

Cedar City Board of Adjustments Minutes
October 5th, 2020

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

PRESENT: Chair, Ann Powell, Jill Peterson, John Ashby, Joe Sanders, Chad Carter, Building Inspector Drew Jackson, Assistant City Attorney Randall McUne, Executive Assistant Onjulee Pittser

EXCUSED: Janet McCrea, Phil Schmidt

OTHERS PRESENT: Brandon Beesley, Jim Burgess, William Bagnell

CALL TO ORDER: Ann called the meeting to order and welcomed everyone. Jill led everyone in the pledge.

APPROVAL OF MINUTES: John motioned to approve the minutes. Second by Joe. All in favor for unanimous decision.

APPROVAL OF FINDINGS OF FACT: John motioned to approve the Findings of Fact from the last meeting. Second by Chad. All in favor for unanimous decision.

REQUEST FOR HOME OCCUPATION FOR DAYCARE/NURSERY SCHOOL LOCATED AT 1084 BULLOCH CIRCLE/SILVA SCHOOLHOUSE/EVA SILVA – Applicant did not show.

REQUEST FOR OTHER HOME OCCUPATION FOR UPHOLSTERY BUSINESS LOCATED AT 569 S. 640 W./BEESLEY'S UPHOLSTERY OF SOUTHERN UTAH/BRANDON BEESLEY – Brandon: I do upholstery. I've been doing it for a while under my grandpas business. He passed away, so my dad and I are taking that over. It's in my home by appointment only. It's not 9-5. I still need to maintain a full-time job.

1. **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. – **Randall:** That's been done.
2. **Off-street parking will be provided.** – **Drew:** We are good. One stall for every 600-sq. of floor and the home occupation is 216 sq. ft. There are 2 for the house, 1 for the business. He's good to go.
3. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling. – **Brandon:** Yes.
- Do you plan on having any employees? – **Brandon:** No. Just myself.
4. The home occupation does not involve the use of any accessory buildings. – **Brandon:** No.
5. **No commercial vehicles** are used except one delivery truck which does not exceed 1-ton capacity. – **Brandon:** I'm not going to use one.

6. The home occupation **does not include a drive through.** – **Brandon:** Yes.
7. The home occupation is clearly **incidental and secondary to the use of the dwelling for dwelling purposes.** – **Brandon:** yes.
8. Do you intend to have a **sign for the business?** – **Brandon:** No.
9. **Not more than the equivalent of 25% of the ground floor area of the dwelling is devoted to the home occupation.** – No.
10. The home occupation shall apply for, receive, and maintain a **City business license.** – **Brandon:** Yes.
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. – **Brandon:** Yes.

William Bagnell: I live down from Brandon and I got the notification. With the spacing he has, where will the parking be? **Brandon:** In my driveway. **Ann:** They have to provide parking on their property. We don't allow off-street parking. **Joe:** Have there been any objections at all? **Brandon:** No. They were just trying to figure out where the business was. **Randall:** What kind of things do you do? **Brandon:** Auto seats, cushions for chairs, boats. That kind of thing. **Randall:** Do you have vehicles there that you're working on? **Brandon:** No. They'll take the seats out and bring them in. If they can't, I'll go out to them. No cars will be in my parking lot. **Randall:** Anything that's large enough to transport in a truck? **Brandon:** Yes. Just a light pickup truck. **Jill:** Whole couches or just cushions? **Brandon:** Whole couches.

Jill motions to approve home occupation permit. Joe seconds. All in favor for unanimous decision.

REQUEST FOR VARIANCE TO USE EXISTING VINYL FENCE IN LIEU OF BLOCK FOR PROPERTY LOCATED AT 287 W. 1425 N./CANON LOFT TOWNHOMES LLC/JOE BURGESS – Jim Burgess:

We're building a townhome project next to Stonehenge assisted living. The ordinance says you have to have a 6' fence and they've done a vinyl fence already. The problem is they built on the property line. There's no way for us to build another fence right next to each other. The closest we could get it would be 18" or 2'. Since there's already fence there, so we're requesting a variance to use the vinyl and not build a masonry wall. **Chad:** Was it installed by Stonehenge? **Jim:** Yes. **Chad:** And that was approved? **Jim:** The footings are already there. Basically, we'd grade and backfill if the variance is not approved it won't look great. **Ann:** Why did Stonehenge do vinyl and not block? They're not a PUD. **Randall:** Are they residential? **Drew:** They're commercial next to an empty lot. **Jim:** I sold the property to them and it was R-3 then. **Randall:** They may not have been required to install a sight obscuring fence. Our ordinance doesn't include vinyl. **Jim:** It's not a huge cost difference to us either way. It'll just look weird. You'll have a canyon running down the full length of the property. I built Countryside townhomes 20 years ago, and the Leavitt's built another project next to us. They had slotted chain link and that was approved. **Drew:** Are you behind the KOA? **Jim:** Yes. This is on the east side of Stonehenge. **Jill:** How big is the parcel? Is it a PUD? **Jim:** Ours is 20 units. There's 8 units that will back up to this. **Jill:** Is this on all the sides or just this one side? **Jim:** Just this one piece. **Drew:** The west side? **Jim:** Yes. **Joe:** It's east of Stonehenge. Their fence has been there a while.

John: What ordinance are we applying here? **Drew:** For a variance in a PUD, the ordinance reads “a fence or wall of not less than 6’ high; a site obscuring fence or wall shall be constructed to manufacturer’s specifications and/or City standards and shall be limited to either masonry or composite fence on the perimeter”. One side will have a site obscuring vinyl fence. **Randall:** Council just barely went through this. It went through Planning Commission on broadening the materials for fences and walls. And this is what they’ve stuck with in the last 6 months. I think they meant a solid composite, like “Trex” style fences. I don’t know how they addressed it. **Jim:** We’re not looking to change the project. It’ll look really funny. **John:** Like a rabbit run. **Randall:** We have a number of these throughout the city. The bigger ones were supposed to be for drainage, but they’re just a bunch of weeds. If you decide this meets the requirements, are you willing to give it to everyone else? **Jim:** I’ve had this request approved before. It’s the lesser of two evils. We’ve already poured the footings, and our lots will be a less desirable product for people looking to buy it if there are 18” or 2’ of weeds. **Randall:** If you intend to grant the variance, it won’t be for the entire wall. They’re still going to build 30” up. **Jim:** Yes. For grade. **Joe:** When council addressed the language in the ordinance was it challenged? **Randall:** I don’t know if it was. There was one where Kit was having them come in and he was spearheading that. In certain areas they allowed it. The manufactured “privacy fencing” was slatted chain link with some limitations. For this area they didn’t explain that far. He may have had many developers come to him and explain that to council. **Joe:** Have there been any for this board this year? **Randall:** For masonry only. It used to be that the applicant described the soil conditions not to fall in 5 years. This Board did grant composite to do Trex-style fencing. Nobody has approved vinyl. **John:** is there a technical aspect strength wise? What’s the difference talking legality between vinyl and Trex? I see a lot of vinyl fencing. I can’t imagine that would be excluded. **Randall:** How many vinyl decks do you see? It’s the material strength. I can’t tell you on an engineering level, but that’s the theory. Trex is able to handle more wear and tear. That’s supposed to be the reasoning behind it. **Chad:** I think the Trex material came about because of project we were doing. **John:** With vinyl, you’re vertical. **Randall:** To say that composite will last longer, there hasn’t been a study done. **Chad:** I don’t see a lot of difference between Trex and vinyl. **Joe:** What shape is the vinyl fence in? **Jim:** It’s good. It may be 5 years old. **John:** Would Stonehenge go halves on a block fence? **Jim:** Block’s not economically friendly. **Jill:** The hardship is what you said earlier. It would look a bit funny. **Chad:** How far for the grade? **Drew:** 30” above the other fence. **Jim:** We’ll consider that the back wall of the project. Moving soil raising level of ground. Just on the high side. Not just material at that point. Looking at height? **Drew:** The retaining wall slope. That would be the measuring height of his new soil level. It can’t be taller than 6’. **Jim:** The purpose of this ordinance in a PUD makes it so people are not looking into your yard. Stonehenge is lower than us.

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.** – **John:** He’s answered that question for us. He’s ready to go. For me it’s the aesthetic feature. **Ann:** But are we prepared for everyone after him to grant their same problem? This is a problem that happens frequently. We need to weigh out the pros and cons. **Jill:** It’s unique because the fence is already up. **Randall:** We don’t create precedent. **Jill:** But if the fence is sight obscuring. **Randall:** As we define sight obscuring this would be excluded. It’s not that you can’t consider it. You’ll just have more developers coming in. **John:** People will see what we’ve established. **Randall:** They’ll have not built their wall and come in and see this one. This can save developers money. He doesn’t have a retaining issue. **Jim:** You’ve approved this example for me before. **Randall:** That was a different board. **John:** It’s a situation about common sense. **Randall:** There’s more questions at the bottom. It’s the

hardship question. We would have approved 90% of what's come through here. Is it a hardship? **Ann:** Can we say the other fence is right on the property line and he doesn't have much room and their fence is cutting into his property? Is that a hardship? **John:** It's a loss of property. **Randall:** You could as long as somebody else comes in with the same conditions. I don't know how many those are. There's one not too far from Northfield where they've done that. **Jim:** It's a slatted chain link fence against a brick wall. It looks dumb. **Randall:** If the ordinance is dumb, this is something that should be fixed by Planning Commission and Council. If it's dumb in this unique situation, that's your job. **Joe:** But it's not a unique situation. We'll get a few more. **Randall:** Fencing has been a common one. **Chad:** How much property are you losing by having to move that back to build the wall? **Jim:** If this isn't approved the wall will be 2' off. **Ann:** The hardship's for the design and the individuals that own the property. They can't build on the property line. These are all individually platted townhomes. They're losing 2'. **Randall:** If he left the ground as it is, the ground is flat. If the top of the fence is sticking over, then you'll need to grant a variance on height. We're asking for the variance to use the existing sight obscuring vinyl fence. It will be 6' on our side of the property. I can't push against it. It's measured from the grounds on both sides. I got to put in a retaining wall, dirt and different sized footings if we couldn't get approval. It causes a hardship on the homeowners to have that unsightly gap. **Randall:** You'll have a gap but 30" tall instead of 6'. **Jim:** There'll be a gap, but that was as close as we could get it. The weeds will be there. They'll maintain it. If it's a 6' thing, there's no access. **John:** For ones already established, I wouldn't have a complaint if their wall is nice. If it's well constructed. **Chad:** I see it as a hardship. **Jill:** I do too. **Chad:** People will lose property, value and space. It's a little unique. Not to mention the appearance of it. It isn't going to look good. **Ann:** What happens when the vinyl fencing falls down? **Jill:** Just build theirs taller. If something happens, they're not required to fix it. **John:** But if their vinyl falls down they have a nice wall. **Ann:** That's my concern. That's why vinyl is not part of the ordinance. It deteriorates. **Chad:** I think ordinance needs to be changed. This seems like a double standard. **Randall:** We do allow certain things in residential areas. It wouldn't be a commercial use. Whose responsibility is it if that vinyl fence breaks? **Jim:** They didn't rezone it. It's R-3. **Randall:** It's an allowed use. They could take it down if they wanted to. That becomes your question. **John:** Doesn't the City have an upkeep ordinance? **Randall:** If it's falling down they just remove it. It's under the nuisance ordinance. But to change the ordinance it goes through building and engineering. The only thing I ask is that you understand that you create a precedent for similar conditions. If it's arbitrary and capricious, we get sued. **Jill:** Could the HOA have some sort of responsibility? **Randall:** That's a struggle that they have. A developer will come in and build something that's not entirely to code and the new homeowners don't know that. **Jill:** I can get past #1. **Joe:** It's unique in that we don't have rental property up to the property line. It's owned property by property buyers and they're losing property. It's something we can sink our teeth into. **Chad:** I agree with that.

- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same district. – Randall:** That's why I mentioned the one that's north of them. Individual homes in an R-2 zone that are single family homes with a slatted chain link and a brick wall and townhomes are individually sold. **Jill:** They could have had a different fence. In some ways the circumstance is similar of the ownership side. The difference is the type of fencing. You try to make it as individualized as you can. **Ann:** Don't forget those property owners will lose that 2' no matter what. Even if you build the retaining wall. **Jim:** You could plant trees or bushes, but they won't lose property. **John:** I think it's

legitimately something that's worthy of consideration. It is useful to a degree with the retaining wall. With a 6' wall, no one could use it. And the yard will look 2' bigger.

3. **Granting the variance is essential to the enjoyment of substantial property right possessed by other property in the same district.** – **John**: That comes back to what they can do. I would say yes. They can plant bushes and landscape in a better way than the 6' retaining wall. It makes no sense.
4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.** – **Ann**: We've established that. It will look better than 2 fences.
5. **The spirit of the zoning ordinance is observed, and substantial justice is done.** – **Jill**: It's a fence you can't see through. And it is 6' high. **Randall**: Is the fence 6' the whole length? **Jim**: No. Down by the road it's 4'-5'. On both sides. So, traffic can see. **Randall**: The top part is lattice and as long as you're ok with that.

Joe motions to grant variance to use existing vinyl fence. John seconds. All in favor for unanimous decision.

ADJOURN: The meeting adjourned at 6:00 p.m.



Onjulee Pittser
Executive Assistant

