

Cedar City Board of Adjustments Minutes
August 3rd, 2020

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

PRESENT: Jill Peterson, Janet McCrea, John Ashby, Phil Schmidt, Chad Carter, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, Executive Assistant Onjulee Pittser

EXCUSED: Ann Powell, Joe Sanders

OTHERS PRESENT: Joan Taylor, Tyrel Eddy, Tad Draper, Melanie Draper

CALL TO ORDER: Janet called the meeting to order. Phil led everyone in the pledge.

APPROVAL OF MINUTES: Jill motions to approve minutes from the July meeting. Phil seconds. All in favor for a unanimous decision.

APPROVAL OF FINDINGS OF FACT: Phil motions to approve the Findings of Fact for last month. Jill seconds. All in favor for a unanimous decision.

REQUEST FOR OTHER HOME OCCUPATION FOR A GUNSMITH SHOP LOCATED AT 1452 S. 550

W./VEST ARMS/TYREL EDDIE – Janet: You were here last month and the only thing remaining was to notify the property owners. **Tyrel:** I've notified the 5 owners. I brought Randall the certified receipts and a few I hand delivered. **Randall:** I've confirmed he has them. **Janet:** Wasn't there a letter of objection? **Randall:** In your packet you'll find a letter was from Doris Abrego. That's the only thing we've heard. **Janet:** The objection was if you would have gun powder. **Tyrel:** As of now, I personally have gunpowder, but I'm not planning on doing it commercially. **Janet:** Randall, legally on the letter do we have to address it in a specific way? **Randall:** No, but you can note that it's there. If you feel it goes toward the questions for the home occupation and there's something relevant, you can take it into consideration. **Janet:** You told us last time that you won't have a bunch of ammunition stored. **Tyrel:** No. The main thing I'm looking to do is building rifles, not making ammunition for rifles. **Janet:** You won't be selling ammunition. **Tyrel:** No. **Janet:** We only had this one item, so we don't have to go through the steps again, right Randall? **Randall:** That's correct. **Phil:** Based on the discussion prior and where you've updated your notices, I'll make a motion.

Phil motions to approve the gun shop located at 1452 S. 550 W. Jill seconds. All in favor for unanimous decision.

Tyrel: Where do I go from here? **Randall:** We will do the Findings of Fact for the next meeting, which is the official document. You can check to see if the minutes that are not yet approved would be sufficient. **Tyrel:** I have to certify in the ATF paperwork that I have my zoning. **Randall:** You are there.

REQUEST FOR VARIANCE FOR 4-PLEX HOUSING UNIT LOCATED AT 292 S. 400 E./TAD DRAPER –

Tad: What I have is an old duplex I bought 25 years ago. The previous owner had removed a furnace from 1938. Behind the tree is all weeds. I'm trying to do a 4-plex by removing the duplex. The 4-plex

is about 72' long and 32' wide. **Phil:** Does it fit the property for the setbacks? **Tad:** I measured the property across. It's more E-W longer (186-ft.) The width of the property is about 58-59', closer to 60'. This would open up for more housing and replace the back end of the property where there's just weeds. It's a fire hazard. It could improve the value of the place. The ordinance requires about 12,000'. I have about 11,880' there. **Melanie:** You can see that all of the lots are narrow and long and they have nothing in the back, except for weeds. We keep it mowed and taken care of, but if one person decides to let that go and the weeds get high, it's going to be a big fire hazard there. **Chad:** Do you have a picture showing the side of the building? **Melanie:** That's the one we were just looking at. **Phil:** Your building's not parallel to the street; it's a 90° angle. **Melanie:** Yes. **Tad:** The 72' would be going lengthwise and 32' is the width. To the north of the building there'll be the driveway and that duplex will be demoed and the tree filled up. Then there'll be room for the 4-plex. It comes to about 18" and 150' is all I need. **Melanie:** The variance we're looking at is 18". **Janet:** For aesthetic purposes, what's the front going look like that fronts the street? **Melanie:** The front currently has grass and trees. **Tad:** That would stay, and we'd landscape it to increase the value. The back will give a little room to get some families in there with kids. Some type of grass or a playground. **Janet:** What will the building look like that fronts the street? Will it be the side? **Tad:** It would be the side. In order to get this accomplished, it needs to sit long. **Chad:** It'll be one of the ends. Have you seen a site plan for parking? **Drew:** I haven't seen one for parking, but the issue on the table is lot size. For 4 units, he'd be required 12,000 sq. ft. He's a little short. He'd have enough to do 3 units as is. The 4th unit would be the one in question. **John:** How shy are we? **Tad:** It comes to 150', about 18". It would be towards the back, but I don't see how I would encroach the neighbors because it would be parking or other things.

Janet: There's been some concerns with student housing on Dewey Ave. Some of those have the back of the building on the front of the street. It's not aesthetically pleasing. I'm not sure why those were built that way. Is there an ordinance about that? **Drew:** I think we'll see an ordinance change coming up, but it's not in place at this time. **Jill:** It just came through planning commission where they have rules they have to meet, like the roof needs to be varied, they have to plant certain trees every 30' and there has to be a main entrance. That's on SUU housing in the SHD zone. This isn't part of the SHD zone. **Janet:** Is there anything in there, aesthetically, about how the building is situated? **Jill:** Yes. That's the housing district. **Janet:** I'm just wondering what their thought is if it's included in there. **Jill:** They're making some changes to that one zone. **Janet:** In that zone, do they have to have the front door on the street? **Jill:** Yes. **Melanie:** The grass and trees that are already there would remain. They have a sidewalk and there's grass and rocks on the front part of the house. The part facing the street. **Phil:** There's a lot of units that are built this way. **Tad:** If you look farther north, there are other duplexes that were built in the last few years and they have a side facing the street. The way the properties are lined, it would be 72' across, and I only have 60'. It would be impossible. **Jill:** Is it currently an SFH? **Tad:** It's a duplex. There's an upper and a lower. **Melanie:** It does have a basement apartment on it. **Tad:** To do the 4-plex, we'd remove that one and have the design on the plans you just saw. **John:** As long as we don't have a City code current, then the aesthetics would not be applicable for what he's applying for. **Phil:** That's the way it's written on the required square footage. **Drew:** The required square footage is in regard to the lot. It sounds like he's about 225 sq. ft. short of what the requirement would be per ordinance. **Tad:** 11,880' is what they had told me. **Phil:** Have you have it surveyed? **Tad:** No, it's just in city records. **Phil:** It would be beneficial to have it surveyed. It depends on where they count the front. Most of the time the property line's 1' behind the sidewalk, but not always. You could have it surveyed, and it'll give you the actual calculation of what it is. **Tad:** I can do that. If it goes to the street, I'd have a lot more. **Phil:** It's usually 1' behind sidewalk, but it's not the case everywhere. You may not even need to be here. I would do that, and

records are fine, but measure the lot. **Tad:** We can do that. **Melanie:** We're happy to answer the questions, but I think we need to get it surveyed first. **Janet:** Do you want to put this on hold then? **Phil:** Pins move, things are gone. I would get it professionally done. Since this is marginal, I would get your facts nailed down to exactly how much you need. **Janet:** We'll put it on hold until the property is surveyed. **Tad:** So, if I have 12,000', I wouldn't have to come. **Janet:** Correct.

REQUEST FOR VARIANCE TO ACCOMMODATE EXPANSION PLANS FOR PROPERTY LOCATED AT 91 E. CANYON COMMERCIAL AVE./RED VELVET DEVELOPMENT/PAUL BEAGLEY – Joan:

The building was built in 2000-2001 for the State DLD and the UHP offices. We bought the property a few years ago. We'd like to add about 5,000 sq. ft. going to the Northwest end toward Main Street. There's about 2,500 sq. ft. on each floor. Sandstone Apartments is to the north of us and they were rezoned R-3. There are 5 buildings on that piece of property. We'd like to ask for the variance to be zoned central commercial (CC). They got the zoning change to R-3. On the SW corner there's about 40' there that we'd like a 20' variance, and because of the R-3, we want a 10-ft. variance. Now it's a required 20' because of the R-3 zone. On the corner of the apartments they have a light and there's a fence and a dumpster. **Phil:** Are you wanting to expand your building? **Joan:** Yes. What we'd like to put in that 10' is an exit on the main floor and a 2-story exit out of the 2nd story building. **Janet:** Is this for safety? **Joan:** Yes. Occupancy is going to require an exit from the 2nd floor. It hasn't gone through project review yet. To the north of us are the Sandstone Apartments. In the corner is the base for their parking lights. I did talk with the superintendent over there and he didn't think that would be a problem. We'd like a 10' variance. Right now, we're required 20' because of the zone change and we'd like to make it 10' to follow the existing. **John:** You want it in line with the existing building. **Joan:** Yes. **Phil:** Where's the variance you need? Is it further north? You want to expand your building and you need an additional easement in the back. **Joan:** That's just dirt. Right now, we're supposed to be at 20', but we'd like to maintain the 10'. **Phil:** Which is the existing. You don't have a problem with parking or access. **Drew:** We'll catch that in project review. As far as I know, it's not an access issue. The R-3 that now abuts the CC requires a 20' separation. They're requesting the 10' variance.

Phil: The R-3 is the apartments right? Is her existing building in R-3 now? **Drew:** No. She's in CC and the apartments used to be in CC. **Phil:** Technically, whoever's here first has to do the 20'. If she would have built her building, then the apartments would have to be 20' over. **Drew:** It goes the other way. The CC has to be 20' from the R-3, but the R-3 isn't required to be 20' from the CC. That's how it's written. **John:** Isn't the R-3 a rezoning? **Drew:** Yes. It was rezoned from CC. **John:** That's the point she's making. Had she done that before it was rezoned, she'd be fine. **Drew:** You mentioned 2 stories on the addition. Are you also thinking a second story on top of the existing 91 E. Canyon Commercial building that's already there? **Joan:** No, we're not. **John:** The building you're proposing is a 2-story. **Joan:** Correct. **Randall:** I would just note that as soon as the Sandstone got the zone change to change the use, this building became non-conforming, or grandfathering. Without looking at the variance stage, they can't expand a non-conforming use. Keep that in the back of your head. Without a variance, they couldn't because it would be non-conforming. **Phil:** But they were there first. **Randall:** The building itself can stay there for eternity, as long as they keep using it. If you're looking to adding on without a variance, it would be an expansion of a non-conforming use. **Phil:** We're going to have to find a hardship that's not financial in order for this to go through.

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. Joan: We would like an exit outside from the main story for fire hazard, for convenience. I would like that to be in the back of the building on the north corner. **Phil:** Do you want to put stairs there? **Joan:** That's the direction were heading is to put exterior stairs. **Phil:** Do the stairs count as part of the building? **Drew:** I don't know off the top of my head. **Phil:** If you put outside stairs here, that were 5-6 ft., I guess we need to find out if it counts as part of it. **Joan:** If we had a variance, that's where it would go. It'd be in the extra footage that you allow us. **Phil:** Into the 10'? **Joan:** No. We'd maintain at least the 10'. **Phil:** Plus, the stairs. You could be 15' from the wall. **Joan:** We wouldn't be able to encroach into the new section. The stairs would be 10' away from the property line. **Phil:** We might be able to count those as 5-6 ft. **Drew:** This is the ordinance: "Yards to be Unobstructed; Exceptions: Every part of a required yard shall be open to the sky and unobstructed except for permitted accessory buildings and for projection of sills, eaves, belt courses, cornices, and other ornamental features and unenclosed steps". **Janet:** Are you planning to put the steps on the side by the Sandstone Apartments? **Joan:** Yes. On the north side against the fence. **Phil:** If your steps were 5-6 ft. wide, you could put those right now couldn't she? **John:** As long as they're uncovered. **Drew:** That's how it reads. **Phil:** You can put them there. You just can't go into the 10' mark. **Joan:** Right now, we can't do it within the 20'. **Randall:** The main building would need to be 20', then she could use into the 20' for the unenclosed steps. That's not going to take up the 10'. **Janet:** She's going into the 10' of the variance that she's asking for. **John:** We're dealing with a variance for the building to not include the stairs. **Joan:** The building itself is not going to include the stairs. **John:** That's the difficulty we're having. Is the new building going to be even with the existing building? **Joan:** No. There's going to be an offset because of the distance. **Phil:** You really only need 5'. **Joan:** The stairs would be along the 10'. The outside of the stairs would maintain 10'.

Phil: You really only need a 5'. If you put your building at 15' from the wall and let's say you offset the new building 5' in from your existing building and put the stairs on the outside of that space, then you really only need a 5' variance. **Drew:** I don't interpret it that way. The ordinance says you need to be 20' from the property line to the building. The stairs could encroach. Line of delineation would be the building at 20'. **Phil:** Have a 10' building offset. **Randall:** With no variance it would have to be a 10' offset. **Phil:** Could you live with that? If you offset your building 10' but you could take your stairs back in that 10' area you wouldn't need anything. **Joan:** If we had the outside of the stairs along this 10' line, which may be only 5-6 ft. wide stairway. **Phil:** It would have to be 10' in from this corner and 10' this way; then you could go out; then you could put your stairs in the area. **Janet:** Then, we wouldn't need to approve the variance. **Chad:** That's not what she's asking. **Phil:** I know but she could get by with that. **Joan:** We have the stairs at the 10' and the building might be 5' back. We'd still need the extra. **John:** The building itself is what we're looking at. **Joan:** It would encroach in that 20'. **Janet:** What is the hardship? Phil has proposed an option to start the building 10' in from the existing building. That's a possibility for you. Then you wouldn't need a variance from us. **Jill:** She'd need a small variance. **Janet:** Not if she did it at 10'. **Randall:** Her answer to what the original hardship was to have the exit outside from the main story for fire hazard and convenience. Then the unenclosed stairs don't count. Do you have a hardship for the building itself? For the extra 4-5 ft. **Joan:** The only thing I know is the square footage we want to add. There's not enough room to add 4-5' to the south. There's an alley that comes from main street south of Wet Willy's and around our lot. As this building shifts to the south those extra 6-7' could mess up the alley. **Randall:** When we talk about hardships we want to know if something's not reasonable. You asked for the building to be deeper than the

existing building. What is the need for that depth? We don't know what you're using it for. **Joan:** It'll be an office building. We're growing. Phase Concrete has about 250 employees. Right now, in the existing building there's about 30 people in there and we need to hire more and put them somewhere. The owners feel like we wanted 5,000 sq. ft. to get that footage, 2,500' on each level. **John:** What's the EW dimension lengthwise? **Joan:** The existing is about 133' x 60'. **John:** On the one you're proposing. **Janet:** I think it's 40'. There's 2,500' on each level. **John:** If you had to cut back 5', how much square footage of office space would you lose? **Joan:** It'd be about 200 sq. ft. Two bathrooms. **Phil:** Do we have the parking to do that? **Drew:** We'll look at parking at project review. **Joan:** We have parking all the way up. Not quite to Sandstone, but it's quite a bit of parking. **Phil:** We can't count anything existing wise on the old building. They were legal at one point in time. Can that be counted as part of the hardship? If their neighbor came in and changed the zoning, it doesn't fit their plan, but the neighbors' property came in to match what he wants. It seems to me that it puts the bite on them, and they didn't do anything. **Randall:** The hardship isn't the cause; the hardship is the effect. This one we're asking what harm to them and ask if it's unreasonable. When you're looking at hardships they all want to expand. **Phil:** This is not her fault. **John:** They already owned the property. **Phil:** They owned the property, the neighbors changed their zoning and affected them. If the neighbors didn't change, they wouldn't be here.

Randal: Under ordinance, if you have 2 residential homes, there's a minimum distance required between the 2. If one comes in and builds first, that changes the minimum distance to the one next to it. If someone comes in and builds first and they shift it, that limits the next persons' ability to build. **Phil:** I thought it was based off property line. **Randall:** It's both. **Drew:** I think it's referred to as accessory structures and that does come into play. **Randall:** You can have problems of someone else building that limits the structures to build on your property. **Phil:** To me, this is a hardship to them. They didn't do it. The existing building is there, and it has the proper setbacks. They didn't change the zoning. **Jill:** Did you own the land or purchase it from Sandstone? **Joan:** We owned it. **Jill:** Was your zone changed in connection to Sandstone? **Joan:** No. Sandstone had the zoning changed after they purchased their property. **Randall:** Did you own it when Sandstone changed the zone? **Joan:** Yes. **Jill:** You owned it and allowed it to be changed. **Joan:** I asked the owner and he said he didn't remember getting a notice on the zoning changes. **Jill:** They have to notify the property owners. **Phil:** Her zone hasn't changed. It's the neighbors that changed, which changes the setback for her. **John:** Which she did not cause. **Phil:** Why can't we count that as a hardship in this case? **Jill:** It didn't change your zone. **Joan:** It changed the requirements for our zone. If the R-3 at Sandstone had stayed CC, there wouldn't be a problem. We can go 10' to the property line. Because of the zone change, now we're required to put 20' if we want to add on. **Jill:** But your piece is still CC. **Joan:** Yes, and so were the properties south and west of us. **John:** I don't think there'll be any problems with the accommodations as far as the facility is concerned. That's a hardship that you did not incur. **Randall:** It's cause vs. effect. This one does have a potential comparison in our past. The tire shop came to the BOA about 10 years ago seeking a variance for the front landscaping. There isn't any. That's required in the first 5'. The board considered that hardship, and that 5' was lost because UDOT took 5'. The action was not caused by the owner of the property to lose 5'. And that was an off property change that you could use here. Both arguments are possible. **Phil:** If we allow that, then the building would have to be at least 5' offset with the stairs coming out the side, because the stairs cannot encroach within the 10' space. **Randall:** If they're not covered, they don't count.

If that's their intended part of the building and put stairs there, and if you granted variance, it would be 4-5', depending on where they put their stairs.

Phil: Has Sandstone put a block wall around their parking lot? **Joan:** It's a concrete wall they put up and brought up the grade and now they're putting a 6' fence on top of the curb. There'll be a 6' fence on the 2 properties and on the other side is a dumpster and a light. **Phil:** Can we count that or are we stuck here? **Randall:** I leave that to you. **Chad:** Is Sandstone going to have an issue with this? **Joan:** I haven't spoken with the owner, just the project superintendent. He doesn't see a problem, but I haven't contacted Sandstone directly. **John:** Are they putting up a 6' concrete fence? **Joan:** I don't think it's concrete. I think it'll be wood or some other site obstructing material. **Drew:** That's by ordinance. They're required to. **John:** Would it change the look of the space? Would it be impeding with anyone's aesthetic site line? **Phil:** They couldn't have a cover over the stairs. **Janet:** Will the stairs be flush with the line of the existing building? **Phil:** The stairs can go into the 10'. **Randall:** Their design was to include the stairs in the length of the building. **Drew:** The stairs would have to meet code provisions above the zoning provisions and potentially fire rating provisions. **Janet:** There is an option for you that you wouldn't need an approval from us if you decided to start the building. **Joan:** With a 10' offset. **Phil:** Would you want the stairs in the 10'? **Janet:** No, because if you started the building 10' under to have the 20', you could have the stairs in that section. **Randall:** Another 4-5' would be into traffic flow. **Phil:** If we granted the hardship, then she could put her building in line with the existing building and put the stairs inside the 10' easement that currently exists. **Randall:** You could if you granted the full 10'. As I understand it, the 40x60 includes the stairs. **Joan:** No. We want the outside of the stairs to be this 10' line. There's stairs and 5', then the building. It wouldn't be dropping the building back 20'. **Phil:** Where would the building line be? It's currently 10'. Where would your existing building line be? **Joan:** That would be another 5-7'. **Phil:** Is the edge of the stairs in the 10' space or not? **Joan:** No. I didn't understand the stairs would be in the 10' space. **Phil:** This will stay 10' clear, then the stairs, then the building. You're only asking for 5-6'. Can't we make this a hardship for that? **John:** There might be some restrictions concerning the stairway itself. **Drew:** We'll cover it on the code side. **John:** In planning, she has to know here before there. **Drew:** We wouldn't see something outside the 10' zone. I don't anticipate a challenge there. **Phil:** If she stays out of the easement and puts the stairs to the edge, I don't see a problem. **Jill:** In CC, is residential allowed? Isn't that what you said that you were adding, office space and housing? **Joan:** No housing. That's Sandstone in R-3. We'd stay commercial office spaces. **Janet:** Then, the hardship would be more of like a 5' variance, because the stairs would be flush with the current building and that's about 5-6'. **Phil:** The hardship was caused by someone else. **Janet:** They already owned the property. They hadn't bought the property knowing that changed.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district. – **Joan:** I think we covered that.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. – **Phil:** Yes.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest. – **Joan:** We don't think it will be.

5. The spirit of the zoning ordinance is observed, and substantial justice is done. – **Phil:** We could build a 2-story in CC property. **Randall:** Substantial justice is not to be harmed by someone else's actions.

Phil: I would motion the property be allowed a variance to put the building in as long as the edge of the stairs is at the edge of the 10' from property line does not encroach space. It cannot exceed the existing edge of the building and/or 10' from the property line. **Randall:** And mention the uncovered stairs. **Phil:** And the stairs to remain uncovered and meet fire and safety code.

Phil motions to approve variance with outlined conditions. John seconds. All approved for unanimous decision.

PUBLIC HEARING & CONFLICTS OF INTEREST TRAINING – *(Refer to the Board of Adjustments Training outline provided by Randall)* Randall discussed the open and public meetings act. All Board of Adjustment meetings are open to the public and the Board should not make decisions without having citizens voice their concerns. A quorum consists of 4 members and if a quorum is present, members should not speak or communicate electronically about anything coming before the Board. Board members must disclose all conflicts in the meeting prior to discussing the agenda item. The Utah rule is that you have no financial interest or personal benefit in the agenda item. The Mayor may remove anyone from the board for a criminal act of misconduct, excessive absenteeism, 3 consecutive meetings. He also went over the Authority of the Board, including Appeals from staff decisions, the City Ordinance for variances and the 5 requirements: 1) unreasonable hardship, cannot be self-imposed or economic, 2) Special Circumstances, like agenda item #3 today, 3) Essential to Enjoyment of Substantial Property Right, 4) General Plan & Public Interest, 5) Spirit of Zoning Ordinance and Substantial Justice. The burden lies on the applicant to prove that all 5 conditions are met. Variances should run with the land. Special Exceptions may be permitted by the Board. Public clamor is not a justification for an administrative decision on this Board. Board of Adjustments Limitations on Authority cannot go outside their specified powers and cannot allow use variances in a zone where it is prohibited.

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



Onjulee Pittser
Executive Assistant

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