

Staff Summary Report



City Council Meeting Date: September 11, 2008

Agenda Item Number: 32

SUBJECT: This is a public hearing for an appeal by the Date Palm Neighborhood Association of the July 8, 2008 Development Review Commission decision to uphold the Hearing Officer's approval of the request by **H B TOBACCO (PL060676)** located at 53 East Broadway Road for one (1) use permit.

DOCUMENT NAME: 20080911dssd01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for the appeal by the Date Palm Neighborhood Association (**UPA08005**) of the July 8, 2008 Development Review Commission decision to uphold the May 20, 2008 Hearing Officer's approval of the request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Steve Stewart, Date Palm Manor, applicant; Anis Ben Harzallah, business owner; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

PREPARED BY: Shawn Daffara, Planner II (480-858-2284)

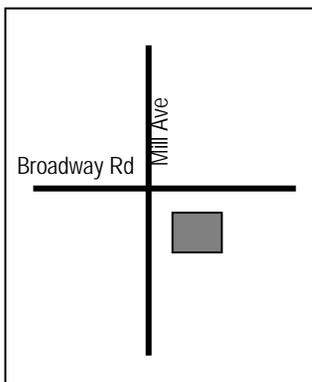
REVIEWED BY: Lisa Collins, Development Services Planning Director (480-350-8989) 
Chris Anaradian, Development Services Department Manager (480-858-2204)

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Denial of the appeal

ADDITIONAL INFO: The applicant, Steve Stewart with the Date Palm Manor Neighborhood Association is requesting an appeal of the July 8, 2008 Development Review Commission decision to deny the appeal for the request for a use permit to allow a hookah lounge/tobacco retailer at 53 West Broadway Road in the CSS, Commercial Shopping and Services District. An appeal letter from Date Palm Manor Neighborhood Association with a signed petition has been received. Staff support's the Hearing Officer and Development Review Commission decision in approving the use permit. The original request for a use permit meets the criteria for a use permit in the Zoning and Development Code.



PAGES:

1. List of Attachments
2. Comments;
3. Comments; Reasons for Approval;
4. Conditions of Approval; History & Facts;
5. Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. ZUP06088 Approval Letter (December 27, 2006)
5. Zoning Administrator Opinion (April 10, 2008)
6. Letter of Intent from May 20, 2008 Hearing Officer Report.
7. Site plan
8. Floor Plan
- 9-10. ZUP08068 Approval Letter (May 28, 2008)
- 11-12. Hearing Officer Minutes from May 20, 2008
- 13-17. 1st Appeal Letter from Date Palm Manor with Petition (May 29, 2008)
- 18-21. Letters of Oppositions for 1st Appeal.
22. Development Review Commission Denial of Appeal Letter (July 9, 2008)
- 23-24. Development Review Commission Minutes from July 8, 2008
- 25-26. 2nd Appeal Letter from Date Palm Manor (July 10, 2008)
27. List of other Hookah Lounges in the City of Tempe
28. Section 3-423: Use Separation Requirements
- 29-30. Definition of Tobacco Retailer and Hookah Lounge
31. Staff Photograph(s)

HEARING OFFICER, MAY 20, 2008, SUMMARY:

The existing Tobacco retail store, which received a use permit in December 2006, is located within the Walgreen's Shopping Center at 53 East Broadway Road, in the CSS, Commercial Shopping & Services District. The applicant, HB Place requested a use permit to amend the previous approval to allow a hookah lounge/tobacco retailer in May of 2008. An ordinance that established separation requirements took effect in June of 2007.

As part of the December 2006 use permit, the Hearing Officer included the following condition -"Smoking will not be permitted within the establishment." The scope of the business is to include the sale of coffee, hot and cold beverages, cigars, cigarettes, chewing tobacco, cigarette tobacco, pipe tobacco, pipes, hookahs, water pipes for tobacco use only, lighters and other tobacco-related products.

The applicant indicated he felt that condition of approval (# 8) didn't include restrictions on Hookah; therefore Hookah existed at this business. The City of Tempe Code Enforcement noticed and found it to be in violation of the conditions of approval. The business owner requested to go back before the Hearing Officer to have the earlier condition amended to clarify that Hookah and no other forms of smoking were allowed at the business.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibits a tobacco retailer (hookah lounge) from locating within 1,320 feet of a school. The applicant provided a copy of their "Tobacco Distributors License" dated 2004, from the State of Arizona, as evidence that they had been operating as a hookah lounge prior to the separation requirement. It was determined that HB Place had been operating as a hookah lounge prior to the separation requirement taking effect; therefore allowing them to submit a use permit request to operate a hookah lounge/tobacco retail establishment, thus amending the previous condition relating to smoking with in the establishment.

Mr. Harzallah submitted this application to request a use permit to include a hookah lounge. The primary use is a hookah lounge, with hours of operation from 3pm to 2am, seven (7) days a week with 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

Staff supported the request for a use permit to allow a hookah lounge.

The Hearing Officer Minutes are attached – see Attachment Nos. 11 & 12.

DEVELOPMENT REVIEW COMMISSION, JULY 8, 2008, SUMMARY:

The applicant, Steve Stewart, President of the Date Palm Manor Neighborhood Association requested an appeal of the May 20, 2008 Hearing Officer's decision to approve the request for a use permit to allow a hookah lounge/tobacco retailer at 53 West Broadway Road in the CSS, Commercial Shopping and Services District. Mr. Stewart opposed the HB Place use permit in December of 2006 for a Tobacco Retailer and the use permit request for a hookah lounge on May 20, 2008.

Staff recommended approval of the use permit when it went before the Hearing Officer on May 20 and is recommending denial of the appeal, thus upholding the Hearing Officer's approval of the use permit.

The Development Review Commission Minutes are attached – see Attachment Nos. 23 & 24.

COMMENTS FOR CITY COUNCIL, SEPTEMBER 11, 2008:

The applicant, Steve Stewart, President of the Date Palm Manor Neighborhood Association is requesting an appeal of the July 8, 2008 Development Review Commission decision to deny the appeal, thus upholding the Hearing Officer approval, for a use permit to allow a hookah lounge/tobacco retailer at 53 West Broadway Road in the CSS, Commercial Shopping and Services District. Mr. Stewart opposed the HB Place use permit in December of 2006 for a Tobacco Retailer and again opposed the use permit request for a hookah lounge on May 20, 2008.

Staff recommended approval of the use permit when it went before the Hearing Officer on May 20, recommended denial of the appeal

before the Development Review Commission, and are still recommending denial of the appeal, thus upholding the Hearing Officer's approval of the use permit.

Use Permit

The Zoning and Development Code requires a use permit for a hookah lounge in the CSS, Commercial Shopping and Services District. Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a) Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.

- b) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This is a hookah lounge and will generate smoke; however all hookah smoking shall be contained within the establishment moreover, the hookah lounge as its own independent ventilation system. Therefore this use should not adversely impact neighboring businesses with the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare.

- c) Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.

- d) Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses

Conclusion

Staff recommends denial of the appeal.

REASON(S) FOR APPROVAL:

1. The business is a general commercial use, and is compatible with the other businesses on the property and within the area.

2. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.

3. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.

THE FOLLOWING CONDITIONS OF APPROVAL WERE ASSIGNED BY THE HEARING OFFICER AND MODIFIED BY THE DEVELOPMENT REVIEW COMMISSION AS INDICATED.

**CONDITION(S)
OF APPROVAL:**

1. The use permit is valid for HB Place and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.
11. The hours of operation for on premises smoking are limited to **8:00 PM to 3:00 AM. ADDED BY THE DEVELOPMENT REVIEW COMMISSION**

HISTORY & FACTS:

- December 19, 2006 ZUP06088: Hearing Officer approved a use permit to allow a Tobacco Retailer for HB PLACE.
- March 11, 2008 CM080349: Complaint opened on HB PLACE for violation of conditions of approval. "Smoking will not be permitted inside this establishment."
- April 10, 2008 DSM08019: Zoning Administrators Decision to allow HB PLACE hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.
- May 20, 2008 ZUP08068: Hearing Officer approved a Use Permit for HB PLACE to allow a Tobacco Retailer/Hookah Lounge.
- May 30, 2008 UPA08003: Date Palm Manor Neighborhood Association filed and appeal of ZUP08068.
- July 8, 2008 UPA08003: The Development Review Commission denied the appeal for HB PLACE, thus upholding the Hearing Officer's approval.
- July 10, 2008 UPA08005: Date Palm Manor Neighborhood Association filed an appeal of UPA08003/ZUP08068.

DESCRIPTION:

Owner – Stoneman Properties
Applicant – Anis Benn Harzallah
Existing Zoning – CSS, Commercial Shopping and Services District
Parcel Size – 114,301 s.f. / 2.62 acres
Total Building Area – 40,202 s.f.
Tenant Area – 2,117 s.f.
Parking Required – 8 spaces
Parking Provided – 152 spaces

**ZONING AND
DEVELOPMENT**

CODE REFERENCE:

Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.

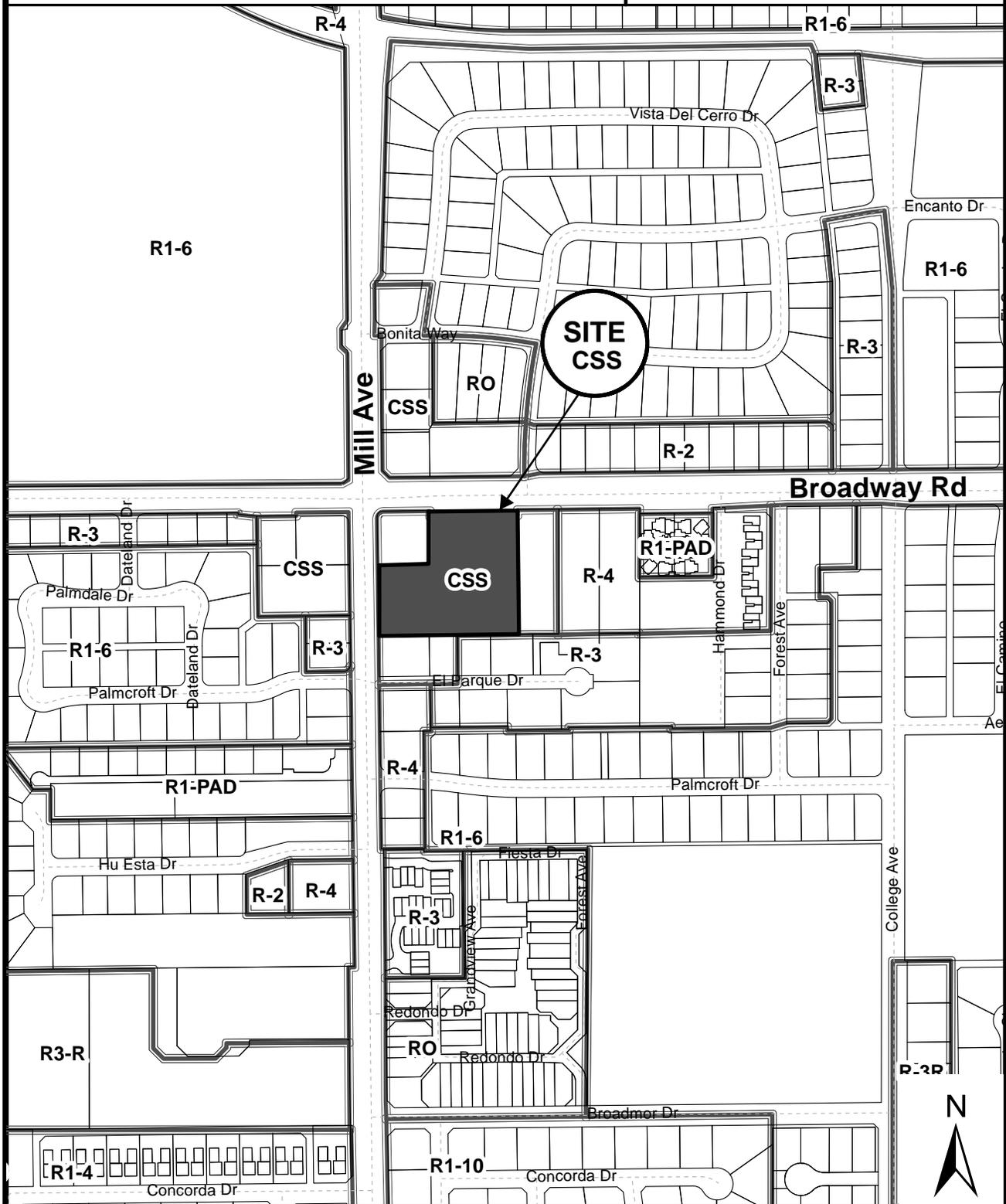
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements

Part 6, Chapter 3, Section 6-308 – Use Permit

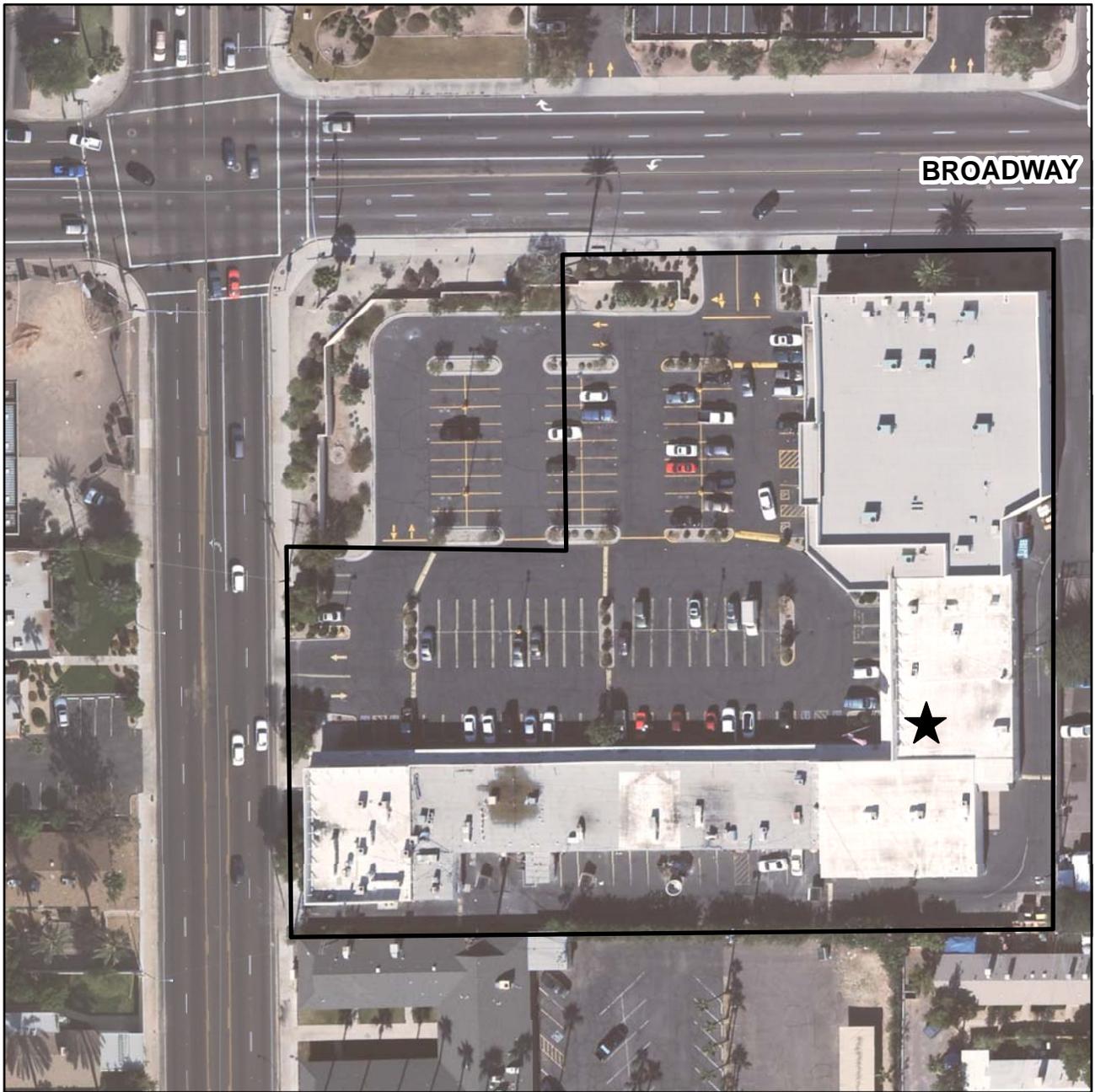
Part 6, Chapter 3, Section 6-313 – Security Plan

WALGREENS PLAZA- HB TOBACCO

PL060676



Location Map



WALGREEN'S PLAZA - HB TOBACCO (PL060676)

(480) 350-8331 (Phone)

December 27, 2006

Mr. Anis Ben Harzallah
851 West University Drive
Tempe, Arizona 85281

**RE: HB PLACE TOBACCO
PL060676 / ZUP06088**

Dear Mr. Harzallah:

You are hereby advised that at the hearing held December 19, 2006, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by **WALGREENS PLAZA – HB PLACE TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Commercial Properties LLC, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

ZUP06088 Use permit to allow a tobacco retailer.

Subject to the following conditions of approval:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The applicant shall devise a security plan in conjunction with the Police Department officials (contact Officer William Vanek (480) 858-6342) prior to the use permit becoming effective.
6. All business signs shall be Development Review staff approved and permits obtained.
7. The applicant shall contact and work with Development Services Development Review staff to upgrade non-compliant lighting at the proposed suite. Further, a 6" x 6" lexan or laminated glass vision panel shall be centered and installed at 63" above finished grade in the east elevation man door. These upgrades shall provide for the safety, security and code compliancy of the proposed business.
8. **Smoking will not be permitted within this establishment. ADDED BY HEARING OFFICER**

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with.

If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer.

You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

A handwritten signature in black ink that reads "Steve A. Abrahamson". The signature is written in a cursive, slightly slanted style.

Steve Abrahamson
Senior Planner

SA:dm

cc: Mr. Craig Lessler/Lessler Commercial Properties LLC
Mr. Stanford Stoneman/Stoneman Properties
File

Development Services
Department

480-350-8331

April 10, 2008

Mr. Ben Harzallah
HB Place Tobacco
53 East Broadway Road
Tempe, Arizona 85282

FILE COPY

RE: **HB PLACE TOBACCO – HOOKAH LOUNGE**
53 East Broadway Road
PL060676 / DS0061478 / DSM08019

Dear Mr. Harzallah:

I have reviewed your request for a Zoning Administrator's opinion as whether an application for a use permit to allow a hookah lounge at the HB Place Tobacco located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District can be accepted. Given the supporting evidence that shows the hookah use existed prior to the separation requirement becoming effective, you are able to apply for a use permit to allow a Hookah Lounge/Tobacco Retailer at this location.

The City of Tempe Zoning and Development Code, Part 3, Land Use, Section 3-423 states:

'Tobacco Retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education. Instructional or vocational schools are excluded from the separation agreement.'

Please submit the use permit fee of \$1065.00 along with the remaining project submittal items when applying for your use permit (i.e. 300 ft. radius map, typed mail labels, site plan, floor plan, letter of intent and signed letter of approval from the property owner).

If you need additional information or assistance, please contact Shawn Daffara, staff planner, at 480-858-2284.

Sincerely,



Lisa Collins
Planning Director

LC/dm

cc: Kay Savard/COT Tax & Licensing
Dean Miller/COT Commercial Code Department
File

APRIL17,2008

City of tempe

Development

Services

31 east fifth st.

Tempeaz85280

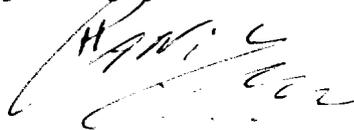
RE;use permit request

Gentlemen,I anis harzallah dba of hb tobacco ihave a space of 2117 s.f. located at 53 east broadway,I did open this business in december ,2006.my business is involve to sale hot and cold beverages,tobacco,seling hookahs ans serving them to smoke

I'am operating this premises as a hookah lounge,I have two employees,and I operate from 7:00pm to 2:00am.

I have a 10 to 20 average customer a night;however,my businesswill not cause any significant change to the vehicular or pedestrian traffic in and around the wallgreens plaza and surrounding streets.and my business never cause any nuisance and will never do,exceeding the ambient conditions.

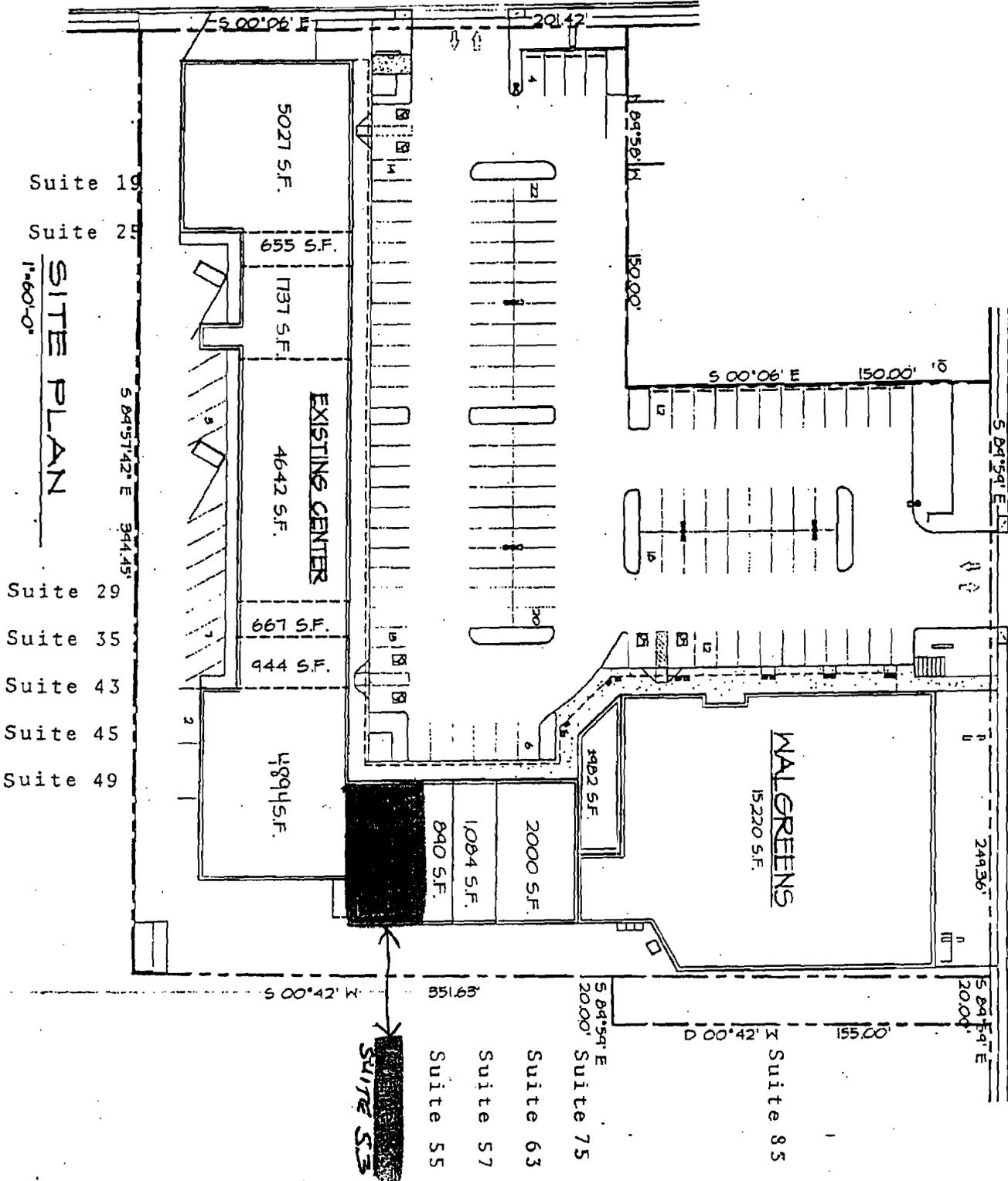
Very truly yours



Anis ben harzallah

MILL AVENUE

BROADWAY ROAD



EXB-1

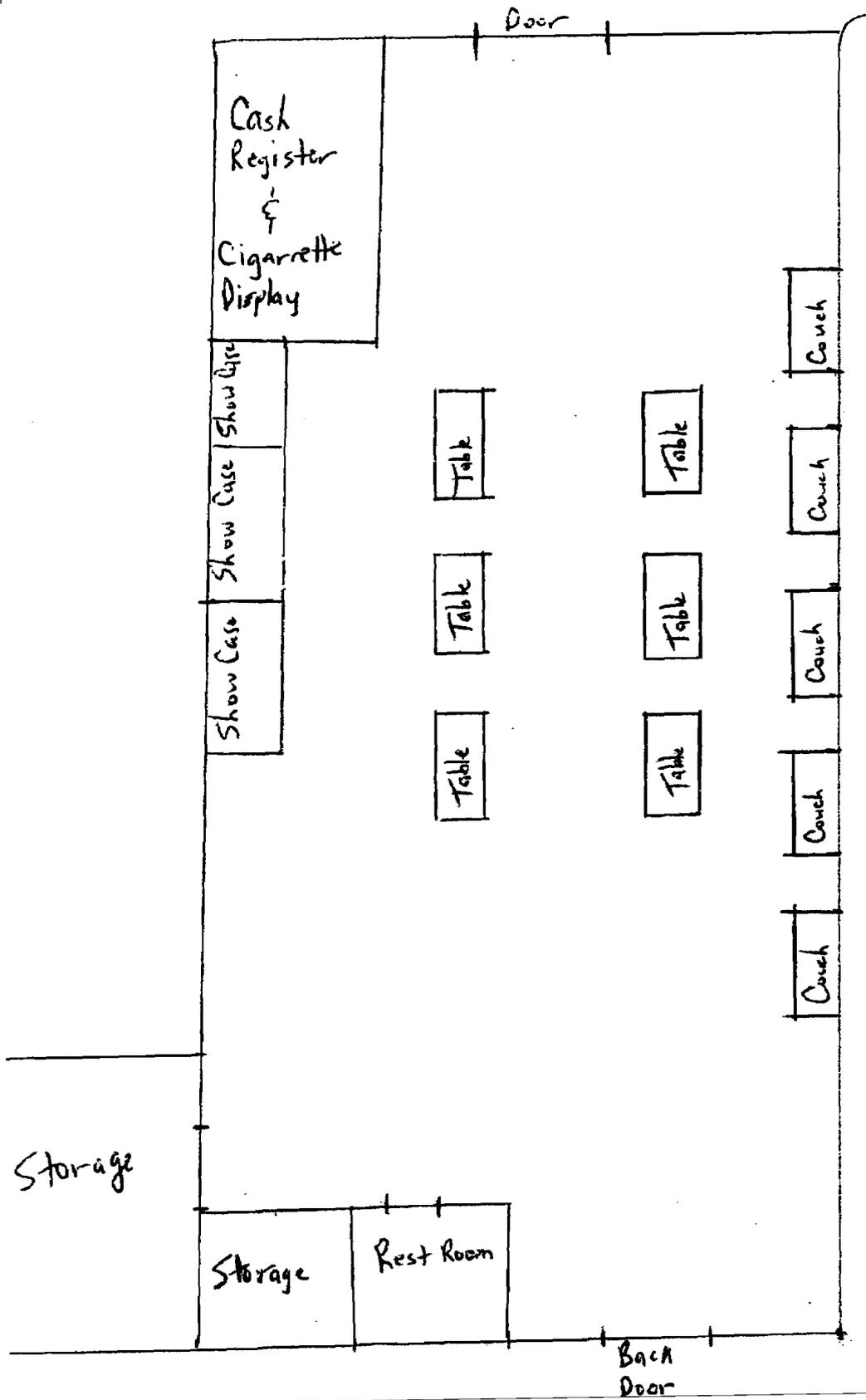
WALGREENS PLAZA
69 E. BROADWAY
TEMPE, ARIZONA
STONEMAN PROPERTIES ATTACHMENT 7

PRELIMINARY
NOT FOR
CONSTRUCTION OR RECORDING

ROBERT KUBICEK ARCHITECTS
AND ASSOCIATES, INC.
3900 E. CAMELBACK ROAD, SUITE 600
PHOENIX, ARIZONA 85018
FAX NO. 602-955-0496

4-1-94
92019

HB. Place Tobacco
53 E. Broadway



Development Services
Department

(480) 350-8331 (Phone)

May 28, 2008

FILE COPY

Mr. Anis Ben Harzallah
HB Place Tobacco
53 East Broadway Road
Tempe, Arizona 85282

**RE: H B TOBACCO
PL060676 / ZUP08068**

Dear Mr. Harzallah:

You are hereby advised that at the hearing held May 20, 2008, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

Approved subject to the following conditions:

1. The use permit is valid for HB Place and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480-858-6330).
11. **The hours of operation for on premises smoking are limited to 7:00 PM to 2:00 AM. ADDED BY HEARING OFFICER**

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with.

If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer. You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Daffara', with a long horizontal flourish extending to the right.

Shawn Daffara
Planner II

SD:dm

cc: Mark Stoneman/Stoneman Properties
File

- Hold a public hearing for a request by **PHOENIX 1 PLAZA – NEXTLINK WIRELESS INC. (PL080147)** (Sonya Okamoto/PlanCom Inc., applicant; Fountainhead Corporation LLC, property owner) located at 2625 South Plaza Drive in the GID, General Industrial District for:

ZUP08076 Use permit to allow roof top wireless antennas.
CONTINUED AT THE REQUEST OF THE APPLICANT

-
- 3. Hold a public hearing for a request by the **NANNAPANENI RESIDENCE (PL060629)** (Ravi Nannapaneni, applicant/property owner) located at 1026 East Knox Road in the AG, Agricultural District for:

VAR08009 Variance to increase wall height in the front yard setback from four (4) feet to six (6) feet.

Mr. Ravi Nannapaneni was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted the neighbor to the west is no longer in opposition and that his concerns have been resolved.

Mr. Williams noted that the purpose of a variance is to provide relief when the Zoning and Development Code is not applied fairly to a property owner. Mr. Nannapaneni's residence is across the street from the parking lot of a high school where there is a lot of activity and the wall will allow privacy.

DECISION:

Mr. Williams approved PL060629/VAR08009 subject to the following conditions:

1. The variance is granted based on the plans submitted and approved by the Hearing Officer.
2. Obtain all necessary clearances from the Building Safety Division.
3. The wall shall be designed to match the existing residence in color, form and material.

FILE COPY

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- 4. Hold a public hearing for a request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

Mr. Anis Ben Harzallah was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This request is based on the Zoning Administrator's opinion that they were allowed to apply for this use permit.

Mr. Williams questioned Mr. Abrahamson as to whether there had been any applicants that were restricted as to hours designated for smoking vs the business hours they are allowed to sell tobacco products. Mr. Williams noted that there was a Walgreens located next door to this business who also sold tobacco products. Mr. Abrahamson explained that the sale of tobacco products was not the primary source of income for Walgreens and they were not required to have a use permit, whereas Mr. Harzallah would derive over fifty percent (50%) of his income from the sale of tobacco. Mr. Williams cited his concern over high school students in the nearby area and asked if perhaps it would be more beneficial to limit the hours when smoking is allowed to a later time period such as 5 PM. He asked if limiting the hours is an option in this case.

Mr. Harzallah spoke and explained that the normal hours of his business were from 7 PM to 2 AM. Staff confirmed that this applicant's letter of explanation specified these hours of business.

Mr. Steve Stewart, Chairman of Date Palm Manor Homeowners Association, presented Mr. Williams with a specific petition of opposition to this request by his association. He pointed out the location of Tempe High School (northwest corner) and that the association strongly protests this use permit based on health concerns.

Mr. Angel Mendez, of Penasco Place, spoke in support of this request and stated that as a business owner and neighbor, Mr. Harzallah keeps the premises and parking area clean and causes no problems.

Ms. Margaret Christiansen, resident of Tempe, spoke in opposition and stated that as adults in our community we need to protect our youth during a period when they are very vulnerable and experimental against things, such as tobacco, that are harmful at all costs.

Mr. Williams noted that the sale of tobacco products is not what is under advisement today as that use permit had been approved over a year ago. The use permit to allowing smoking on the premises is what is being considered today, and because of the concern over high school students having a place to go and smoke, a use permit was denied a year and a half ago. He went on to state that we are back today to look at that very same question. Further, he indicated that he shared a very strong concern with the community over the close proximity of high school students, and the relation of this business to the location of the high school. Due to the Zoning Administrator's opinion that stated that this use was 'grandfathered', and the fact that the hours of operation were beyond the high school hours, since high school kids are not concentrated at 7 PM at this location, Mr. Williams noted that he was approving this request with an added condition limiting the hours of operation.

DECISION:

Mr. Williams approved PL060676/ZUP08068 subject to the following conditions:

1. The use permit is valid for HB Place and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480-858-6330).
11. **The hours of operation for on premises smoking are limited to 7:00 PM to 2:00 AM. ADDED BY HEARING OFFICER**

DATE PALM MANOR – NEIGHBORHOOD ASSOC.

C/O Steve Stewart, Chairman – 10 W. Palmcroft Dr. – Tempe, AZ 85282
480 – 966-5865

CITY OF TEMPE

May 29, 2008

c/o Development Services Department
P.O.Box 5002
Tempe, AZ 85280-5002

DEVELOPMENT SERVICES DEPARTMENT:

Date Palm Manor Neighborhood Association hereby requests appeal consideration on application PL060676 decision issued May 20, 2008. This appeal is based on the following, that we believe the Hearing Officer may have overlooked.

1. Our initial complaint is on the reverse side of this request and definitely deserves additional consideration.
2. The modification of hours of operation to start at 7:00 pm, does not in any way detour the juvenile traffic because of the tobacco legal age of (18) eighteen. Two years ago, here in Date Palm Manor, we had about ten of our Police Officer's break-up a group of 4-500, drinking and gun-firing teenager's celebrating someone's 18th birthday. This "hookah lounge" is like a giant teenage magnate to allow our youth to openly travel in a negative direction. This is the opposite direction of the YMCA.
3. We have worked very hard to make Tempe a beautiful city. With less than 19% of the American public smoking, and kids comprising a large percentage of that 19% , the problem is compound; littering and contributing.
4. Why add to our already overloaded Police Department? Tempe Leadership tries to develop responsible and active citizen's. Without a doubt, if the "hookah lounge" is allowed to operate, the entire surrounding neighborhoods will be watching and calling the police as required.

Respectfully,



Steve Stewart, Chairman - Date Palm Manor Neighborhood Assoc.

WALGREENS PLAZA-HB TOBACCO

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

First point of consideration is TEMPE HIGH SCHOOL located directly across the street on the northwest corner of Broadway Road and Mill Avenue. Secondly, both the City of Tempe and the State of Arizona are attempting to better protect our children and citizens from the abusive effects of tobacco; this application is definitely counterproductive and as such, should not be granted.

The below signed residents pray for the denial of this application:

<u>NAME</u>	<u>ADDRESS</u>	<u>SIGNATURE</u>	<u>DATE</u>
1. Steve Stewart	10 W. Palmcroft Dr.	_____	5-18-08
2. Joy Stewart	10 W. Palmcroft Dr.	_____	5-18-08
3. Margaret Christiansen	18 W. Palmcroft Dr.	_____	5-18-08
4. Carolyn Jenkins	116 W. Palmcroft Dr.	_____	5-18-08
5. Adrienne Decker	103 W. Palmdale Dr.	_____	
6. Pat Lauderdale	111 W. Palmdale Dr.	_____	
7. Patti Morrell	115 W. Palmcroft Dr.	_____	
8. Bidy Hayden	121 W. Palmcroft Dr.	_____	

NOTE: 5-29-08: When this petition was originally given to the Development Services Department, May 20, 2008 @ the public hearing, there were (23) twenty-three valid resident signatures on three separate sheets. This sheet is being attached to our request for appeal to the Hearing Officer's decision on this case at that hearing.

WALGREENS PLAZA-HB TOBACCO^(1 of 3)

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

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4.	4. Carolyn Jenkins	116 W. Palmcroft Dr.	<i>Carolyn V. Jenkins</i>	5-18-08
5.	5. Adrienne Decker (VACATION)	103 W. Palmdale Dr.		
6.	6. Pat Lauderdale	111 W. Palmdale Dr.	<i>Pat Lauderdale</i>	5-18-08
7.	7. Patti Morrell	115 W. Palmcroft Dr.	<i>Patti Morrell</i>	5-18-08
8.	8. Biddy Hayden	121 W. Palmcroft Dr.	<i>Biddy Hayden</i>	5-18-08
9.	9. HAL L. JENKINS	116 W. PALMCROFT	<i>Hal L. Jenkins</i>	5-18-08
10.	10. KRS ROBERTS	25 W. Palmcroft	<i>KRS Roberts</i>	5-18-08
11.	11. MARTON MUNIK	19 W. PALMCROFT	<i>Marton Munik</i>	5-18-08
12.	12. Robert Eagar	26 W. Palmcroft	<i>Robert Eagar</i>	5-18-08
13.	13. Kari Eagar	26 W. Palmcroft	<i>Kari Eagar</i>	5-18-08
14.	14. Beverly Alisky	44 W. Palmdale	<i>Beverly Alisky</i>	5-18-08
15.	15. Sandra Alisky	44 W. Palmdale	<i>Sandra Alisky</i>	5-18-08
16.	16. Annamaria Oliviero	111 W. Palmdale Dr.	<i>Annamaria Oliviero</i>	5-18-08

WALGREENS PLAZA-HB TOBACCO

(2 of 3)

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8. Biddy Hayden	121 W. Palmcroft Dr.		
16. 9. Roseanna Spier	2018 S. Dromedary Dr	Roseanna Spier	5-18-08
17. 10. Dale Spier	2018 S. Dromedary Dr	Dale Spier	5-18-08
11.			
12.			
18. 13. Elsie M. Miller	15 W. Palmcroft Dr.	Elsie M. Miller	5-20-08
19. 14. Debbie Bonets	25 W. Palmcroft Dr.	Debbie Bonets	5-20-08
20. 15. CATHY ORTIZ	2025 S. Dataland	Cathy J. Ortiz	5/20/08
21. 16. Peggy Maddox	102 W. Palmcroft	Peggy Maddox	5/20/08

WALGREENS PLAZA-HB TOBACCO

(3 of 3)

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

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7. Patti Morrell	115 W. Palmcroft Dr.		
8. Bidy Hayden	121 W. Palmcroft Dr.		
9. Rosanna Spier	2018 S. Pomegranate Dr	Rosanna Spier	5-19-08
10. Dale Spier	2018 S. Pomegranate Dr	Dale Spier	5-19-08
22. 11. Mark Petiford	14 W. Palmcroft Dr.	Mark Petiford	5/19/08.
23. 12. Chenli Petiford	14 W. Palmcroft Dr.	Chenli Petiford	5/19/08.
13. ELSIE M. MILLER	15 W. Palmcroft Dr.	Elsie M. Miller	5-20-08
14. Deldae BOWEN	25 W. Palmcroft Dr	Deldae Bowen	5-20-08
15. Cathy Ortiz	2025 S. Patalwood	CATHY J. ORTIZ	5/20/08
16. Peggy Maddox	102 W Palmcroft Dr	Peggy Maddox	5/20/08

Anaradian, Christopher

From: Ellis, Shana
Sent: Thursday, May 22, 2008 3:14 PM
To: Anaradian, Christopher
Subject: FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

Here is the other one I told you about.....

Shana

From: Scott Turley [mailto:scott.turley@gmail.com]
Sent: Sunday, May 18, 2008 5:19 PM
To: Hallman, Hugh; Hutson, Hut; Arredondo, Ben; Carter, Barbara; Ellis, Shana; Mitchell, Mark; Shekerjian, Onnie
Cc: huthutson@cox.net; julie@julieforcouncil.com; navarrorforcitycouncil@hotmail.com; corey@coreywoods2008.com
Subject: Hearing for a permit for a Hookah Lounge across from Tempe High School

Dear esteemed Mayor, Tempe City Council, and those running for City Council:

I am a concerned resident in the city of Tempe in the neighborhood between Mill Avenue and the railroad tracks south of Alameda Dr. Our family has two young children, ages three and five and attend church with families who also live in the surrounding neighborhoods some of whom have children attending Tempe High.

It has come to my attention that the business HB is applying for a permit to operate a Hookah Lounge in the Walgreen's shopping center across the street from Tempe High school. The business also intends to extend operations from 3pm to 2am, opening its business just as the Tempe High School will be releasing its students from classes.

I am concerned because I frequent this shopping center often. The corner restaurant, El Penasco, is a local favorite for our family, and we sometimes walk their to frequent it and other businesses in the plaza.

About four years ago, we were looking to buy a house in the area. We did not want to follow the trend of many of my friends who were buying brand new houses on the outskirts of town. We chose Tempe because we love Tempe. We bought an old house in an old neighborhood because we liked the amenities of the city. However, one of the distinct disadvantages of being in this part of the city for us is the number of tobacco type shops close by. There are three, including this one that we could literally walk to from our house.

Much more important, having such a shop right across the street from a high school is a direct violation of city law. And for them to operate such a shop at 3pm so close to the hours of operation of a high school just violates common sense. I do understand the shop was operating before the city law to ban such establishments was in place, but the law was passed for a reason, and common sense needs to dictate in this case.

I strongly urge all on this list who have the power to limit operations of such establishments to locations not near our schools, and they especially should not be allowed to open as students are walking nearby.

One final note, I am a concerned and informed Tempe resident. I have researched those running for city council this Tuesday and I am planning to vote. I am generally excited at the direction Tempe is currently going, but I definitely want to see neighborhoods like mine looked after to ensure a safe, family friendly environment for all who reside here.

I appreciate your time on this matter.

Scott Turley
16 W. Del Rio Dr.
Tempe, 85282
480-517-1438

Anaradian, Christopher

To: Abrahamson, Steve

Subject: FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

From: Ellis, Shana

Sent: Thursday, May 22, 2008 3:01 PM

To: Hearn, Shelley; Anaradian, Christopher

Subject: FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

Do either of you have any information on this? Thanks!

Shana

From: TESmith [mailto:etsmith2@cox.net]

Sent: Monday, May 19, 2008 10:33 PM

To: Hallman, Hugh; Hutson, Hut; Arredondo, Ben; Carter, Barbara; Ellis, Shana; Mitchell, Mark; Shekerjian, Onnie

Subject: Hearing for a permit for a Hookah Lounge across from Tempe High School

Dear Mayor and Tempe City Council,

It has come to my attention that the business HB is applying for a permit to continue to operate and expand a Hookah Lounge in the Walgreen's shopping center across the street from Tempe High school.

While I visit this strip mall frequently, I never realized the type of business that HB was conducting behind it's highly silvered windows, being tucked back in the corner, opening only after dark and with almost no signs to speak of. This was not an operation to take pride in, it was being run with stealth, keeping under the radar screen.

With this proposal, they will become the premier store in this shopping facility. The application by the owner states that he plans to extend his operation hours from 3pm to 2am, opening its business just as Tempe High School is releasing its students for the day.

I understand that there is some need to allow the grandfathering of existing business locations even when they operate in violation of the new laws regarding their proximity to schools. If the business plan were to continue as it has since 2006, I would not object. But, in my opinion, this new business plan is a blatant attempt to ensnare our city's youth in an activity that has come under condemnation by so many in the community.

I feel that it was irresponsible for the city staff to recommend approval of this application to the hearing officer. I also feel that it would be a betrayal of the public trust for this application to be approved by city officials as it stands now.

My wife and I have raised our five children with pride here in Tempe over the past 30 years. I have felt that the city has tried to make itself a safe place for youth and children and in the whole, it has done a good job.

We have one son who is a junior at Tempe High School and a daughter who will most likely attend there in two years. We take their public safety very personally. We object to letting this loophole throw open the gate to actions so inconsistent with our current laws.

Although the time is short, I trust that you and your staffs will be able to communicate our displeasure and concerns to the hearing officer responsible. Be assured that we do not stand alone in our feelings. There are many others who would want to stand and be counted were the time to respond not so short.

We appeal to you, our elected officials, to examine this matter more closely.

Sincerely,

Tim and Evelyn Smith
21 W Geneva Dr.
Tempe, AZ 85282

480 968-5603

Development Services
Department

(480) 350-8331

July 9, 2008



Steve Stewart
Date Palm Manor Neighborhood Association
10 West Palmcroft Drive
Tempe, AZ 85282

RE: **PL060676 – WALGREENS PLAZA-HB PLACE TOBACCO APPEAL OF USE PERMIT
DS061478 UPA08003**

Dear Mr. Stewart:

At its hearing of July 8, 2008, the Development Review Commission denied the appeal request and upheld the Hearing Officer's decision for approval of the Use Permit for **WALGREEN'S PLAZA-HB PLACE TOBACCO** at 53 East Broadway Road in the CSS, Commercial Shopping and Services District. The request includes the following:

UPA08003 – (ZUP08068) Appeal of the approval to allow a hookah lounge/tobacco retailer.

This denial may be appealed to the City Council within fourteen (14) days. Please submit your request in writing to the City of Tempe's Development Services Department.

If you have any questions, please contact me at (480) 858-2284.

Sincerely,



Shawn Daffara
Planner II
Development Services Department

cc: File
Ben Harzallah

SD/II

REGULAR AGENDA

2. Request for **TEMPE (HAYDEN) BUTTE (PL080136)** (City of Tempe, property owner; Joe Nucci, Historic Preservation Officer, applicant) for designation to the *Tempe Historic Property Register*, located at 222 East 5th Street in the GID, General Industrial District, the MU-4, Mixed-Use High Density District and in the Rio Salado & Transportation Overlay Districts. The request includes the following:

HPO08002 – (Ordinance No. 2008.31) Historic Designation located on approximately 35 acres.

STAFF REPORT: [DRCr_TempeButte_070808.pdf](#)

This case was presented by Ryan Levesque and represented by Bob Gasser of the Historic Preservation Commission.

Commissioner Nicpon: Will this designation preclude any commercial or recreational activities and has ASU been brought into this process so that the entire butte can be historically designated, not just part of it?

Levesque: This designation will not preclude any type of development but it's the City's intent to keep the butte as it is. Yes, ASU has been informed of the process and they are aware of what the City is doing. Although at this time, ASU is not included in this submittal. ASU may also choose to include their portion of the property at a later date or partake in any future national designation.

Bob Gasser, Chairman of the Historic Preservation Commission, makes a brief presentation on the designation process of the butte and what their part has been in this process.

Commissioner DiDomenico: What does this designation mean at a local level?

Gasser: It brings awareness to the historic significance of the butte.

Nicpon: Do we own the entire mountain?

Gasser: No. ASU owns east of College Avenue.

On a motion by Commissioner Nicpon and seconded by Commissioner Attridge, the Commission with a vote of 7-0 recommend approval of this Historic Designation with all conditions as outlined in the staff report.

FILE COPY

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3. Appeal of the May 20, 2008 Hearing Officer's decision to approve the request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Steve Stewart/ Date Palm Manor Home Owners Association, applicant) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District. The request includes the following:

UPA08003 – (ZUP08068) Appeal of the approval to allow a hookah lounge/tobacco retailer.

STAFF REPORT: [DRCr_HBPlaceAppeal_070808.pdf](#)

This case was presented by Steve Abrahamson and represented by the applicant, Steve Stewart.

Commissioner Webb to Mr. Stewart: Do you know of any problems that the Hookah lounge has had?

Mr. Stewart: No.

Webb: Are you familiar with Tempe High's zero tolerance policy?

Stewart: Yes.

Mr. Harzallah, HB Place Tobacco business owner, makes a brief presentation.

Nicpon: You sell tobacco in this establishment; will tobacco be allowed to be smoked inside?

Harzallah: No, only hookah. We also require identification from each customer, no one under 18 is allowed.

Nicpon: What is your ventilation system for smoke?

Harzallah: We have a filtration system.

Oteri: Even though your 2006 use permit indicates no smoking, you took liberties and allowed smoking of hookah, can you explain?

Harzallah: I checked with all hookah lounges and was under impression that the hookah was excluded, and not included in the smoking ordinance. I don't allow tobacco such as cigarettes and cigars to be smoked.

DiDomenico: Can any of the items used to smoke hookah be purchased by anyone under 18?

Harzallah: No.

Chair MacDonald opens the hearing to public input:

Six people from the public voiced support for denial of the use permit, stating concerns that the lounge is located across from a high school and its hours of operation.

Three people spoke in opposition to the appeal stating that there have been no direct complaints against the hookah lounge and indicating that clientele are required to show identification and be 18 or over to enter the establishment; also indicating that Walgreens, which is located in the same plaza, also sells tobacco products.

The hearing was closed for public comment and both the applicant and shop owner finished their closing comments.

A motion was made to approve the appeal (denying the use permit) by Commissioner Nicpon and seconded by Commissioner Attridge (supported by Commissioner Swanson) (motion then failed with a vote of 3-4, (Commissioners MacDonald, DiDomenico, Oteri, Webb opposed).

On a motion by Commissioner DiDomenico and seconded by Commissioner Webb, the Commission with a vote of 4-3 (Nicpon, Swanson and Attridge opposed) denied the appeal (upholding the Hearing Officer's approval of the use permit).

The following condition was modified on the Use Permit:

11. THE HOURS OF OPERATION FOR ON PREMISES SMOKING ARE LIMITED TO ~~7:00 PM TO 2:00 AM~~
8:00 PM TO 3:00 AM

DATE PALM MANOR N.A.

C/O Steve Stewart – 10 W. Palmcroft Drive – Tempe, AZ 85282

July 10, 2008

CITY OF TEMPE

c/o Mayor and City Council

P.O.Box 5002

Tempe, AZ 85280

MAYOR AND CITY COUNCIL:

Date Palm Manor Neighborhood Association hereby request appeal consideration on application PL060676 decision issued July 8, 2008, by the Development Review Commission based upon the following:

- 1. Arizona is a NO SMOKING state and Tempe is a NO SMOKING city**
- 2. Multiple violations of Tempe City Code; Article II, Sec.22-40/54**
- 3. All Tempe "hookah lounges" (six others) are located in school areas**
- 4. Supposedly, only a flavored "light tobacco" is used in the hookah**
- 5. The lounge owner, Mr. Anis Ben Harzallah, openly stated in the July 8, 2008 DRC Meeting, that the hookah's were used while homework was being done. This lounge is directly across the street from Tempe High School and will act as a gigantic adolescent magnet at any time of the day, especially evening hours.**
- 6. This lounge is also in violation of the distance restriction from a school. (Broadway Road & Mill Avenue)**
- 7. The applicant of PL060676 is attempting to infer a grandfather status**
- 8. If we change a speed limit down from 35mph to 25mph, that means immediately. It obviously indicates an assumed safety hazzard. Because you have traveled this area in the past at 35mph does not grandfather you to continue to do so. We know the health effect's of tobacco use and here we are encouraging its use with the eighteen year olds and their friends. Think about that for a minute!**
- 9. Here in Tempe, we are very community active; as indicated by such**

organizations as: YMCA, TCAA, Boys & Girls Club, Tempe

- Page Two -

Leadership, and the various service clubs, such as Kiwanis (Serving the Children of the World). All of these community organizations devote countless hours and millions of dollars NON-PROFIT. By allowing a business to profit by promoting a known health hazzard; we may as well increase all of our school speed zones to at least 40mph. Our actions outspcak our words, everytime, when it comes to our children.

- 10. Date Palm Manor does not stand alone in this request. The meeting of July 8, 2008 was addressed by many other Tempeans with identical and extended concerns. Sometimes governments with good intentions make bad decisions. The mistake is to not correct the error. Apparently, when the decision was made to allow "houkah lounge's" in Tempe, no one was aware of the original use of the hookah was for opium; which is a cool and attractive origin to an adolescent.**

In conclusion, we in the neighborhood of Date Palm Manor (Broadway & Mill Ave.) would request the Mayor and City Council consider enforcement of the laws and codes in place, resulting in the denial of application PL060676.

Respectfully,



**Steve Stewart, Chairman
Date Palm Manor N.A.**

**Cc: The Honorable Janet Napolitano
Governor of Arizona
1700 W. Washington
Phoenix, AZ 85007**

HOOKAH LOUNGES

Updated: July 2008

<u>Business</u>	<u>Address</u>	<u>Operation</u>	<u>Use Permit</u>
Red Sea	827 S. Rural Rd	2002	Yes, Aug 2002
Café Istanbul	1310 E. Apache Blvd	2004	Yes, June 2008
Urban Café	1212 E. Apache Blvd	2006	Yes, May, 2008
King Tut	1125 E. Apache Blvd	2004	Yes, May 2008
Memo's Café	1845 E. Broadway Rd	2008	Yes, April 2008
HB Place	53 E. Broadway Rd	2006	Yes, May 2008
Layelena	1290 N. Scottsdale Rd	2006	Hookah is Outdoors, no use permit necessary.

Hookah Lounges that could not meet Smoke Free Arizona or Separation Requirement, Ceased Activity

Oasis Café	1731 E. Broadway Rd	2005	Withdrew Application
La Pita	505 S. Mill Ave	2005	Ceased Hookah Activity.
Eddie's Pizza	1250 E. Apache Blvd	2007	Ceased Hookah Activity.
Mill's End	310 S. Mill Ave	2007	Ceased Hookah Activity

Section 3-422 Amateur Radio Antennas

Amateur radio antennas for non-commercial use.

- A. Antennas Permitted.** Amateur radio antennas are permitted in all zoning districts subject to the following standards:
1. Antenna *structures* are allowed up to thirty-five (35) feet in height;
 2. Antenna *structures* shall comply with *setback* standards for the zoning district in which it is located and in all residential zoning districts, shall be located in the rear half of the *lot*;
 3. Antennas, including support *structures*, shall not extend beyond the *property line*; and
 4. When a Federally Licensed Radio Amateur no longer occupies the subject property, the antenna *structure* shall be removed.
- B. Antennas with a Use Permit.** All amateur radio antennas that exceed thirty-five (35) feet in height shall require approval of a *use permit*. Such antennas shall be of telescoping design and lowered to a height of no more than thirty-five (35) feet when not in use. In no event shall an amateur radio antenna exceed the height of seventy-five (75) feet.

Section 3-423 Use Separation Requirements.

- A. Non-Chartered Financial Institutions.**
1. *Non-chartered financial institutions* shall not be located on a *lot* within 1,320 feet, measured by a straight line in any direction, from the lot line of another *non-chartered financial institution*.
 2. *Non-chartered financial institutions* shall not be located on a lot within five hundred (500) feet, measured by a straight line in any direction, from the lot line of a residential district.
 3. The requirements pursuant to Section 3-423(A) shall also apply to *Non-chartered financial institutions* which are ancillary to another existing or permitted use.
- B. Auto Title Loan.** *Auto Title Loan* businesses shall not be located on a *lot* within 1,320 feet, measured by a straight line in any direction, from the lot line of another *auto title loan*. The requirements in this section shall also apply to *auto title loan* businesses which are ancillary to another existing or permitted use.
- C. Tobacco Retailer.** *Tobacco Retailers* shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a *charter school, private school, or public school*, which provides elementary or secondary education. *Instructional or vocational schools* are excluded from the separation requirement.

Section 7-121 "T" Definitions.

Tattoo, body piercing establishment means any establishment offering indelible designs, letters, scrolls, figures, symbols or other marks that are placed on or under the skin with ink or colors by the aid of needles or other instruments and that cannot be removed without a surgical procedure; any establishment offering designs, letters, scrolls, figures or symbols or other marks done by scarring/branding on or under the skin; any establishment where decorations or other devices are inserted into the skin; any establishment using techniques such as penetrating, perforating, boring or creating a hole in the skin or another human body part; or any establishment whose primary function is permanent body alteration for non-surgical purposes. The following establishments shall be exempt from this definition: those where offering permanent facial make-up/cosmetics ancillary to the primary business; those where procedures are performed by a person authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture and the procedures are performed in conformity with the standards of that profession; those where procedures are performed by registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopath; those where the only type of piercing offered is ear piercing.

Telecommunications Hotel means a windowless controlled environment buildings which allow for businesses to lease computer server space for connection to local exchange carriers, interexchange carriers, Internet service providers, competitive access providers and telephone services. In addition to voice and data connectivity, the amenities include controlled temperature and humidity, 24-hour security, fire detection/suppression systems and generator power backup. These facilities have no pedestrian activity associated with the use.

→ **Tobacco retailer** means any person or business who primarily sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to, smoke shops, tobacco shops, cigars and pipe retailer, cigarette retailer, and hookah lounges.

TOD means a Transportation Overlay District, which creates an overlay to existing zoning to encourage development supportive of light rail, bus, bicycle and pedestrian uses.

(TOD) Corridor means the portion of the Overlay District not located within a *Station Area*.

(TOD) Station Area means the portion of the Overlay District located Only areas within 400 linear feet of a light rail transit station are referred to as *Station Areas*, measured from the center point of the platform, extending 400 feet in a linear direction along the center of any public right of way, including only properties adjacent to the public right-of-way, with required uses, development and design standards that encourage intensified development around the light rail stations.

Transit shelter means a structure provided at a bus or train stop to provide shelter from weather and/or sun to transit patrons waiting at the stop.

Tourist court see "hotel".

Townhouse means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in a subdivided lot.

Section 7-109 “H” Definitions.

Hardscape means brick, concrete, wood, tile, paver, or other decorative hard surfaces used outside in lieu of or in conjunction with landscape materials such as trees, shrubs, turf, ground cover wood chips, or gravel.

Home occupation means a business activity that is carried out on the same site as a dwelling unit, and which is accessory to the household living use on the site.

Hospital means a building where the sick or injured are given in-patient medical or surgical care, including ancillary uses common to medical needs, such as pharmacies and medical labs. (Not a clinic.)

Horizontal regime means the three dimensional area in a condominium plat that is under a single ownership.

Hotel means a building that contains more than five (5) boarding rooms.

→ **Hookah lounge** means any business which primarily serves tobacco and related products, whereby patrons share the tobacco from a communal hookah or water pipe which is placed at each table. The business may sell beverages and snacks, but the gross sales of these items shall not exceed that of tobacco and related products.

Section 7-110 “I” Definitions.

Intensity means dwelling unit density, employment density and/or floor area ratio, whichever is applicable.



WALGREENS PLAZA- HB TOBACCO

53 EAST BROADWAY ROAD

PL060676

FRONT OF BUSINESS