

City of Hailey Planning Department

MEMORANDUM

TO: Hailey Planning and Zoning Commission

FROM: Beth Robrahn, Planning Director

RE: Appeal of Administrative decision

HEARING: December 1, 2008

The applicant, Leargulf, LLC is appealing an administrative approval of minor modifications to design review approval for the CSM Building given by the Commission on June 16, 2008.

The Planning Department received plans on September 9, 2008 with modifications to the CSM Building design review approval. The modifications were approved administratively as allowed for in the conditions of approval.

Section 3.6 of the Zoning Ordinance establishes the procedure for appeals as follows;

“A party aggrieved by a final decision of the Administrator, Hearing Examiner or Commission may appeal in writing any final decision by filing a Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed, the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

At the time of the filing of the Notice of Appeal, the Appellant shall pay the costs of preparing the transcript and record estimated by the Administrator and the fee for filing an appeal, as established by ordinance. The Administrator will prepare one original transcript (if applicable) and record and 8 copies of the transcript (if applicable) and record. If the costs of preparing the transcript and record exceed the estimated costs paid by the Appellant, the Appellant shall pay the difference before a hearing on the appeal is heard.

Once the transcript and record have been prepared, the Administrator shall schedule a hearing on appeal with the Commission or Council for the next available hearing date. If the Appellant desires to file a brief in support of the appeal, the Appellant shall file an original brief and 8 copies of the brief with the Administrator five business days before the scheduled appeal hearing. If the brief is not timely filed, the Commission and the Council may elect not to consider the brief. The Appellant and Appellant’s representative and a City representative shall only be entitled to present argument before the Commission or Council.”

City of Hailey

115 MAIN STREET SOUTH
HAILEY, IDAHO 83333
PLANNING & ZONING DEPARTMENT

(208) 788-9815
FAX: (208) 788-2924

November 25, 2008

Scott Miley
P.O. Box 3271
Hailey, ID 83333

Dear Scott:

Our office received plans on September 9, 2008 with modifications to the CSM Building design review approval of June 16, 2008.

Condition (m) of the design review approval states, "This Design Review approval is for plans dated May 9, 2008. The Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit."

I have reviewed the revised plans and identified the following modifications to the CSM Building:

- The addition of a second story deck on the east and west elevations, approximately 175 square feet each
- Change of windows to doors leading out to the deck on the east and west elevations
- Removal of the lower roof standing seam on the east and west elevations
- The addition of a trellis on the south elevation

The proposed changes are minor modifications to the plans approved in Design Review on June 16, 2008 and appear to be acceptable.

My review and approval does not in any way waive any Design Review requirements. All Design Review elements must be installed, or bonded for, if weather or other extenuating circumstances exist, prior to issuance of Certificate of Occupancy.

Please call me at 788-9815, ext 13, if you have any questions.

Respectfully,



Beth Robrahn, AICP
Planning Director

cc: Jim Phillips (email)
Marc Corney (email)

NOV 19 2008 Submittal Date: 10 / 29 / 2008

City of Hailey - Appeal Application

Name of Appellant: LEARGULF, LLC
Mailing Address: P.O. BOX 3271 City: HAILEY State: ID Zip: 83333

Phone: (208) 788 - 5362 Fax: (208) 788 - 7025 Cell: (208) 720 - 2900

Email Address: samiley@cox.net

* Signature: SCOTT MILEY, OWNER Date: 11 / 9 / 10

Application Contact (if different than above): JAMES PHILLIPS, ATTORNEY
**Application Contact will be the Planning Department's primary point of contact for questions related to the application.

Mailing Address: 409 MAIN ST. NO. City: HAILEY State: ID Zip: 83333

Phone: (208) 788 - 2427 Fax: (208) 788 - 3918 Cell: ()

Email Address:

* Signature: JAMES PHILLIPS, ATTORNEY Date: / /

Address of Subject Property: 1760 LEAR LANE

Legal Description of Property: LOT 1A, BLOCK 3, AIRPORT WEST SUB.

Administrator or Commission Decision under Appeal: HAILEY PLANNING & ZONING COMMISSION, OCTOBER 20, 2008, APPELLANT'S DESIGN REVIEW APPLICATION FILED AUGUST 28, 2008. AKA CSM BUILDING

See the Hailey Zoning Ordinance or Hailey Subdivision Ordinance for information on application process.

Fees: Cost of additional noticing, recording fees, and other direct costs (such as copying costs) will also be assessed	
Application	\$255.00
Total due	\$ 255.00

- The following information must be included for the application to be considered complete:
- A written statement of the reason(s) for the appeal and argument(s) which support the appeal.
 - If appropriate, one (1) large set of all site plans and/or building elevations, to scale, which pertain to the decision appealed.
 - Six (6) 11" x 17" copies of any larger plans/maps.
 - PDF files of all required documents and 11" x 17" plans/maps

City Use Only -
Certified Complete by: _____
Date: ____/____/____

JAMES W. PHILLIPS

RECEIVED
NOV 12 2008

November 11, 2008

Planning and Zoning Commission
Mayor and City Council
City of Hailey, Idaho
P.O. Box 945
Hailey, ID 83333

NOTICE OF APPEAL

Re: **NOTICE OF APPEAL** by Leargulf, LLC, ("Appellant") of decision of the Hailey Planning and Zoning Administrator set forth in her letter dated on October 31, 2008 ("Decision") regarding the Appellant's Design Review Application filed August 28, 2008 ("Application").

This letter constitutes the NOTICE OF APPEAL of the above-referenced Decision pursuant to Section 3.6 of the Hailey Zoning Ordinance. The Application in question is for a building located on Lot 1A, Block 3, in the Airport West Subdivision.

The reason for this appeal is to have the Decision overturned on the grounds that the Decision is:

- (1) not in accordance with or in violation of the validly adopted, effective and applicable ordinances of the City;
- (2) in violation of the constitution of the state of Idaho and/or statutory authority of the City;
- (3) based upon ordinances made upon unlawful procedures;
- (4) arbitrary, capricious and/or an abuse of discretion;
- (5) not supported by substantial evidence in the record; and,
- (6) based upon ordinances of the City which are void for

vagueness and lack of standards.

Without limiting the foregoing, the Appellant further states as follows:

The Appellant filed a separate design review application on August 28, 2008, for a building with different design elements from one which received a prior approval. The Appellant's right to submit design review applications is not limited in any way by Hailey's ordinances. So, the application is not to amend any existing approval, but a new application for design review approval.

The Decision is a restatement of an the earlier decision of the Administrator expressed to the Hailey Planning and Zoning Commission on October 20, 2008, which decision was discussed and upheld by motion of the Commission at that meeting. And, that decision of the Commission is the subject of a pending Notice of Appeal to the City Council. As such, it is not a new decision at all and therefore has no force and effect. Also, this duplicative Decision has required the Appellant to incur the costs of preparing and filing a second Notice of Appeal and pay another \$300.00 appeal filing fee to which the Appellant objects.

The Administrator based her decision on Section 6A.3.g of the Hailey Zoning Ordinance, which was purported to have been adopted by Hailey Ordinance 1009 on August 11, 2008. However, such ordinance is not valid because the required public hearing notices were not published in accordance with Idaho Code 60-106, and, therefore, under that statute are void and without force and effect. Similarly, said ordinance was not published in accordance with that law and therefore was not made effective within the thirty (30) days as required by law. As a result, the Administrator has no authority to approve any design review plans and any decision in that regard is in violation of the applicable city ordinances and state laws.

Even if the ordinance was valid, it does not provide the Administrator with sufficient legal standards by which to exercise the discretion purportedly granted to the Administrator thereunder. Therefore, the ordinance violates the standards of substantive due process under both the U.S. and Idaho constitutions, and is void for vagueness.

Even if the ordinance was valid, the Appellant's Design Review Application submitted August 28, 2008, does not involve minor changes under Section 6A.3.g, because the building design includes enclosed decks which under the ordinance result in a change in the building's footprint.

Furthermore, design elements which include an enclosed deck rather than a roof is not a minor difference in building design. Such a change is not subject to administrative

approval under Section 6A.3.g because such difference in building design may significantly impact a project's impact on neighboring properties.

Also, the Design Review Application did not include installation of public sidewalks within the street right of way. This is a significant difference from an earlier approved design review application. Any condition imposed on the Appellant's Design Review Application dated August 28, 2008 to require such sidewalks violates the Appellant's rights guaranteed under the U.S. and Idaho constitutions.

The Appellant reserves the right to address additional points in its brief to be filed as part of this appeal.

By filing this Notice of Appeal, the Appellant is not withdrawing its prior Notice of Appeal filed October 29, 2008 or waiving any rights with regard thereto or with regard to the Design Review Application filed August 28, 2008.

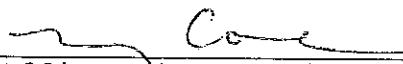
SUBMITTED on this 12th day of November, 2008.

THE ROARK LAW FIRM, PLLC

by 

James W. Phillips, of counsel
Attorney for Appellant

RECEIVED together with estimated cost of transcript and record this 12th day of November 2008.


Office of the Hailey City Clerk

cc: client
Marc Corney