

December 6, 2017

Rich Demarest, Chair
Boise City Planning & Zoning Commission

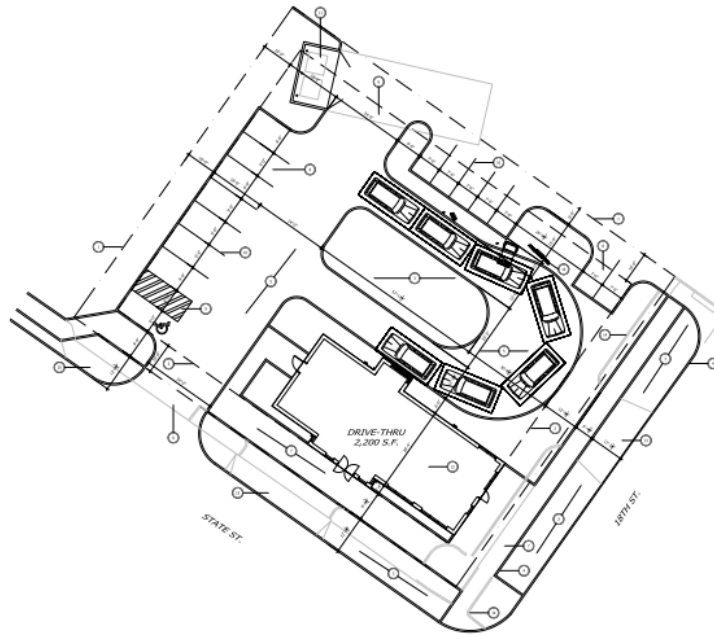
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RE: Proposed Starbuck's Drive-Thru at 1806 W STATE ST (CUP 17-00082)

Mr. Chair, Members of the Planning and Zoning Commission, and Mr. Riddle:

This letter is to express the opposition of the North End Neighborhood Association and the West Downtown Neighborhood Association to a proposed Starbuck's store and drive-thru (Project) proposed for 1806 W. State Street (Site).

A drawing of the proposed Project, which was included in the packet, is reproduced below:



The Project would entitle a new drive-thru, which is a disfavored use and prioritize auto-oriented uses in a neighborhood commercial retail, which goes against all of the planning guidelines for this part of State Street.

The Project requires a conditional use permit for the drive thru. We urge you to deny the Project's request. We fully recognize that there is an existing drive thru at this location. However, just because past generations made bad planning decisions doesn't mean we have to continue making the same bad choices. Here is where the auto-oriented uses along this stretch of the State Street corridor should end.

I. Requirement of non-conclusory findings

Idaho Code § 67-6535(2) requires that the approval or denial of any land use discretionary permit "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." This requirement is not just one of statute in nature; rather, in such quasi-judicial proceedings, it sounds constitutionally in due process and, moreover, is essential to the proper checks and balances courts must perform as part of the democratic governance.

As the Idaho Supreme Court has noted:

For "effective judicial review of the quasi-judicial actions of zoning boards, there must be ... adequate findings of fact and conclusions of law." *Workman Family P'ship v. City of*

Twin Falls, 104 Idaho 32, 36, 655 P.2d 926, 930 (1982). Conclusory statements are not sufficient; instead “[w]hat is needed for adequate judicial review is a clear statement of what, specifically, the decisionmaking body believes, after hearing and considering all of the evidence, to be the relevant and important facts upon which its decision is based.” Id. at 37, 655 P.2d at 931 (quoting *S. of Sunnyside Neighborhood League v. Bd. of Comm'rs*, 280 Or. 3, 21–22, 569 P.2d 1063, 1076–77 (1977)). . . .

Cowan v. Bd. of Comm'rs of Fremont Cty., 143 Idaho 501, 511, 148 P.3d 1247, 1257 (2006). In other states with the same mandate of findings in discretionary permits, courts have described the due process and judicial review mandate as one that requires the Commission to “set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 515, 522 P.2d 12, 17 (1974).

All of this means that, in the context of granting the conditional use permit, the variances, and the parking exception requested, the Planning & Zoning Commission’s decision must be supported by findings, and those findings must not be conclusory. The findings must show that the Commission has reasonably deliberated and reached a decision backed by evidence in the record and, moreover, the Commission must illustrate that it relied upon such evidence. Reasonableness is not just a matter of Idaho law, it is a longstanding requirement the U.S. Supreme Court has imposed on a city’s exercise of the police power. See *Lawton v. Steele*, 152 U.S. 133, 137, 14 S. Ct. 499, 501, 38 L. Ed. 385 (1894) (“To justify the state in thus interposing its authority in behalf of the public, it must appear . . . that the means are reasonably necessary for the accomplishment of the purpose. . . .”); see also Idaho Code § 67-5279(2)(d) (prohibiting quasi-judicial decisionmaking that is “arbitrary, capricious, or an abuse of discretion”). Without such a finding, the permits cannot be properly issued.

II. The conditional use permit should not be granted for this Project

The Project requires a conditional use permit because it seeks to have a drive-thru window. Below we analyze each of the relevant findings that the Commission must make in italics followed by an analysis illustrating why the Commission cannot properly make a finding to approve this permit. Boise Zoning Code § 11-03-04(6)(v) (findings for a conditional use permit).

- *The location is compatible to other uses in the general neighborhood;*

We acknowledge that a coffee shop is a permitted use in this location. What we object to is the drive thru, which perpetuates auto-oriented traffic patterns as the city is trying to shift away from those. For that reason, while the drive thru may be consistent with past zoning decisions, it is not consistent with the new policies of the city and the future uses of the general neighborhood.

- *The proposed use will not place an undue burden on transportation and other public facilities in the vicinity;*

State Street is one of the most busy streets in Boise, if not all of Idaho. Nonetheless, the Project seeks to place yet another drive thru on this commercial strip. Drive thrus are notorious for creating

congestion and back-up onto arterials. For that reason, the city has largely sought to prevent future drive thrus on State Street in the Downtown Planning Area precisely because the city recognizes that they create an undue burden on the free flow of traffic into and out of the city. Placing yet another drive thru here, which should not be permitted.

- *The site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls, fences, parking, loading, landscaping, and such other features as are required by this Code;*

The Project anticipates substantial queuing for the drive thru but provides no transportation analysis supports that the site is sufficiently large for the expected traffic and its queuing.

- *The proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity;*

The proposed Project would demolish one building and would substantially impact adjacent businesses, which we understand will also file opposition. The Project does not indicate how it will mitigate the effects on other property owners.

- *The proposed use is in compliance with the Comprehensive Plan;*

The Project is not in compliance with Blueprint Boise, the city's comprehensive plan.

We acknowledge that State Street already has many drive thrus; however, these were sins of the past that current planning documents seek to prohibit. For instance, Blueprint Boise notes:

Existing auto-oriented commercial centers will be revitalized as mixed-use activity centers over time to serve adjacent neighborhoods, increase housing options, and establish a more transit-supportive pattern of growth.

Blueprint Boise at 2-2 (Community Vision #3).

State Street has also been designated a "community gateway." In these locations:

The purpose of the Community Gateway designation and the associated design principles is to protect and strengthen the visual character of the city's gateways or primary entrance points. Key considerations include the streetscape characteristics, screening of parking, utility placement, and building design and orientation.

Blueprint Boise at 3-50. A drive thru goes against all of the design principles that are associated with such community gateways. See Principle GDP-CG.1: Streetscape Character; Principle GDP-CG.2: Site Planning/Development Orientation.

Blueprint Boise Goal NE-CCN 2.5: STATE STREET CORRIDOR seeks development in accordance with the State Street Corridor Transit Oriented Development Policy Guidelines.¹ Those Guidelines emphasize a “diversity and design of building intensity” and scale along State Street, which this Project would eliminate by demolishing the historic-eligible buildings. Further, the Guidelines encourage the creation of nodes that “become a ‘place’ responsive to market needs with a suitable mix of uses.” It is a tenet of modern building practice that historic structures provide character, which in turn makes new development more attractive and provides higher values to that new construction. Another drive thru here would increase visual blight along State Street.

For these reasons, the Project is not in compliance with the Comprehensive Plan.

In addition, the Project cannot meet the additional findings for “drive-up establishments” in Boise Zoning Code § 11-06-05(3)(A)(2)(a), as detailed below.

- *The location shall not cause an increase of commercial traffic in nearby residential neighborhoods, or cause significant adverse impacts in the vicinity.*

The Project would increase traffic into the north side of State Street where an existing fine-scale development pattern already exists. The Project would increase commercial traffic into residential neighborhoods.

- *Drive-up aisles should be located behind the building and circulation should provide for pedestrian access to and from the establishment’s entrance.*

The Project does locate the drive-us aisle behind the building. However, the Project provides no traffic modeling to indicate that the traffic would, in fact, fit within the proposed queuing.

- *Waiting lane(s) are of sufficient length to accommodate average monthly peak volumes;*

The Project provides no data to analyze this. The project bears the burden of proof in proving that this is the case. The neighborhood association requests appropriate time to comment on any newly available information on project design related to this issue.

- *Lights are designed and located to prevent glare on adjoining screening of lights may be required as a secondary measure of mitigation.*

The Project provides no data to analyze this. The project bears the burden of proof in proving that this is the case. The neighborhood association requests appropriate time to comment on any newly available information on project design related to this issue.

- *Landscaping should screen drive-up aisles from the public right-of-way and minimize the visual impact of vehicular lights, readerboard signs, and directional signs;*

¹ https://pds.cityofboise.org/media/127913/1_StateStreetTODPolicies.pdf

The Project provides no data to analyze this. The project bears the burden of proof in proving that this is the case. The neighborhood association requests appropriate time to comment on any newly available information on project design related to this issue.

- *Drive-up lanes shall be setback at least ten feet from residentially zoned or used property.*

It is unclear whether the Project meets this requirement.

- *Landscape and sound abatement walls may be required when appropriate.*

The Project provides no data to analyze this. The project bears the burden of proof in proving that this is the case. The neighborhood association requests appropriate time to comment on any newly available information on project design related to this issue.

- *Communication systems shall not exceed 55 decibels at any property line adjoining or across the alley from residential zones or uses.*

The Project provides no data to analyze this. The project bears the burden of proof in proving that this is the case. The neighborhood association requests appropriate time to comment on any newly available information on project design related to this issue.

III. Concluding Remarks

For these reasons, we encourage the Commission to deny the conditional use permit this Project seeks. To the extent that Starbucks would locate in the neighborhood without the drive thru and embraced a multi-modal approach to trip generation, we would welcome them to our community.

Very truly yours,

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