

**Cedar City Board of Adjustments Minutes
October 7th, 2019**

The Cedar City Board of Adjustments held a meeting on Monday, October 7th, 2019 at 5:15 p.m. in the City Council Chambers, 10 North Main Street, Cedar City, Utah

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

OTHERS PRESENT: Dale Jones, Teri Northington, Amber Chandara, Doug Meldrum

EXCUSED: Janet McCrea

CALL TO ORDER - Ann called the meeting to order. John lead the pledge.

APPROVAL OF MINUTES - **Ann:** Did every have a chance to look at the minutes from last month's meeting? Any changes? John motions to approve. Roger seconds. All approved for unanimous decision.

APPROVAL OF FINDINGS OF FACT - **Ann:** We had 3 findings of fact last month. Any additions/subtractions we need to change? Can I get someone to make a motion? Roger motions to approve the findings of fact. John seconds. All approved for unanimous decision.

REQUEST FOR HOME OCCUPATION FOR AIRBRUSH BUSINESS LOCATED AT 243 N. 800 W./Teri Northington - **Ann:** Just give us a brief summary of what you want to accomplish. **Teri:** I want to start airbrushing at home as a business. Motorcycle tanks, I do portraits, pretty much anything paint will stick to. **Ann:** Hopefully you have had a chance to look at the questions we need to go through and make sure you can answer all of those.

1. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling – **Teri:** Yes.
2. The home occupation does not involve the use of any accessory buildings. – **Teri:** No.
3. No commercial vehicles are used except one delivery truck which does not exceed one (1) ton capacity – **Teri:** No.
4. The home occupation does not include a drive thru – **Teri:** No.
5. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes – **Teri:** Yes.
6. Do you intend to have a sign? – **Teri:** No. I painted on my garage door, but the inspector said that wasn't really a sign.
7. Not more than equivalent of 25% of the ground floor area of the dwelling is devoted to the home occupation. – **Ann:** Drew, did you go out and measure and are we ok there? **Drew:** Yes. The main floor square footage is 1,200 sq. ft. The allowable would be 300 sq. ft. They're using 91 sq. ft., so that would be in compliance.
8. The home occupation shall apply for, receive and maintain a City business license. – **Teri:** I already have that.

9. 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. – **Teri:** No.
10. Off street parking will be provided – **Ann:** Does she have enough parking? **Drew:** We may have an issue on this one. She does have enough parking, but it is not hard surfaced. In our mind, the business would trigger hard surface requirements. That's an issue we have on the table. **Phil:** Is it gravel? **Teri:** Like the inspector said, it was paved or cemented at one time. It's just an old house. **Ann:** It's basically crumbled. **Teri:** It looks like dirt. Some of it's hard and some I've pulled up some of the cement in areas. **Ann:** How many spots? **Drew:** She needed 4, and she's got the 4, but it has to be hard surfaced. **Ann:** Like cement? **Drew:** It says asphalt or concrete. I think if I'm not mistaken, one came before the board and asked about roto mill. What would you say it looks like? **Phil:** It's hard packed gravel. You've got grass growing in it. **Roger:** On one of the first questions you had said no accessory buildings, but on your property map, you have proposed shop listed. **Teri:** I was building that for my boyfriend. I'm in the garage that's attached to the house and the shop is just to get him out of the garage. **Ann:** What you're proposing to do would be in your garage. **Teri:** Yes. **Ann:** So, you do need to have that hard surface. There are several options: cement, asphalt or roto mill. **Phil:** It's just recycled asphalt. **Ann:** That's cheaper than asphalt, correct? **Phil:** You wouldn't need a lot there. Maybe put down 1 ½ inches. You could do pavers, but that's basically your 4 options. **Teri:** What was that? **Phil:** You could concrete it. Would she need to concrete all the way back to the shop or just make 1 or 2 spots? **Ann:** She needs 4. **Drew:** She'll have to go 18-ft. wide 36-foot-deep, 9x18 on each stall, and if I doubled that width that's 18 wide, 36 deep. **Phil:** How are you going to park on that? **Drew:** You'll go tandem, which would be allowed by ordinance. **Ann:** So, until that is done, we cannot approve this. We can table it until that is done. **Teri:** You can't you give me a temporary permit and give me so long to pave it? I have everything else in order. **Ann:** Randall, how does that work? **Randall:** We've had in the past where we have granted or allowed a home occupation permit contingent upon this being completed. That's not what she's really thinking of, because it still wouldn't allow her to start her business until we had proof that it's completed. This board in the past for parking has always said no on that as a condition. We've said we want it first and make sure to have it in place. **Teri:** Do I have to pave it and then come back and pay another fee? **Ann:** No. If we table it, you don't have to pay again. You let Onjulee know it's done, and she'll get you on the agenda and we'll go through the questions again and then you're done. Like Randall said. We've always said that parking has to be done first. **Joe:** Is that the only obstacle? **Randall:** There is one other thing and it could change depending on how long it takes. It's nothing too major. I have the obligation to go through and see notification to the neighbors. There were 3 that were missed at the edge. You may have assumed it was multiple parcels. If she's back within a month or 2, she'll only need to notify these 3, but if it's next year, she wouldn't have to redo the application, but she would need to notify the neighbors again. **Teri:** I got some that were returned to me saying "undeliverable". **Randall:** That happens. It's ok. **Drew:** Did the fire department do the inspection already? **Teri:** I didn't know they needed to. **Drew:** They need to for the home-based business. **Roger:** On the aerosol or air painting, what are you doing to control the fumes? **Teri:** I have a paint booth with a filter, and I have spoken to the people who regulate the air quality and I don't use enough paint per month or per year to have to get a permit. **Roger:** Randall, I know this is under the "Other" category for home occupations. Does this fit with zoning? What is it zoned? **Teri:** I'm in the highway service zone. **Randall:** But it's being used as a residence. It's one of those bizarre situations. We like to give them the benefit on both ends, allowing her to maintain the home as a home and try to make sure we mixed the 2 correctly. If we went too far, it wouldn't be a residence at all. Obviously, that's not her goal or our goal. She's allowed to continue to use it as a residence

until she decides to change it. **Roger:** The small use of the paint booth doesn't require any additional monitoring? The reason I'm asking is I've been near paint booths before and it burns your face off. **Teri:** I was doing it before as a side job or hobby, and I've never had any neighbors complain. My neighbors aren't that close, but nobody's said anything, and I know most of them anyway. **Drew:** What we usually do in a situation like that, the Air Quality Management District (AQMD) would be the authority and have jurisdiction. I suppose we could ask for something from them saying they're good, if that would help the cause. Is that something you could get us? **Teri:** I guess. I'll have to call them again. What happened last time I emailed someone saying I may need a permit and they called me back. When I was getting the permit for the shop, it was really hard to get emails from other people. It seems like somebody should know what they're doing because I don't. It seems like somebody should have known what this paper is. It's been difficult. **Drew:** I invite you to call the City building department. I'll be happy to help. **Teri:** Denise has been very helpful. **Jill:** Are pavers allowed as a hard surface? I think Phil mentioned those, didn't you? **Randall:** I'm pretty sure it's included in our definition. **Drew:** I don't know off the top of my head. I know it says hard surface. I don't know if it's more definitive than that. **Teri:** I know there's cement in there because I was pulling it up in front of the garage doors, so they'd open better, and I was pulling up blocks of cement. **Randall:** The definition of a hard surface is asphalt, concrete or brick pavers. **Phil:** You can call Rocky Ridge. They have some recycled asphalt. **Teri:** My brother owns a construction company. He could come do it. **Ann:** Hopefully, we'll see you back in a month or two. **Randall:** Just let Onjulee know. She's not going to put you on until you tell her. Remember we have to publish it. **Teri:** Yes. Before 10 days. I learned that lesson.

REQUEST FOR SPECIAL EXCEPTION/VARIANCE/ZONING MAP INTERPRETATION FOR A HIGHER SIGN ON PROPERTY LOCATED AT 1380 S. MAIN ST./DOUG MELDRUM - MAVERIK-

Ann: Just state your name and give us an overview of what you're trying to accomplish. **Doug:** We're trying to build a Maverick station on the corner. This property was recently surplus from UDOT, so it wasn't included in the South interchange zone. I've included a copy of the map so you can see what it looks like. It's the parcel between I-15 and old Hwy. 91. It's not included in the current zoning, but it ultimately should be, and we'll try to consider pursuing that. To move ahead, we're asking for an exception, so this property has the same rights as the property across the street that pertains to the signage ordinance. **Ann:** Randall, do we just go through the 5 questions? **Randall:** When we talked before, the discussion was a shotgun approach until we could narrow it down. But you're sticking with variance? Is that where we're going? That was the easiest one from my point of view. **Doug:** I think the variance is the easiest. I think the best way to handle this is to do a text amendment to the ordinance that will include the South interchange zone, that would include this piece of property, but for the short interim, the variance sounds like the best option. **Ann:** Since we can't do the first thing. **Randall:** We've done in the past where it met the 5, you'd say they would grant a variance but only for so long. You'd need to get the ordinance fixed within a certain amount of time. **Doug:** At what point would the City be responsible, or would the City take this on to change the text amendment on their own? **Randall:** That would be a question for the City Attorney, Tyler Romeril. **Doug:** Either way, I think that would be the best option, because this fixes the problem permanently. **Randall:** Since it's under the zoning ordinance, that goes through the long process. **Doug:** It will take months. **Ann:** Let's go through the 5 questions and see if we can get past them.

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. – **Doug:** I would explain that by if we comply with the ordinance, the sign ordinance that would

apply to this area of property, I think the sign is 30 ft. tall, and the property across the street, the sign ordinance that applies to them grants them a taller sign. We just want the same rights. The hardship is that you can't see the 30-ft. sign from I-15 as you pass by. You can't see it from the exit down the highway from the South or to the North. **Jill:** Which hotel is it? **Doug:** It's the La Quinta. Right there at the intersection where old Hwy. 91 and Main Street turns and goes under I-15 at the South end of Main Street. It's where the old pump stations at. **Phil:** Is that the old wrecking yard? **Doug:** It's the old Main Street. It used to go through that property. **Randall:** The map you have here is the old map. **Phil:** You're basically to the left of Golden Corral. **Doug:** Yes, across the street from Golden Corral and there's a hotel down South of there. **Phil:** Is it on the same side as Golden Corral? **Doug:** No. Across the street. It's that little piece of property between I-15 and Hwy. 91. **Randall:** It was UDOT property and that's why we wouldn't have bothered putting it into our map **Ann:** Is that why the ordinance is not the same? **Doug:** Yes. **Randall:** That's the best guess. There would have been no reason to include UDOT in there no say over UDOT. **Ann:** So, basically the people across the street can have a 50 ft. sign, but he can't. **Joe:** So, the Golden Corral can have a 50-footer, but on the West side you can't and you're closer to the freeway. **Doug:** Correct. **Randall:** The only reason I can guess is that we would have never thought about it before. If you look at the map as it was, that was UDOT property there for whatever they needed it for the interchange. They surplused it out and Maverick bought it. **Phil:** On hardships could we bring up the point that this was a government property; therefore, it was not included in anything and it was kind of its own entity. This is a hardship he didn't create. He bought the property, but he didn't create that hardship, because it's zoned around you, I would take it where this was UDOT, they were left out of it. **Doug:** Correct. **Roger:** UDOT would have been exempt. **Jill:** Isn't that one of the same questions as well? That they enjoy the same property rights. **Doug:** Yes. **Jill:** I'm good with that. **Roger:** Not yet. When you bought the property, you know it wasn't zoned. **Doug:** No. We did not know. It was not included in the South interchange zone. That was discovered after our pre-application for the project. **Joe:** So, it would not be self-imposed if he didn't know. **Drew:** They didn't know until project review. I brought it up. **Roger:** It just wasn't published. You just assumed probably because if you look at the zoning map, obviously, it's there.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district. – **Doug:** Maybe past circumstances being UDOT property which no longer applies. I think the ultimate solution would be a text amendment for this zone or, at least, a map change. **Ann:** Eventually, that will need to happen. I feel ok that there are special circumstances around this piece of property. Any questions?
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. **Ann:** That's true. Everyone else can have a big sign.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest. **Roger:** I would concur.
5. The spirit of the zoning ordinance is observed, and substantial justice is done. **Roger:** I would agree with that also. **Ann:** Does anybody have any questions? Thoughts?

Roger: What would be a reasonable time frame or some way to tie this to? I agree with you, Doug, that having the zoning, or the map amendment is the right way to do it, but I also understand in the effort of expediency, what's the right way to timeline this? We don't want

to put Maverick in a position where they suddenly find themselves out of compliance through no fault of their own, but at the same time, making those zone changes, ordinance change is the right way to do it. **Randall:** What's the timeline we have when someone wants a permit, how long they can't work on it to get into trouble? **Drew:** The building code says 180 days between inspections. I don't know if that's totally applicable here. **Randall:** We had one where we allowed them to have a temporary building while they were constructing and that was allowed 2 years, I think. We had one of those on Main Street. They didn't actually do it, but we approved it. **Drew:** They were going through a zone change at the same time. **Randall:** They might have been, but it was mainly because they came in for a variance because they were going to have frontage on both sides. I thought it was 2 years. Those are the time frames that are kin to this. **John:** What's the construction timetable? **Doug:** It probably won't be applicable for a year. We may not have the ability to put a sign up until then. **Ann:** But, do we need to put a time limit on it if we grant a variance? **Randall:** You don't have to. You're looking at the hardship being a temporary hardship, then you could put on there that he could take the time frame you pick, it wouldn't be a hardship anymore because you could take it back to the planning commission and council by then, in which case, take that route. He gets the approval now, he knows it's ok, he can step forward with everything while we take it back to the planning commission and council and make sure they're ok with it, too. **Phil:** How are we accessing this? **Doug:** Off of Hwy 91. We don't have accesses approved yet. **Phil:** UDOT's not giving you access yet. **Doug:** It's a City road, but I am working with UDOT to get this approved. I've had several conversations with UDOT, and they work with the City closely to facilitate access permits to make this happen. **Phil:** Now you're looking at 2 entrances off of Hwy. 91? **Doug:** I don't think we'll get to three. We threw out a conceptual site plan wish list and we worked from there. Nothing's been approved yet, but we just don't know where they're going to lie. **Phil:** Hopefully not off a City street and Main Street. That's a stoplight there. **Drew:** I think that's where UDOT's going to get involved too. They're going to have certain standards for distances from the intersection. **Doug:** We realize that. **Ann:** What if we do a time limit and they don't change the zone? **Randall:** Then at the end of that time, the variance would expire. **Ann:** So, then he'd have to come back in? **Doug:** We'd be out of compliance and have to reapply. **Randall:** He'd have to reapply and now you have an issued decision by the council saying they don't want it. You could take that into consideration, and you could say that it goes against the general plan. **Doug:** What's the benefit of having a temporary variance? **Joe:** I'm not sure that I'm in agreement with a temporary variance. I think if we're going to grant a variance, let's grant a variance. **Ann:** That's my thoughts as well. **Roger:** My thoughts on the temporary variance is indirectly garnishing Doug and Maverik's support to see this through because the right answer is to change the zoning ordinance. **Doug:** At this point, is this a City issue rather than a Maverick issue? I'd be happy to guide this through, but it has to be driven by the City at some point as well, because it is a City zoning issue. We're only taking a portion of this property, but there will be additional parcels farther to the South, which this will also always apply to them. **Randall:** We had one student housing where the board granted lower parking requirements and fast forward there was no incentive to change it. They came back to this board and were upset because the board wouldn't grant it again to the same developer. They had no incentive before because the variance was permanent for that previous property. You can deny it, grant it full out and say it's permanent until some other zone change, or you can meet in the middle and grant it but still get the area changed to match with what you have. You have those 3 options to pick from based on the information provided. It's really your discretion. **Ann:** Thoughts? I'm good with whatever. **Phil:** I'm ok with the sign. I think they should pursue the zone change and correction in the language. You'll have to drive that. The

City won't. **Doug:** I don't have a problem with that. It's the timing that I do have a problem with. We want permits pulled within the next few months. **Ann:** How much time can we give them? Do we give them 2 years? 3 years? **Randall:** We've done 5 for one of our manufacturing places based on when a road would be brought in. 2 years is what I kept thinking of because the development related concept that we allow buildings to be located on construction sites for 2 years. If it takes longer than that, something went wrong. **John:** The rest of that area it not going to sit idle. **Doug:** I think it would be fairly simple but time consuming to make something like this happen. **Ann:** Yes, and I want to make sure you have plenty of time to go through process. **Joe:** I motion to grant a special exception with a variance zoning at the location of 1380 S. Main Street. **Phil:** Are we putting a time frame on it? **Ann:** We can if you'd like. **Phil:** Are we leaving it open? **Joe:** Does the board want to put a 2-year time frame on it? **Phil:** I think we should put something. **Joe:** Ok. With a 2-year time frame attached to the change in the ordinance. **Ann:** Does that work, Randall? **Randall:** I just want to clarify that we only want the variance and not special exceptions. **Ann:** Right. **Randall:** You had mentioned both, so stick with granting the variance exception for that location with a 2-year time frame to change the. **Phil:** And that works for you alright? **Doug:** Yes, that's fine. I think 2-years is enough time to do this.

Joe motions to approve. Phil seconds. All approved for a unanimous decision.

REQUEST FOR HOME OCCUPATION FOR DAYCARE/NURSERY SCHOOL LOCATED AT 311 W.

1550 N./Amber Chandara – Ann: Tell us a bit of what you're trying to accomplish. **Amber:** I'll run a small family childcare out of my home. I have been running a childcare out of my home a few blocks away and I've ran that for 11 ½ years now. It's gone well but we just moved to a bigger house, so I just need a new business license. **Ann:** We'll go through those 13 questions to make sure you're in compliance.

1. The home occupation is conducted entirely within the dwelling and is carried on by members of the family residing in the dwelling. – **Ann:** You can have employees other than family members residing in the dwelling. They are permitted in some circumstances. Are you going to have any employees? **Amber:** Yes, based on the inspection I'm allowed up to 13 children and with the childcare licensing I can have (8) for myself but anything over that I need an employee, so I do plan on having (1) employee.
2. The home occupation does not involve the use of any accessory buildings, except for nursery schools, in which case it is presumed that rear yard space is utilized, and the rear yard space must be completely fenced with at least a 6-foot high fence. – **Amber:** Yes. I will use my backyard for play.
3. No commercial vehicles are used except one delivery truck which does not exceed one-ton capacity. – **Amber:** No.
4. The home occupation does not include a drive through. – **Amber:** No.
5. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes. – **Amber:** Yes.
6. Do you intend to have a sign for the business? – **Amber:** No.
7. Not more than the equivalent of 25% of the ground floor area of the dwelling is devoted to the home occupation. Day care centers need not designate a particular 25% of the ground floor area shall be utilized to calculate the maximum number of children allowed in the dwelling. **Ann:** It sounds like you can have 13 and that's what you're planning on having? **Amber:** Yes. **Ann:** She's good there, Drew? **Drew:** She is, yes.

8. The home occupation shall apply for, receive and maintain a City business license. – **Amber:** Yes.
9. The activities in connection with home occupation are not contrary to the objectives and characteristics of the zone in which the home occupation is located. – **Amber:** No. My neighbors are very supportive.
10. Off street parking will be provided. – **Ann:** Drew, does she have enough parking? **Drew:** She does. She has 6 and only needs 5.
11. Home occupation for nursery schools may be granted by the Board of Adjustments provided that the proposed nursery school has: A) a maximum of 16 children at any one time, including the occupant's own children; B) that the portion of the dwelling allowed to be used for the nursery school contains floor space of at least 25-sq. ft. per child and alternate door exists. – **Ann:** For our ordinance, you can actually have more kids than the State. Is that correct? **Randall:** It depends on the circumstances. In this one, based on the square footage, she mentioned that she gets up to 13.
12. Building inspector and fire marshal shall inspect the premises. – **Amber:** Yes. **Drew:** That's what I understand and they're both good.
13. Notice by the applicant shall be given to all neighbors within a 300-ft. radius from the boundary of the proposed home occupation. – **Amber:** I believe I have. I never heard otherwise. **Randall:** You had one that was half crossed off. **Amber:** That was one that I know them, and they came over and I gave them their notice. **Randall:** There was one other one across Northfield that I think when the County had it, it may have reached the line, but Northfield is wider, so I think she's fine.

Phil: Did you sell your other house? **Amber:** Yes. **Phil:** So that daycare or anything is no longer there. You're just trying to get into this other house. **Amber:** Correct and I have my City business license from there. I don't know if I need to cancel that. **Randall:** You'd just need to talk to Renon. She would usually just transfer it to the new address. It's cheaper than getting a new one. **Phil:** Are you State certified too? **Amber:** Yes. They are waiting for my City business license that's required and then they will be able to come and do my inspection to get State certified. I have been in the past with no findings. **Joe:** I drove by and noticed your daycare, your house and it looked like a perfect daycare. **Amber:** Thank you so much. My goal is a fun and safe environment for the children.

Roger motions to approve the request for a daycare/nursery. Joe seconds. All in favor for unanimous decision.

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


Onjulee Pittser
Executive Assistant