

Staff Summary Report



Hearing Officer Hearing Date: 5/17/11

Agenda Item Number: 3

SUBJECT: This is a public hearing for a request by **THE FIRE HOUSE SMOKE SHOP** located at 764 West Broadway Road, Suite No. 101 for one (1) use permit.

DOCUMENT NAME: 20110517cdng01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **THE FIRE HOUSE SMOKE SHOP (PL110152)** (Jason Lapenna, applicant; Haechler Trust, property owner) located at 764 West Broadway Road, Suite No. 101, in the CSS, Commercial Shopping and Services District for:

ZUP11031 Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

PREPARED BY: Nick Graves, Planner (480-350-8690)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

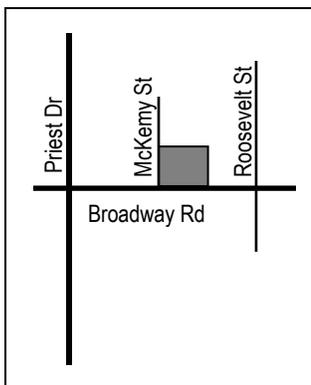
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: **Staff – Approval, subject to conditions**

ADDITIONAL INFO:



The applicant is before the Hearing Officer to request approval of a use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products. The business will involve the sale of cigars, cigar wrappers, cigarette papers, pipe tobaccos, chewing tobaccos, ashtrays, wooden pipes, glass pipes, and other accessories. There has been no public input to date regarding this request. Staff recommends approval of the request as submitted.

PAGES:

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

ATTACHMENTS:

1. Location Map
2. Aerial Photo
- 3-4. Letter of Intent
5. Site Plan
6. Floor Plan
7. Staff Photograph

COMMENTS:

The Fire House Smoke Shop is before the Hearing Officer to request approval of a use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products. The proposed store will be located within the shopping Center at 764 West Broadway Road, Suite No. 101 just west of Roosevelt Street along Broadway Road.

The business will involve the sale of cigars, cigarillos, cigar wrappers, cigarette papers, pipe tobaccos, chewing tobaccos, ashtrays, wooden pipes, glass pipes, metal pipes, pouches, cases, and other accessories. DVD videos, posters, tapestries, and locally produced shirts and hats will also be offered. To the north, the shopping center is adjacent to the R-3 Multi-Family Residential Limited Zoning District. It is adjacent to the CSS, Commercial Shopping and Service District to the west across McKemy Street and to the east, and GID, General Industrial District, across Broadway Road to the south. According to the applicant, the intended hours of operation will be Monday to Thursday from 10:00 a.m. to 8:00 p.m., Friday and Saturday from 10:00 a.m. to 9:00 p.m., and closed on Sundays. Future hours of operation would include being open at 9:00 a.m. Monday through Saturday and being open on Sundays from 10:00 a.m. to 8:00 p.m. Smoking will not be permitted indoors.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibit a tobacco retailer from locating within 1,320 feet of a school. This proposal is not within 1,320 feet of a school, thus a tobacco retailer can be allowed subject to an approved use permit.

To date, staff has received no public input concerning this request.

Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a use permit in the CSS, Commercial Shopping and Services District. This use permit request meets all applicable tests in the following manner:

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 retail use, similar to others within the shopping center; there should be no nuisances.
- 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 approval of the use permit subject to the attached conditions of approval.

REASONS FOR APPROVAL:

1. Traffic generated by this use should not be excessive.
2. There will be no apparent damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
3. The use appears to be compatible with the building, site and adjacent properties.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITIONS OF APPROVAL:

1. The use permit is valid for The Fire House Smoke Shop Inc. and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
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. Should smoking be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
9. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8372.
11. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 350-8311 within 30 days of this approval by June 17, 2011.

HISTORY & FACTS:

January 25, 1978

A-78-1.14 – The Board of Adjustment approved a request for Walt Bollinger located at 722 - 790 W Broadway Rd. for the following:

- a. Variance to reduce the required 10 foot landscaping strip along Broadway Rd to 0 ft.
- b. Variance to reduce the required number of off-street parking spaces from 71 to 69.

July 20, 1999

BA990156 – The Hearing Officer approved a request for Wendy’s located at 790 W Broadway Rd for the following:

- a. Variance to reduce the minimum landscape island widths from 7'-0" to 4'-10".
- b. Variance to reduce the required parking from 57 to 56 spaces.

DESCRIPTION:

Owner – Haechler Trust
Applicant – Jason Lapenna
Existing Zoning – CSS, Commercial Shopping & Services District
Total Site Area – 48,779 s.f. / 1.12 acres
Total Building Area – 4,186 s.f.
Proposed Tenant Lease Space – 1,505 s.f.
Parking Required – 5
Total Site Parking Provided – 56

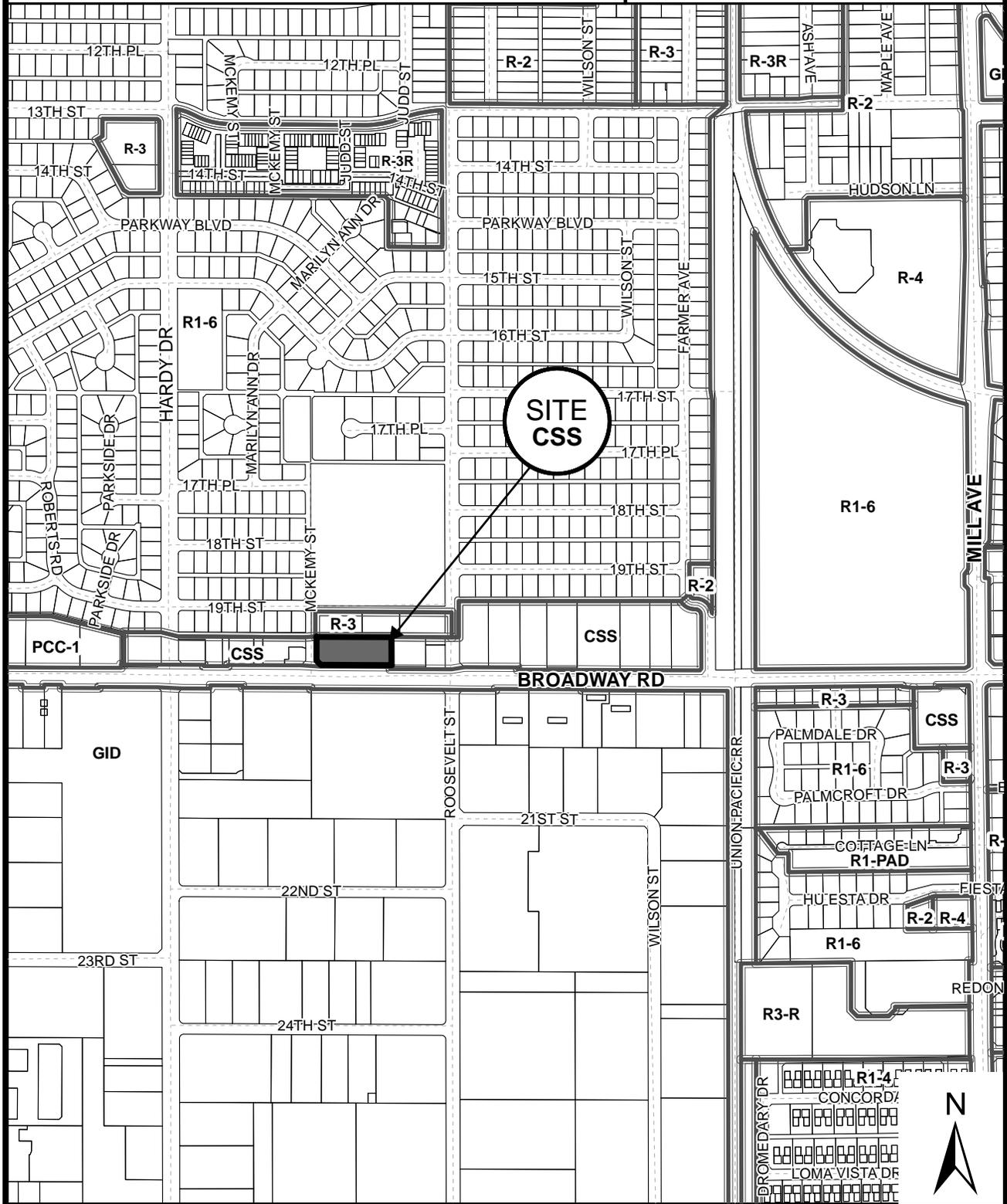
**ZONING AND
DEVELOPMENT**

CODE REFERENCE:

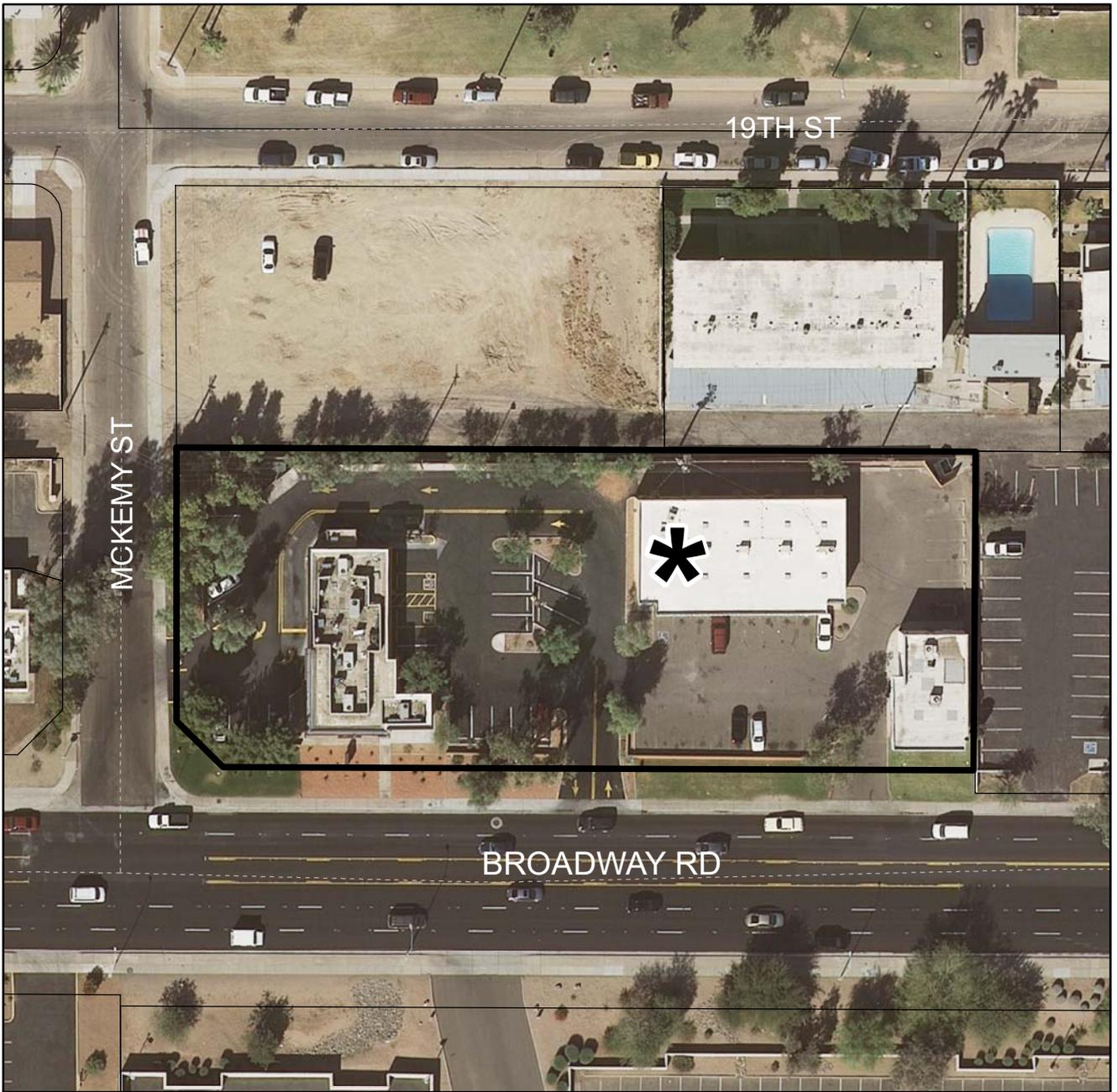
Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts
Part 3, Chapter 4, Section 3-423(C) – Tobacco Retailer
Part 6, Chapter 3, Section 6-308 – Use Permit.
Part 6, Chapter 3, Section 6-313 – Security Plan

THE FIRE HOUSE SMOKE SHOP

PL110152



Location Map



THE FIRE HOUSE SMOKE SHOP (PL110152)



*764 West Broadway, Tempe, AZ 85282
Tel: (480) 968-1509*

To Whom It May Concern

Tuesday, April 19, 2011

Dear Sirs,

This letter is intended to describe, in detail our intention to open a Smoke Shop in the property at the location above.

My partner – John S. Sayegh, and I – Jason M. Lapenna, being the sole owners of the corporation known as “The Fire House Smoke Shop Inc.”, intend to sell the following tobacco & accessory products in the manner described in the section below. We have researched the suitability of the location in respect to zoning requirements and that we have sufficient distance from the local Elementary and High Schools.

Customers will have to be at least 18 years of age to enter the store. This will be clearly marked on the front entry door.

Our target cliental will consist of smokers of **Premium Cigars**, for which we are custom building a 10’x11’ walk-in humidor which will be air-conditioned and humidity controlled.

We will also cater to smokers of cigarettes, loose tobacco and smoking accessories. We intend to carry a large selection of *Cigars, cigarillos, cigar wrappers, cigarette papers, pipe tobaccos, chewing tobaccos, ashtrays, wooden pipes, glass pipes, metal pipes, pouches & cases, incense and DVD videos. We also intend to sell posters & tapestries, and possibly some locally produced custom T-shirts & hats.*

John Sayegh has owned and run a very successful Smoke Shop & Convenience Store business in Tempe for Nearly 15 years now. Jason Lapenna has been working with John at this store for the last two years and comes with more than 15 years of business-to-business and retail experience in the Information Technology Industry. Together we believe that we can expand on the success of the first store and provide our customers with a truly original experience and choice in both quality and value.

We are pleased to have found a second location here in Tempe as this will allow us to offer an extended choice of products to many of our existing customers. We support many local suppliers and manufacturers with our business and look forward to increasing this support for the local business community.

FireHouseSmokes@gmail.com

ATTACHMENT 3



*764 West Broadway, Tempe, AZ 85282
Tel: (480) 968-1509*

Initially the store will open with only one employee (Jason Lapenna), but the intention is to expand the number of employees to 2 or 3 within the first year.

At the time of opening our business hours will be as below :

Monday	10:00am	-	8:00pm
Tuesday	10:00am	-	8:00pm
Wednesday	10:00am	-	8:00pm
Thursday	10:00am	-	8:00pm
Friday	10:00am	-	9:00pm
Saturday	10:00am	-	9:00pm
Sunday			Closed

Once we are able to hire an additional employee it is our intention to extend our hours to open at 9:00am and to be open on Sundays from 10:00am – 8:00pm

For any further information please contact

Jason Lapenna
(602) 541-7560
(480) 968-1509

John Sayegh
(602) 438-4650

FireHouseSmokes@gmail.com

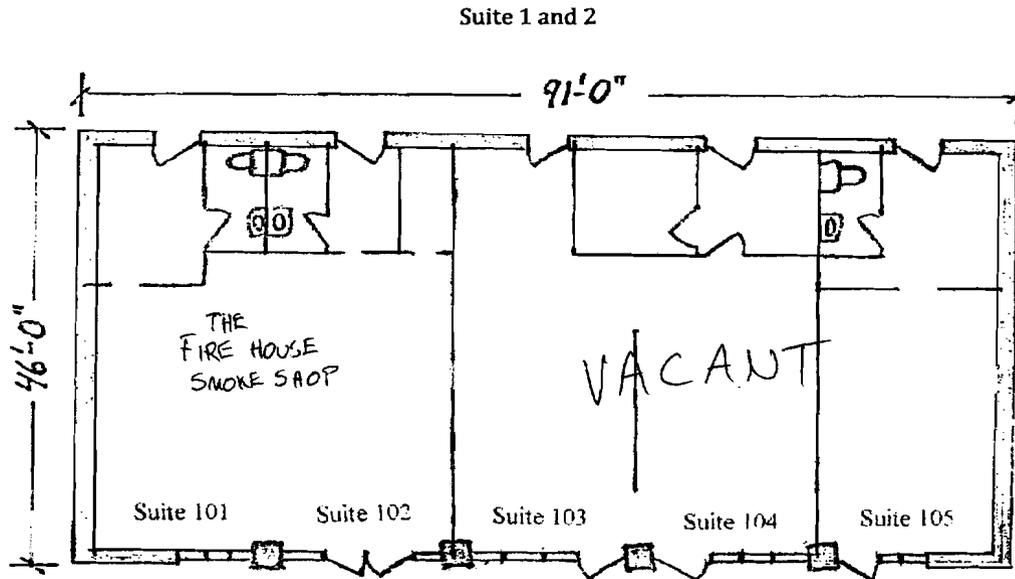
"EXHIBIT A"

SITE PLAN AND LEGAL DESCRIPTION

The attached site plan is for general informational purposes only. Any and all features, matters and other information depicted thereon are for illustrative purposes only and subject to the provisions of the Lease, are subject to modification without notice, are not intended to be relied upon by Tenant and are not intended to constitute representations, warranties or covenants as to the size and nature of the improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants thereof.

LEGAL DESCRIPTION ACCORDING TO ASSESSOR'S OFFICE:

S 190F OF S2 SE4 SW4 SE4 EX E 283F & E W 25F RD & EX S 40F RD & EX ANY PT LY WITHIN D/P 12927-934



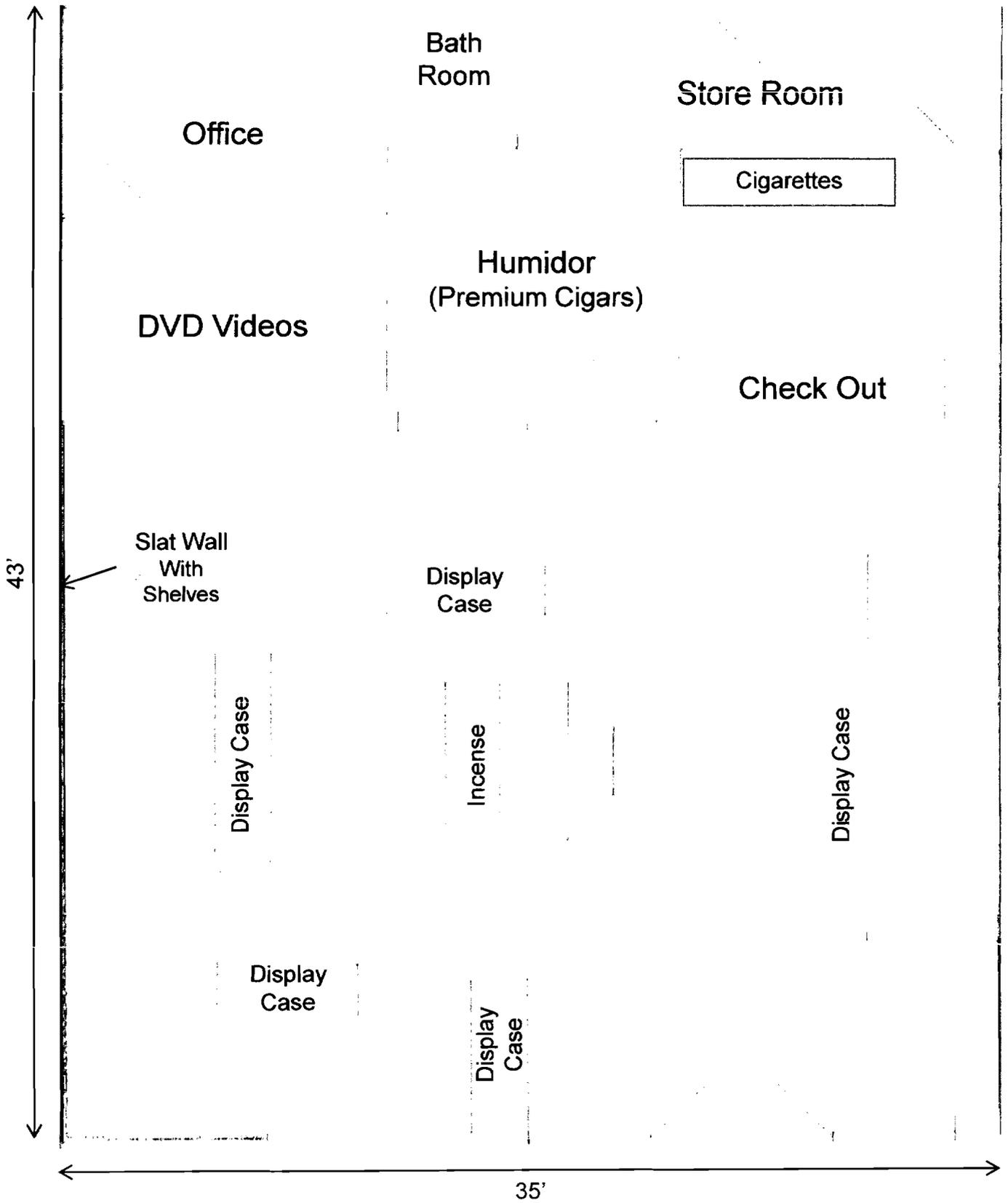
A-1

LL Initial

J.S.

Tenant Initial

[Signature]





THE FIRE HOUSE SMOKE SHOP

764 WEST BROADWAY ROAD

PL110152

FRONT OF BUSINESS

