



PLANNING COMMISSION STAFF REPORT

APPLICATION: Minor Exception
ME2018-0008

AGENDA ITEM: PH-1

PREPARED BY: Teresa Santilena
Assistant Planner

MEETING DATE: July 11, 2018

SUBJECT: Minor Exception ME2018-0008
109 East Lemon Avenue

REQUEST: Applicant is requesting a Minor Exception from Monrovia Municipal Code Section 17.28 to exceed the maximum permitted permanent window sign area (100% window coverage in lieu of 10% window coverage) at an existing restaurant, The Diplomat Eatery & Tavern. This property is located in the HCD (Historic Commercial District) zone.

APPLICANT: Joe Kouchakian
109 East Lemon Avenue
Monrovia, CA 91016

BACKGROUND: On April 13, 2016, the Planning Commission reviewed and approved two Conditional Use Permits related to the operations at The Diplomat Eatery & Tavern, a restaurant located within the Historic Commercial Downtown (HCD) zone at 109 East Lemon Avenue. The first, CUP2016-08 allowed the indoor and outdoor service and sales of alcohol, and the second, CUP2016-09 allowed for live entertainment within the restaurant. Conditions of approval for these permits place limits on some operational activities and development standards for the business in the interest of preserving the health, safety, and welfare of the surrounding uses.

In January, 2017, Code Enforcement staff contacted the applicant after it came to the City's attention that celebratory photographic images in the



form of perforated window decals were installed without City approval and covered 100% of the windows at the subject location. The photo above portrays the window signage. At that time, the applicant was directed to work with Planning Division staff to obtain the required approvals. Planning Division staff provided the applicant several correction options, which

included removing the window decals, or applying for a minor exception to allow for a minor increase in window signage above what the development standards within the Monrovia Municipal Code (MMC) would allow. It was made clear that staff would not be able to support an application seeking 100% window coverage, as MMC §17.28 permits a maximum of 10% of the window area to be covered by signage and MMC §17.14.040(E)(3) requires that an unobstructed view corridor be maintained into commercial establishments in Old Town. Throughout 2017, City staff made contact with the applicant several more times both in person and through the administrative citation process, which includes education and warning letters being sent out before any administrative citations are issued. After several attempts to educate and engage the applicant, the City issued the first citation pertaining to this matter in February, 2018, more than a year after the applicant was first contacted.

The applicant is now seeking the approval of a minor exception to maintain perforated vinyl window decals on 100% of the storefront windows of the restaurant (see attached letter from the owner, labeled "Exhibit A").

SUBJECT PROPERTY: The subject site is located on the north side of East Lemon Avenue, between South Myrtle and South Ivy Avenues. The lot measures 53 feet wide and 150 feet deep, for a total lot area of approximately 7,950 square feet. The parcel is designated Historic Downtown Commercial in the General Plan and is located within the HCD zone designation. It is improved with two commercial buildings (The Baxter Building and The Keefer Building) that total 13,900 square feet. The restaurant occupies one tenant space in the Keefer Building that totals 2,150 square feet. The subject property is surrounded by the following land uses:

North:

General Plan:	Historic Downtown Commercial
Zoning:	HCD (Historic Commercial Downtown)
Land Use:	Restaurant (Bella Sera Trattoria)

South:

General Plan:	Historic Downtown Commercial
Zoning:	HCD (Historic Commercial Downtown)
Land Use:	Retail (Crown Shoes), and Restaurant (Saigon Avenue)

East:

General Plan:	Area PD-5: Downtown
Zoning:	PD (Planned Development) – Area 5
Land Use:	Movie Theater (Studio Movie Grill)

West:

General Plan:	Historic Downtown Commercial
Zoning:	HCD (Historic Commercial Downtown)
Land Use:	Retail (Puff Monkey)

DISCUSSION/ANALYSIS: The applicant's request letter lists several reasons why he believes the perforated window decals are beneficial to his business. Among those reasons is the energy cost savings that can be achieved by having the windows covered. Though the applicant describes the perforated window decals as screens that provide protection against the sun, window decals are considered signage based on the following definition contained within the MMC:

SIGNS. Shall include, without limitation, all outdoor advertising on any card, cloth, paper, paint, plastic, metal, painted glass, wooden or stone materials, and any and all devices, structural or otherwise, lighted or unlighted, painted or not painted, attached to, made a part of or placed in the window of, in the front, rear, sides or top of any structure and visible from any public or private street, way, thoroughfare, alley or walk, which device in any manner, or by any means, whether enumerated in this section or not, announces or directs attention to the name, nature, merits, availability, price or type of goods, services or products, produced, sold, stored, furnished or available at that location or at any other location, including signs specifically for the sale of real property, and shall include all parts, portions, units and materials composing the same, together with the frame, background, structure and support and anchorage therefor, as the case may be, but shall not include official notices issued by any court or public body or officer or directional warning or information sign or structures required by or authorized by law or by federal, state, county, or city authority.

Because the MMC has strict regulations related to window coverage at commercial locations, many businesses use shades and blinds, which can be raised and lowered, to combat the heat and light of the sun.

Window Sign Regulations for all Commercial Locations

The applicant's request letter states that the perforated vinyl decals attract potential diners to the restaurant because of the unique "Prohibition" theme that is displayed on the windows. The MMC, however, establishes development standards related to permanent window signage in nonresidential locations. MMC §17.28.100(D), defines a window sign as, "a sign posted, painted, placed, or affixed in or on a window exposed to public view. An interior sign that faces a window exposed to public view and located within three feet of the window is considered a window sign for the purpose of calculating the total area of all window signs." The MMC states that window signs shall not exceed 10% of the total window area of the face of the building upon which the signs are mounted or applied.

Window View Corridor Regulations for Old Town

The MMC also governs development within the Historic Commercial Downtown Zone in order to preserve the retail nature of Old Town. MMC §17.14.040 requires that "all uses located at street level must have a front window corridor consistent with the retail nature of Myrtle Avenue." It goes on to state that, "storefront windows shall not be obscured. Window coverings on the ground floor shall be reviewed by the Development Review Committee and shall maximize the appearance of an open storefront." Maintaining an open view corridor into the storefront windows allows for a pedestrian-oriented commercial district to engage passers-by. Stand-alone bars are not permitted in the HCD and maintaining an open view into the restaurants preserves the family friendly atmosphere of Old Town. The perforated window decals obscure the view into the subject restaurant and, therefore, do not meet the intent of the Municipal Code.

Conditions of Approval

Conditional Use Permit CUP2016-08, for the service and sales of alcohol at The Diplomat was approved in April, 2016. The MMC establishes procedures and guidelines for any business wishing to offer service and sales of alcohol, with many of the conditions of approval written within §17.44.25 of the MMC. One such condition states that, "Window signs shall be placed and maintained in a manner so that there is clear and unobstructed view of the interior of the

premises from the public sidewalk or entrance to the premises.” This condition of approval was included within CUP2016-08, as it is within every alcohol related CUP. During the public hearing process in 2016, the applicant did not express concern regarding this condition, and he signed the Affidavit of Consent to Conditions accepting the conditions.

The applicant’s request letter states that the privacy screening that is provided by the window decals increases the safety of the restaurant by reducing the chance of theft. However, the intent of the requirement to maintain a clear view into the establishment is to allow public safety employees the ability to see into the restaurant in the case of an emergency.

Minor Exception

The Development Review Committee (DRC) is a four-person body made up of the Police Chief, Fire Chief, Public Services Director and Community Development Director, which is granted the authority to review and approve minor exceptions in the MMC. However, the Chair of the DRC is also the Community Development Director and has oversight over code enforcement activities within the City. Because this request is directly related to an ongoing code enforcement case, the DRC Chair must recuse himself from voting on the matter to avoid a conflict of interest. Similarly, the Public Services Director, who also sits on the DRC is the City’s only certified hearing officer with the authority to review appeals of administrative citations. Because the applicant filed an appeal of one of the administrative citations issued for this case, the Public Services Director must also recuse herself from hearing this application. With two of the four members of the DRC unable to hear the application, a quorum cannot be met. Therefore, under the authority of the Community Development Director, this application has been referred to the Planning Commission for their consideration.

MMC §17.52.110 states that “in appropriate cases, the Committee shall have the power to grant minor exceptions to the development standards of this title in those cases where such minor exceptions are warranted by practical difficulties, unnecessary hardships or results that may be inconsistent with the general intent of the code.” It also includes a specific list of deviations from the development standards that may be granted through the minor exception process. Minor exceptions are intended to allow small deviations from the development standards that do not meet the level of a full variance request.

Due to the “minor” nature of these applications, many minor exceptions are limited to a specific percentage for the deviation, (i.e., “Rear setback: 20% maximum reduction”). However, the code allows for more flexibility in allowing the DRC to review minor exceptions pertaining signage, i.e., “Deviations pertaining to the sign regulations.” This flexibility is tacit acknowledgment within the MMC that what is appropriate signage in one location may not be appropriate in another. However, minor exceptions must still meet the general intent of the MMC. Since the code clearly states in several sections that a retail storefront shall maintain a view corridor, to maintain 100% window coverage exceeds the threshold for a minor deviation and therefore does not meet the intent of the minor exception code provisions.

Conclusion

Staff recommends denial of the minor exception. The exception processes permitted within the MMC are meant to ensure consistent application of standards, so that the zoning ordinance is applied as evenly as possible across the City. Though a minor exception may permit additional window signage, 100% window coverage has not been permitted in the past. The window signage was installed without appropriate City review and approval. No unnecessary hardship or practical difficulty has been demonstrated for this location that would require 100% window coverage. The development standards listed within MMC §17.28.100(D) pertaining to signage,

and MMC §17.14.040 pertaining to Old Town businesses clearly prohibit 100% window coverage. Furthermore, the conditions of approval within CUP2016-08 for service and sales of alcoholic beverages at this location specify that a clear view corridor into the restaurant must be maintained. It is important to note, however, that denial of this minor exception request would not prevent the applicant from amending his plans and seeking an alternate approval that meets the intent of the Municipal Code.

RECOMMENDATION: Staff recommends denial of minor exception ME2018-0008. This recommendation does not prevent the applicant from revising his plans to lessen the amount of window coverage and applying for a new minor exception. If the Planning Commission concurs with this recommendation then, following the public hearing, the following actions would be:

1. The Planning Commission finds that the custodian of records for all other materials that constitute the record of proceeding upon which this decision is based is the Planning Division Manager. Those documents are available for public review in the Planning Division located at 415 South Ivy Avenue, Monrovia, California, 91016.
2. The Planning Commission in the exercise of its independent judgment hereby makes the findings for denial listed on attached Data Sheet No. 3 for minor exception ME2018-0008, which are incorporated herein by this reference.
3. The Planning Commission denies minor exception ME2018-0008 subject to the recommendations in the Staff Report, all of which are incorporated herein by this reference.

MOTION:

Deny minor exception ME2018-0008 without prejudice pursuant to the recommendations in the Staff Report.



MINOR EXCEPTION

As required by Section 17.52.110 of the Monrovia Municipal Code (MMC), the decision for denying Minor Exception ME2018-0008 to allow perforated vinyl window decals to cover 100% of the window area in lieu of the maximum 10% window coverage at an existing restaurant, The Diplomat Eatery & Tavern, is based on the following findings:

Minor exceptions to the development standards of the MMC may be granted based on practical difficulties, unnecessary hardships and results that may be inconsistent with the general intent of the code. As demonstrated in multiple sections of the MMC, allowing 100% window coverage does not meet the general intent of the code. MMC §17.14.040, which governs development within the Historic Commercial Downtown (HCD) Zone requires all uses located at street level to have a front window corridor consistent with the retail nature of Myrtle Avenue. MMC §17.14.040(E)(3) states that, “storefront windows shall not be obscured. Window coverings on the ground floor shall be reviewed by the Development Review Committee and shall maximize the appearance of an open storefront.” Additionally, MMC §17.28.100(D), which establishes development standards related to permanent window signage in nonresidential locations, states that window signs shall not exceed 10% of the total window area of the face of the building upon which the signs are mounted or applied. Furthermore, MMC §17.44.25 establishes procedures and guidelines for business wishing to offer service and sales of alcohol and includes the following standard condition of approval, “Window signs shall be placed and maintained in a manner so that there is clear and unobstructed view of the interior of the premises from the public sidewalk or entrance to the premises.” This condition of approval was included in CUP2016-08 for service and sales of alcoholic beverages at this location. If granted, Minor Exception 2018-0008 to allow perforated vinyl window decals to cover 100% of the window area in lieu of the maximum 10% window coverage would be inconsistent with the provisions of the Monrovia Municipal Code related to the HCD zone designation, the standards pertaining to signage, and the conditions of approval for service and sales of alcoholic beverages.

The applicant’s request letter indicates that the practical difficulties associated with this application have to do with solar protection, increased safety due to the limited ability of passers-by to see into the restaurant, and projecting the restaurant’s “Prohibition” theme. However, these difficulties may be overcome through alternate means. Shades and blinds may be effectively utilized to provide shade and solar protection to diners. Safety of patrons is better ensured by allowing public safety officers to see into the restaurant in the case of an emergency. Finally, the “Prohibition” theme can be projected through other means, such as music, art on the interior of the restaurant, the dress code of restaurant employees, and a food and drink menu evocative of the Prohibition era.

The Diplomat Eatery & Tavern
109 East Lemon Ave.
Monrovia, CA 91016
(626) 239 0100

joey@diplomattavern.com lucie@diplomattavern.com

June 18th, 2018

RE: Window screen covers

I, Joe Kouchakian, the proud owner of the Diplomat Eatery & Tavern, would like to state the reasons why I have the screen covering on our windows.

First and most of all the screen covers are the one-way privacy and solar control. The window decals are made from perforated vinyl materials with tiny perforated holes making the screens translucent. The screens offer shade inside the restaurant, making us energy efficient. During the hot Southern California days, the decals keep the indoors 50% cooler. They reduce the amount of infra rays, visible light and ultraviolet radiation entering through the clear windows. It helps reduce our energy bill, especially in the summer.

The window screens appear opaque from the outside, but allow visibility from the inside. They provide our customers privacy while sitting alongside the windows. Because of the screens one-way privacy benefits, there is a reduced chance of theft. Keeping the restaurant-bar less visible to the potential hooligans, the window screens are protecting me, my family, my employees and my customers from becoming the next targeted victim(s).

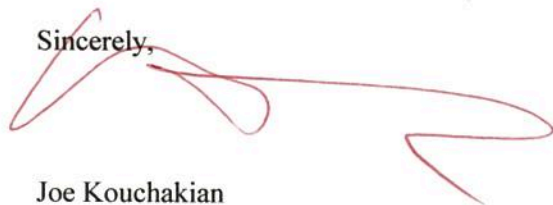
Lastly, the window screens are the ultimate way to dress up our restaurant front. The Diplomat Eatery & Tavern is located off the main street (Myrtle Ave). The window screens create a curiosity to new potential customers to check out our menu posted on the side of the front door.

The screens are tastefully designed to bring our prohibition theme together. We are the only prohibition style restaurant-bar in the Monrovia area. The window screens are the best way to project that prohibition image.

I have always looked for creative ways to improve our beloved Monrovia and bring new potential costumers not just for my business but also all the businesses around. I work very hard each and every day to sustain in this very challenging food business to make a living not only for my family but also the families of those I employ.

I look forward to hearing back from you.

Sincerely,



Joe Kouchakian