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EXHIBIT 3 - STAFF REPORT

DATE: October 19, 2017
TO: McMinnville Planning Commission
FROM: Chuck Darnell, Associate Planner
SUBJECT: SE 2-17 – Sign Standards Exception – 2250 NE Highway 99W

Report in Brief:

This is a public hearing to consider an application for a sign standards exception to allow for an existing sign to exceed the maximum height and size requirements for freestanding signs. The existing sign is the freestanding sign associated with the Burger King restaurant 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.

Background:

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 deadline for the amortization process may be extended by one year to December 31, 2018, pending a zoning text amendment that will be under consideration by the Planning Commission and the City Council near the end of 2017. However, 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.

The subject site is identified below:

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Attachment A – Decision, Findings of Fact, and Conclusionary Findings for the Denial of a Sign Standards Exception Request at 2250 NE Highway 99W



Discussion:

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

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square feet in size, between the 3 (three) separate cabinets on the pole sign. The subject freestanding sign can be seen below:



Section 17.62.120(A) of the McMinnville Zoning Ordinance states that the Planning Commission may authorize sign standard exceptions where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the sign standards and amortization process would cause the property owner an undue or unnecessary hardship.

Sign Exception Review Criteria

The criteria that must be met in order for the Planning Commission to grant an exception are described in Section 17.62.120(B) of the McMinnville Zoning Ordinance. Those criteria are as follows:

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Section 17.62.120(B):

- 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

The applicant has provided arguments that state that the exception is necessary to prevent an unnecessary hardship due to sign location, topography, and surrounding development. The applicant has argued that the location of the sign presents challenges that would result in a hardship. Those challenges, as described by the applicant, include the existence of overhead powerlines which obstruct the vertical space on the north side of the site, parking lot improvements and landscaping within the site that limit the relocation of the sign, and other surrounding development (other signs and parking lot lights) that cause the need for the taller sign. The applicant also references the fact that the Burger King building is set back from the street, and believes that necessitates the exceptions to sign height and size that are being requested.

Staff does not concur with the applicant's arguments, and does not believe that the exceptions requested are 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. Staff believes 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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Section 17.62.120(B):

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

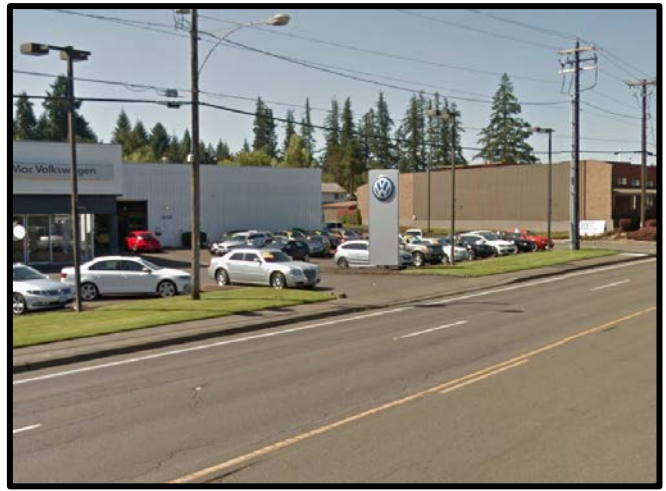
The applicant has argued that the existing sign does not result in material damage to other properties and businesses in the vicinity, as the sign is offset from the roadway and does not block any other businesses from view.

Staff believes that the existing sign, in and of itself, does not cause any material damage to other surrounding properties. However, the granting of the exceptions will 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

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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:



Section 17.62.120(B):

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

The applicant has stated that the existing sign and the exceptions being requested would not be detrimental to community standards or the appearance of the city. The applicant has provided drawings from the time of the sign’s installation in the 1980s, and statements that the sign is continually maintained and cleaned, as evidence that the sign is not detrimental to community standards.

Staff concurs with the applicant’s statements that the sign is maintained and does not believe that the sign is ever in a state of disrepair. However, the community does have 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

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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”.

Staff does not believe that the exception request would 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.

Additional Review Criteria

In addition to the review criteria discussed above, Section 17.62.120(C) of the McMinnville Zoning Ordinance allows another opportunity for a property owner to be granted an exception. This section states the following:

- 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.

The applicant has argued that the strict enforcement of the amortization program would negatively impact the economic viability of the property for the property owner, business owner, and employees, based on the fact that any loss of signage space would result impact advertising to the business. The applicant is arguing that this is integral to the operation and success of the business at this location, and that reducing the height or size of the sign would reduce traffic and sales for the business. The applicant has also argued that strict enforcement of the amortization program would interfere with the owner’s use and enjoyment of the property on which the sign is located, as any changes to the sign would place the franchisee operating the Burger King restaurant in a legal dispute with Burger King Corporation.

Staff does not believe that the strict enforcement of the amortization program will 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.

While the required updates to the existing freestanding sign may require changes that cause conflict between a franchisee and the larger corporation, staff does not believe that this on its own warrants the granting of a sign exception. Section 17.62.120(D) of the McMinnville Zoning Ordinance states that “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”. Therefore, staff believes that the applicant’s main argument for the interference of the owner’s use and enjoyment of the

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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 will not allow for the granting of an exception.

Fiscal Impact:

None.

Commission Options:

- 1) Close the public hearing and **DENY** the application, per the decision document provided which includes the findings of fact.
- 2) **CONTINUE** the public hearing to a specific date and time.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a specific date and time.
- 4) Close the public hearing and **APPROVE** the application, providing findings of fact for the approval in the motion to approve.

Recommendation/Suggested Motion:

The Planning Department recommends that the Commission make the following motion to deny SE 2-17:

THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR DENIAL IN THE DECISION DOCUMENT FOR SE 2-17, AND THE MATERIALS SUBMITTED BY THE APPLICANT, THE PLANNING COMMISSION DENIES SE 2-17.

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