

Cedar City Board of Adjustments
Minutes
July 10th, 2023

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

PRESENT: Chairperson Janet McCrea, Chris Bearson; Chad Carter; Mark Mumford; Dorian Page; Carter Wilkey; City Attorney, Randall McUne; Asst. City Attorney, Joseph Farnsworth; Chief Building Official, Drew Jackson; Executive Asst, Natasha Nava.

EXCUSED: John Ashby.

OTHERS PRESENT: Bryan Baggaley.

1. **CALL TO ORDER:** Janet: welcomed everyone. Mark: led everyone in the Pledge of Allegiance. Randall introduced Joseph Farnsworth as the Assistant City Attorney.
2. **APPROVAL OF MINUTES:** Dorian motions to approve the Minutes from the May 1st, meeting; second by Chad; all in favor unanimous decision.
3. **APPROVAL OF FINDINGS OF FACT:** Dorian motions to approve the Findings of Fact from the May 1st, meeting with the addition of the condition that not more than half of the office space be used for storage; second by Chris; all in favor unanimous decision.

Request for Variance to not install 5' landscape strip along the right-of-way line on property located at 103 East Cobblecreek Drive/ Bryan Boogoley: Bryan I have this odd, shaped lot on Cobblecreek, parking has been very difficult because of the shape. I've tried multiple ways to make parking work. (Exhibit 1 plat) I lose 2 parking spaces with the landscape requirements on the south and west side of the parking lot. We are building a homotel, either nightly rentals or long-term rentals. We are also proposing for 1 unit to be commercial store front for retail or a small restaurant or laundry mat. Randall this would be the first homotel this board has seen. It's a combination of hotel and residential. They can rent each unit however they like. (Exhibit 2 City Ordinance section 26-I-4) "Homotel: A building or buildings containing one-bedroom dwelling units which are primarily used for apartment style living, being rented on a monthly basis. However, the dwelling units may also be used as a motel being rented on a daily basis. For parking requirements see Section 26-39. Water and sewer connections are the same as apartments. Setback requirements are the same as motels in CC and GC zones. A Homotel is not permitted in residential zones." (Exhibit 3 City Ordinance section 26-V-3) "Homotel: One and one half (1.5) parking spaces for each bedroom." the parking is listed as higher than what's required for apartments. Bryan this is more parking than required for other apartment buildings I've built. I'm also required to have 3 additional parking spaces for the commercial store front. This seems excessive. Carter if you have a restaurant in the commercial space you will need more than 3 parking spaces. Bryan I'm planning on a laundry mat or retail store.

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. Bryan I will have to move the parking to the opposite side of the lot. I can fit 2 spaces in the landscaping area. Janet I haven't heard a non-financial hardship. Bryan I think it's safer to have parking all in one area, instead of 2 areas. I will also need to put signage up with directions to the other parking area. Janet can you redesign your building to give you the necessary parking? Bryan it would be very difficult. The rezoning really messed things up for my property. I had submitted the plans for the homotel years before the zoning changed to residential requiring me to have setbacks. In a commercial zone I have no setbacks. When I shrunk the building, it messed up the parking. Janet would grandfathering apply? Randall you had a completed application in before the rezoning? Bryan I went to Sketch. Randall you are grandfathered in from the moment you submit a completed application. Bryan that is my hardship. Drew did you pull a building permit? Bryan no. Janet when did the zone change take place? Bryan 2 years ago but Covid set me back. I tried to buy building materials and was told they could not be guaranteed. Carter were you notified of the zone change? Bryan yes, I attended the meeting. No one knew what this zone change was going to do to neighboring property. In that meeting no one said this change will force you into 20-foot setbacks and landscaping. Otherwise, I would have spoken up against the zone change. I met with Don Boudreau and he showed me 2 similar properties that requested a variance when a zone change had occurred. This isn't a big lot and between the setbacks and landscape, you lose a lot of property to build on. Dorian that sounds like an unreasonable hardship to me. Randall grandfathering does not occur when you purchase the property, it occurs when you "vest" meaning a building permit is pulled. I don't think he meets the non-conforming vested rights concept since a completed application was not submitted. Now we need to identify not just a hardship, but an unreasonable hardship specific to his property. Is it unreasonable for him to have 2 parking lots? Mark I don't see it as unreasonable, we have hotels that have parking spread out all over the lot. Chad he can reduce the size of the building to accommodate the parking. Janet can you move your parking lot? Carter we are bound by 5 questions. If money can solve the problem, then money can solve the problem. Bryan you can solve any problem with money. Is it reasonable to require me to move

my parking or shrink my building to fit 2 more parking spaces? I don't think requiring my customers to make 2 left turns in order to get to the other parking is reasonable. That doesn't sound safe to me. We have the bare minimum in there now, 9 by 18 parking stalls. **Randall** this access here on the east side is a shared access, you can use both sides, correct? Could you turn this into a circular entrance? **Bryan** we would lose parking and not gain it. And I'm not sure it would comply with the landscaping requirement. We have moved the building to comply with the landscaping requirements. **Carter** what about moving the 2 spaces to the shared access road? **Bryan** my neighbor currently has people parking in my lot. If I did that it would be more parking for him and less for me. There is also an elevation difference, and I will have to put in stairs and sidewalk. Which will take away landscaping. **Carter** can you take this to City Council. They are allowed discretion where we are not. **Randall** Council cannot approve this request. They can give variances regarding Engineering Standards. **Dorian** the shape and the history of the lot is an unreasonable hardship. **Janet** he knew the shape of the lot when he bought it. The only thing that I could consider is the change of the zoning. **Bryan** the size and shape of the building has not changed since the Sketch meeting. Changing the building will cause a major delay and major cost at this point. There are other properties that may be coming before this board because of how the zone change impacted their ability to develop. **Janet** that's fine. We're considering this today. **Bryan** I really wish that Planning and Zoning would have explained all these changes to the property owners. **Dorian** if this zoning had not changed you could make a single parking lot. **Bryan** it moved the building that moved the parking. **Chad** I agree with Dorian, the zoning change made it so he could not build on his property as he had intended. **Chris** I agree with them. **Mark** I think he can move the parking and it wouldn't be a big deal. **Carter** you can move the parking or change the building. **Bryan** what is reasonable? **Carter** we have asked people to move powerlines before. We have told applicants to build something else. **Janet** we have had applicants where the foundation was already poured in the setbacks, and we asked them to take it out. **Bryan** a lot of work goes into pulling a building permit. I moved forward based on the approval from Sketch. I spent \$10,000 in architecture fees and thousands more in engineering. **Janet** we cannot consider anything financial. **Bryan** everything is financial. **Janet** it is not all financial. We have had safety issues. **Bryan** I could build an underground parking garage for a million dollars. **Mark** I do not see the danger in moving the parking spaces. People park on busy roads all the time. **Dorian** you can't connect the 2 parking lots. It will require you to make 2 left turns. **Bryan** I'm not sure the customers would even know that parking is for the homotel. As a Traffic Engineer, 2 left hand turns is not desirable. **Randall** will you have employees? **Bryan** for the commercial space, yes. **Randall** what if you made that employee parking? **Dorian** we're talking about a couple trees and a couple bushes. **Bryan** please be reasonable. **Janet** we have to adhere to the Municipal Code that the City Council has passed. **Carter** Drew, do you see any safety concerns with moving those 2 spaces? **Drew** it's how the original plans showed it. It would meet the ordinance per the plans we have.

Janet let's take a vote to see if we agree that an unreasonable hardship has been established.

Chris Bearnson	<u>AYE</u>
Chad Carter	<u>AYE</u>
Janet McCrea	<u>NAY</u>
Mark Mumford	<u>NAY</u>
Dorian Page	<u>AYE</u>
Carter Wilkey	<u>NAY</u>

Randall Janet is a voting member, she is not just a tie breaker. If it remains a tie, it is an automatic denial. **Carter** this one doesn't seem like a large financial hardship to me. What about when the next person comes in and wants a variance. **Janet** he was impacted by the zone change, but he still has options. **Drew** yes, it is possible. **Dorian** I think it makes parking very awkward. **Carter** I agree. **Randall** you need to make sure you have reasoning behind your decision so that it isn't arbitrary and capricious. If we had a similar situation when an applicant expended funds in design, then a zone change occurred and made that shift. Would you have a hard time saying it's anything different? Are you ok with approving this variance because the applicant went to Sketch and expended funds before and after the zone change. They've submitted something short of an application to the City. And then a zone or ordinance change happened. Are you ok with someone getting the same or similar variance. **Janet** I'm struggling with the fact that the rights haven't vested. **Mark** it feels like the board moving the goal posts to me. It doesn't feel right. **Bryan** the plan here with the 2 parking spaces separate from the rest of the parking was something I never intended. Platt & Platt drafted this and submitted the plans without my knowledge. **Carter** where were the 2 spaces located in the plans approved by Sketch? **Bryan** the line here is on a slight angle to the north. As you shift the building to the north it gets us very close to the

spaces we need. **Dorian** the ordinance change caused a shift that took your parking. **Carter** I need to see what changed from the Sketch plan to the plan we are looking at now. **Randall** per the minutes from the 2/4/2021 Sketch meeting, "Drew asked how many units this will be? **Bryan** said 24 cars is all that can fit. Giving us 16 units." I'm curious where those spaces were because I'm only seeing 21 spaces right now. I would like to see what has changed to determine what caused the loss of the parking spaces. **Bryan** we lost spaces because of the sidewalk in the front of the building. ADA required a 5-foot sidewalk instead of a 4-foot sidewalk. **Randall** indicated that the lot had not been surveyed. **Carter** I would like to compare the 2 and identify the impact of the zone change. **Bryan** the circles in exhibit 1 are the parking spaces lost due to the landscaping. We went from 14 units down to 12 units; we lost more parking than is shown here. **Randall** how do these corners change without shifting the entrance? The building location is not a problem for any of this. **Bryan** that is incorrect. The dash touches at the lower right-hand corner of the building, and it separates at the top. The building would be at more of an angle if it were closer. It's a 6-to-8-inch difference. **Randall** I still don't understand how a few inches turns into a few feet. **Janet** shall we table this until we have sufficient information to compare what changed? Or do we want to vote now? Has anyone changed their decision? **Bryan** I've lost the 20 most impactful feet of the lot. The shape of the lot is driving this a ton.

Dorian motions to table, **Chris** seconds.

Carter can we hold off please. **Randall** if the information we get from the Sketch plans could change your mind from a no to a yes, it's worth tabling. If your mind is made up that he just needs to shrink his building, then tabling will not do any good. **Carter** people rezone property all the time. **Bryan** how come the people in charge of zoning did not bring up how this zone change would impact neighboring properties. How come the people that get paid to do that, didn't step up and do their job. **Randall** they do not get paid to do that. It is not our staff's job to inform people of something that could harm them. It is only their job to ensure the ordinance, and building code is followed. That's being done. **Bryan** I don't think you can expect a landowner to know the zoning ordinance like the city staff that are in charge of that. **Randall** it would be an impossibility for staff to be able to review each lot that may be impacted by a zone change. Staff would never be able to provide that service. **Bryan** the question is not, should the staff be responsible; the question is does that create a hardship? **Carter** I would like to see the Sketch plans to determine if the 5-foot setbacks were met. If I could see that the zone change caused the parking lot to move, and take those spaces, I would change my vote. **Dorian** can we approve this under the condition that that is the case? **Janet** I don't think that's a good idea as there may be some other issues that we may need to take into consideration. I don't think we can do that blind. **Carter** the applicant lives in Salt Lake City. Tabling would mean another month and another meeting. **Bryan** in the last month interest rates have increased to the point that I'm not sure I can even do this. A month could kill this project. **Randall** we can approve the plan with those 2 spaces on the other side. **Bryan** if I cannot get this approved without moving the spaces, I'm not sure this is worth building. It's not cost effective to put those spaces where you're suggesting. I would need to put in sidewalk, stairs, and a retaining wall. I would rather cut a unit than put those spaces in. **Drew** I can get the Sketch plans now instead of tabling.

(Exhibit 4, plans submitted to Sketch) **Randall** from this drawing we do not have measurements. So, we don't know if it met the requirements. **Bryan** I drew this out on AutoCAD and I had the 5-foot setbacks. **Carter** I see 8 parking spaces on both drawings. **Bryan** we lost parking in the row closest to the building. **Carter** but the 8 spaces didn't change at all. **Bryan** I had 4-foot sidewalks and they needed to be 5-foot. **Carter** that didn't change because of the zone. **Bryan** no it didn't. **Carter** you could move your parking lot 10 feet and get your parking spaces back. **Randall** your initial design does not have measurements. I'm not sure if shifting the parking would gain your spaces back. **Carter** now you have 1 ADA parking space instead of 2. **Bryan** with the reduction of units I only need 1 now. From the original plan to now, I've lost 5 parking spaces. Moving those spaces is a poor workaround to get the parking. **Mark** what if you did slanted spaces? **Bryan** we have configured this every way possible and still cannot make the parking work. **Carter** could you get another parking space up here by shifting? **Bryan** no. **Chad** no, because of the dimensions. **Carter** I understand he lost parking overall, however, I can't tie that directly to the zone change. **Janet** Sketch does not approve or deny, it's a conceptual meeting, correct? **Drew** correct. **Janet** has anyone's vote changed? **Bryan** the zone change took away parking. And I've already taken a big hit by reducing the units. **Drew** per the Sketch minutes and application I don't recall there being a discussion regarding a commercial store. The commercial store has its own parking requirements. Each homotel unit must have 1.5 parking spaces. Each commercial store must have 3 parking spaces. **Janet** can he do the homotel without the commercial store? **Drew** yes. With 16 homotel units you will need 24 parking spaces. **Janet** so we're not even close to the necessary parking. **Bryan** my current application has 12 units and 1 commercial store,

requiring 21 parking spaces. **Carter** what if you did a wider entrance. Would that give you more parking? **Bryan** I don't know. **Carter** if you widen this entrance you don't need to have 2 entrances. I can't tell if you lost parking because of the zone change or because this drawing was not to spec. You would have lost at least 1 of the spaces at the top because of the 10-foot setbacks. **Janet** you didn't lose it, because you didn't have it in the first place. **Bryan** I wouldn't second guess the engineer here. **Carter** I'm not second-guessing Platt & Platt, I'm second guessing the original plans. **Randall** I think you need to ask Platt & Platt how many parking spaces are lost and for what reason. **Carter** I don't see the drastic change to show that the loss is due to the zone change. If the other plans had measurements and had the parking spaces, I can see that the zone change caused the loss of the spaces. **Randall** the burden is on the applicant to give you that evidence. **Bryan** I don't think I can lose 5 parking spaces because of measurements. **Janet** without measurements it's all speculation at this point. We can't make a decision based on speculations. Does anyone change their vote?

Janet we are still at a tie. **Randall** at that point it is a denial.

No motion was made, the variance was denied due to a tie.

ADJOURN: The meeting adjourned at 7:16 p.m.



Natasha Nava
Executive Assistant