



**CITY OF MCMINNVILLE  
PLANNING DEPARTMENT**  
231 NE FIFTH STREET  
MCMINNVILLE, OR 97128

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[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

**DECISION, FINDINGS OF FACT, AND CONCLUSIONARY FINDINGS FOR THE DENIAL OF A SIGN STANDARDS EXCEPTION REQUEST AT 2250 NE HIGHWAY 99W**

**DOCKET:** SE 2-17 (Sign Standard Exception)

**REQUEST:** The applicant has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.

**LOCATION:** The subject sign is located on the property at 2250 NE Highway 99W. The subject site is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.

**ZONING:** C-3 (General Commercial)

**APPLICANT:** Jonathan Aliabadi

**STAFF:** Chuck Darnell, Associate Planner

**DATE DEEMED COMPLETE:** September 27, 2017

**HEARINGS BODY:** McMinnville Planning Commission

**DATE & TIME:** October 19, 2017. Civic Hall, 200 NE 2<sup>nd</sup> Street, McMinnville, Oregon

**COMMENTS:** This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Comcast; and Northwest Natural Gas. Their comments are provided in this exhibit.



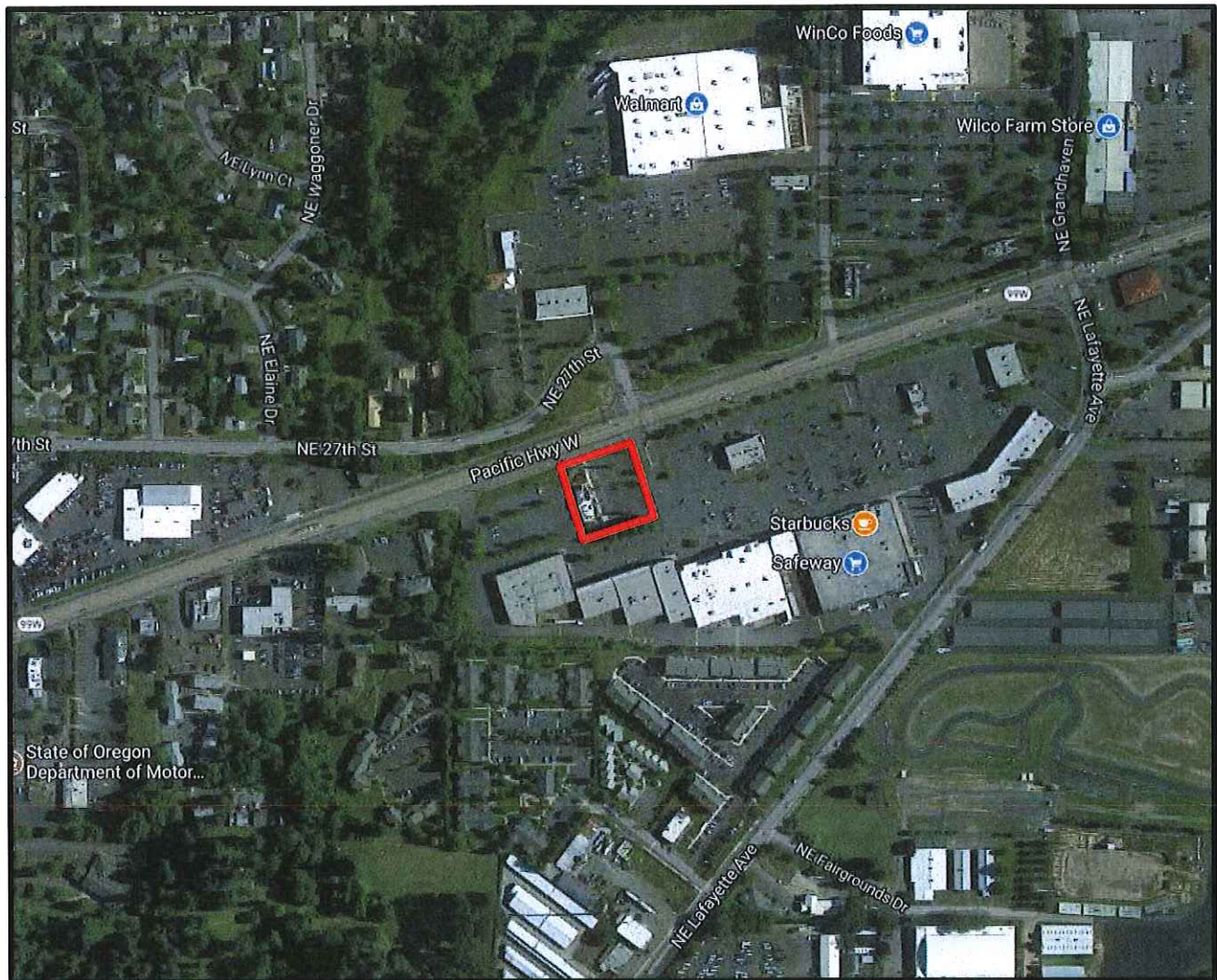
**APPLICATION SUMMARY:**

The applicant has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.

Certain types of existing nonconforming signs in McMinnville are subject to an amortization process, which requires that signs that are not in compliance with the current sign standards be brought into compliance by December 31, 2017. Specifically, Section 17.62.110(C) of the McMinnville Zoning Ordinance states the following:

Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, 2017, [...]

The subject site is identified below:



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**Attachments:**

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The McMinnville Zoning Ordinance does allow for property owners with existing nonconforming signs that are subject to the amortization process to request an exception to the sign standards to allow their sign to continue to exist. In this case, the property owner is requesting an exception from the height and size requirements for freestanding signs in commercial zones. The subject site is zoned C-3 (General Commercial). Freestanding signs in commercial zones are limited to 125 square feet in area and 20 feet in height when the subject property is located adjacent to Highway 99W.

Specifically, Section 17.62.070(C)(1) of the McMinnville Zoning Ordinance regulates freestanding signs as follows:

Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere.

The existing sign on the property, which is the subject of this exception request, is located near the subject property's frontage to Highway 99W. The subject freestanding sign is 30 feet in height and 182 square feet in size, between the three separate cabinets on the pole sign. The subject freestanding sign can be seen below:



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**ATTACHMENTS:**

1. Application and Attachments

**COMMENTS:**

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Frontier Communications, Comcast, Northwest Natural Gas. The following comments had been received:

No comments have been received prior to the Public Hearing.

**FINDINGS OF FACT**

1. The applicant, Jonathan Aliabadi, has requested a sign standards exception to allow an existing freestanding sign to exceed the height and size standards for freestanding signs on commercially zoned properties. The specific exception request is to allow the existing Burger King freestanding sign to be 30 feet in height and 182 square feet in surface area.
2. The property on which the subject sign is located is 2250 NE Highway 99W. The subject site is more specifically described as Tax Lot 900, Section 15BB, T. 4 S., R. 4 W., W.M.
3. The subject property is currently zoned C-3 (General Commercial), and is designated as Commercial on the McMinnville Comprehensive Plan Map, 1980.
4. This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Frontier Communications, Comcast, Northwest Natural Gas. No comments in opposition were provided to the Planning Department.
5. Notice of the public hearing was provided by the City of McMinnville in the October 10, 2017 edition of the News-Register. No public comments were received prior to the public hearing.
6. The applicant has submitted findings (Attachment 1) in support of this application. Those findings are herein incorporated.

**CONCLUSIONARY FINDINGS:****McMinnville's Comprehensive Plan:**

The following Goals and policies from Volume II of the McMinnville Comprehensive Plan of 1981 are applicable to this request:

- GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF MCMINNVILLE.

*Policy 188.00: The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of*

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*information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.*

Finding: Goal X 1 and Policy 188.00 are satisfied in that McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed staff report prior to the McMinnville Planning Commission and/or McMinnville City Council review of the request and recommendation at an advertised public hearing. All members of the public have access to provide testimony and ask questions during the public review and hearing process.

### **McMinnville's City Code:**

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) are applicable to the request:

#### Chapter 17.62 - Signs

17.62.010 Purpose. The City Council finds that signs provide an important medium through which individuals and businesses may convey a variety of messages. However, left completely unregulated, signs can become a threat to public safety and a traffic hazard as well as an obstruction to the aesthetic appeal of McMinnville's unique landscape.

The standards contained in this chapter are primarily intended to balance the needs of businesses and individuals to convey their messages through signs, and the right of the public to be protected against the unrestricted proliferation of signs and their effect on public and traffic safety and the aesthetic qualities of the City such as vistas and gateways. In an attempt to achieve that balance, the purpose of this chapter is to:

- A. Improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards;
- B. Provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance;
- C. Minimize visual clutter caused by signs by limiting their numbers and duration of use;
- D. Protect citizen safety by prohibiting hazardous signs;
- E. Ensure compliance with state and federal laws regarding advertising by providing rules and standards that are content neutral; and
- F. Provide for near term and longer term improvements to signage through the use of appropriate amortization and incentive policies.

Finding: Section 17.62.010 is satisfied by the decision in that the Planning Commission finds that the exception request does not allow for the purposes of the Signs chapter to be implemented. Specifically, an approval of the exception request would not allow for the City to "improve the visual qualities of McMinnville's streetscape environment through the use of equitably applied sign height, size, and location standards" or to "provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance". The Planning Commission also finds that the exception request does not meet the required review criteria for sign standards exceptions, which will be discussed in more detail below.

17.62.070 Permanent Sign Regulations. Permanent signs may be erected and maintained only in compliance with the following specific provisions: [...]

- C. Commercial (C-1, C-2, and C-3) and Industrial (M-L, M-1, and M-2) zones. Signs in the commercial and industrial zones may be directly or indirectly lit and shall meet all setback requirements of its zone.
  1. Freestanding Signs: Each site or multi-tenant complex is allowed one (1) permanent freestanding sign not to exceed forty-eight (48) square feet in area and six (6) feet in height. In addition, each site or multi-tenant complex is allowed one (1) additional permanent freestanding sign per 500 feet of frontage, not to exceed three (3) per site

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or multi-tenant complex, each not to exceed 125 square feet in area and twenty (20) feet in height if located on Highways 99W or 18 and sixteen (16) feet in height if located elsewhere. [...]

Finding: The exception request is warranted because the subject sign is 30 feet in height and 182 square feet in surface area, both of which exceed the height and size maximums for a freestanding sign in a commercial zone and adjacent to Highway 99W.

#### 17.62.110 Nonconforming Signs.

- A. The following provision will require that a nonconforming sign be brought into compliance with this chapter: physical modification of a nonconforming sign or any action on a nonconforming sign that requires a building permit. This does not include replacement of a sign face without modification of the frame or general sign maintenance and repair.
- B. All temporary or portable signs not in compliance with the provisions of this code shall be removed or made compliant immediately following adoption of this ordinance.
- C. Amortization. Any freestanding, roof, or animated sign which was lawfully established before January 1, 2009, but which does not conform with the provisions of this ordinance, shall be removed or brought into conformance with this ordinance by no later than December 31, 2017, or at the time of occurrence of any of the actions outlined in provision 'A' above.
- D. Notice of Sign Noncompliance. Notice of sign noncompliance will be mailed to affected property owners prior to taking enforcement action pursuant to Section 17.62.130 of this chapter. For those signs impacted by 17.62.110(C) of this chapter, notice of noncompliance will be mailed to affected property owners no later than six months prior to the end of the amortization period, and again prior to taking enforcement action pursuant to Section 17.62.130 of this chapter.
- E. Appealing a Notice of Noncompliance. Any owner of property on which a nonconforming sign is located may appeal a Notice of Sign Noncompliance issued pursuant to Section 17.62.110(D) within 60 days of the mailing date of such Notice by:
  1. Submitting evidence of sign compliance to the Planning Department. The Planning Director shall determine whether the evidence submitted proves sign compliance, and the Director has the authority to dismiss a Notice of Sign Noncompliance. All decisions made by the Director may be appealed to the Planning Commission; or
  2. Submitting an application for an Exception pursuant to Section 17.62.120 to the Planning Director; or
  3. Submitting an application for an administrative variance pursuant to Section 17.72.020 to the Planning Director; or
  4. Submitting an application for a variance pursuant to Section 17.72.020 to the Planning Department.

Finding: Section 17.62.110 is satisfied in that a notice of potential sign noncompliance was provided to the owner of the property on which the subject sign is located. The notice was issued by the McMinnville Planning Department on June 30, 2017, which was six (6) months prior to the end of the amortization period as defined in Section 17.62.110(C). The applicant appealed the notice of noncompliance by submitting the application for a sign standards exception on August 24, 2017.

#### 17.62.120 Exceptions.

- A. Applications for an Exception shall be heard by the Planning Commission, which may authorize exceptions from the requirements of this chapter where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this chapter would cause an undue or unnecessary hardship as set forth in subsections (B) and (C) of this Section, except that no exception shall be granted pursuant

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to subsection (B) of this Section to allow a sign or a type of signage which is prohibited by Section 17.62.050 of this chapter. In granting an exception the Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or otherwise achieve the purposes of this chapter.

Finding: Section 17.62.120(A) is satisfied in that the Planning Commission held a public hearing to consider the exception request. The Planning Commission found that strict application of the Signs chapter and the amortization process would not cause an undue or unnecessary hardship as set forth in Section 17.62.120(B) or Section 17.62.120(C), as described in more detail below.

B. An exception may be granted if the property owner established that:

1. An exception is necessary to prevent an unnecessary hardship due to factors such as topography, location, surrounding development, lot shape or lot size; and [...]

Finding: Section 17.62.120(B)(1) is satisfied by the decision in that the Planning Commission finds that the exceptions requested are not warranted based on the sign's location, surrounding development, or other physical characteristics of the subject site. The property that the Burger King building is located on is relatively flat. There is a slight reduction in elevation from the grade of Highway 99W adjacent to the property down to the property's parking lot and building site, but the grade difference is not substantial enough to warrant the increase in sign height being requested (10 feet over the standard maximum of 20 feet in height). Also, the reference to the vertical space being obstructed by overhead powerlines does not warrant the exception for sign height, as a reduction in height down to a level that meets the City's sign standards would actually bring the sign down below the height of the powerlines and reduce the obstruction from view from the public right-of-way. In terms of the exception for sign size, the applicant did not provide sufficient evidence for the need for a larger sign (57 square feet over the standard maximum size of 125 square feet).

In addition, the subject site is highly visible from the adjacent right-of-way. The Burger King building is set back from the street, but is completely unobstructed from view with no landscaping or other physical barriers between the building and the adjacent right-of-way. The Planning Commission finds that the property has space to accommodate a freestanding sign that meets the City's current sign standards along the property's frontage that would still provide additional visibility for the business. The underlying zoning district (C-3 General Commercial) did not require that the building be setback from the street, so if visibility was a primary concern of the property owner, the site could have been designed to locate the building closer to the roadway. Therefore, some of the hardships referenced by the applicant are not specific to the subject property and were not out of the control of the property owner, but are the result of the manner in which the property was developed.

Views of the subject site and existing sign, from both directions on the adjacent public right-of-way (Highway 99W), are provided below:

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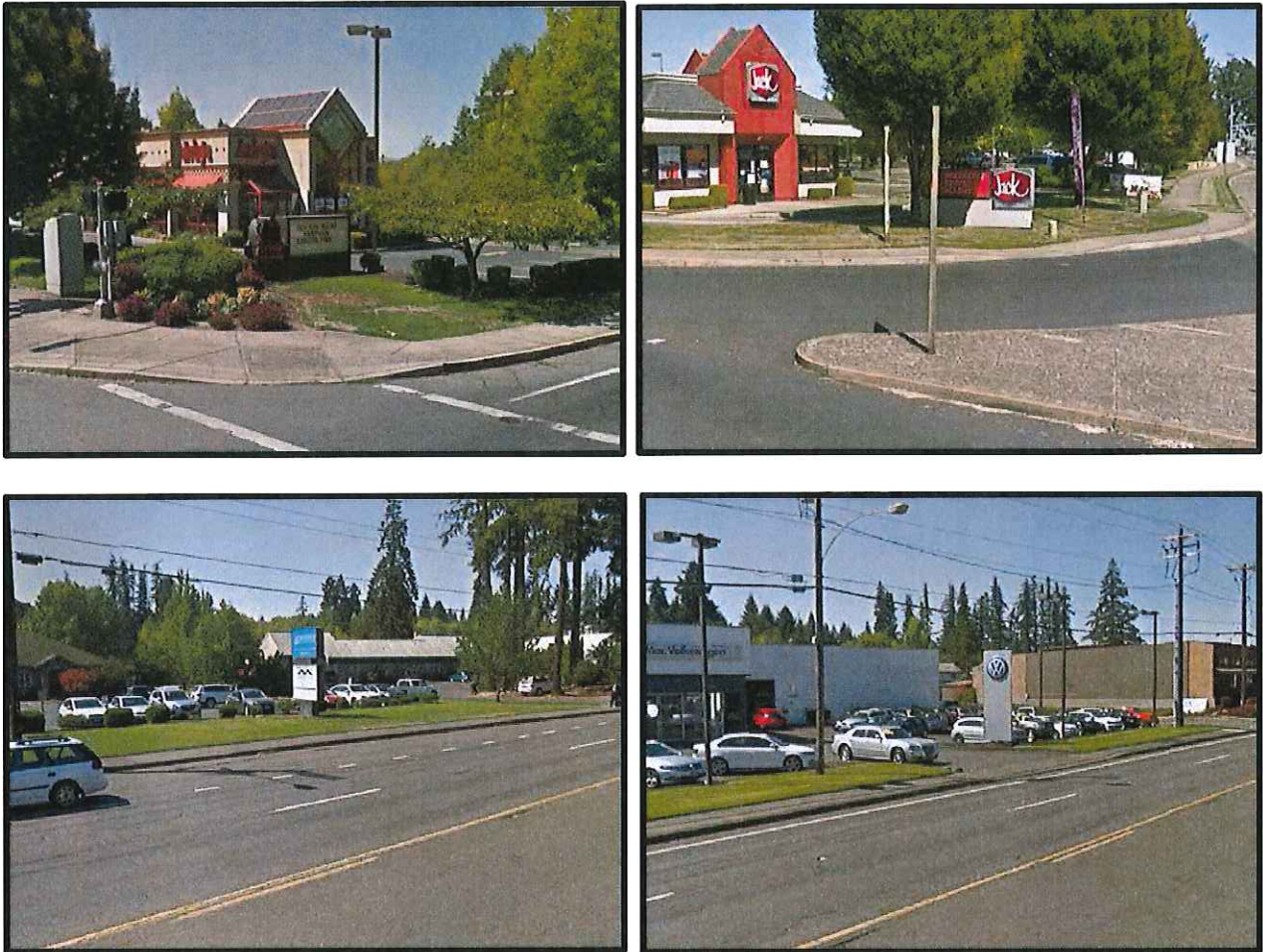
2. The granting of the exception will not result in material damage or prejudice to other property in the vicinity; and [...]

Finding: Section 17.62.120(B)(2) is satisfied by the decision in that the Planning Commission finds that the existing sign, in and of itself, does not cause any material damage to other surrounding properties. However, the granting of the exceptions would result in prejudice to other properties in the vicinity that have constructed signs that meet the City's sign standards. Many of the factors that the applicant referenced in their response to criteria #1 (Section 17.62.120(B)(1)), including sign location, topography, and surrounding development, apply similarly to many other properties in the vicinity. Those properties have taken those factors into consideration, and still found a location on the site that allowed for a sign to be located that provides visibility for the businesses but that also meets the City's standards for freestanding sign size and height. Within a quarter mile of the subject site, there are numerous properties with similar physical characteristics that have installed freestanding signs that meet the City's standards for height and size. Examples of those signs and the properties that would be prejudiced are provided below:

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3. The request will not be detrimental to community standards and the appearance of the city.

Finding: Section 17.62.120(B)(3) is satisfied by the decision in that the Planning Commission finds that the community has specific standards in place in the McMinnville Zoning Ordinance for the height and size of freestanding signs. These standards limit the height of freestanding signs along Highway 99W to 20 feet in height and limit the size of freestanding signs to 125 square feet in area. These size requirements were developed to implement the purpose of the McMinnville sign ordinance that was adopted in 2008 under Ordinance No. 4900. The purpose of the sign standards that were adopted, as now stated in Section 17.62.010 of the McMinnville Zoning Ordinance, is to “improve the visual qualities of McMinnville’s streetscape environment through the use of equitably applied sign height, size, and location standards” and to “provide minimum, consistent, and enforceable sign standards by regulating sign location, size, height, illumination, construction, and maintenance”.

The Planning Commission finds that granting the exception request would not be consistent with the community standards for freestanding signs, not only because the existing sign does not meet the clearly defined standards for height and size, but also because an approval of the exception request would not result in “equitably applied sign height, size, and location standards”. An approval of the exception request would result in prejudice to other properties in the vicinity that have followed the community’s standards for freestanding signs, as described in more detail above.

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- C. An exception may be granted if the property owner establishes that the strict enforcement of the ordinance will either:
1. Deny the owner of all economically viable use of the property on which the sign is located; or
  2. Substantially interfere with the owner's use and enjoyment of the property on which the sign is located.

Finding: Section 17.62.120(C)(1) and Section 17.62.120(C)(2) are satisfied by the decision in that the Planning Commission finds that the strict enforcement of the amortization program will not deny the owner of all economically viable use of the property, or substantially interfere with the owner's use and enjoyment of the property. The amortization program and the sign standards that apply to the existing freestanding sign do not deny the owner of all economically viable use of the property. Strict enforcement of the amortization program does not require that signage be completely removed from the property, only that the signage be updated to be in compliance. The amortization program also does not result in the property becoming completely economically inviable, as the existing building and use are allowed to continue to operate as they do today.

- D. Exceptions shall not be granted for the convenience of the applicant or for the convenience of regional or national businesses which wish to use a standard sign size.

Finding: Section 17.62.120 is satisfied by the decision in that an exception is not being granted for the convenience of a national business or corporation to use a standard sign size. While the applicant has stated that the required updates to the existing freestanding sign may require changes that cause conflict between a franchisee and the larger corporation, that argument does not warrant the granting of a sign exception. Therefore, the Planning Commission finds that the applicant's main argument for the interference of the owner's use and enjoyment of the property is not applicable, as the use of a corporation or national business standard sign size is specifically stated in the McMinnville Zoning Ordinance as a factor that does not allow for the granting of an exception.

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