

Cedar City Board of Adjustments Minutes
May 4th, 2020

The Cedar City Board of Adjustments held an electronic meeting via Zoom on Monday, May 4th, 2020 at 5:15 p.m. in the Administration Conference Room, 10 North Main Street, Cedar City, Utah

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

EXCUSED: John Ashby

OTHERS PRESENT: Dallas Buckner, Ashley Fabila, Misty Anderson, Ryan Anderson, Teresa McDonald, Mark McDonald

CALL TO ORDER: Ann welcomed everyone and called the meeting to order.

APPROVAL OF MINUTES: Ann: Did anyone else have any changes or concerns with the minutes from our last meeting in March? Could I get someone to approve those minutes?

- Janet motions to approve March minutes; Phil seconds; all in favor for unanimous decision.

APPROVAL OF FINDINGS OF FACT: Ann: We had 2 Findings of Fact from our March meeting. Did anyone have concerns over those? Could I get someone to approve the Finding of Facts from our March meeting?

***Phil motions to approve Findings of Fact; Roger seconds; all in favor for unanimous decision.**

REQUEST FOR ADMINISTRATIVE APPEAL/SPECIAL EXCEPTION/VARIANCE/CONDITIONAL USE APPEAL/NON-CONFORMING USE FOR BUSINESS LOCATED AT 151 S. MAIN ST./IRON AXE LLC/RYAN ANDERSON & JEFF BARNEY -

Ann: Who's there with you? **Ryan Anderson:** Me and my wife, Misty. Jeff and Jason are not here yet. **Ann:** Give a little reminder of what you're trying to do. **Misty:** We're working on the parking situation. We have a small amount of parking, but it's limited and we're trying to adjust and work this out to get the business license secured. We've talked to Justin Stein, our architect. He's done a parking calculation for us, which is what you asked for last time. We need 19 spaces, and we currently have 18 if we're counting some garage spaces. Altogether, with Iron Axe and Soul Fitness in the back, it's a combined 21 spaces total. According to ordinance 26-V-7, 50% of daytime parking can count as nighttime parking. If Iron Axe borrows from Soul Fitness, we need 19 total. He suggested for us to come to you to seek an adjustment that would allow 50% of nighttime parking count towards our daytime parking, which will allow us the 16 spaces we have now. **Ann:** We've been back and forth on this. Do the board members have any questions? **Joe:** Does Soul Fitness require parking? **Misty:** There's 5 parking spaces required for Soul Fitness. **Joe:** I didn't remember hearing that last time. Iron Axe required spaces are 16 and Soul Fitness is 5. **Ann:** Is your business mostly evenings? **Misty:** Yes. **Ann:** And Soul Fitness is mostly during the day? **Misty:** A majority is during the day but a few things in the evenings. What do you consider evenings?

Randall: I don't think it defines that. **Drew:** I haven't done one of these before where we've gone 50/50 day to night and night to day. It's new terrain for me. **Randall:** 50% of parking facilities used primarily for daytime use shall be available for nighttime use provided the parking area is contiguous with the owner's properties and there are recorded covenants between the owners allowing such

use of the parking facilities. It only goes one way as it's written. When you talk about it with our purposes, normal business hours, 8-5, that would be the nighttime. That's how they do it in multipurpose areas of the cities. Primarily is not defined in any way that I know of. You're looking for something at the minimum would be a majority of it. As a board, you get to help interpret ordinances. If you feel it needs to be more than 50% plus 1, that's the minimum level. You could do that if you felt that way was to meet the purpose of the ordinance. I don't know how to reverse that. The goal might be legal, I don't know if the method is. You have the ability to vary parking requirements if it meets the requirements for a variance. You can't take a specific ordinance and reverse it. If you think they meet the requirements of variance, you can do that through the terms of a variance. **Misty:** Soul Fitness is about 70% daytime use and 30% evenings. **Randall:** Is Iron Axe all evenings and weekends? **Misty:** It is all evenings. **Roger:** When you say evenings in terms of your business, what does that mean to you and for Soul Fitness? **Misty:** Iron Axe opens at 5:00 p.m. every day until 11:00 p.m. or midnight. Soul Fitness starts at 6:00 a.m. They have morning and kids classes up until 5:00 p.m. Then, they have 3-5 7:00 p.m. classes. **Ann:** There's a little overlapping there. **Drew:** Of those 19 proposed spots, are all those hard surface or are we back to trying to use the dirt area as well? **Misty:** If you look at the plan, there's 16 spots and the garage with 2 bays makes it 18. That's all hard surface right now. We are 4-ft. short of another parallel parking. **Drew:** On the proposed 3 through 10 spots, what dimensions do you have? Do you know how wide and how deep they are? **Misty:** 9-ft. wide by 20-ft. **Randall:** Is the entrance on the west wide or south side? **Misty:** The Main Street side. **Randall:** What's the separation between parking spot #10 and the building with the 2-bay garages? **Misty:** There's about 6-ft. If we were to use the bay spots, that would be employees only. **Randall:** What's the minimum we require? **Drew:** Are you talking about the parking space or the fire department access? Parking space minimum 9'x18'. **Randall:** Access to that garage. Depending on where the entrance is, they'll have to have access back here. **Drew:** It's 12-ft. on a 1-way and 24-ft. on a 2-way, backing up into those spots there. **Randall:** That can create an issue for spots there. **Drew:** Don brought up a good point. If it's employees only, it changes the game a bit. We would assume 9 and 10 would be out, so the 17 and 18 employees only spots could utilize the turnaround access space that's over 24'. In that case it would work. **Randall:** It would work without losing either 9 or 10 or just losing 10? **Drew:** I think the differentiation on my end is employee. It won't work as a public space, because 17 and 18 are going to back right into 9 and 10. If you use it just as employee, perhaps we could consider it. **Phil:** If doing that would work for him, let's do that. **Randall:** If you look at their measurements, if you don't give the 50% parking calculated would be 21. If you follow the ordinance and think they meet the primary use, then they're at 19. They're still off by one. They're still hoping for a variance from the board in hopes to grant that. They talked to neighboring business and they didn't have a problem with them being used, they just didn't want to put it in writing. **Misty:** Yes, based on insurance issues, but they said we could use the parking space. **Randall:** That's the answer I got from Pizza Factory as well. They were happier that you would be taking up less space than the previous business, where customers would drop stuff off and block the entrance. **Ann:** So, you're saying they should go this route vs. the 50/50. **Randall:** I don't know what would give you the authority to swap 50/50, but you could accept it as it is, get them to 19 and decide if they meet the requirements for a variance on the other one. Another way is you have specific authority on parking itself. They marked everything they could think of on their application. Variance is the normal route to go. There's a parking one if we need to go into the variance.

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. - **Phil:** I would say true to that. **Ann:** Can you give me more? What are you thinking? **Phil:** The way I understand it is if following the ordinance would cause undue hardship, we could give

the variance for one spot. They have permission, not written, it's very close to what they have, then if both neighbors are willing, if they follow ordinance it won't allow it. That's how I interpret it. **Ann:** What's the unreasonable hardship? **Phil:** It wouldn't allow them to get their business license. They couldn't function. Legally, the business couldn't be there. **Ann:** How does the board feel? **Janet:** The unreasonable hardship can't be financial, right Randall? **Randall:** Correct. **Janet:** We need something not financial. Some special circumstance associated with this property. **Ann:** Can it be that they're surrounded by parking spaces? There are a few available, just not designated to this business. We have word that it's ok, not in writing. **Roger:** As it was built and has been used for the past years, really had insufficient parking for the existing business and that can't get kicked down the road to Iron Axe. They did change the occupancy or the use of the building, which is making us reevaluate the parking. We can't say it's truly grandfathered in. The hardship they have is the inherent parking challenges of a very old building that is landlocked and there is no way to expand parking. **Ann:** I agree. **Randall:** The property we're dealing with is bizarrely shaped. It goes over the property line. Previous owners were more liberal where they put things. How far off this is used and half of the building is on the line of the lot. This board has already granted a variance on this property for access through to the other street on 100 E. Back in 2003. The previous users were just getting started. Anything about this layout that is considered to this property. We want to be careful on the parking all around it. The wording is "it's located on or associated on the property". A circumstance peculiar to the property. Whether it's unreasonable or if you go with the purpose of the zoning ordinance it's going against. **Janet:** Could the unreasonable hardship be the building that straddles the property line? **Ann:** Or even that they may not ever have enough parking. **<Unintelligible>** **Ann:** It's long and narrow. Thoughts? **Janet:** It's going to have to be something very unique. Otherwise this precedent can be used by any business not having enough parking. **Phil:** One thing unique is that there are at least 20 stalls on either side of it that are vacant, and the owners are ok. It's not in writing, just for the insurance. They have permission, just not in writing. There's ample parking on each side of the property. **Janet:** Randall read the ordinance that said the parking has to be on the property. **Phil:** Could we count that as the unique situation? Roger said just the condition of the property has never had ample parking for what they did. Could we use that? **Randall:** The thickest part of the Iron Axe building is only access, not for parking. You have parking in the front, then you have the other 8, 2 more and the remainder. You can't back out on main street. **Ann:** There's a wall there. **Randall:** I'm guessing they measured and made sure there wasn't room for adequate parking. It's not that big of a space. **Janet:** How many spots are we short? **Misty:** During the daytime it's 1 spot we're short. **Janet:** You could designate a couple as employee only, then that would qualify, right Drew? **Drew:** That's part of the original calculation, assuming those 2 will be used for employee parking. **Misty:** How do you designate from employee? Do you remove it from the count? **Ryan:** For what I understand, that's correct. You have the 2 in the garage used exclusively for employee parking which frees up 9 and 10 to be used by patrons and by the time the business is closed and employees are leaving, there won't be anyone in those parking spaces. Patrons 17 and 18 will be able to back out. That's what we we're talking about. Assuming we can use 17 and 18 we're still one short. **Phil:** Is there one parking spot along the back street? 100 E.? Isn't there a parking spot by the building? **Drew:** The tough thing is it's going to say, "off street". We're going to run into a snag if we start allowing "on-street" instead of off-street" what the ordinance is specifying. **Phil:** Is that a designated parking area? Isn't there a parking strip allowed through there? **Drew:** Where are you referring to? **Phil:** Just on the East side of the building where it butts up against the road. If you took both property lines and continued

straight out in between the 2 property lines, isn't there parking for that location? **Randall:** Are you talking about this area behind where a lot of vehicles are there? **Phil:** On the East side. **Drew:** Isn't the public way the wider section of sidewalk near the lot? **Randall:** A little bit is technically part of that property. **Phil:** The cars aren't part of this property, right? **Randall:** There's a little bit that's technically part of the property. There's dirt back there. **Phil:** Is that part of the property? **Misty:** Half of it is. **Phil:** I don't know what you're parking there now, but isn't there a possibility to get at least one parking spot out of there someplace? **Ryan:** It's not hardpacked. **Phil:** It wouldn't have to be paved. You could oil it and call it good. It acts like a temporary asphalt. **Drew:** Would Rotomill work there? **Phil:** Yes, it would. **Ann:** Could they do just 1 spot? **Phil:** It looks to me they could put something there for 1 or 2 spots and solve their parking problem. It could be a few hundred dollars. **Drew:** We'd have to watch access through that whole aisle there if we're going to do that to negate one of those spots. **Phil:** We may have to meet on site to look at that, but there could be a possibility there. **Ann:** This is all of theirs, right? **Randall:** From the parking calculations they sent us, you have a little more space along back, but it's dirt. You could put it in. As we require some home occupations and such, they could have the same parallel and convert a few into angle or perpendicular parking to add a few more spots in that process. **Phil:** They could add a few more if they did angle parking. **Randall:** They'd have to add some asphalt, cement or brick pavers to make the requirements for our parking, right Drew? **Drew:** That's what the ordinance says, but we've talked about Rotomill before. Can you explain that Phil? **Phil:** They take the freeway, grind up the asphalt real fine, lay it back down, water it, roll it, and it becomes packed like asphalt would be. It stays clean and there's places all over that have that. **Misty:** Would that pass for paved? **Ann:** Yes, and you'd only have to do it for 1 or 2 parking spots. **Randall:** Not the full spot, because you have 9 ft. for parallel parking and do another 10 feet in to finish those off to get the correct number of parking spots. **Ann:** How do you feel about that? **Ryan:** We would prefer to do that. We had assumed we couldn't park anything there if it's dirt. We didn't know about the less expensive options than paving. **Ann:** And not the whole thing, just enough to get the extra parking spots. **Misty:** Could we double up parking? In between the garage and Soul Fitness? Is there any allowance? **Drew:** Are you saying at the 24' 7, just above 9 and 10, and double park something there? **Ryan:** Like employee only that we did on the other. **Randall:** Don worked on the ordinance. He may want to jump in on that. **Don:** Typically, you don't see tandem for commercial. I don't know legally this could be a condition that it would be used for employees only. **Phil:** Do you have to back out or can you drive forward to get out? **Drew:** It's one way in and you'd have to back out. 24' is key because it's wide enough. You could get 2 in there. **Phil:** They'd have to be designated as employee only or they could get blocked in. **Drew:** If we use the garage, 17 & 18 are employee and the other space next to Soul Fitness. It could be potentially 4 employee parking spots. **Phil:** Does that bring you enough or not? **Ryan:** If we could get those 2 above 9 and 10 and sharing daytime vs. evening, it would put us at 20. **Janet:** How would you access that parking? It's blocked by 9 and 10. **Phil:** We'd have it fixed if they fix it on the east side if they made 1 or 2 improvements there. Wouldn't that be sufficient? **Janet:** I think so. They just need 1 more parking space. **Phil:** If the employees wanted to park back there. I don't know that we need to designate. If we make 1 or 2 more spots and put some pavement or concrete, they're up and running. **Randall:** The board is assuming that we're giving them the 19 parking spots, letting them share 2 of Soul Fitness' parking spots and accepting the daytime/nighttime shared parking. **Ann:** Is everyone ok with that? **Phil:** He's talking about the 50/50 split. I would be fine with that. **Ann:** We need to know that before we move on.

Janet: I don't see any problem with it if it's in the code. **Jill:** I think it could work. **Joe:** I'm ok with that. **Randall:** Drew, do you have any reason to not agree with that? **Drew:** The count itself? I don't take exception to the parking calculation number. **Ann:** Let's figure out a way to get them to 20. **<Unintelligible>** **Ann:** Let's doublecheck. We're feeling like they should put another parking spot where 11,12,13 is. **Janet:** And pave with Rotomill. **Ann:** They have some options there of what to put on there as long as it's hard surface. Do we need to make a motion? We're not granting a variance, or are we? **Randall:** The standard is an unreasonable hardship if you don't grant it. If you think it's reasonable to add in 1 more parking spot, then it's not reasonable. You could deny it or table it. There may be something that prevents them from laying down Rotomill. **Phil:** I don't think we should do that. They'll be able to do that. **Randall:** I expect they will. It looks flat. You probably won't need more than 9' extra, because you'll be perpendicular instead of parallel. You should be able to pave one more spot that allows them to go in a different direction. You could deny and say there's a reasonable alternative if the board wants to vote on it. **Ann:** We don't need to make that with the 50/50. **Randall:** As long as Drew is speaking on behalf of staff is ok with that interpretation, you don't need a finding. But, Drew, do you want them to give you a finding? **Drew:** What do you think staff? **Randall:** If you were making a staff interpretation, that's how I read it. It starts with you upstairs and if you view that as I do, they are showing they are primarily daytime and nighttime, those 2 spots can be shared. If you agree on that, the board doesn't need to make a finding on that. If you're not confident, we can have the board vote and give you cover. **Drew:** Let's see what they say. **Janet:** It sounds like it could be approved administratively by Drew because it's in the ordinance. **Ann:** I agree. **Phil:** if we do that, we don't need to really do anything. Just tell them to fix the parking lot not. They don't need a variance then they'd be good to go, wouldn't they? **Ann:** We could deny their application because they don't need anything from us. They just need to add in that parking spot, then they're in accordance to the ordinance. **Phil:** That's how I see it. **Ann:** Is everyone ok with that decision? **Janet:** Yes. **Phil:** Yes. **Roger:** Yes. **Jill:** Yes. **Ann:** I need someone to make a motion to deny their application, and someone to second.

Phil motions that the application be denied for availability of parking. Jill seconds. All in favor for unanimous decision.

Ann: Do you understand what just happened? **Misty:** We need to add in at least one extra space and knock out a few of those. **Randall:** Anything that's hard surface, asphalt, cement, brick pavers, and Rotomill would fall under asphalt. **Ann:** You just need one more spot and you're ready to go. **Drew:** You may be well served to get us a revised plan so we can make sure those dimensions work and we're all on the same page. **Ryan:** As far as that revised plan goes would that be ok to take the existing plan and put those one or two parking spots right there above 11? **Drew:** Show the dimensions and we'll work with you guys.

REQUEST FOR OTHER HOME OCCUPATION FOR DOG GROOMING BUSINESS LOCATED AT 3914 WEST 50 SOUTH/JACQUELINE SLACK - Ms. Slack did not join the meeting; **Randall:** I emailed the home occupation ones and made sure they got the link. This one has not responded. I would suggest to the board to table this one.

REQUEST FOR OTHER HOME OCCUPATION FOR YOGA/SKINCARE/ESSENTIAL OILS BUSINESS LOCATED AT 632 S. 2475 W./TERESA ESSENTIALS LLC/MARK MCDONNELL & TERESA MCDONNELL

Ann: Give us an overview of what your business is. **Mark:** It's essential oils and skin care products, like lotions. **Teresa:** We do internet sales and do some consultations for health, beauty, and yoga sessions by appointment only. **Ann:** We have questions we need to go through to make sure everything is in order and we'll let the board ask some questions if they need to. **Janet:** How many people can be in there shopping at any one time? **Teresa:** It's not retail or a store front. **Ann:** Most of their business is done online and by appointment only. **Mark:** People order online, we mix the product and send it out. **Joe:** Is the yoga a part of this? **Teresa:** We do yoga sessions by appointment only. **Phil:** How many people in a yoga session? **Teresa:** 1-3.

1. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling. **Mark:** Correct. **Ann:** Are you planning on having any employees? **Teresa:** No.
2. Notice by the applicant shall be given to all property owners of record within a 300-ft. radius from the boundary of the proposed home occupation. **Ann:** Did they get all their notifications? **Randall:** They did.
3. The home occupation does not involve the use of any accessory buildings. **Mark:** No.
4. No commercial vehicles are used except one delivery truck which does not exceed a 1-ton capacity. **Mark:** No.
5. The home occupation does not include a drive through. **Mark:** No.
6. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes. **Mark:** Yes.
7. Do you intend to have a sign for the business? **Teresa:** We had thought about it and when the inspector came, we told her yes, but we decided not to do that. **Ann:** If you do change your mind there's some specific sizes so keep that in mind.
8. Not more than the equivalent of 25% of the ground floor area of the dwelling is devoted to the home occupation. **Drew:** We've been to the home. Ground floor area approx. 2,300 sq. ft., 25% would be 575 ft. Their proposed area of usage 170 ft. They're well within their parameters.
9. The home occupation shall apply for, receive, and maintain a City business license. **Teresa:** Yes.
10. 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. **Mark:** No.
11. Off-street parking will be provided. **Ann:** Drew, do they have enough parking? **Drew:** They do. We figured it at 3 for need, 2 in the garage and 3 in the driveway, so they exceed. **Janet:** Is that enough if they have a yoga class of 3? **Drew:** The closest thing we found was more a drug store type use. We look at the ordinance and figure out what is the closest use. Drug

store would be 3 total. I didn't do it for a combined occupancy. I'd have to take a look at that. **Janet:** Wouldn't you use more of an education format for the yoga class? **Phil:** If they limit that to 3. **Randall:** We talked about comparing it to other ones, like dance/karate studios. Didn't we do that with Soul Fitness? **Drew:** Yes, we did. For dance/karate studios, it's 1 space for every 350-sq. ft. of floor area. Even if we were to add that 1 space with 4 total required, they have 5. **Ann:** You meet all the requirements. **Joe:** Sounds like they're ready to go. **Ann:** Can I get someone to make a motion?

Joe motions to grant the home occupation permit for Teresa and Mark McDonald. Roger seconds. All in favor for unanimous decision.

Ann: Make sure you get your business license and good luck.

REQUEST FOR OTHER HOME OCCUPATION FOR NAIL SALON BUSINESS LOCATED AT 93 N. 4000

W./NAILS BY ASHLEY/ASHLEY FABILA - Ann: Just give us a little overview of what your business is going to be. **Ashley:** It's just an in-home nail salon. **Ann:** We'll do the questions and see if you meet all the requirements.

1. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling. **Ashley:** Yes. **Ann:** Are you going to have any employees? **Ashley:** No.
2. Notice by the applicant shall be given to all property owners of record within a 300-ft. radius from the boundary of the proposed home occupation. **Ann:** Did you notify all your neighbors? **Ashley:** Yes, I did. **Ann:** Is that correct, Randall? **Randall:** Yes, she did. We had to get an email from the school district, but we got them all.
3. Off-street parking will be provided. **Drew:** We figured that out as a beauty salon, 3.5 total and she has 1 in the garage and 3 off-street in the driveway. She's good there.
4. The home occupation does not involve the use of any accessory buildings. **Ashley:** No.
5. No commercial vehicles are used except one delivery truck which does not exceed a 1-ton capacity. **Ashley:** No.
6. The home occupation does not include a drive through. **Ashley:** No.
7. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes. **Ashley:** Yes.
8. Do you intend to have a sign for the business? **Ashley:** No.
9. Not more than the equivalent of 25% of the ground floor area of the dwelling is devoted to the home occupation. **Drew:** We were on site and it was approx. 1,700-sq. ft. on the ground floor, which would allow 425. She's using approx. 120. She's well within the limitations.

10. The home occupation shall apply for, receive, and maintain a City business license. **Ashley:** I already have one.

11. 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. **Ashley:** No. **Ann:** Do any of the board members have questions? Can I get someone to make a motion?

Janet motions to approve the home occupation for the nail salon; Joe seconds; all in favor for a unanimous decision.

Ashley: Will they update my business address, or do I need to do anything? **Randall:** Talk to Renon and make sure she has the business license with that address.

REQUEST FOR VARIANCE/ZONING MAP INTERPRETATION ON PARCEL ZONED RE-RESIDENTIAL ESTATES LOCATED AT 4223 W. 1600 N. LOT 8/GOCIVIL ENGINEERING/DALLAS BUCKNER –

Dallas: Originally, we had proposed to do a zone change. It's currently NX transition. It was a package deal; 2 parcels, 2 separate owners. It was brought to my attention that the parcel that is E-W oriented was going along for the ride to help out Dillon Nelson, who is the N-S oriented that fronts along 1600. The reason we came to BOA was to try to get the RE zone for just Dillon's piece, which is the piece that fronts the N-S oriented one. In the zoning ordinance it says the minimum acre size for the RE parcel is 10 acres, but the density is 2-units per acre. You could have lots as small as a half-acre. The thing that makes this unique is it's lot 8 of a subdivision and every parcel to the East and West de-annexed back into County. This piece is a peninsula that hooks on. There's another piece to the North, across 1600, but the RE zone fits with the County standards for the adjacent lots. It's a 5-acre parcel with bigger lot sizes, borrow ditches, and with it being zoned annex transition, nothing can be done on the parcel until we establish the zone. The normal zones, R-1, R-2, R-3, don't fit with what he wants to do on his parcel. That's why we're requesting a variance to allow this (1) 5-acre parcel to be zoned RE, since it's not 10 acres or greater. **Randall:** There's some Utah case law that goes into the authority of the BOA of what they can and cannot grant. One thing they look to if they can't if there's something unique to a particular zone and the person doesn't meet the one unique thing, it's not within the board's authority to grant it. The case that I'm thinking of it talked about the zone required that a lot be 7,000 ft. and they only had 6,000. The board denied it. They appealed it to the Supreme Court and the Supreme Court said that's one of the distinctions is the density of a zone vs. another one. They specifically said that the BOA could not have authority when that's the primary difference that's there. The struggle is whether or not we can even address that issue at all. If they combined them, they'd have enough acreage to change to zone. In Equestrian Pointe, green is the zone they're aiming for. The blue is R-1. Equestrian Point has a little of both. The main difference is the amount of use. The green still allows some limited livestock. Blue R-3 does not. I struggle with whether you have the authority to grant it, even if you think it meets the 5. **Ann:** Does he need to go to zoning committee? **Randall:** Yes. He would have to continue with combining those 2 lots or go to the planning commission and council to change the zoning ordinance to allow areas less than 10 acres to be zoned RE. **Ann:** How are we feeling? **Phil:** Is this an island inside the County? **Randall:** Based on the zoning map yes. **Phil:** The County might have a bit of an issue with this also. **Randall:** They may have an opinion on it. My guess is they like the size they are now. I don't think they'd have an issue with the zone change as much as they'd have an issue with the subdivision. If they change to R-1, which we allow in that area it would allow higher density than RE would. That's just a guess. **Phil:** They probably should go to the planning and zoning at the County, I think. **Janet:** I agree. We don't have jurisdiction over County property, do we? **Randall:** No. The

— one he's here on is ours and the one he was thinking of combining with is also within the City. **Phil:** They're already in the City zone. **Randall:** Yes. These were annexed in initially and there were quite a few portions that were about 130 acres. Many de-annexed afterwards. It left them as an island by not de-annexing and others did. **Janet:** I think we should defer to Randall's legal opinion that we don't have authority to approve this. **Roger:** I agree. Based on the example Randall brought up, it's fairly cut and dry. **Phil:** I would agree with what Roger said. **Dallas:** As far as the case you're referring to, if you read through the RE zone, is that just 1 component of the requirements like lot/width or density? Because in the City ordinance, the 10-acres is mentioned in the objectives and characteristics. As far as the requirements for the zone, we can meet all of those with a 5-acre parcel. If the density of the zone is 2 units/acre and we're talking about a 5-acre parcel, the way it's written, I would think a 10-acre parcel being zoned is more of a development side. They're not going to allow them to do subdivisions 10-acres or less for RE. Where this is part of a subdivided lot, it's the only lot in that entire subdivision that's in the City. **Randall:** This situation did not come up in the other 2 cases. They're looking towards size of lots. Part of the language they use essentially what makes the zone unique. I wasn't here when they decided the RE zone should exist. They want you to avoid spot zoning and make sure you don't have a situation where there are 3 different zones in quick succession. That's the primary purpose. If they create a RE zone, they're not putting lots with livestock by ones that don't. The goal is transitioning to less rural and more urban so there's not so much overlap. We don't want to allow them to override an ordinance because they need more acreage. That's up to you and there's no way around that. The board doesn't have to agree with me. **Dallas:** With it being an island surrounded by the County, no matter what you zone it it's going to be a spot zone. As far as the objectives and characteristics of a RE zone, that's the closest to what the County's is. A lot of those 5-acre parcels are built per County standards. If we come back and say we now want to pursue an R-1, R-2, R-3 zone, you're going to have 12 lots in a subdivision. 11 of those lots have the livestock that a 5-acre piece would have, borrow ditches in the frontage. You'll have this one piece in the middle of the subdivision that is going to have to have curb/gutter/sidewalk and not allowed to have any animals outside what the R-1 is. And for me looking at this is it a spot zone? It looks like zoning this to RE to is the closest zone to what the County has with the same allowed uses. **Phil:** What does the RE zone allow? What are you looking for? **Dallas:** The plans for the parcel is to build SFH, potentially a shop. The permitted uses within the RE zone allows 2 large animals per lot, one additional animal for every 10,000 sq. ft. over 1-acre, not more than 20 chickens. It's more rural. There's no curb/gutter/sidewalk on the frontage, it allows more animals density than the R-1 and density wise, you can mix and match. You can have a RE zone and make a subdivision with 5-acre parcels, and then 10,000 sq. ft. You just can't exceed that density. As far as permitted uses and zoning requirements with that lot size, we're well above it. The only hang up is in the objectives and characteristic it talks about are what the RE zone is that the minimum lot that can be zoned is 10-acres. We meet all the criteria of the zone. **Phil:** Are you trying to do the 2 lots or just the 1? **Dallas:** We'd like to just do the one. The other 5-acre piece that's East-West oriented, that's a friend of Dillon Nelson's. He doesn't have any plans to develop it and doesn't want to do a zone and be locked in. I think he'd like the NPD zone. **Phil:** What if you take it back to the County and take it out of the City? **Dallas:** I don't know that he can because it would create an island for the parcel to the north. And his dad, Preston Nelson, does not want him to de-annex that parcel. I talked with Reid Erickson and they don't want us to create island. **Phil:** It's an island now isn't it? **Dallas:** It's loosely connected with annexed transition and NPD. Everyone in that 12-lot subdivision de-annexed, but there's an island of loose connected zones that don't conform. Really, nothing can be done with it. **Ann:** Our concern is that we do not have the authority as BOA to change the zone. Randall was saying our biggest concern as BOA we do not have authority to change a zone, which is what you're asking for here. I'm assuming my board members feel the same way. I think we would

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feel more comfortable if you went to the zoning and planning commission to see what you could do there. **Janet:** It doesn't sound like we have the authority to approve this. **Phil:** I agree with Ann. **Ann:** It's not a variance. **Randall:** It's not in the realm of a variance that this board has the authority to grant. **Phil:** We don't have authority to do this one. Send it back to Cedar City zoning. **Dallas:** Does that mean that in the residential estates zone you can't zone less than 10-acres and the planning commission and council can approve a 5-acre piece to be zone? **Randall:** What it means is a zone change goes through a different process than the BOA is part of. Keep in mind that I'm not the City Attorney. Tyler would have his own opinion, as would the council, the city manager and Mayor. As I read it, they could not grant that unless the ordinance changed first. I don't know how to avoid language when it's in there telling you it has to be that many acres. **Dallas:** That's why I ended up here. They told me to take it to BOA because it's a variance on the zone. **Randall:** We're not all powerful and we do tend to be faster than a change of the zoning ordinance, and if they have the authority it would be quicker. I don't see that we can get into that. **Ann:** Can someone make a motion?

Janet motions to deny the request for a variance on the zone; Jill seconds; all in favor for unanimous decision.

REQUEST FOR VARIANCE FOR PARKING STALLS REQUIRED FOR BUSINESS LOCATED AT 110 W. 535 S./TRIPLE S POLARIS/COLTON FRANCIS - Mr. Francis didn't appear in the meeting. **Ann:** Tabled

Roger informed the board that he is moving out of the city and this is his final meeting. He thanked the board and staff. Ann asked who was replacing him. He stated he does not know, but that the Mayor has been made aware of this and will be looking for a new appointment. Ann asked other board members if they had suggestions. Janet asked if he could get a special exception, grandfathering, to remain on the board. Randall stated that the ordinance specifically states that board members be residents of the City.

ADJOURN: The meeting adjourned at 6:48 p.m.


Onjulee Pittser
Executive Assistant