

Charlene Way

From: Chris Johnson
Sent: Tuesday, August 31, 2021 3:56 PM
To: Lynette Cochran; City Clerk
Cc: Josh Leonard; david@speedyquick.net; Bill Nary
Subject: RE: Request for Reconsideration - CR-2021-0003 - Speedy Quick

Received. We will be in touch with next steps soon.

Chris Johnson, M.Ed., IdCMC
City Clerk | City of Meridian
33 E. Broadway Ave., Meridian, Idaho 83642
Phone: 208.888.4433 | Email: cjohnson@meridiancity.org

City Clerk's Office



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From: Lynette Cochran <lcochran@clarkwardle.com>
Sent: Tuesday, August 31, 2021 3:50 PM
To: City Clerk <CityClerk@meridiancity.org>
Cc: Josh Leonard <jleonard@clarkwardle.com>; david@speedyquick.net
Subject: Request for Reconsideration - CR-2021-0003 - Speedy Quick

External Sender - Please use caution with links or attachments.

Please see the attached request for reconsideration submitted on behalf of Speedy Quick in CR-2021-0003. Please acknowledge your receipt by return email.

Thank you,



Lynette Cochran, Legal Assistant

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
lcochran@clarkwardle.com | Phone 208.388.1000 | Fax 208.388.1001

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To: City Clerk
Cc: Josh Leonard; david@speedyquick.net
Subject: Request for Reconsideration - CR-2021-0003 - Speedy Quick
Attachments: Request for Reconsideration.pdf

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JOSHUA J. LEONARD
JLEONARD@CLARKWARDLE.COM

August 31, 2021

Meridian City Clerk
33 E. Broadway Ave., Suite 104
Meridian, Idaho 83642

Re: Speedy Quick (CR-2021-0003) - Request for Reconsideration of Meridian City Council's Land Use Decision
CW Matter No. 23481.1

Dear City Clerk,

This firm represents Blood, LLC ("Applicant") in the above-referenced matter. On behalf of the Applicant, we write to formally request reconsideration of the Meridian City Council's final land use decision in application no. CR-2021-0003.

Meridian City's Uniform Development Code ("UDC") provides that a request for reconsideration of a final decision of the City Council is appropriate only after "final approval of the findings of facts, conclusions of law, decision, and order" (UDC § 1-7-10.A.1).

In late July, we received a letter dated July 21, 2021, which referenced "Speedy Quick (CR-2021-0003)," and included only the following statement about the City Council's decision in the above-referenced matter:

This letter is to confirm that the City Council upheld the Director's determination regarding the dimensional standards set forth in UDC Table 11-2B-3 and denied the subject application at their July 6, 2021 meeting.

July 21, 2021 letter from Caleb Hood, Planning Division Manager (the "July 21st Letter").

In late August, we received a similar letter, this one dated August 23, 2021, which again referenced "Speedy Quick (CR-2021-0003)," and included only the following statement concerning the Meridian City Council's decision:

This letter is to confirm that at their meeting on August 17, 2021, the City Council entered Findings of Fact, Conclusions of Law, and Final Order upholding the Director's determination associated with the above-listed application.

August 23, 2021 letter from Caleb Hood, Planning Division Manager (the "August 23rd Letter"). The August 23rd Letter did not enclose a copy of the Findings of Fact, Conclusions of Law, and Final Order that the City Council approved on August 17, 2021, to uphold the Director's decision finding against the Applicant.

Idaho Code ("I.C.") § 67-6535(2) contains requirements for final decisions:

The approval or denial of any application required or authorized pursuant to this chapter shall be **in writing** and **accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision** based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

I.C. § 67-6535(2), emphasis added. Subsection (a) then prescribes the result of a final decision that fails to include the requisite elements:

- (a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

I.C. § 67-6535(2)(a).

Reading UDC § 1-7-10.A.1. together with I.C. § 67-6535(2), the Applicant is entitled to a much more detailed "reasoned statement" that includes approved "findings of facts, conclusions of law, decision and order." Until a complete "reasoned statement" is approved by the City Council and sent to the Applicant, the timeline for the Applicant to submit its request for reconsideration has still not yet begun to run.

Pursuant to UDC § 1-7-10.A.2., a reconsideration request "must be in writing and filed with the City Clerk ***within fourteen (14) days*** of the final approval." This Request for Reconsideration now is filed with the City Clerk within 14 days of the August 17th "final approval."

The Applicant's request for reconsideration is submitted pursuant to Idaho Code §§ 67-6535(2)(b), 67-6521(1)(d), and UDC § 1-7-10.

Specific deficiencies in the Council's decision include the following:

1. **Failure to Comply with LLUPA Requirements.** Although "at their meeting on August 17, 2021, the City Council entered Findings of Fact, Conclusions of Law, and Final

Order” (August 23rd Letter), neither the July 21st Letter nor the August 23rd Letter included the information required by Idaho’s Local Land Use Planning Act.

2. Failure to Comply with LLUPA Requirements. Reviewing the approved “Findings of Fact, Conclusions of Law, and Final Order” (“Findings, Conclusions, and Order”) also fails to comply with LLUPA, in that the Findings, Conclusions, and Order does not include a sufficient “reasoned statement,” as required by LLUPA. As a result, the Applicant’s due process rights are violated, in that the Applicant has no way to know:

- what **criteria and standards** were considered relevant by the City Council;
- what **relevant contested facts** were relied upon by the City Council;
- the **rationale** offered by the City Council for its decision; and
- how the City Council might have reached its **decision**, based on relevant provisions of (a) the comprehensive plan, (b) the UDC, (c) LLUPA, (d) constitutional principles, and (e) factual information in the record.

No substantive request for reconsideration (or subsequent Petition for Judicial Review) is possible without all of the above information being provided to the Applicant, which is why LLUPA requires the City Council, for every LLUPA-authorized or -required application, to issue final decisions that include all of the above information.

3. Incorrect Standard Applied. The Findings, Conclusions, and Order fail to explain the “criteria and standards considered relevant,” as required by I.C. § 67-6535(2). The first reason given by the City Council for upholding the Director’s determination, according to the Council’s Findings, Conclusions, and Order, was:

...in evaluating the intent of the interpretation to apply to a re-use of an existing structure **was** [sic] **more reasonable interpretation** to apply to the single residential building, but not to any new buildings to be constructed on the site;

Findings, Conclusions, and Order, Section C.1., third bullet. The Findings, Conclusions, and Order included no citation to Idaho Code, the Uniform Development Code, or Meridian City Code authorizing “was more reasonable interpretation” to be applied as the standard in this matter.

4. No Factual Support. The Findings, Conclusions, and Order fail to identify the “relevant contested facts relied upon,” as required by I.C. § 67-6535(2). The second reason given by the City Council for upholding the Director’s determination, according to the Council’s Findings, Conclusions, and Order, was:

The intent of the code was to grant limited leeway to re-use an existing structure, but not simply waive all setback requirements entirely.

Findings, Conclusions, and Order, Section C.1., fourth bullet. There is no mention in the Findings of the source of this unilateral finding of intent by the City Council.

If the City Council's decision to uphold the Director's determination was based on "[t]he intent of the code," then there should be a citation to the source of such interpretation of intent. Although testimony was offered regarding the "legislative intent" behind the applicable language contained in UDC Table 11-2b-3, the person providing that testimony provided no foundation for his personal knowledge of such claimed intent, and no citation was provided for the source of any personal knowledge to support such testimony.

5. UDC is Ambiguous. Table 11-2B-3 in the UDC states the applicable side setback in the L-O zoning district as "10/5²," with note ² reading: "minimum setback only allowed with reuse of existing residential structure." Reading this in the UDC, the Applicant interpreted it as clearly authorizing a smaller 5' side setback for all buildings, if an existing residential structure on the property was being reused. The City Council recognized that the language used in the UDC's Table 11-2B-3 is ambiguous:

The Council determined that **the language on its face could be construed in more than one way**, but in evaluating the intent of the interpretation to apply to a re-use of an existing structure was more reasonable interpretation [sic] to apply to the single residential building, but not to any new buildings to be constructed on the site;

Findings, Conclusions, and Order, Section C.1., third bullet, emphasis added.

In reliance on his reasonable interpretation of Table 11-2B-3, which the City Council now admits is ambiguous, the Applicant expended funds to design and plan a site plan that complied with the shorter 5' side setbacks.

6. Incorrect Legal Standard. Among the reasons given on the record for the denial of the Applicant's appeal was that all applications must be treated the same, which is incorrect. The unique facts and circumstances of each application must be considered and decisions made on the merits of each application. Land use decisions by a local agency have no precedential value.

7. Final Decision Flawed; Violated Applicant's Substantive Rights. The City Council's decision was:

- In violation of constitutional or statutory provisions, including (without limitation) those entitling the Applicant to due process of law and the rights of the Applicant to own, use, and enjoy its real property;
- In excess of the statutory authority of the agency, in that the City Council is required to implement the plain language of the UDC;

- Arbitrary, capricious, or an abuse of discretion, as set forth above.

Based on the above deficiencies, the Applicant's substantive rights, including its right to own and use property, were violated.

Additionally, while the Applicant's appeals were still in process, and before the City Council's August 17 "Final Decision" was made, City staff notified the Applicant:

...you were to commence the use, acquire the building permits and commence construction on or before July 6, 2021. As it is July 22, 2021 and this has not occurred, the CUP is no longer valid.

July 22, 2021 email from Current Associate Planner Alan Tiefenbach to Lynette Cochran, Applicant's attorney's Legal Assistant. However, the Applicant could not have pulled building permits for its planned improvements on the subject property - the Applicant needed to wait for a final decision on its appeals. It was fundamentally unfair for the deadline for expiration of the CUP to continue running while the appeals were unresolved. In a subsequent email, Planning Supervisor Bill Parsons noted his concurrence with Associate Planner Tiefenbach's UDC interpretation of the CUP deadline and expiration.

On behalf of the Applicant, we continue to reserve all rights to supplement this request for reconsideration. We further reserve our right to submit a request for reconsideration within 14 days of receipt of a complete final decision that includes the "reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record" required by LLUPA and "findings of facts, conclusions of law, decision, and order" required by the UDC.

Sincerely,



Joshua J. Leonard

Cc: David Blood