

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
NOTICE OF FIELD TRIP
THURSDAY, SEPTEMBER 22, 2016 – 9:15 AM
1010 TENTH STREET
LOBBY (MAIN LEVEL/NEAR STAIRS)**

I. ROLL CALL

II. FIELD TRIP

There will be a field trip to allow the Board to view property to be discussed at the regular meeting later in the day. Interested parties may join the Board at any of the properties at the approximate times shown below. Statements on the merits of an application are inappropriate on a field trip and should be made at the regular meeting. The regular meeting is on September 22, 2016, 10:00 am in Chambers. The agenda for the regular meeting is attached.

9:00 am Leave Tenth Street Place to View Property

9:15 am Property Located at 3410 Oakdale (Britton) Item A

III. ADJOURNMENT

Posted pursuant to Government Code Section 54956 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT AGENDA
THURSDAY, SEPTEMBER 22, 2016 10:00AM
BASEMENT CHAMBERS
1010 TENTH STREET – MODESTO, CA**

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of July 28, 2016.

III. CONFLICT OF INTEREST DECLARATION

Board members and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. PUBLIC HEARINGS

Item A VAR-16-003: Request for Reduction of Parking for property located at 3410 Oakdale Rd., submitted by Cory Britton

V. OTHER BUSINESS

None.

VI. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, the Board may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised.
- (b) Ask a question for clarification.
- (c) Provide a reference to staff or other resources for factual information.
- (d) Request staff to report back at a subsequent meeting.
- (e) Finally, a Board member, or the Board itself, may take action to direct staff to place a matter of business on a future agenda.

VII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Board of Zoning Adjustment and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

VIII. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the Office of the Planning Division, third floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board of Zoning Adjustment Secretary (209) 577-5267. Assistive listening devices are available upon request to the BZA Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the BZA regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to provide additional information to you. Signing this form is

optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**LIST OF INVOLVED PARTIES FOR THE BOARD OF ZONING ADJUSTMENT
AGENDA OF SEPTEMBER 22, 2016**

At the Board Members' request, staff has compiled a list of individuals having a personal/financial interest in the matters contained in the accompanying agenda report to help assist in identifying potential conflicts of interest.

ITEM A

<u>Relationship</u>	<u>Name/Address</u>
Applicant	CORY BRITTON 3460 OAKDALE RD MODESTO, CA 95355
Owner	CW BROWER INC 413 S RIVERSIDE DR #A MODESTO, CA 95354

Minutes
Board of Zoning Adjustment
(July 28, 2016, 10:00AM)

Being the hour of 10:00 am, the meeting was called to order by Chairperson Matas.

I. ROLL CALL

Board Members Matas, Pollard, Selover and Vohra present

Board Members Morris and Rodriguez absent

MOTION

It was moved by Board Member Pollard, seconded by Board Member Selover, and carried unanimously that Board Members Morris and Rodriguez be excused from this meeting.

II. APPROVAL OF MINUTES

It was moved by Board Member Pollard, seconded by Board Member Selover, and carried unanimously that the minutes of the regular meeting of April 28, 2016, be approved.

III. CONFLICT OF INTEREST DECLARATION

None.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

Item A VAR-16-002 Side-yard variance, 820 Sycamore (Messamer)
Contact Info: Rita Doscher, 577-5267 rdoscher@modestogov.com

Motion/Action (Approved)

It was moved by Board Member Pollard, seconded by Board Member Selover, and carried by majority (Pollard, Selover, Matas, Vohra, ayes; none, noes; Morris, Rodriguez, absent; None, recused) that the Board of Zoning Adjustment adopt **RESOLUTION NO. 2016-07** A RESOLUTION GRANTING A VARIANCE TO ELIZABETH MCINNES AND DON MESSAMER FOR A 7-FOOT-HIGH WALL TO EXCEED THE 42-INCH HEIGHT LIMIT WITHIN THE REQUIRED 7.5-FOOT STREET SIDE YARD SETBACK AT 820 SYCAMORE AVENUE

VI. OTHER BUSINESS

Item B Approval of 2017 PC/BZA Meeting Schedule

It was moved by Board Member Pollard, seconded by Board Member Matas, and carried by majority (Pollard, Selover, Matas, Vohra, ayes; none, noes; Morris, Rodriguez, absent; None, recused) that the Board of Zoning Adjustment approve the 2017 Planning Commission & Board of Zoning Adjustment Meeting Schedule.

VII. ORAL COMMUNICATIONS

None.

VIII. MATTERS TOO LATE FOR THE AGENDA

None.

IX. ADJOURNMENT

The meeting was adjourned at 10:27 am.

Original, signed copy on file in CEDD

Patrick Kelly, Secretary



CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT STAFF REPORT
 1010 10TH STREET
 MODESTO CA 95354
 (209) 577-5267 – (209) 491-5798 (fax)

TO: Chairperson Matas and Members of the Board of Zoning Adjustment

PREPARED BY: Jonnie Lan, AICP, Associate Planner
 Contact Info: 577-5267 jl@modestogov.com

APPROVED BY: Patrick Kelly, Planning Manager

DATE: September 22, 2016

SUBJECT: VAR-16-003, A Request for a Reduction of Parking, located 3460 Oakdale Road; submitted by Cory Britton (Shadow Lounge)

RECOMMENDATION

That the Board of Zoning Adjustment adopt the attached resolution granting a reduction in parking to Cory Britton to permit the conversion and expansion of retail store to a nightclub.

PROJECT DESCRIPTION

This is a request for a business to be considered for a reduction of parking. Shadow Lounge, located at 3460 Oakdale Road, is converting from a retail use to a nightclub and lounge use. The property is zoned Village One Specific Plan (SP) and allows General Commercial (C-2) uses. Some of the uses within this 28,000 square foot shopping center include, but are not limited to a convenience store, a banquet hall, a hookah lounge, a boutique and a tattoo artist's studio. Allowing this conversion from "general retail" use to "bar" requires additional parking. The property, with all of the existing uses, and this conversion, would not meet parking requirements. Approving this request would allow the property to operate with reduced parking.

ANALYSIS

The applicant has applied for a building permit to remodel, expand and convert a retail smoke shop into a 4,000 + square foot bar and smoke lounge. By itself, this use would require 67 parking spaces. When added to the existing banquet hall, another lounge and several retail establishments, the parking requirement, per code is 230 spaces. However, the property only provides for 126 parking spaces on site.

Section 10-5.104(a) allows the Board of Zoning Adjustment to approve a reduction in parking provided that the Board finds that the reduction meets the needs of the buildings or uses and the outcome doesn't negatively affect the surrounding properties. The following criteria are used in making this determination:

1. The applicant shall submit sufficient information to indicate the normal hours of operation of such uses or activities do not substantially coincide or overlap with each other and/or the peak hour parking demand;

To determine if the proposed parking will result in adequate parking for the proposed uses, staff conducted a shared parking study utilizing a methodology developed by the Urban Land

Institute (ULI) (see Attachment No. 3). This methodology recognizes that different uses have different peak parking demands, and includes factors to account for this. In addition, the applicant is proposing hours of operation for the nightclub/lounge that generally do not overlap the hours of operation for the existing retail, office or banquet facility (Attachment No. 4), and this was accounted for in the analysis. Using this methodology, the total parking requirements for all four uses came to 124 parking spaces required, less than the 126 spaces existing on-site.

2. The adjacent or nearby properties will not be adversely affected relative to parking;

The project is located in the Village One SP zone that allows General Commercial (C-2) uses. The properties directly adjacent to this site on the south and east are also zoned to allow C-2 uses. These developed properties have more than adequate parking. North of the property is Sylvan Avenue. West of the property is Oakdale Road. Because the shopping center property is surrounded by compatible uses with adequate parking on-site, staff has determined that the reduced parking will not adversely affect the neighboring properties.

3. The development is located near available on-street parking or other public parking areas;

There is no on-street parking immediately adjacent to this property. Immediately south of the property, on Oakdale Road, there is on-street parking, should the need arise to use it.

4. Transit alternatives are available near the development.

Currently, the City of Modesto has four bus lines (34, 32, 34 and 37) that connect this site with the rest of the transit system.

In addition, the applicant has developed a partnership with Lyft and Uber, two companies which provide rides, for those who need them, not unlike a taxi. The applicant has created a designated drop-off and pick-up area to be used for this purpose. This partnership will give riders financial incentives to use this mode of transportation.

Staff is in support of the applicant's parking proposal and recommends that the Board approve the reduction in parking.

GENERAL PLAN CONSISTENCY

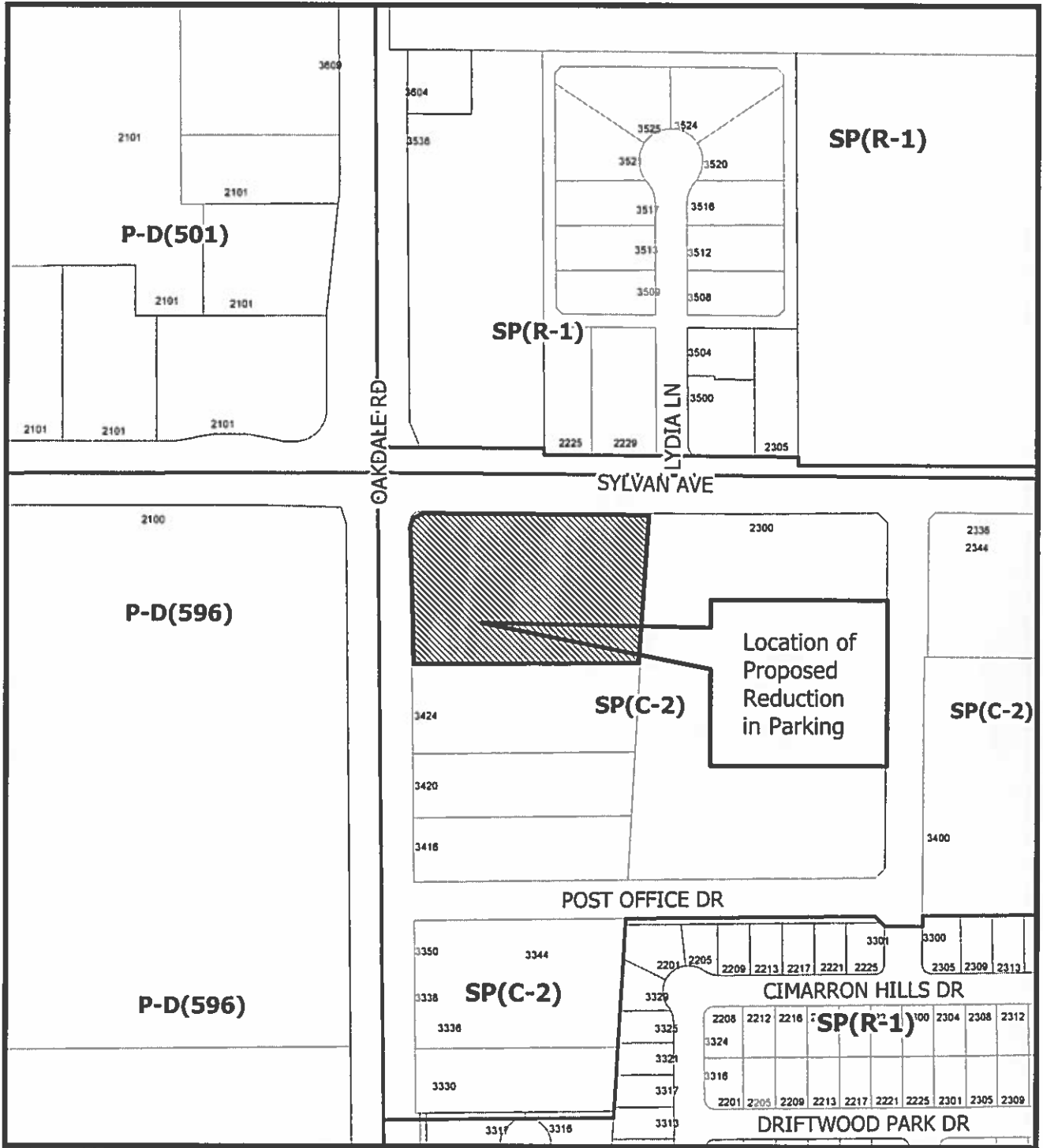
The General Plan Land Use designation for this area is Village Residential (VR). The Village One Specific Plan serves to implement the VR General Plan Designation. Within the Village One Specific Plan, Precise Plan Area 2, Sub-area A allows for commercial uses consistent with the City's General Commercial (C-2) Zone. This parking reduction has no effect on the General Plan's designation and the project remains consistent with the Modesto Urban Area General Plan both in land use and intensity.

ENVIRONMENTAL ASSESSMENT

This project is exempt under Section 15301 of the CEQA Guidelines, which exempts "Existing Facilities" if the "project involves negligible or no expansion of an existing use."

ATTACHMENTS

1. Draft Board of Zoning Adjustment Resolution – September 22, 2016
2. Financial Interest Disclosure Form
3. Urban Land Institute Parking Table Exhibit
4. Map of Existing Uses



**AREA MAP OF PROPOSED
REDUCTION OF PARKING**

VAR-16-003



BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2016-XX

A RESOLUTION GRANTING A REDUCTION IN PARKING TO CORY
BRITTON TO PERMIT THE CONVERSION AND EXPANSION OF A RETAIL
STORE TO A NIGHTCLUB

WHEREAS, an application for a reduction of parking varying from the provisions of Section(s) 10-5.102 of the Modesto Municipal Code to permit the conversion and expansion of a retail store to a nightclub at 3460 Oakdale Road was filed by Cory Britton on August 19, 2016; and

WHEREAS, Section 10-5.104 of the Modesto Municipal Code authorizes the Board of Zoning Adjustment to consider and approve requests for parking reductions with a non-discretionary action subject to criteria specified in Section 10-5.104; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on September 22, 2016, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the request for a parking reduction is exempt from CEQA, pursuant to Section 15301 of the CEQA Guidelines, which exempts "Existing Facilities"; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines that:

1. The applicant has submitted sufficient information to indicate the normal hours of operation of such uses or activities do not substantially coincide or overlap with each other and/or the peak hour parking demand;
2. Because of the abundance of parking on adjacent uses, and the variety of operation times both onsite and at adjacent properties, the adjacent properties will not be adversely affected relative to parking;
3. The development is located near available on-street parking or other public parking areas;
4. Transit alternatives are available near the development;
5. The request is exempt from CEQA, pursuant to Section 15301 of the CEQA Guidelines, which exempts "Existing Facilities".

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the application of Cory Britton to vary from Section (s) 10-5.102 of the Modesto Municipal Code allowing a reduction of parking and permitting the conversion and expansion of a retail establishment to lounge be approved with the condition below:

1. That the property owner and developer shall, at their sole expense, defend, with counsel selected by the City, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold

harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on September 22, 2016, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Patrick Kelly, Secretary

FINANCIAL INTEREST DISCLOSURE FORM GUIDELINES

City ordinance requires that all individuals with a material interest in a decision of the City Council must be disclosed. The following is for your assistance in completing the attached disclosure form:

1. For all of the below, corporate names/LLC's/limited partnerships are not acceptable in and of themselves, all individuals with an interest of \$2000 or more must be disclosed in these cases.
2. Individuals with a material interest include all property owners.
3. Individuals with a material interest include any developer.
4. Individuals with a material interest include any architect, engineer, or other design professional.
5. Individuals with a material interest include the applicant's attorney or other representative.
6. Individuals with a material interest include any real estate agent who is party to the transaction.
7. Individuals with a material interest include any contractor constructing the project for which the contract has been arranged by the time of the hearing.

The above is for guidance only and not an inclusive list of all individuals at interest. You have a responsibility to determine and list all individuals in accordance with the Tests of Materiality as set forth on the attached.



FINANCIAL INTEREST DISCLOSURE FORM

All persons included within the meaning of either of the following tests have a material financial interest in an agreement, or application for development rights, submitted for approval or disapproval by the City Council, and shall be identified by the applicant, by name.

Tests of Materiality:

1. Whether it is foreseeable to a reasonable person that the value of their interest in property available for use by an applicant, or their interest in the applicant itself, may increase or decrease by an amount greater than \$2,000.00 as a direct or indirect result of Council action on the applicant's agreement or application for development rights.
2. Whether it is foreseeable to a reasonable person that the person's gross income from the applicant may increase or decrease by a sum greater than \$2,000.00 as a direct or indirect result of Council action on the agreement or application for development rights.

It is the legal obligation of all applicants for approval of an agreement or of an application for development rights to verify in writing, under penalty of perjury, that the identity of each person having a material financial interest in the agreement or application or development rights is true, correct and complete. The applicant understands that this information is provided under penalty of perjury, and that intentionally supplying misinformation or deception may result in either invalidation of the agreement or application, or criminal prosecution for misdemeanor violation of the Modesto Municipal Code, or both. Negligent provision of misinformation shall be grounds for invalidation. In accordance with the Modesto Municipal Code, each applicant has a continuing obligation to maintain the truth, accuracy and completeness of the financial interest disclosure information provided below until after final consideration by the City Council of any matter arising out of or relating to the agreement or application.

PROJECT: REDUCES PARKING FOR SHADOW LOUNGE

Cory Britton
APPLICANT SIGNATURE

Cory Britton
APPLICANT NAME (type or print)

NAMES

Property Owner(s) – (Please list name of company and names of individual names of said company)

C.W. Brower INC.

Developer(s) – (Please list name of company and names of individual owner(s) of company)

Architect(s), Engineer(s) or Other Design Professional(s) – (Please list name of company and names of individual owner(s) of company)

DAVID PADILLA

Attorney(s) or Representative(s) – (Please list name of company and names of individual owner(s) of company)

Real Estate Agent(s) – (Please list name of company and names of individual owner(s) of company)

Contractor(s)

DAVID PADILLA

Other – (Investors, Trustees, etc.)

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Table
Project: Shadow Lounge
Description: To Shared Parking

9/12/2016

December																										
Weekday Estimated Peak-Hour Parking Demand																										
	Monthly Adj.																					Overall Pk	AM Peak Hr	PM Peak Hr	Eve Peak Hr	Footnote
		6 AM	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM	7 PM	8 PM	9 PM	10 PM	11 PM	12 AM	9 PM	11 AM	2 PM	9 PM		
Community Shopping Center (<400 ksf)	100%	-	2	5	11	19	26	32	35	35	35	33	30	28	26	23	18	11	4	-	18	26	35	18	-	
Employee	100%	1	1	3	6	7	8	8	8	8	8	8	8	8	8	7	6	3	1	-	6	8	8	6	-	
Nightclub	100%	-	-	-	-	-	-	-	-	-	-	-	-	19	37	56	74	74	74	74	74	-	-	74	-	
Employee	100%	-	-	-	-	-	-	-	1	1	1	2	4	6	8	8	8	8	8	8	8	-	1	8	-	
Convention Center	60%	-	-	5	10	10	10	10	10	10	10	10	10	10	5	3	3	1	-	-	1	10	10	1	-	
Employee	70%	-	-	-	-	1	1	1	1	1	1	1	1	1	1	-	-	-	-	-	-	1	1	-	-	
Office <25 ksf	100%	-	-	-	1	1	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	
Employee	100%	-	3	7	9	9	9	8	8	9	9	8	5	2	1	1	-	-	-	-	-	9	9	-	-	
TOTAL DEMAND	Customer	-	2	10	22	30	36	42	45	46	45	43	40	52	66	82	93	85	78	74	93	36	46	93	-	
	Employee	1	4	10	15	17	18	17	18	19	19	19	18	17	17	16	14	11	9	8	14	18	19	14	-	
	Reserved	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
		1	6	20	37	47	54	59	63	65	64	62	58	69	83	98	107	96	87	82	107	54	65	107	-	
																					107	54	65	107	-	

Footnote(s):

December																										
Weekend Estimated Peak-Hour Parking Demand																										
	Monthly Adj.																					Overall Pk	AM Peak Hr	PM Peak Hr	Eve Peak Hr	Footnote
		6 AM	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM	7 PM	8 PM	9 PM	10 PM	11 PM	12 AM	9 PM	11 AM	2 PM	9 PM		
Community Shopping Center (<400 ksf)	100%	-	2	4	14	23	27	33	37	39	39	37	35	31	29	25	20	14	6	-	20	27	39	20	-	
Employee	100%	1	2	4	8	9	10	10	10	10	10	10	10	9	8	8	7	5	2	-	7	10	10	7	-	
Nightclub	100%	-	-	-	-	-	-	-	-	-	-	-	-	21	43	64	86	86	86	86	86	-	-	86	-	
Employee	100%	-	-	-	1	1	1	1	1	1	1	2	5	7	10	10	10	10	10	10	10	1	1	10	-	
Convention Center	60%	-	-	5	10	10	10	10	10	10	10	10	10	5	3	3	1	-	-	-	1	10	10	1	-	
Employee	70%	-	-	-	-	1	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	1	1	-	-	
Employee	100%	-	-	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	
TOTAL DEMAND	Customer	-	2	9	24	33	37	43	47	49	49	47	45	57	75	92	107	100	92	86	107	37	49	107	-	
	Employee	1	2	5	10	12	13	13	13	13	12	13	16	17	18	18	17	15	12	10	17	13	13	17	-	
	Reserved	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
		1	4	14	34	45	50	56	60	62	61	60	61	74	93	110	124	115	104	96	124	50	62	124	-	
																					124	50	62	124	-	

Footnote(s):

The Urban Land Institute (ULI) methodology is based on surveys conducted at different locations throughout the country. These locations have been evaluated at different times of the year to determine the worst case scenario for parking needs. According to the manual which accompanies the shared parking model, a weekday and a weekend day in December both seem to be where ULI has deemed the time of the year for the worst case scenarios. In addition, the model day is divided up by hour between 6:00 AM and 12:00 AM the next day. This is to show the change in parking need throughout the day with the peak being about 9:00 PM. Staff has placed land use and square footage information into the model. In addition, staff adjusted the information to account for a small percentage of people who may use alternative modes of transportation. The result is that the project as proposed would only require that 124 spaces be provided. The site has 126

PARKING

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