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BEFORE THE HEARING EXAMINER
FOR THE TOWN OF LA CONNER, WASHINGTON

David Lowell, Hearing Examiner

Atkinson Development / KSA
Investments CUP

Conditional Use Permit

NO. LU21-56CU

RESPONSE OF DEBBIE ALDRICH
TO APPLICANT’S MOTION FOR
RECONSIDERATION

The applicant has requested reconsideration of Condition 9.A and 9.B. Combined, these conditions preclude any portion of the proposed structure to exceed the Code’s 30-foot height limitation. The motion for reconsideration identifies three reasons for revising that condition. The motion also identifies five “other considerations” in support of the motion. Neither the reasons nor the “other considerations” provide an adequate basis for revising the condition.

The three reasons listed reference codes of other jurisdictions (and the IBC Code) which – it is contended – would allow for greater height. The obvious and complete response is that the Examiner is required to apply La Conner’s Code, not any of the other codes. For better or for worse, the applicant is vested to the Town’s code that was in effect when it filed its application. If the applicant believes the Town should revise its code to mimic the codes of other jurisdictions, it is free to request the Town Council to amend the Town’s code. But the current project application, vested to

1 the current code, must be judged by the current code, not the codes of other jurisdictions that may (or
2 may not) be adopted by the Town at some unknown date in the future.

3 The “other considerations” listed in the motion are a hodgepodge of reasons that the Town
4 Council might consider if it were requested to amend the current height limitation. These policy
5 considerations may (or may not) provide adequate justification for the Town Council to amend the
6 code in the future. But until and unless the Town Council amends the code (based on these “other
7 considerations” or any other rationale), the applicant must meet the current Code requirements.

9 Apart from seeking an amendment from the Town Council (which the applicant has not done),
10 the applicant’s other mechanism for seeking to relax the 30-foot height limitation is by requesting a
11 variance. *See* La Conner Municipal Code, § 15.125.040. But the applicant has not filed an
12 application for a variance either. The Examiner cannot rule on a variance application when a
13 variance application has not been filed.

15 Nor, for that matter, has the applicant made any attempt to demonstrate that it meets the
16 criteria required for granting a variance. A core criterion for any variance is that there are special
17 conditions “which are peculiar to the land, structure, or building involved . . . which are not
18 applicable to other lands, structures, or buildings in the same district.” LMC 15.125.0.040(2)(a).
19 The applicant has made no effort to establish that there is some “peculiar” condition of this lot that
20 requires a variance from the standard code height limitations. Nor is there any evidence in the
21 record to support such a finding.

23 Basing a variance for this project on a “peculiarity” of the “structure or building” is
24 impossible because there is no existing structure or building that remain as part of the project.
25 Instead, the applicant proposes to create a new structure/building. There is nothing “peculiar”
26 about the non-existent building that requires a variance. The applicant’s desire to add structural

1 components on the rooftop is not an adequate justification. All the applicant need do is reduce the
2 height of the remainder of the building (up to the roof) to assure that the total height (building plus
3 rooftop elements) stays within the 30-foot height limitation.

4 To the same effect, a variance cannot be created if the need for the variance “result[s] from
5 the actions of the applicant.” LMC 15.125.040(2)(c). Yet it is precisely because of the actions of
6 the applicant that it needs a variance. If the applicant merely revised its building design to lower
7 the total height of the project (structure plus rooftop features less than or equal to 30 feet) no
8 variance would be required. The applicant has brought the need for a variance upon itself. It is not
9 due to any “peculiar” feature of the property or existing building/structure.

11 For the foregoing reasons, the motion for reconsideration should be denied.

12 Dated this 21st day of June, 2022.

14 Respectfully submitted,

15 BRICKLIN & NEWMAN, LLP

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18 By:

19 David A. Bricklin, WSBA No. 7583
20 Attorney for Debbie Aldrich

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