

Cedar City Board of Adjustments Minutes
August 2nd, 2021

The Cedar City Board of Adjustments held a meeting on Monday, August 2nd, 2021, at 5:15 p.m. in the City Council Chambers, 10 North Main Street, Cedar City, Utah

PRESENT: Chairperson, Janet McCrea; Jill Peterson; John Ashby; Chad Carter; Dorian Page; City Attorney, Tyler Romeril; City Engineer, Jonathan Stathis; Executive Assistant, Onjulee Pittser.

EXCUSED: Joe Sanders; Building Official, Drew Jackson; Assistant City Attorney, Randall McUne;

OTHERS PRESENT: Shane Wittwer, Matt Volker

1. **CALL TO ORDER:** Janet welcomed everyone; the Pledge of Allegiance was led by Chad.
2. **CHAIR SELECTION:** Jill motions to elect Janet as chair; second by John; all in favor for a unanimous decision. Janet accepted the position.
3. **APPROVAL OF MINUTES:** John motions to approve the minutes from the May 3rd and July 19th, 2021, meetings; seconded by Chad; all in favor for a unanimous decision.
4. **APPROVAL OF FINDINGS OF FACT:** *Janet deferred to address the Findings of Fact from the past 2 meetings until next month.*
5. **REQUEST FOR VARIANCE ON SETBACK TO CONSTRUCT A COVERED PATIO/DECK FOR PROPERTY LOCATED AT 285 N. 900 W./ABBEY INN/WITTWER MANAGEMENT/MATT VOLKER – Matt Volker:** Have you been able to look at the sketch? *Matt drew the diagram from his application packet.* **Shane Wittwer:** I'm the owner of the hotel. We've served breakfast out of that home for a number of years. In the case of inclement weather our hope is to extend the outdoor patio area, and have it covered so guests can eat breakfast on the patio. We're requesting as much space as we can get for the setback. The flat faced home and we would add a deck that's raised and leave it open. **Janet:** Is it the house behind the Abbey Inn? **Shane:** It's a house north of the Abbey Inn, but part of the operations. We use it to serve breakfast to the guests at the hotel. I know that sounds odd, but we get a lot of positive comments on breakfast in a home, but it's too small. **Dorian:** Are you a part owner in the Abbey Inn? **Shane:** I am. It's a big family. **Matt:** The street runs up the side of 900 West. The hotel and parking and the house we use this is the location we're proposing. **Dorian:** Is the handicapped in front going away? **Matt:** Yes. It will be changed. We're proposing to push the deck into the lawn where the handicap stairwell is, so we can put a covered awning on it, maybe enclosed with a screen, put a skirt on the bottom, because the elevation would be a bit higher so it could match the house and not the basement below. This is zoned Highway Service (HS), and I can't remember what setback was on this. **Jonathan:** It's 20'. **Matt:** We'd like to push that to the sidewalk to allow more space. **Chad:** What would it be if it was for as much what you'd like? **Shane:** We'd take anything we could get. If we end up with 10' that would be

wonderful. **Jonathan:** What's the setback of the existing building? **Shane:** It seems like it's 25'-30'. We have the ramp that's in front. This would completely cover then ramp and come in the side. **Matt:** We'd end up redo the driveway, running it down the side, rather than back and forth across front. **John:** What's the property north of it? **Shane:** It's a home. It's zoned the same, HS zone. **Jill:** Is there anyone living in that? **Shane:** It's a rental. **Dorian:** What about the property behind it? **Shane:** It's a vacant lot. Eventually, we'd like to add on to the hotel in that lot, which was part of the master plan. **Dorian:** You can clean up those sheds. **Shane:** We'd like to do that. **Dorian:** What will it look like when you're done? Will it be a concrete or block wall against the sidewalk? What we give you in setback, what would be the delineator? **Shane:** The front of the patio. We'd extend it as far as we can. **Dorian:** Is it concrete? **Matt:** It would be on a pier, because the height would have to be elevated to match the house, and we'd put a skirt around the front of it so it's not visible. You'd see the deck and railing so nobody can fall off and a covered piece on it. **Dorian:** How would you access the building? **Shane:** We'd have a ramp and enter up through the driveway. There's an entrance into the front of the house and one side is used for guests. **Dorian:** The carport area? **Shane:** Yes. **Matt:** You could walk out the doors onto a flat deck. There's a doorway halfway and another one to allow access. **John:** Beyond the property that you own what's on the rest of the block? **Shane:** There are homes that go above that. We own the 2 homes above as well.

John: What we have to consider is precedence. If we establish it for one, we open it for all. **Shane:** The zoning on the other parcels is different than the two. **John:** They're the only ones zoned in that category? **Shane:** Yes. **Janet:** So, the Abbey Inn isn't in the HS zone? **Tyler:** I'm not sure. **Matt:** It was when we looked it up. **Janet:** So, all 3 of those are in HS zone. **Matt:** The remaining homes are not. **Janet:** What does a HS zone require? **Tyler:** It's to provide services for people that are commuting back and forth; it's for restaurants and gas stations. **Janet:** Are the requirements more lenient? **Tyler:** No. **Jill:** Is it still a 20' setback. **Tyler:** Yes. **Janet:** Do you have the option to put that anywhere else? I'm not familiar with the properties. We look for solutions that don't require a variance. **Dorian:** Is the purpose of the patio for aesthetics? **Shane:** The front of the home could use some love and for guests to use. We have events and groups that come down. I wouldn't say not meetings, but more for social gatherings. The back has property, but there's gas meters and stuff there make things complicated. **Dorian:** Are there nice trees out back? **Shane:** Yes. The next home has a similar back yard. **Janet:** We need some legal advice. **Tyler:** For this board to grant it, you have to meet the 5 factors. When we look at the first one, will enforcing it be not giving a variance; does it cause an unreasonable hardship for the applicant? It sounds like they've been using the property for what they want to. Is there an unreasonable hardship? That's debatable, because they have an option of how to do it. They want to expand it. That first one gives people a tough time. The second one is, are there any special circumstances attached to the property that don't apply to the other properties in the district? If there's something unique about this, we'll give a break, but that's not the case in this situation either.

- (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.** – **Janet:** The unreasonable hardship cannot be financial. Can you define an unreasonable hardship for us? **Shane:** I wish I could come up with

an answer right now. There's not an unreasonable hardship. It's cost but its utilizing the property for the best use. **Janet:** This creates a precedent that would apply to anyone who wanted a variance without an unreasonable hardship. We have to be careful about what we're doing. **Chad:** Can you add anything onto that? What's the setback now? **Shane:** It's 25'-30'. We would like to do something, it's just a small space, and makes it questionable to do something or not. It's part of the commercial property. It's used by the hotel already. It's tied to it. I understand the concern of changing the zoning, but I think if you look at it, its business property and used that way. I know setbacks are always changing and I'm sure it will change. **Janet:** We have to go by the ordinance. Sometimes they may not make sense to us, but it's not up to us to determine that. **Dorian:** We have to substantiate why we recommend the variance. Here's the law; why doesn't it apply. **Tyler:** The tough thing with variances is that people would enjoy it, they like it, but the problem is when you've got commercial and meshing it with residential. There has to be something unique. If not, you're going outside of what the state law requires. **Chad:** Across the street to the east are all residential homes. **Matt:** Yeah. There's the drink shop and from there up its residential properties that match the other side. **Chad:** We have a responsibility to protect those as well. **Matt:** Even with the zoning being a bit different, that doesn't protect it? **Chad:** It has a tendency to infringe on that area.

John: If someone were to establish a private business in that home, we'd have to follow the same rules. If something looks nice would help you, but it's outside our per view to run a variance for pleasure. **Shane:** Is the 25' variance for all businesses? There are some in the City that are much closer. Isn't the precedent already set? **Tyler:** It depends on what zone you're in that outlines the setback. **Matt:** What's the standard for residential? **Jonathan:** I believe it's 25'. **Dorian:** Going down that street, it's all very similar to your property. **Janet:** Could you put it in between? **Matt:** There's easements in between the homes, but we talked about that before. **Jill:** Could you combine the parcels, since you're eventually going to do that anyway? **Shane:** The guests who stay there like the carport when it's snowing. **Tyler:** HS is 20 and 25 on the others. **Janet:** Jill suggested combining the parcels and do something across both. Is that an option? **Dorian:** It's still zoned the same. **Tyler:** It wouldn't help with the front setback. **Janet:** Could they put something in between? Would they need to talk to the Building Dept. to combine parcels? **Tyler:** You'd be amending the plat of the subdivision. It would go to Sketch, Planning Commission, then City Council. It's about a 45-day process to amend a plat. **Matt:** Does it affect the easements or is that another process? **Tyler:** Yes. You'd have to vacate easements. The only way someone will sign off is if there's an infrastructure and there are no future plans of putting in infrastructure.

Shane: Is the setback from the street or edge of sidewalk? **Jonathan:** It's 1' from property line. **Janet:** Then you have options to put that in the back of the house. **Shane:** Not a great option because there's so many utilities, but it's not impossible. **Janet:** We try to come up with something. **John:** Under the circumstances we're going to have to deny them. There are options given to you and when we're restricted by virtue of the status as we have to apply with the setback, I don't see any way around it. **Janet:** Unfortunately, we have to deny it. **Shane:** I understand. As we see

old ordinances looked at now to make housing developments to help with the housing shortages we're seeing multi-use come into play in Southern Utah. This will change in time. What is the process for that? Is there a way we could address this so it would be accepted? **Tyler:** That's an ordinance change. You can find the City ordinances on the City website, Chapter 26. If you have some proposed language, you could come visit with me and I'll help you through that. You could present it to Planning Commission, see what they say, and they present it to City Council. If you want to look at vacating easements or combining lots, you can come talk to me and we can go through that process. **Matt:** Are those easements in the homes now? **Tyler:** No.

John motions to deny the variance for the Abbey Inn; Dorian seconds; all in favor for unanimous decision.

- 6. ETHICS TRAINING – RANDALL MCUNE:** *Janet deferred this agenda item to next month as Randall was not present.*

ADJOURN: Dorian motioned to adjourn the meeting at 5:45 p.m.; second by John; all in favor for unanimous decision.



Onjulee Pittser
Executive Assistant