

**Cedar City Board of Adjustments  
Minutes  
February 6<sup>th</sup>, 2023**

The Cedar City Board of Adjustments held a meeting on Monday, February 6<sup>th</sup>, 2023, at 5:15 p.m. in the City Council Chambers, 10 North Main Street, Cedar City, Utah.

**PRESENT:** Chairperson Janet McCrea, Chad Carter; John Ashby; Dorian Page; Carter Wilkey; Mark Mumford; Chris Bearnson; Asst City Attorney, Randall McUne; Chief Building Official, Drew Jackson; Executive Asst, Natasha Nava; Jonathan Stathis, City Engineer.

**EXCUSED:**

**OTHERS PRESENT:** Dan Dailey.

1. **CALL TO ORDER:** Janet welcomed everyone. John led everyone in the Pledge of Allegiance.
2. **APPROVAL OF MINUTES:** John motions to approve the minutes for the December 5<sup>th</sup>, 2022, meeting; Chris seconds; all in favor, unanimous decision.
3. **APPROVAL OF FINDINGS OF FACT:** Chad motions to approve the findings of fact for the December 5<sup>th</sup>, 2022, meeting; Mark seconds; all in favor for unanimous decision.
4. **Request for Variance to not install curb, gutter, sidewalk, and other frontage improvements for property located at 1651 North Bulldog Road/ Dan Dailey.** Randall this same request was made in our November 7<sup>th</sup>, 2022, meeting requesting a variance to not install curb, gutter, and sidewalk at this same property. The board made a motion to deny that request. Robert's Rules of Order would require a motion to reconsider to re-address this same request for a variance. Dorian does it need to be reconsidered by someone who voted in favor of denying the variance? Randall correct. In my findings from that meeting, Janet, Chad, John, and Mark voted to deny the variance. Any of those 4 may motion to reconsider this request. If one of those 4 make a motion to reconsider, we need a second to that motion from any board member. There would need to be a majority vote of those present to reconsider. The reasoning behind this process pertains to appeal rights. Any decision this board makes can be appealed to the Fifth District Court. That timeframe is limited to 30 days from the date the Findings are approved. The 30 days expired January 4<sup>th</sup>, 2023. If this board reconsiders and goes through the 5 questions; regardless if you approve or deny his request; he will have the option to appeal your new decision. We have the appeal process to protect the rights of the citizens and the City. In addition; we do not want an applicant to return to the board multiple times in an attempt to secure an approval.

Janet do you have any new information to present? Dan yes. Mike Platt came in and his biggest concern was water drainage, we found some additional issues all up and down Bulldog Road. We met with Jonathan and as soon as we went into the design phase we ran into issues from the Master Plan. Janet this board does not have authority over the Master Plan. Dan the Master Plan is what's triggering the improvements that we are here to discuss. Randall whether or not Bulldog should have improvements, is not something this board can decide. If there is something unique about your property, this board can see if it meets the 5 questions. Do you have information regarding the unreasonable hardship specific to your property? Janet any concerns with the Master Plan would go before the City Council. Randall this board has the authority to grant a deferral as we have in the past, as long as it meets the 5 questions. Dan the Master Plan changes Bulldog to a 75-foot right-of-way causing property owners to lose property. If you do any kind of improvements on your property you will lose 10-feet of your property to accommodate the road widening. It impacts us significantly because the current building was built in 1978 and it was built closer to the road than current zoning allows. Our biggest issue is how to divert the water. With the landscape and improvements, we lose 10,000 square feet of our property because of the proximity of our building to the road. We now must move the parking lot because the ordinance does not allow backing onto Bulldog Road. We have ideas we want to propose to the City Council; a 66-foot right-of-way opposed to a 75-foot right-of-way would help the situation and gives us parking in the front. Carter what are you building? Dan we are building a new warehouse. Randall when a building permit is pulled, we require the property to come to current code.

Randall of the 4 board members; Janet, Chad, John, Mark. Does anyone wish to change their vote? Janet I have not heard anything that is within our purview. John I have not heard anything that changes my decision. If we do it for one, we must do it for everyone. Absent an unreasonable hardship we are stuck with what the Ordinance calls for. Dan I'm just asking for a deferral of the improvements. We will make the improvements. We need this deferral so that we can begin construction. Dorian if we allow you to defer those improvements, it will change the way you build. Randall this board granted a temporary variance to Maverick for the height of their sign. We gave them 2 years to go through City Council and have the Ordinance changed at the South Interchange. That never happened. We tried that approach and it backfired. Dan you approved the deferral of improvements for Diamond K. We would be the 1<sup>st</sup> property having to install the improvements. Randall we approved 2 variances on Bulldog to defer the improvements. Both properties had several hardships specific to their property: safety,

powerlines, the bridge, slope. In addition, one of the properties should have had the improvements done when the PUD was developed, however, the builder did not make those improvements and the board saw it as an unreasonable hardship for 1 property to incur the burden solely when it would usually be shared among the entire PUD.

**Dan** our plans have been in for 3-4 months, we have bank financing, we just want to build our building. This could drag out for who knows how long. Lawyers and turning over 4-feet of property. If we can't get this variance we will not go through with the construction. No owner wants to turn over 4-feet of their property. We would be losing over 10,000 square feet of usable space. **Carter** did the Master Plan change? **Randall** the Master Plan was changed in February last year. You would be asking them to change back what they have already said they want to happen. The Council can grant these deferrals. We can't help him in the absence of having an unreasonable hardship. **Dorian** I think the body that makes the rules should also have to defer. **John** I agree. **Carter** I don't see any difference with your property compared to any other developer who doesn't want to make the improvements. Unfortunately, that's how the improvements are done, the City doesn't make improvements, every developer individually makes those improvements. **Dan** everyone on the East side must give up 10-feet of their property. Everyone on the West side must give up 4-feet. Bulldog is very flat, where is each individual property going to dump the water? It's not just a me issue. UDOT has built 4 buildings in the last few years and hasn't made any improvements. You have the power poles running down the East side of the road only a foot from the road. My tapers go 4-feet into the neighboring property. If the road is widened Diamond K's building will be in the setbacks. **Carter** Diamond K had already poured their foundation before coming to this board. **Janet** all the issues you just addressed need to go to the City Council. **Carter** if he does the improvements and his neighbors do not, where will the curb and gutter divert the water to? **Randall** sometimes the Council does not consider all the side effects when making a change. **John** City Council needs to figure out what they're doing. **Carter** as a taxpayer, I appreciate that the City requires the developer to bring the property to code instead of the City. It saves the taxpayers a lot of money. The other properties had safety issues that I just don't see with your property.

**Chad motions to reconsider. Second by Chris. John and Carter are in favor. Janet, Mark, and Dorian are opposed.**

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance: **Dan** my sidewalk would dead end into Western Rocks driveway. I would need to get variances to put in tapers. I would need to lease or buy the neighboring property to put the tapers in. **Randall** the City can't force him to purchase a neighboring property; and that property owner doesn't have to give it. If that is what you were told upstairs, It's unconstitutional to ask him to do that. The development must be on your property. **Carter** how does the taper work? **Randall** requiring tapering into the right-of-way is my guess. We can't require tapering onto another property without us taking that property. I'm not sure if you would taper, most just end at the property line. **Jonathan** I'm not sure where the property lines are. **Janet** if it is unconstitutional, how can we ask him to do it? **Carter** in my opinion that could be his hardship. His neighboring properties have not had to widened. If there is an issue with the tapering, **Mark** there is no procedure for this?

**Randall** the draining issue was brought up in the previous meeting by another applicant at the meeting. The arguments he's making today are the same things we discussed in the previous meeting. We can't require him to taper on their properties. I've seen tapering that begins and ends within the property lines. I showed this to the board, where there was no tapering, it just ended. **John** if we grant this variance can he begin construction? **Randall** yes. If we grant a variance for a period of time, he could build his building. What happens if the time runs out, but the improvements have not been made to the road? The City just changed the Master Plan, how likely are they to change their minds on the improvements? If we grant him this variance, how do we force the improvements later? We need to make sure he meets the 5 before we even think about granting a variance. **Dorian** this really needs to be addressed with the City Council. **Randall** if he expends money on the construction and the City rejects his project later, the City could be sued. We noticed a problem in the plans for Tim Watsons project, it wasn't past the period to make the changes and he had to make the changes. He was upset and threatened legal action. This board granted him a variance because the City caught it so late. Even though we caught it at the stage of the Ordinance where we are supposed to. If you grant this, it will be against the wishes of the Council.

**Dan** we have no problem with the expense or with the widening. **Randall** if the widening wasn't 75-feet and you didn't have to put in sidewalk you would be happy. Your hardship is the 75-foot road and the sidewalk. **Dan** yes. **John** if we allow him to build his building and the final decision is made on the road, what then? Does he tear down his building? **Randall** his building would be fine, his parking would be taken for the road and improvements. **Janet** what variance are you seeking? **Dan** I would like to begin construction and have time to get further direction from the City Council before making the improvements. **Janet** I still don't see the hardship. **Dan** the hardship is the tapering. **Janet** and we already addressed that you would not be forced to taper outside of your property lines. **Carter** without having the property information at hand, there may be a right-of-way at your property line already, and the taper will be in the right-of-way and won't take any additional property from you. **Dan** Western Rock has their driveway on my property. It's a dirt road with heavy construction equipment

coming and going. I would be tapering across their driveway to make the improvements. My sidewalk would dead end into their driveway. **Dorian** if they are encroaching on your property, they would need to move their road. **Randall** is there a reasonable alternative to granting a variance? Deferrals from the City Council can happen in 2 meetings. **Dorian** take it to the source. **Dan** the building is closer to the road than neighboring properties. And the tapering onto neighboring properties. Those properties would have to sign over the right-of-way to the City. **Randall** if the tapering is in the right-of-way nothing would need to be signed over, that's why it's the right-of-way. When you pull a permit to develop the City has the right under State and Federal Law to take that right-of-way, it's only your property being taken at that time. If your neighbors never develop their property, they will never have to make those improvements. **Dan** there is no right-of-way. **Jonathan** (exhibit 1) here's the right of way currently, **Dan's** correct it's 4-feet. This would be the new property line. The sidewalk is located 1-foot in front of the property line. A 5-foot sidewalk is required with a 75-foot road. Pavement starts right here, at 6 feet from the property line and the tapers come out this way. This would be the existing pavement here. This would be center line here. I think all the tapering would be in the City right-of-way. No property would need to be taken. Currently there is 66-feet of right-of-way. There is room for the road to be widened. The 4-feet would be dedicated from each property owner when they make improvements. It's such an old road I don't think the road was ever dedicated when it was put in. Changes to the Master Plan does not automatically dedicate the land.

**Dan** we lose the whole frontage of our property to the improvements. We would lose our parking in the front because we would be so close to the road and your can't back out on Bulldog Road. We are ok right now with the 66-foot road, but not with a 75-foot road. We would have to relocate the parking. **Randall** how does your lot compare with someone that came in and built a brand-new building? **Dan** if I could move my building back 5-feet I could keep 17 of my parking stalls upfront. **Randall** we could look at a variance of the curb, gutter, and sidewalk; or a variance of the landscape. You could get a variance of the landscaping; this board has granted a similar request. That would still allow for the road expansion, and you could keep your parking. **Carter** then you would just need to put in the curb, gutter, and sidewalk. Is it an unreasonable hardship for him to have to move his parking lot? Is there a potential safety issue dead ending a sidewalk into a driveway? **Randall** we have sidewalks through busy driveways throughout town. Anyone walking on Bulldog is risking their own lives to begin with. **Dan** my parking is safer as it is right now, I would be concerned about people trying to enter or exit the parking lot right next to Wester Rocks driveway. **Chris** with the sidewalk dumping pedestrians at Western Rocks driveway; that sounds dangerous. **Dorian** we cannot grant a variance off someone else's danger. **Randal** does anyone else agree with the hardship **Chris** has brought up. **John** it's an unfortunate hardship. **Dan** being the 1<sup>st</sup> one always sucks. **Carter** our job is to adhere to the 5 questions. We do not have any grey area. **Dan** when the people across the street find out they are going to have to give up 10-feet of their property, they're not going to be happy. **Carter** I don't understand the math, 4-feet from your side and 10-feet from across the road, for a 75-foot road? **Dan** the current center of the road is not actually in the center. The road will have to shift. **Carter** moving your parking lot is not unreasonable. We have asked people to move powerlines. When the road is finally improved, they will rip out everything he has done, correct? **Randall** that would be a City Council question. **Dan** when you add everything up, it's a significant hardship, financial or not, it's a hardship.

*Carter motions to deny the variance to defer the improvements. Second by Dorian. All in favor, unanimous decision.*

ADJOURN: The meeting adjourned at 6:35 p.m.



Natasha Nava  
Executive Assistant

