

Cedar City Board of Adjustments
Minutes
March 6th, 2023

The Cedar City Board of Adjustments held a meeting on Monday, March 6th, 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.

EXCUSED:

OTHERS PRESENT: Mike McCoy; Kirstin McCoy; Teresa Williams; Breanna Williams; Ralph Watson; Suzanne Watson; Hannah Pace; Katie Hanks; Jeremy Hanks; Jason Dodds.

1. **CALL TO ORDER:** Janet: welcomed everyone. Drew: led everyone in the Pledge of Allegiance.
2. **APPROVAL OF MINUTES:** No minutes to approve, it will be added to next month's agenda.
3. **APPROVAL OF FINDINGS OF FACT:** No Findings of Fact to approve, it will be added to next month's agenda.
4. **Request for Home Occupation (daycare) Business on property located at 226 North Highland Drive/ Adventure Awaits Daycare/ Teresa Williams & Brenna Williams:** Teresa me and my daughter Brenna would like to start an in-home daycare. (Exhibit 4-1 parking diagram; Fire inspection; Health Department Permit). I've made upgrades since the inspection. I put in pavers to meet the parking requirement, and I'm in the process of installing the fence. The weather has caused delays in completing the fence. Jason I live next door to Teresa. How many children do you plan to have? Teresa no more than 16 children. Drew how did you come up with that amount? Teresa per my home inspection with the City and State they identified 16 children. Drew per my math her legal limit would be 14 children. Your ground floor is 1,008, your basement is 1,008 putting you at 2,016. Divide that by 25%, you get 504. Divide that by 35%, you get 14.4, rounded down to 14 children including your own children. Her legal limit by our ordinance. Janet do you have any children of your own? Teresa yes Brenna has 2 children. Janet that would reduce the amount you are able to take in to 12. Randall per County Records the square footage is listed at 1,044 for each floor (Exhibit 4-2 County Parcel Records) we would round up to 15 children. Jason 15 children minus Brenna's 2 kids. Randall at any given time she can have 15 total children. Jason the other concern is parking. Drew they need 4 spots. They added 1 foot via pavers to the driveway to meet the requirement for parking. *Answer to question 10, Off-street parking will be provided.*

Ralph Watson I live at 233 Highland Drive, I disagree with what Drew has said. When I read the ordinance it reads, "Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation. Nursery schools and daycare centers may use up to twenty-five percent (25%) of the ground floor area and one other floor of the home. Nursery schools and day care centers need not designate a particular twenty-five percent (25%) of the two-floor area; however, the actual 25% of the two-floor area shall be utilized to calculate the maximum number of children allowed in the dwelling pursuant to Section 26-IX(E)(11)(b). Ground floor area is defined as the square footage computed in the outside measurements of the dwelling portion of the home on the ground floor level. Basement or basement level floor space shall not be used in computing ground floor area." Per the ordinance we are talking about the ground floor only, not the ground floor and the basement. Drew Nursery Schools and Daycares may use up to 25% of the ground floor and 1 other floor of the home. **Ralph** my interpretation of the ordinance is, if they do not use 25% of the ground floor, they can also use another floor of the home to make up the 25%. **Randall** the intent of the ordinance specifically regarding daycares, was to align our ordinance with the calculations the State uses to determine the max number of children at any one time.

Ralph I'm grateful of the right to own property and do with it what I see fit. However, when the use of my property interferes with the rights of my neighbors, therein lies the problem. Highland Park has been around since 1964 and has always been zoned R1. It's a great place to have and raise kids. "The objective in establishing the R-1 Residential Zone is to encourage the creation and maintenance of a residential environment within the City which is characterized by large lots (at least 10,000 square feet) on which single family dwellings are situated, surrounded by well-kept lawns, trees, and other plantings. A minimum of vehicular and pedestrian traffic and quiet residential conditions favorable to family living and the rearing of children shall also be characteristic of this zone. Representative of the uses within R-1 zone are one-family dwellings, parks, agriculture, playgrounds, schools, churches, and other community facilities designed in harmony with the characteristics of the zone. Boarding and lodging houses, two-family dwellings, triplexes, apartment houses and other multiple dwellings representative of higher density residential areas are strictly prohibited in this zone as are commercial and industrial uses and home occupations are strictly limited." SECTION 26-III-2. R-1 Residential Zone. From my understanding R1 is designed to raise families, with minimal traffic. A quiet residential area. Boarding and lodging are strictly prohibited. Daycare centers and boarding schools are very similar.

Apart from staying overnight, they are the same. Daycare centers are not allowed in R1 zone. Highland Drive is a 60-foot-wide street, we have a lot of cars parked on the street. When the kids are playing ball, the traffic is very bad on 375 North. The road is very narrow. With my experience as a Civil Engineer, along with the research I have done on this daycare, it would add 101 trips per day to the neighborhood. The 101 vehicles are broken down into peak times, mornings, and evenings. 7:30 a.m. and 5:30 p.m. You will have at least 16 coming and going at those times. Your ordinance has not addressed the stacking problem that occurs from dropping off and picking up. We have off-street parking for the residents. Where does the daycare traffic park? They double park in the road. The ballpark is a perfect example. That has happened many times to me. The same thing will happen if you allow this daycare. If you grant this home occupation you will change the character of this neighborhood. You will be starting the degradation of a neighborhood. (Exhibit 4-3 pictures of car parking and notes) As you can see from the pictures parking is a problem currently. We have contacted Code Enforcement, and nothing has been done. If you grant this application, it will be going against the spirit and nature of the R1 Zone you have written in your ordinance. We live in a Democracy, another word for a majority. We have 5 families here tonight that live on that street, and we don't like it, we don't want it and we hope you will recognize we who have lived there for a long time.

Carter we are asked a set of questions, our job is to determine if they check all the boxes. **Ralph** what do you expect us to do if they check all the boxes? **Ralph** if they check all the boxes, this is a done deal. The ordinance gives you discretion to say this is going to impact the quality and lifestyle of the people that live there. I'm asking you to take that into consideration. **Katie Hanks** I live across the street. I have concerns regarding the parking and traffic of the neighborhood. I have little kids and during the summer we already have increased traffic. It is not a very wide road. To add more on top of that is pretty slim pickings. It would create more danger for my kids that like to play in the front yard. We have a registered sex offender that lives up the street on the North end of Highland Drive and I don't know if that is considered regarding daycares. It's really a safety concern for me to have additional traffic on top of what we already experience. (Exhibit 4-4 letter Betty Stones) **Carter** Drew does our ordinance address Sex Offenders? **Drew** not that I'm aware of. **Randall** a registered Sex Offender is not permitted to live within 700 feet of a school. However, that does not apply the other way around. A Sex Offender would not prohibit a school or daycare from moving next to them. **Janet** in going through the questions; these questions are set by the City Council and if you do not agree with them you will need to go to City Council to have them changed.

1. The home occupation is conducted entirely within a dwelling and is carried on by members of the family residing in the dwelling. Employees other than family members residing in the dwelling are permitted as long as the following conditions are complied with: **Teresa** it would be 3 employees including me. **Janet** how does that factor into parking? **Randall** we factor in parking for up to 2 employees. We are not required to have additional parking past 2 employees. **Teresa** we would only have 2 employees at a time.
2. The home occupation does not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling not normally associated with residential use, except for Nursery Schools, in which case it is presumed that rear yard space is utilized, and the rear yard space must be completely fenced with at least a six-foot (6') high fence. **Teresa** the fence is not complete. With the layout of the yard, we are fencing in the area we want the kids to have access to. The fence is not going around the entire property. **Randall** in the past we have accepted for them to fence the area the children will be playing in. **Carter** if we approved it today it will be contingent upon the final inspection. **Drew** correct.
3. No commercial vehicles are used except one delivery truck which does not exceed one (1) ton capacity. **Teresa** correct.
4. The home occupation does not include a drive-through. **Teresa** correct.
5. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the building from that of a dwelling. **Teresa** correct.
6. Do you intend to have a sign? **Teresa** if I did have a sign, it would be the size of a wreath on the door. **Janet** if you decide you would like a sign please talk to **Drew**.
7. Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation. Nursery schools and daycare centers may use up to twenty-five percent (25%) of the ground floor area and one other floor of the home. Nursery schools and day care centers need not designate a particular twenty-five percent (25%) of the two-floor area; however, the actual 25% of the two-floor area shall be utilized to calculate the maximum number of children allowed in the dwelling pursuant to Section 26-IX(E)(11)(b). Ground floor area is defined as the square footage computed in the outside measurements of the dwelling portion of the home on the ground floor level. Basement or basement level floor space shall not be used in computing ground floor area. **Ralph** basement or basement level floor space shall not be

used in computing ground floor area. That means the basement cannot be factored into the calculation. **Randall** what this means is we are not to use a basement as ground floor area. With daycares they are allowed to use the ground floor and 1 additional floor. All other Home Occupations that are not daycares are not allowed to use the ground floor and basement in the calculation. **Dorian** the way that it is written is confusing. It reads as if the basement should not be factored into the calculation. **Randall** we are saying that you cannot consider the basement as the ground floor area. **Ralph** by my understanding that sentence says you cannot use the basement. **Randall** the basement cannot be considered as ground floor. Daycares can use the ground floor plus 1 additional floor. That additional floor can be a basement or any level other than the ground floor.

8. The home occupation shall apply for, receive, and maintain a Cedar City business license. **Teresa** yes.
9. The activities in connection with the home occupation are not contrary to the objectives and characteristics of the zone in which the home occupation is located. **Janet** this is defined in the ordinance set by the City Council. If you have any concerns, they need to be addressed to the City Council. **Ralph** it does make a difference to this neighborhood. This is why we object so strenuously.
10. Off-street parking will be provided. **See page 1 end of 1st paragraph.**
11. In addition to the above requirements, home occupations for Nursery Schools may be granted by the Board of Adjustments provided that the proposed Nursery School has: a. A maximum of sixteen children at any one time, including the occupant's own children; b. That the portion of the dwelling used for the Nursery School contains floor space of at least thirty-five (35) square foot per child and alternate door exits. **Janet** we have already answered this question.
12. The Building Inspector shall have conducted an on-site inspection and shall make a report of his findings to the Board of Adjustments. **Drew** the fence and the verification of the pavers is all that's needed.
13. Notice by the applicant shall be given to all property owners of record within a 300-foot radius from the boundary of the proposed home occupation. Said notice shall be sent certified mail or hand-delivered to the property owners in accordance with the most current Iron County Assessment Roll no later than five (5) days before the board of adjustments meeting. Proof of the certified mail and/or a certificate documenting hand delivery to property owners as required herein shall be delivered to the City Building Official prior to the board of adjustments meeting. **Randall** we received proof for each one.
14. The applicant certifies that the home occupation will not violate any CC&R's that regulate the dwelling. **Teresa** no CC&R's.

Dorian if we go through all the questions and the requirements are met, is the board required to approve the application? **Randall** if you determine it does not meet all the conditions you are required to deny the application. It's not discretionary. The major complaints are with question 5 and 9. If you feel the intended use is contrary to the zone you have the ability to decline the application. Or if you think the daycare changes the use from a residential use to primarily commercial use, you can decline the application. **Janet** we had an application similar to this where we had objections from the neighbors, and parking issues. **Randall** it was near the Temple, at the end of a temporary cul-de-sac. It was initially denied based on parking issues. She had been operating the daycare business without a license and without approval from the Board of Adjustments. The neighbor had photo evidence of the many parking violations that had occurred in conjunction with the daycare. Once they resolved the parking problem it was approved. Similar arguments were made regarding a daycare off Cross Hollows; they already had 2 daycares and a preschool, and another daycare was coming in. Another application downtown, this board approved it under the condition that the applicant must leave 1 open parking spot in the driveway for the daycare. You can set conditions of the approval if you feel it will mitigate concerns. **John** parking is a concern regarding what's already taking place in the neighborhood. Single Family Dwellings are in the ordinance; however, they're blatantly violated in that neighborhood. **Carter** our Single-Family Ordinance allows you to have up to 4 unrelated people living in any home. **John** we did not make the ordinance and we cannot set a precedence. **Jason** as an Engineer we use the phrase "never has been may" in your ordinance under the Board of Adjustments, it states you may grant home occupations. It's not shall; it is you may. So that leaves discretion to this board. May does not mean shall. May allows you to take into consideration what has been presented to you today. **Randall** this fits under a Conditional Use Permit. Regardless of may or shall, courts have been very strict. If the application meets the requirements, you are required to grant it. You are an appointed administrative body. You are not elected. You do not get discretion. Discretion can get you sued. If you cannot back up your answer with a reason that is discrimination. If you agree this is not incidental and secondary to the use of a dwelling for dwelling purposes. Or if you feel this is not appropriate in this zone, and here is my reason why. It's not discretion, it's your determination of the facts. You decide that it has or has not met the requirements. Courts will review if there is

substantial evidence to answer these questions. **Carter** I'm not a fan of businesses in an R1 Zone, however, when it comes to daycares I am. In the definition of R1 it references the rearing of children as an allowed use. What is the difference of rearing and raising? Animals are raised and humans are reared. Daycares would fall under the rearing of children to me. I have sent my own children to daycares and lived next door to a large daycare. I understand the parking and traffic concerns. However, that's what streets are made for, parking. Public streets are for public parking. **Teresa** I do not want to cause hardship to anyone. I want to do this the right way. I have met the State and City requirements. I have no intention of changing the appearance of the home. If anything, I'll make improvements to the outside. I will do my best in managing the parking. I'm not responsible for the current parking issues taking place in the neighborhood right now. I want to open this daycare, there is a huge need for childcare in Cedar. **Janet** does anyone see any difference in this daycare compared to the other daycares we have approved in the past? **Dorian** the fence is not in the parking has not been verified. **Janet** it would be approved under the contingency of those improvements being done. **Dorian** or just table it until they're done. **Randall** we have approved applications with similar contingencies. **Dorian** if you look at the daycare that SUU has on 300 West of 1100 West, it's ridiculous. The driving and parking at these locations is awful. **Janet** that would go through City Council for a change to the Parking Ordinance. **Dorian** so if she provides a parking spot, she's good. **Drew** she needs 4 total parking spots. **Dorian** and those spots are dedicated for the daycare, other people in the home are not able to park there? **Carter** the ordinance does not read that way. **Randall** the board can require that 1 spot be dedicated to the daycare. **Dorian** this would violate the R1 Zone. **Randall** looking at R1 Zoning, home occupations are limited they are not prohibited.

Dorian motions to deny the application; no second.

Carter motions to grant the home occupation daycare, contingent upon the final approval of the fence and driveway widening, second by Mark. Chad, John, Chris, and Janet in favor. Dorian opposed. Motion approved.

- 5. Request for Home Occupation (daycare) Business on property located at 2211 West Meadow Street/ Little Sharks Swim Academy/ Mike & Kirstin McCoy:** Mike in 2015 we opened Little Sharks Swim Academy. From 2015-2021 we rented pool space from the City, SUU, and anyone with a public pool. We closed during Covid, when we tried to reopen, we lost the ability to use any public pool in Cedar. We have explored a lot of options but are left with nothing. Per our insurance we can do this in our backyard legitimately. We would like to build a 30-foot by 30-foot building behind our home. Our neighbors have outbuildings, it is not uncommon. We would be installing a 15-foot by 17-foot endless current swimming pool. We would have absolute control of the temperature and noise; we do a lot of adaptive programs with kids that can't self-regulate their body temperature. These pools are made for swim training and coaching. Swimming against a current that you can control. You could even put a treadmill in for someone needing water therapy. The building has not been built yet; we were told from Staff that we needed the approval of this board in order to begin construction. Our neighbors are in support of what we're trying to do. (Exhibit 5-1) We are not considered a public pool by the Board of Health. **Janet** home occupations do not allow the use of an accessory building. **Randall** home occupation daycares do allow the use of accessory buildings. This board has allowed an applicant to use an accessory building, because the board believed the intended use was not outside of what's normally associated with residential use. Can you picture the use being something that would normally happen in a residential area. **Dorian** this is not just a pool, it's going to be a business. **Randall** it will be used for teaching swim lessons. **Carter** do we have any home occupations that currently teach swim lessons out of their home? **Randall** we had one off Fiddlers Canyon. We approved a home occupation for swim lessons at 75 South 300 West. **Janet** they already had the pool to my knowledge, they didn't need to build it. **John** is the variance for the building? **Randall** they have home occupation, home occupation/daycare, and variance checked. If you feel this meets the requirements for a home occupation/daycare we will start there. Their primary function is teaching children. If you do not feel it meets the requirements for a daycare, then we will look at a standard home occupation. Finally, if you do not feel it meets the standard home occupation, we will go through the variance questions. I do not suggest going the variance route, as you would be varying your own authority. It would be using a variance to give yourself more power to make a decision. **Janet** per the agenda, variance is not listed. **Natasha** I did not add the variance to the agenda by mistake. **Janet** how old are the children that will be coming for lessons? **Kirstin** per our insurance we can teach children from 6 months to adults. I plan on teaching ages 6 months to 3 years. And 6 years and younger. It's a learn to swim class so they can save themselves in the water. **Carter** if a high school aged kid wants to improve their stroke you wouldn't do that? **Kirstin** I can, but it's not what I intend to teach. **Carter** prior to 1st grade falls under daycare. **Randall** in a standard home occupation they are going to have a smaller space allowed compared to a home occupation/daycare which allows for more square footage to be used to calculate the max size of the building and number of children. **Janet** legally does this fit the definition of daycare? **Dorian** I don't see how this counts as the specialization and education of children. **John** narrow phases become big phases. **Kirstin** swimming is a skill that can take them throughout life. **Carter** are there parents that do not stay for the lesson? **Kirstin** parents must be present for the entire lesson for all ages. **Carter** it doesn't sound like daycare if the parents are there. There is still the

education component which I recognize. Because it reads and/or I can see this as a daycare. **Mark** think of it as piano lessons or music lessons. Would this have to be limited to kids 1st grade and younger? **Randall** we have never restricted it before. Think of your standard daycare, we have never asked the age of kids they intend to watch. If they intended to teach mostly adults, it would be a concern. **Mike** I wouldn't want to limit it to 1st grade. We do not intend to teach high school or adults. With the disabled kids we have taken, we have never asked their age. **Mark** the special needs population is a small group. **Mike** we also have home schooled children. **Randall** it says specializing in, if you feel this is specializing in the education of swimming to children, you're good to proceed. Making sure we have followed our own interpretation or tradition as in the past. If you think that they would be specializing in the age of older kids then you need to deny it.

1. The home occupation is conducted entirely within a dwelling and is carried on by members of the family residing in the dwelling. Employees other than family members residing in the dwelling are permitted as long as the following conditions are complied with: **Mike** just Kirstin.
2. The home occupation does not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling not normally associated with residential use, except for Nursery Schools, in which case it is presumed that rear yard space is utilized, and the rear yard space must be completely fenced with at least a six-foot (6') high fence. **Mike** we do have the yard completely fenced. **Dorian** but this is an income producing property. **Randall** a rental dwelling could be considered commercial use. **Janet** what zone are you in? **Mike** R1 I believe. Is an outbuilding considered typical use of the space for residential purposes? **Randall** it comes down to the use of the building, not the existence of the building. **Mark** having the swim school inside a building makes it less objectional to the neighbors. They're not even going to hear what is going on, even though that's allowed. **Randall** you have substantial evidence to go either way; home occupation or daycare. **Dorian** commercial does not belong in R1. **Carter** how many kids can you have in the pool at 1 time. **Mike** 4 kids per half hour. We've staggered it in the past so class isn't ending and starting at the same time. **Janet** what hours do you plan to teach? **Kirstin** I prefer mornings. I have a lot of moms that bring their kids throughout school hours. I've done 9:30-11:30, taken a break and started up again at 4:00. **Carter** I still don't see this as a residential use. I define residential use as eating, sleeping, and using the bathroom. **John** and the rearing of children. Is this not the rearing of children? **Janet** is everyone good with this question? All in approval except Dorian.
3. No commercial vehicles are used except one delivery truck which does not exceed one (1) ton capacity. **Mike** no.
4. The home occupation does not include a drive-through. **Mike** no.
5. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the building from that of a dwelling. **Dorian** I don't know how you can say this doesn't change use. **Janet** any other objections on this question? **Chad** I'm good with it. **Janet** everyone other than Dorian agrees. **John** in my eyes the property is part of the dwelling. I don't just reside in the dwelling; I dwell in the yard and property.
6. Do you intend to have a sign? **Mike** no.
7. Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation. Nursery schools and daycare centers may use up to twenty-five percent (25%) of the ground floor area and one other floor of the home. Nursery schools and day care centers need not designate a particular twenty-five percent (25%) of the two-floor area; however, the actual 25% of the two-floor area shall be utilized to calculate the maximum number of children allowed in the dwelling pursuant to Section 26-IX(E)(11)(b). Ground floor area is defined as the square footage computed in the outside measurements of the dwelling portion of the home on the ground floor level. Basement or basement level floor space shall not be used in computing ground floor area. **Drew** 13 is the max number of children they can have including their own children. **Dorian** we're calculating the dwelling, even though their business will not be conducted inside the dwelling, they would always be outside. **Randall** with daycares the kids are outside majority of the time. **Carter** if we used the area of the outbuilding, they would be able to have 6 kids. **Janet** that speaks to the capacity.
8. The home occupation shall apply for, receive, and maintain a Cedar City business license. **Mike** yes.
9. The activities in connection with the home occupation are not contrary to the objectives and characteristics of the zone in which the home occupation is located. **Dorian** I believe it does conflict, R1's are not intended to have businesses. **Janet** the majority are in approval.

10. Off-street parking will be provided. **Drew** they need 4, they have 6. They are good.
11. In addition to the above requirements, home occupations for Nursery Schools may be granted by the Board of Adjustments provided that the proposed Nursery School has: a. A maximum of sixteen children at any one time, including the occupant's own children; b. That the portion of the dwelling used for the Nursery School contains floor space of at least thirty-five (35) square foot per child and alternate door exits. **Randall** they do not have to designate a certain area of the home for the daycare. This is purely to determine the number of children. **Dorian** it just doesn't fit. Does anyone else live in R1? **John** a girls group home is moving in next to me, am I happy with it? No. That becomes a traffic issue. Why doesn't law enforcement enforce that? This is not our purview. **Dorian** we have the ability to make an exception.
12. The Building Inspector shall have conducted an on-site inspection and shall make a report of his findings to the Board of Adjustments. **Randall** we have had applications where the construction is not complete and the board has approved the application with contingencies. For example, they wanted to use a different type of fencing. We have approved without it being finished. **Drew** we will have a building permit tied to this application.
13. Notice by the applicant shall be given to all property owners of record within a 300-foot radius from the boundary of the proposed home occupation. Said notice shall be sent certified mail or hand-delivered to the property owners in accordance with the most current Iron County Assessment Roll no later than five (5) days before the board of adjustments meeting. Proof of the certified mail and/or a certificate documenting hand delivery to property owners as required herein shall be delivered to the City Building Official prior to the board of adjustments meeting. **Randall** yes. **Mike** No objections everyone was supportive.
14. The applicant certifies that the home occupation will not violate any CC&R's that regulate the dwelling. **Mike** no CC&R's **Dorian** we talked about parking, this situation is a little different as the parents will be staying not just dropping kids off. **Janet** they have 6 parking stalls. They plan on having no more than 4 kids at a time, the parking sounds adequate. **Kirstin** our goal, if this is approved is to pave the front of our home to be parking. **Randall** we have rules regarding minimum parking, we do not have rules adding additional parking. **Carter** you have 6 parking spots, could you get up to 8 off-street parking spots? **Kirstin** yes.

John motions to approve the home occupation contingent upon the Building Permit and 1 designated off-street hard surface parking spot per concurrent child in addition to the parking for the home. Second by Chad. All in favor unanimous decision.

ADJOURN: The meeting adjourned at 7:39 p.m.



Natasha Nava
Executive Assistant