaces are you short? **Jeff:** 5.

Phil: Are you open all day or just at night? **Jeff:** Just at night. **Daniel:** On the weekends we open at 1:00 p.m. **Ann:** Is there any way you can add 5 spaces? **Jeff:** We could add hard surface in the back, but it's kind of costly right now and it's winter. **Phil:** We can work on that. Hard space would be allowed once it's available. **Jill:** I guess you could also operate seven lanes, right? Instead of 10? And be in compliance. **Daniel:** We could operate 7 lanes instead of 10. We have 10 set up. Something else that was talked about in our meetings is that the owners were designating a lane what we call a bay. People will come in a group of 4 and we'll put them in a bay; 2 people on one target and 2 people on another. There's not a partition in there. There are partitions. There's 5 bays and we could define a bay as a lane if that's something you would accept. **Randall:** We don't define lane. What it comes down to is we attempt when we don't define a word to use its standard dictionary meaning. In a particular sport, is there a definition already there or if there's already a usage in the terminology for axe throwing how would we define a lane. I haven't been through that to make a determination. In looking at their pictures, they do have different areas where there's 5 barriers, but only a tiny little 2-3 ft. thing between the targets. We'd have to look to see how that's defined. We don't have any other indoor shooting ranges to see how they separate their lanes out and if they have anything remarkably different. Bowling alleys are easy. **Phil:** You can't compare bowling alley. **Randall:** We'd have to look at the comparisons to make that determination.

Roger: I have a question about how they got through the permit process without parking ever coming up to the owners. They're operating a business now and saying that they don't have enough parking to operate our business. How did that happen? **Drew:** They don't have a certificate of occupancy. **Roger:** They don't have a C of O. And we're operating a business without a C of O? **Jeff:** We talked to Renon. **Joe:** How long have you been operating? **Jeff:** Since November. We talked to a lady in the business licenses and we asked her if we could do our grand opening and she told us to go ahead and go for it and said that we could work on our building permit while we're in the process. **Randall:** We give a 30-day temporary license when they come in to get a business license, with the idea that we want to encourage businesses to move forward and get things going. Nearly all of them, within that 30 days, gets into compliance. The City says as long as you're working on it, you're ok. Unless there's something obvious that we need to consider. **Roger:** I think we've put them in a position where their business needs parking and the City is doing a disservice by forcing them to come into us. I'm not saying it's intentionally doing it. It's just an oversight. Parking is a really big deal for Cedar City as we have been moving forward with all the commercial development. **Ann:** My struggle is that there's so much parking in that area. **Phil:** There's 30 spaces that Ace never uses. **Randall:** If Ace signed off on it. **Phil:** There's not a locked gate at the parking lot. The church does that. They put a chain and lock it off. If they don't lock it off, it's public access. There's no sign that

says it's private. **Drew:** Except that a joint use parking agreement would be required. That's in the ordinance.

Phil: What about the gas station? Is that parking all Ace's? **Randall:** I think up to the barrier, but I haven't verified. If Ace felt comfortable putting this in a recorded document. We would calculate how much the gas station has and how much they need; how much does Ace have and how much they need. I could almost guarantee they'd have extra space. We don't necessarily base it on usage. I wouldn't be surprised if the Pizza Factory had more parking than they need based on square

footage. **Tom Jett:** Have you contacted them? **Daniel:** Pizza Factory has refused all our requests to talk about parking. **Ann:** It sounds like you've gone to Pizza Factory and Ace and that's not an option. If we wanted to go to defining what's a lane, what's the process they need to go through?

Randall: It's a decision in the realm of staff first, then the board. You may want to table it and have them bring their arguments to say this is 5 lanes and not 10. Maybe make some changes so it fits in the definition of the field we're dealing with. **Daniel:** We could remove the central barrier. **Randall:** Assuming it's even needed. They could bring that to staff to look at it. If we disagree, they'd come back to you and ask to make that decision now. We're here only on an appeal, so it's only a decision based on if you reverse a decision staff has made. Staff's never had to make a decision on that. The first step is to try and figure that out. The only thing you have the authority on today is an appeal of a staff decision to classify it like a shooting range. If you think something else fits better, you could. The other 2 that I could think of would be a bowling alley, which is worse, or a gymnasium that could also be worse. **Misty Anderson:** There's a skating rink and dance hall that's also a social thing with different lanes. **Randall:** We'd be looking at exact measurements to see if any of those would be better for them.

Roger: Would it be helpful to give them a 12-month stay of this ordinance to see if you can appeal to City Council or can you appeal and/or define a lane or at the end of 12 months, you put additional parking spots in. Is that in our per view? **Randall:** Not today. **Roger:** So, they asked the wrong question. **Randall:** Yes. If they had come in seeking a variance or a special exception then yes, we can grant you that limited variance or a limited special exception. On an appeal from staff decision, it's this or this, it's not a temporary thing. I have no desire to prosecute people if they're working on things. On the civil side, get a restraining order from the Court or on the criminal side for doing business without license. We've never done that as long as people are working on it. I can't say 12 months because it depends on if they're working on it. **Tom Jett:** In our ordinance we have a provision that allows you to use the neighbor's property. It also talks about using a neighbor's property a distance away. Is that 300-ft.? **Drew:** Joint use parking. **Don:** It's 400-ft. **Tom:** Does it limit them from going across the street? **Drew:** Not that I know of. Joint use parking is in 26-5-7. **Tom:** We did the same thing on the Leavitt property. They were doing some cross pollination of their parking on the properties by the mortuary. **Ann:** I think that was just temporary. The mortuary was letting the contractors park there. **Tom:** I'm pretty sure that went through City Council. **Phil:** I don't think the Leavitt apartments can park in the mortuary parking lot. **Tom:** I'm not talking about the mortuary. I'm talking about their other 2 properties, one to the South of the mortuary and one directly across the street. They did a cross parking agreement on those 2 and I couldn't remember the distance. I'm told it's 400-ft.

Drew: Here's what it says: "The off-street parking facilities required by this Ordinance shall be located on the same lot or parcel of land as the use they are intended to serve, except that in cases of practical difficulty, the City Building Official may approve a substitute location which meets the following conditions: (A) That all or part of the substitute location is within 400-ft. from the principal use for which the parking is being provided. Said distance shall be measured as walking distance along a public street or sidewalk; and (B) That the substitute lot is in the same possession as the use it is intended to serve. Such possession may be by deed or long-term lease, the terms of which meet the approval of the City Building Official. The present and future owners of the substitute lot shall be

bound by covenants filed in the office of the County Recorder requiring such owner to maintain the required number of parking spaces for the duration of the use served. **Tom:** There is a revocable agreement, correct? **Randall:** You can revoke it. **Tom:** My suggestion to these folks would be to table this issue and address the people that used to be the Honda building and also the motel across the street. **Phil:** Ron's would be your best bet. I wouldn't try the hotel. That wouldn't work. **Tom:** I just picked out those potential adjoining properties or the property where the Pizza Factory used to be, behind H&R Block. **Joe:** They'd have to go across the street. **Tom:** There's no rules that dictate they cannot. **Randall:** The measurement said within 400 ft. Then it says within walking distance on a public street or sidewalk. Have we ever interpreted it as they can't cross the street? **Tom:** We did it for Leavitt. **Drew:** We're going to try to work with them where we can. **Tom:** If they could get an agreement across the street. **Roger:** I would put forth a motion that we agree with staff's interpretation. I think that given the options that we have tonight that's all we can do. Do we agree or do we not agree? I think that City staff has done their best to interpret the ordinances as they exist. I would encourage the axe throwing folks to work through City Council or with Randall to come up with other solutions. It sounds like the City is on your side, the Board of Adjustments is on your side. That's why I put forth the motion that we agree with staff's interpretation. **Ann:** Do we agree to compare this to a shooting range? **Daniel:** Does that mean we need to withdraw our petition? **Randall:** That's what I hesitate on. You may the board to not make a decision, because if you table it and they decide they don't like staff's decision they don't have to repay. **Phil:** Then they could come back with a different question. **Randall:** We don't have a problem with a modification. We've allowed that in the past where we've said they've only checked one box. Next month when they come back, they check the other two and come back and we can discuss those. **Joe:** Do you use all 10 of your bays during any given night? **Daniel:** Very rarely are we maxed out. We shuffle them around while we're maintaining another one. Very rarely are they all getting used at the same time. **Joe:** Would an option be as what Jill mentioned earlier to reduce to 7 so you meet the qualifications immediately or get an occupancy permit? **Daniel:** We could do that. **Joe:** Legally, that would get you into your business right away. Then you could work on expanding. **Ann:** Or you could add the parking, add the asphalt. **Daniel:** We would like to do that, but we can't right now. **Joe:** If you're only using 7 or 8 now. **Jeff:** We do have parties that rent out the whole building so there'll be 20 of them. We'd have to use all of them. We don't want to limit our bigger groups. **Ann:** We could go back to the 5 bays. **Jeff:** And have a bay count as a lane. **Ann:** Do they need to look at what a shooting range measures? **Randall:** It's probably a good way for both of us to go and see what we can find on defining a lane. My best guess is they may have to remove the divider between the 2. Not yet, but it's feasible to narrow that down with some modifications. **Phil:** Did you buy the building or renting? **Daniel:** We're renting. **Phil:** If they're renting, they could go back to the landlord and ask them to put in additional parking in April so they can continue to utilize your building fully. Could they do that legally? **Randall:** We don't care who puts it in. **Phil:** Nobody can hard surface now. You won't be able to until sometime in April. If we could give them an agreement. You go back and talk to your landlord. If you're renting the building, you have to be able to use it, which you'll need to have the parking. If we have an agreement to move in that direction. If they're working on it, couldn't we authorize them to proceed to make them legal. Then go back to owner and tell them that they need this. Is that feasible? **Ann:** It's a possibility. **Randall:** From my angle on shutting them down, we won't, but aren't you able to grant temporary permits knowing asphalt can't be poured? **Drew:** We could do something like that. Typically, we would go through a bonded place. It could be like a frontage improvement like we've done in the past with commercial projects. **Phil:** It's cheap, but that's an option. We've got Roger's option that we table it. I would avoid going to City Council because that may take a long time. If we go this route and an opportunity to fix it, you'll need to anyway. You need to just fix the parking, so you have it. If you can't do it now, we'll

— give them variance until the appropriate time, work it out with the landlord then you don't have to fight the City. **Ann:** Or your landlord could split the cost. **Drew:** To clarify on those bonds, typically it's 150% times the improvement. It's not a surety bond, it's a cash bond. **Phil:** You can't do an insurance bond? **Drew:** We haven't in the past. We could talk to Kit and see if we can. **Phil:** For bidding projects, it's an insurance bond. For any City project, the bond is not a cash bond, it's an insurance bond. For subdivision improvements, it's a cash bond. It's not for the contractor to do City work. That's an insurance bond, not a cash bond. There's both. **Drew:** We could explore that option. **Jill:** Could you explain that for us? **Drew:** The difference of a surety bond and cash bond. **Phil:** A cash bond is cash. **Drew:** Or in this case, it's 150% is \$30,000. **Phil:** If you had to do 5 spaces, it's basically $9 \times 20 = 180$ sq. ft. per each one and you have to have 5, so that's around 1,000 sq. ft. and it's going to cost you something like \$3-\$4 per sq. ft. Something like \$10,000. **Drew:** A surety bond is a lot less. **Phil:** A surety bond will cost you \$100. That's the difference, but they both carry the same weight. A surety bond in this case is adequate. To me, it's a totally different end result. The City's not paying anything for it. They're just giving a guarantee that they'll do it, and if they don't, the insurance company picks up the tab. **Ann:** We've given you some options. We'll table this. **Daniel:** When do we need to come back? **Ann:** Come back next month. When you do your application, check off a few more boxes. What will they have to mark? **Randall:** We want variance, special exception, and non-conforming use, or grandfathering, based on Polaris being there before hand. They may be given exemptions that may allow them to grandfather in. That's a possibility to shrink the parking requirements. **Ann:** If the box is checked, we can do it. You don't have to pay again if you come back next month. You can still operate your business because you're working on it. **Daniel:** Do we not have a mechanism to set a precedence for axe throwing businesses in Cedar City? **Randall:** Yes and no. In their case, they're limited in the same way Drew is to find something similar to what's in the ordinance. To change the ordinance, there's a separate process not involving this board. That goes through planning commission and City Council, but it may take longer and it's not a guarantee. If we can find it in the legal sense, you get a clear yes or no answer. If you don't like it, you can appeal it here. If you don't get to where you want to her, there is the option to go to City Council. **Daniel:** It doesn't seem like something we want to bother with, but how did all the other things get on the list? **Randall:** They come here, and the board says we're stuck, then they can go to City Council. **Ann:** Which is what happened with the parking around the university. The Leavitt's came in and built a big unit. They were short. We said we can't make that decision. They went to City Council now parking ordinance around the university changed. Sometimes seeing them, they have move authority than we do. You take your chances with them. If we can find another way, it just maybe pouring asphalt. **Daniel:** That's what it's starting to look like. **Roger:** We do have a motion. Is it better to withdraw my previous motion? **Randall:** Yes. **Roger:** Then, I withdraw my previous motion. **Ann:** You're tabled. Hopefully, we'll see you next month. Let Onjulee know that you're coming so she can put you on the agenda. Mark a few more things on the application, then we're covered on what we can do. **Phil:** Can they continue to operate? **Randall:** Yes. **Ann:** Because they're working on it.

ADJOURN: The meeting adjourned at 6:15 p.m.

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Onjulee Pittser
Executive Assistant

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