

STAFF REPORT

Report Date: July 31, 2024

Application/Project Name: LU32024-00521
Floor and Décor Modification of a Decision

Application Number: PD22024-00516

Proposal: The applicant, Floor and Decor, requests Modification of a Parking Determination approval (PD2022-0006 Floor and Decor) to remove two conditions of approval related to a required shared parking agreement, citing changes in state law associated with the Climate Friendly and Equitable Communities program that prohibits cities with population's greater than 10,000, including Beaverton, from requiring minimum off-street parking.



Proposal Location: The site is located at 10700 SW Allen Boulevard on the south side of SW Allen and east of Highway 217, specifically identified as Tax Lots 100, 200, 400, and 500 on Washington County Tax Assessor's Map 1S122AA.

Applicant: Floor and Decor.

Recommendation: APPROVAL of LU32024-00521 Floor and Décor Modification of a Decision (PD22024-00516), subject to conditions identified at the end of this report.

Hearing Information: 6:30 p.m. August 7, 2024, at City Hall, 12725 SW Millikan Way

Note: Public Hearings are held remotely and can be viewed at the following link:
<https://www.beavertonoregon.gov/291/Agendas-Minutes>

Contact Information:

City Staff Representative: Steve Regner, Senior Planner
(503) 319-4427, sregner@BeavertonOregon.gov

Applicant/ Applicant Representative: Floor and Décor Outlets of America Inc.
Attn.: Summer Zimmers
2500 Windy Ridge Parkway SE
Atlanta, GA 30339

Property Owner: Oregon Worsted Co.
9701 SE McLoughlin Blvd.
Portland, OR 97222

Existing Conditions

Zoning: Commercial – Community Service (CS)

Site Conditions: The site is currently under construction for a retail shopping center

Site Size: Approximately 17.4 acres

Location: 10700 SW Allen Boulevard. Located on the south side of SW Allen Boulevard and east of Highway 217, specifically identified as Tax Lots 100, 200, 400, and 500 on Washington County Tax Assessor’s Map 1S122AA.

Neighborhood Association Committee: Denney Whitford / Raleigh West

Table 1: Surrounding Uses

Direction	Zoning	Uses
North	Industrial (IND)	Warehouse/ Industrial Uses
South	CS	Multi-tenant office/commercial uses
East	<ul style="list-style-type: none">• IND• Residential Mixed A (RMA)	<ul style="list-style-type: none">• Beaverton School District Bus Storage/ Maintenance Facility• Mobile Home Park
West	CS	<ul style="list-style-type: none">• Hotel• Highway 217

Application Information

Table 2: Application Summaries

Application	Application Type	Proposal Summary	Approval Criteria Location
PD22024-00516	Parking Determination	Request to remove two conditions of approval of PD2022-0006 related to a required shared parking agreement.	Development Code Section 40.55.15.2.C and 50.97

Table 3: Key Application Dates

Application	Submittal Date	Deemed Complete	120-Day	365-Day*
PD22024-00516	June 12, 2024	June 25, 2024	October 23, 2024	June 25, 20225

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

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Exhibits

Exhibit 1. Materials submitted by Staff

- Exhibit 1.1 Vicinity Map (page 5 of this report)
- Exhibit 1.2 Zoning Map (page 6 of this report)
- Exhibit 1.3 Land Use Order 2928 PD2022-0006 (attached)

Exhibit 2. Public Comment – No public comment was received.

Exhibit 3. Materials submitted by the Applicant

- Exhibit 3.1 Signed Application Form
- Exhibit 3.2 Written Narrative
- Exhibit 3.3 Original Approved Site Plan – approved under Floor & Décor (DR2022-0078 / PD2022-0006)
- Exhibit 3.4 Pre-Application Notes

Exhibit 1.1: Vicinity Map

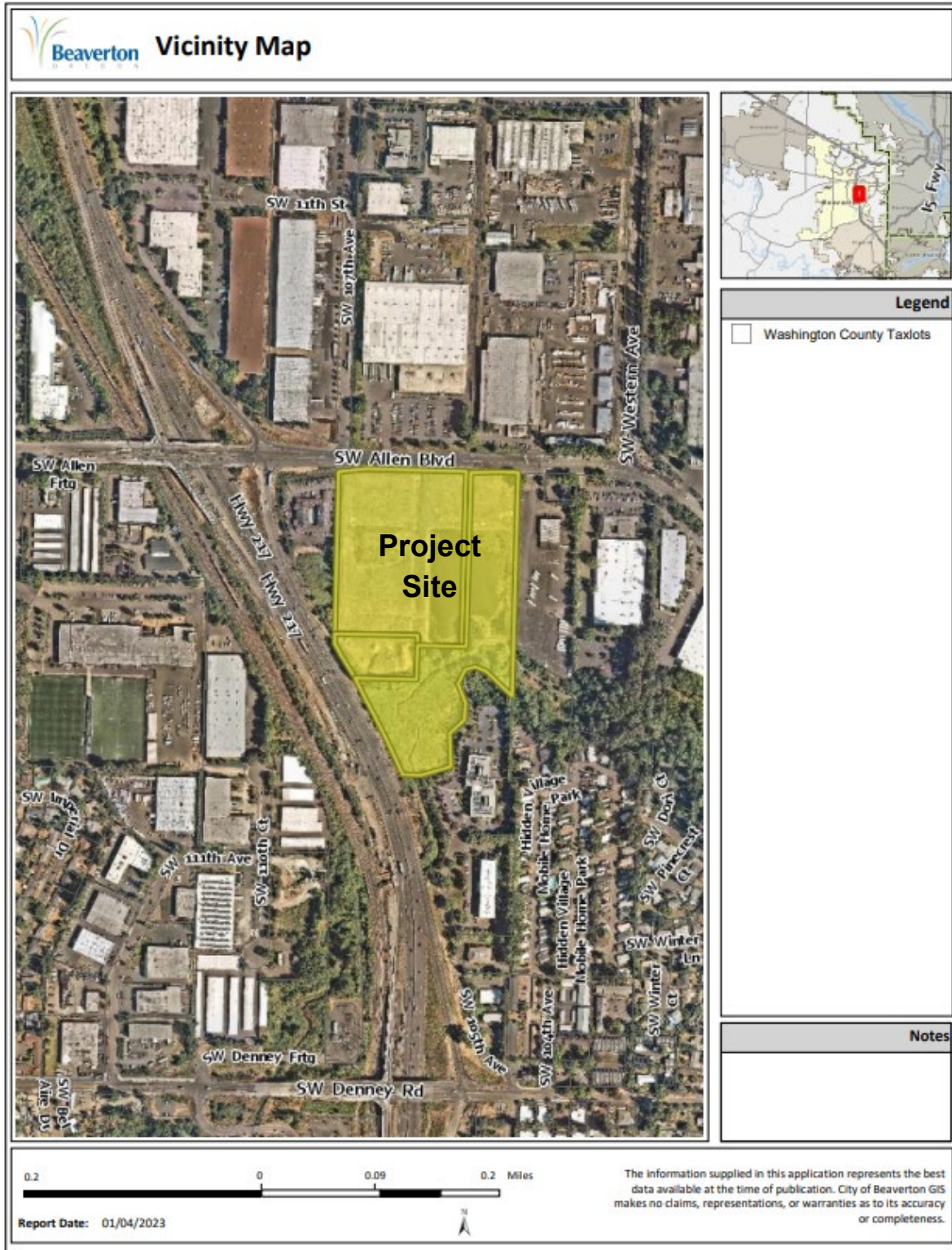
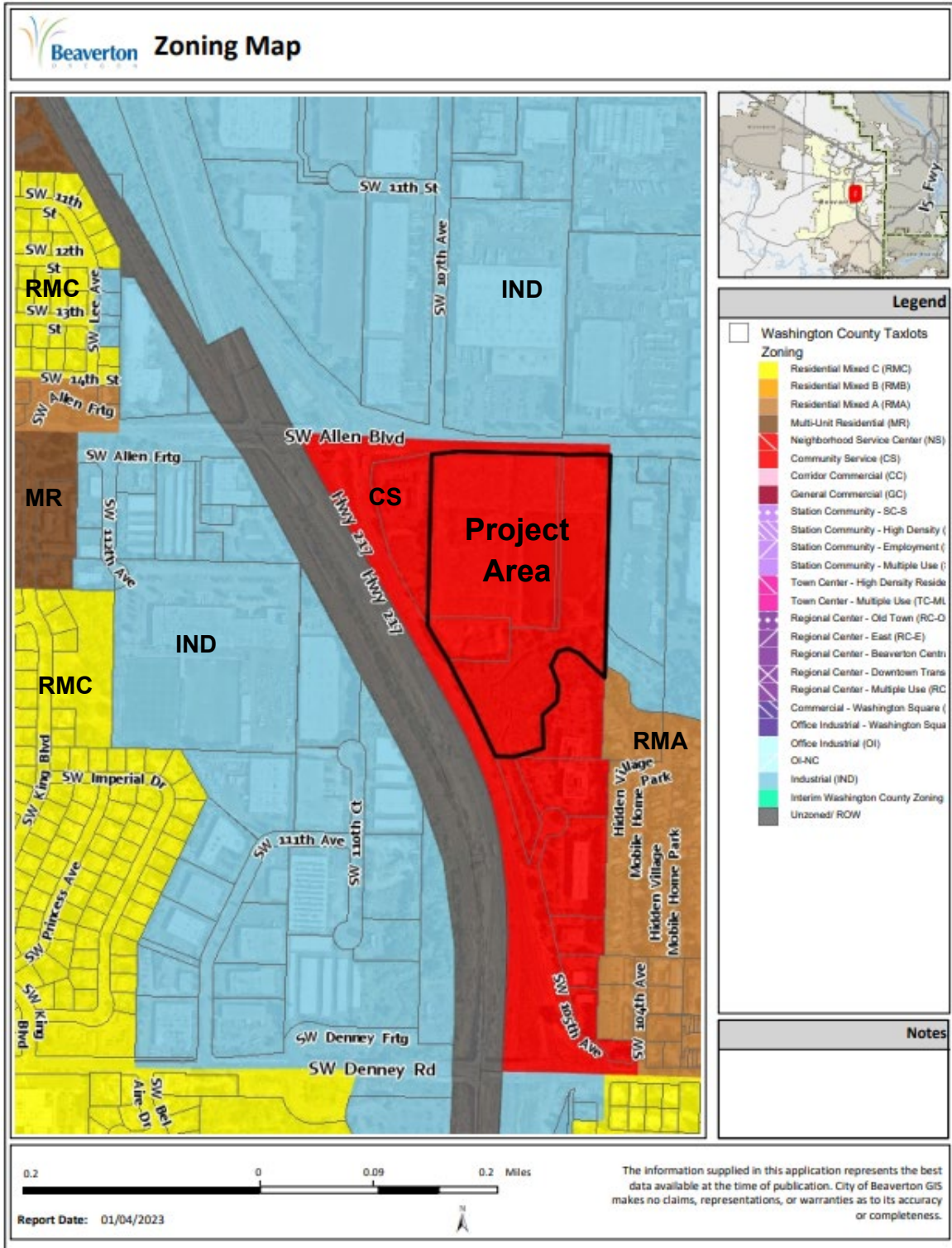


Exhibit 1.2: Zoning Map



Attachment A: PARKING DETERMINATION PD22024-00521

ANALYSIS AND FINDINGS FOR MODIFICATION OF A PARKING DETERMINATION APPROVAL

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **PD22024-00521**, subject to the applicable conditions identified in Attachment B.

Section 40.55.05 Purpose

The purpose of a Parking Determination is to establish required number of parking spaces for uses which do not have a parking ratio requirement listed in the Development Code. The Parking Determination application is established for determining the required number of off street parking spaces in advance of, or concurrent with, applying for approval of an application, development, permit, or other action. This Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval:

Section 40.55.15.2.C of the Development Code provides standards to govern the decisions of the decision making authority as they evaluate and render decisions on Parking Determination. The decision making authority will determine whether the application as presented, meets the approval criteria. In this portion of the report, staff evaluates the application in accordance with the criteria for a Parking Determination.

To approve a Parking Determination application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.55.15.2.C.1

The proposal satisfies the threshold requirements for a Shared Parking application.

FINDING:

The applicant proposes to remove two previously approved conditions of approval, associated with a previously approved application, PD2022-0006, for a shared parking agreement. Specifically, the conditions requested for removal are related to the timing of parking spaces required to be constructed on Phase 1 of the site prior to temporary occupancy.

Section 50.95.7. of the Development Code states that, "The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40". The original request meets Threshold No. 1 of a Parking

Determination which reads, “The required off-street parking for two or more uses will share required parking spaces.

Conclusion: Therefore, staff finds that the proposal meets the criterion.

Section 40.55.15.2.C.2

All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING:

The applicant has paid the appropriate fee for a Parking Determination application.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.55.15.2.C.3

The shared off-street parking is located on any property within 500 feet of the property upon which the use requiring the parking is located, except in Multiple Use zoning districts where the location may be at any distance.

FINDING:

The shared off-street parking to be utilized by Phase 1 and 2 sites are located less than 500 feet from one another.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.55.15.2.C.4

The location of the shared parking and the site containing the use shall be connected by a hard surface pedestrian pathway.

FINDING:

The applicant was previously approved to construct a new 75,100-square-foot retail building on the Phase 2 site, which is mostly constructed at the time of publication of this report.

The applicant has constructed a previously approved hard surface pedestrian pathway connecting the Floor and Décor building and the site’s frontage along SW Allen Boulevard. Parking in both Phase 1 and Phase 2 of the overall site are connected along this pedestrian pathway.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.55.15.2.C.5

If the location of the shared parking and the site containing the use are separated by a street of collector or higher designation, the two locations shall each be within 300 feet of a controlled pedestrian crossing, such as a traffic light, stop-controlled intersection or marked pedestrian crossing such as a striped intersection or pedestrian-activated signal.

FINDING:

Required off-street parking will be shared between the Phase 1 and 2 sites. The two sites are directly adjacent to one another and are not separated by any streets.

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.55.15.2.C.6

If multiple properties are involved, the owners of the properties have each agreed to the shared parking by entering into a shared parking agreement.

FINDING:

Off-street parking shared between the Phase 1 and 2 sites are located on four contiguous tax lots all owned by the same entity, Oregon Worsted Company. The four tax lots will be consolidated as part of the Phase 1 approval (Case No. LD2021-0002) and will remain under Oregon Worsted Company's ownership even after the consolidation is recorded. Because the subject site will remain under common ownership and the property owner signed the Shared Parking Application form, a shared parking agreement is not required.

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.55.15.2.C.7

The time of peak parking demand for the various uses located on the subject properties occur at different times of the day.

FINDING:

The applicant's previous approval (PD2022-0006) demonstrated that all development proposed on site could be supported by the parking constructed on site.

Furthermore, staff cites changes in Oregon Administrative Rules OAR 660-012-0400 through 0450, associated with the Climate Friendly and Equitable Communities program which led to the City of Beaverton eliminating off-street motor vehicle parking minimum requirements. The parking demand analysis for the previous approval was based partially on minimum parking requirements in effect at the time of the proposal. With the elimination

of minimum parking requirements, the parking study is functionally nullified, as there is no minimum performance threshold to evaluate the proposal against.

Conclusion: Therefore, staff finds that the criterion for approval does not apply.

Section 40.55.15.2.C.8

Adequate parking will be available at all times when the various uses are in operation.

FINDING:

The applicant's previous approval (PD2022-0006) demonstrated that all development proposed on site could be supported by the parking constructed on site.

Furthermore, staff cites changes in Oregon Administrative Rules OAR 660-012-0400 through 0450, associated with the Climate Friendly and Equitable Communities program which led to the City of Beaverton eliminating off-street motor vehicle parking minimum requirements. The parking demand analysis for the previous approval was based partially on minimum parking requirements in effect at the time of the proposal. With the elimination of minimum parking requirements, the parking study is functionally nullified, as there is no minimum performance threshold to evaluate the proposal against.

Conclusion: Therefore, staff finds that the criterion for approval does not apply.

Section 40.55.15.2.C.9

The proposal is consistent with all applicable provisions of CHAPTER 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of CHAPTER 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.

FINDING:

The applicant's proposal is limited removing the timing requirement for the full construction of on-site parking approved under Phase 1 of the development. No other physical changes are proposed with this request. Safe and efficient pedestrian and vehicle circulation will still be present on site without the previously identified shared parking spaces constructed.

Conclusion: Therefore, the Committee finds that the proposal meets the criterion.

Section 40.55.15.2.C.10

There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the site.

FINDING:

The applicant's previously approved plans show there will be safe and efficient vehicular circulation patterns throughout the site, and that the parking lot complies with minimum drive aisle widths and other parking lot design standards in Section 60.30.15

Conclusion: Therefore, staff finds that the proposal meets the criterion.

Section 40.55.15.2.C.11

The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.

FINDING:

The applicant submitted the Shared Parking Application on June 12, 2024 and the application was deemed complete as of June 25, 2024.

Conclusion: Therefore, staff finds that the proposal meets the criterion.

Section 40.55.15.2.C.12

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

Staff have not identified any additional applications or documents needed at this time.

Conclusion: Therefore, staff finds that the proposal meets the criterion.

CONCLUSION & RECOMMENDATION

Based on the facts and findings presented, staff recommends APPROVAL of PD22024-00516, subject to the applicable conditions identified in Attachment B.

Section 50.95 Modification of a Decision

The applicant has requested a modification to a condition of approval of the previously approved Parking application (PD2022-0006). Therefore, Section 50.95 of the Development Code is applicable to the request. To approve a modification of a decision related to a Parking Determination application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 50.95.1

An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2, or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

FINDING:

The applicant proposes to remove two conditions of approval previously approved with application, PD2022-0006, for a Shared Parking – Parking Determination. Specifically, the request is to remove two conditions of approvals requiring the construction of 40 parking on the adjacent Phase 1 development site prior to Floor and Décor receiving temporary occupancy. These 40 parking spaces were identified as being required to be constructed prior to temporary occupancy to meet the minimum off-street parking requirements at the time of the original Floor and Décor approval. The approved site plan and 40 off-site parking spaces are shown in Exhibit 3.3 of this report. This modification is associated with a decision that was originally approved through a Type 3 procedure. Therefore, the application is subject to a Type 3 procedure, and the applicant must return to the Planning Commission to request approval of this modification.

The applicant's narrative explains that the basis for the requested removal of conditions is due to the change in state and local laws that no longer require minimum off-street parking ratios for development. As such, the conditions of approval requiring a specific number of parking spaces to be constructed would no longer be required if the proposal were to be reviewed under the current Development Code.

The subject conditions from the PD2022-0006 approval that the applicant is requesting to remove read as follows:

“B. Prior to issuance of temporary occupancy, the applicant shall:

3. If not yet constructed as part of the Phase 1 redevelopment, Phase 2 shall construct the 40 parking spaces on the Phase 1 site that are identified on Sheet C3.2. A direct,

paved pedestrian walkway shall be provided from these 40 parking spaces to the Phase 2 site. (BDC 40.55.15.2.A, 40.03.1.F and 60.30.15 and 20) (Transportation / KM)

4. If the 40 parking spaces identified on Sheet C3.2 have not yet been constructed as part of the Phase 1 redevelopment, Phase 2 shall submit a photometric plan demonstrating the 40 parking spaces comply with the applicable lighting standards in BDC Table 60.05-1 and BDC 60.55.25.10.B.7. (Transportation / KM)

Staff concurs, noting the Climate Friendly and Equitable Communities program, adopted by the State of Oregon in 2022, and changes to the Beaverton Development Code, (Parking Policy and Code Project casefile TA2023-0001), adopted by the City of Beaverton in 2023, resulted in the removal of minimum off-street parking requirements in Beaverton's Development Code.

Staff observes that the subject conditions of approval in as written for PD2022-0006 would not be placed on the proposal if it were reviewed under the current Development Code, which currently precludes the applicant from receiving a temporary occupancy permit for full retail store operations.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.2

An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

FINDING:

The applicant requests removal of two conditions of approval of PD2022-0006. A Pre-Application Conference was held on June 5, 2024, and the applicant submitted the subject application on June 12, 2024. At that time, staff conducted a completeness review, and the application was deemed complete on June 25, 2024. No other information is required of the applicant associated with this request.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.3

An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

FINDING:

Staff confirms that the application complies with the 120-day requirement of ORS 227.178.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.4

Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

FINDING:

The applicant has applied to modify the approved Parking Determination application, PD2022-0006, associated with the Floor and Décor project.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.5

Expedited Land Divisions and Preliminary Middle Housing Land Divisions are not eligible for modification of a decision.

FINDING:

The request is to modify a condition of approval associated with a Parking Determination application.

Conclusion: Therefore, staff finds that the criterion for approval does not apply.

Section 50.95.6

An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

FINDING:

The originally approved development, Floor and Decor (DR2022-0078 PD2022-0006) was processed through a Type 3 procedure. Therefore, although a Parking Determination application is typically subject to a Type 2 procedure, the requested modification to a condition of approval of the Parking Determination application must follow the same Type 3 procedure as the original approval.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.7

The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision-making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. A new or modified condition would better accomplish the purpose of the original condition.

FINDING:

As identified in response to Section 50.95.1 above, the applicant seeks to remove two conditions of approval of the approved Shared Parking - Parking Determination (PD2022-0006). By citing the change in state law and Beaverton's Development Code, the applicant has demonstrated that the circumstances have changed to the extent that the condition is no longer needed or warranted, in accordance with criterion 50.95.7.C. The original purpose of the Parking Determination, and the two subject conditions of approval, was to ensure that the Floor and Décor development provided sufficient off-street parking to meet the minimum parking requirements at the time of store opening through a shared parking agreement with the adjacent development, approved as Allen Redevelopment: Hotel and Commercial Development, casefiles CU2021-0004/ CU2021-0005/ DR2021-0027/ LD2021-0002/ LO2021-0001/ TP2021-0003.

In 2023, the City of Beaverton removed all minimum off-street parking requirements, (Parking Policy and Code Project casefile TA2023-0001). With this removal of off-street parking requirements, the need for the Shared Parking agreement to supply the additional parking is no longer necessary. As such, the applicant requests that the two conditions of approval from the Parking Determination (PD2022-0006) requiring the 40 off-site parking spaces be constructed before temporary occupancy be removed.

Staff concurs that the requested modification meets criteria C of Section 50.95.7, and recommends removal of the following conditions of approval from LUO 2928 (PD2022-0006):

"B. Prior to issuance of temporary occupancy, the applicant shall:

3 If not yet constructed as part of the Phase 1 redevelopment, Phase 2 shall construct the 40 parking spaces on the Phase 1 site that are identified on Sheet C3.2. A direct, paved pedestrian walkway shall be provided from these 40 parking spaces to the Phase 2 site. (BDC 40.55.15.2.A, 40.03.1.F and 60.30.15 and 20) (Transportation / KM)

4. If the 40 parking spaces identified on Sheet C3.2 have not yet been constructed as part of the Phase 1 redevelopment, Phase 2 shall submit a photometric plan demonstrating the 40 parking spaces comply with the applicable lighting standards in BDC Table 60.05-1 and BDC 60.55.25.10.B.7. (Transportation / KM)

Conclusion: Therefore, staff finds that, by meeting the conditions of approval, the proposal meets the criterion.

Attachment B: RECOMMENDED CONDITIONS OF APPROVAL

Application: LU32024-00521 Floor and Décor Modification of a Decision

Recommendation: APPROVE PD22024-00516

MODIFICATION OF A PARKING DETERMINATION (PD22024-00516)

A. General Conditions:

1. All conditions of PD2022-0006 remain in full effect, except condition of approval B.3 and B.4, which are struck and are no longer in effect. (Planning / SR)