

Staff Summary Report



Hearing Officer Hearing Date: May 20, 2008

Agenda Item Number: 3

SUBJECT: This is a public hearing for a request by **H B TOBACCO (PL060676)** located at 53 East Broadway Road for one (1) use permit.

DOCUMENT NAME: 20080520dssd02

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: 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.

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

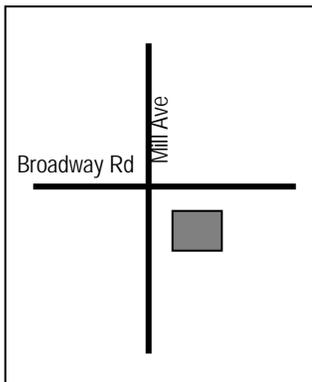
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval subject to Conditions 1-10

ADDITIONAL INFO: The applicant is requesting a use permit to allow a Hookah lounge/tobacco retailer located at 53 East Broadway Road in the CSS, Commercial Shopping & Services District. No public input has been received to date. Staff supports the request for a use permit as it meets the criteria for a use permit in the Zoning and Development Code.



PAGES:

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

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site plan
5. Floor Plan
6. Zoning Administrators Opinion
- 7-8. ZUP06088 Approval Letter
9. Staff Photograph(s)

COMMENTS:

The applicant, HB Place is requesting a use permit to allow a hookah lounge/tobacco retailer. The existing Tobacco retail store is located within the Walgreen's Shopping Center at 53 East Broadway Road, in the CSS, Commercial Shopping & Services District. HB Place opened in December of 2006 prior to the separation requirements that took effect in June of 2007. The Hearing Officer added a condition of approval (# 8) to the Use Permit -"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 Hookah; therefore the business was noticed and found to be in violation of the conditions of approval. To rectify the violation, Mr. Harzallah submitted this application to request a use permit to include a hookah lounge. The primary use will be as a hookah lounge. Hours of operation will be from 3pm to 2am, seven (7) days a week; they will employ 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

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. Thus, HB Place requested a Zoning Administrator's opinion to determine if they would be permitted to submit a use permit request to operate a hookah lounge/tobacco retail establishment. 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. In the Zoning Administrator's letter, Planning Director Lisa Collins opined 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.

No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge.

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 approval of the use permit subject to conditions.

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.

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

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.

HISTORY & FACTS:

December 19, 2006 ZUP06088: Hearing Officer approved a use permit to allow a Tobacco Retailer for HB PLACE.

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.

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.

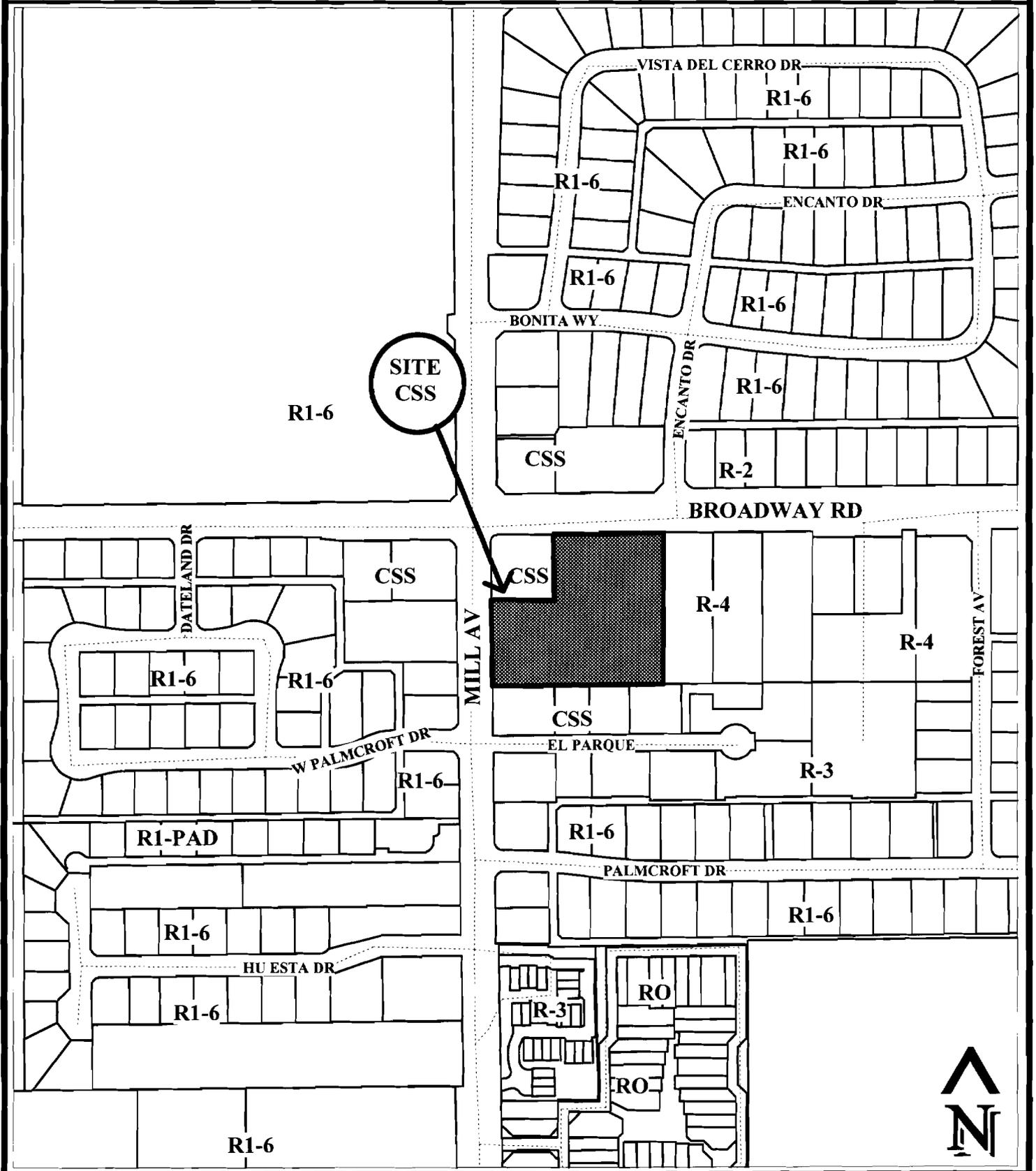
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements

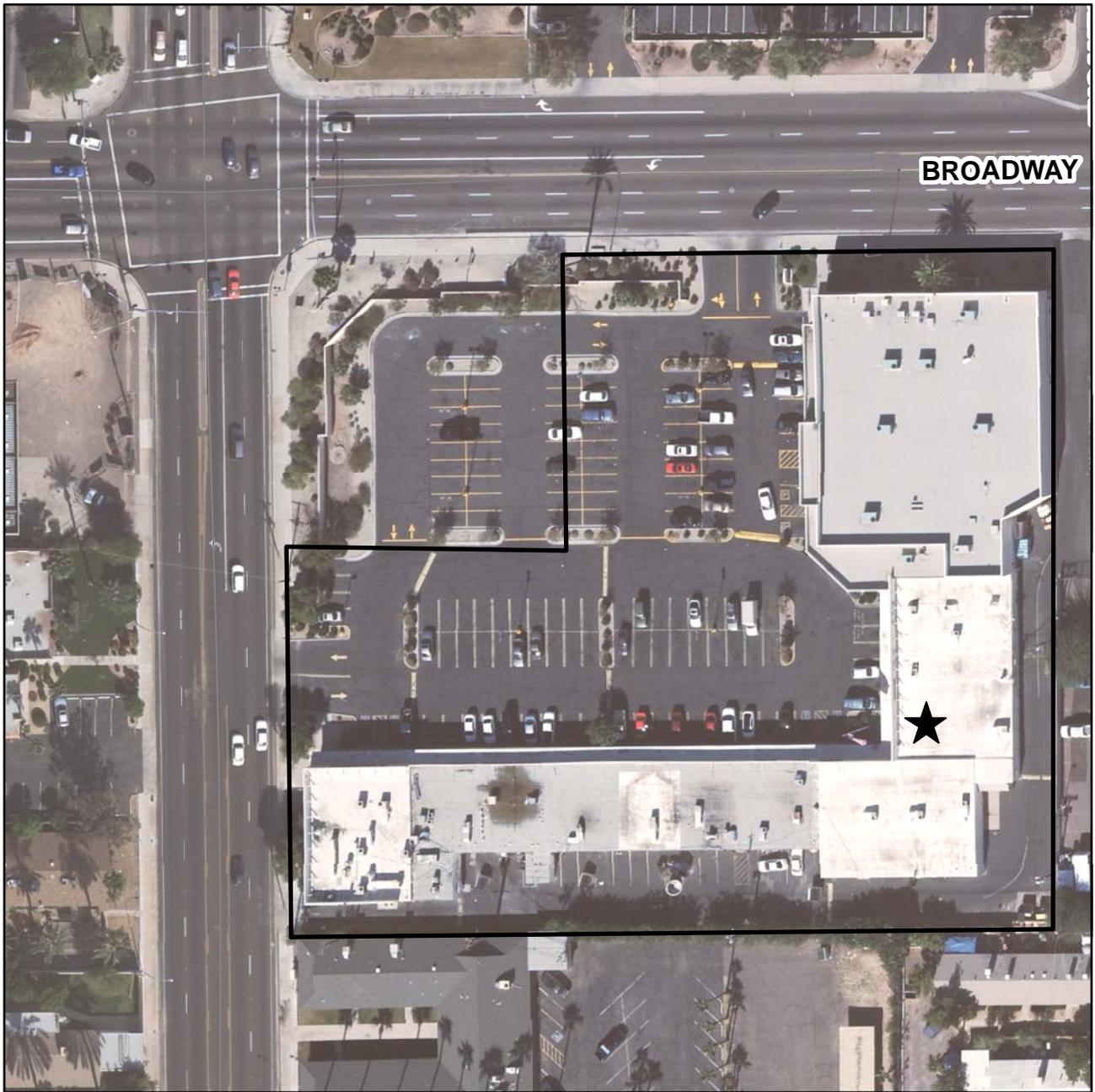
Part 6, Chapter 3, Section 6-308 – Use Permit

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

WALGREENS PLAZA-HB TOBACCO

PL060676





WALGREEN'S PLAZA - HB TOBACCO (PL060676)

APRIL17,2008

City of tempe

Development

Services

31 east fifth st.

Tempeaz85280

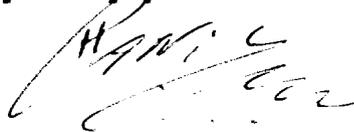
RE;use permit request

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.

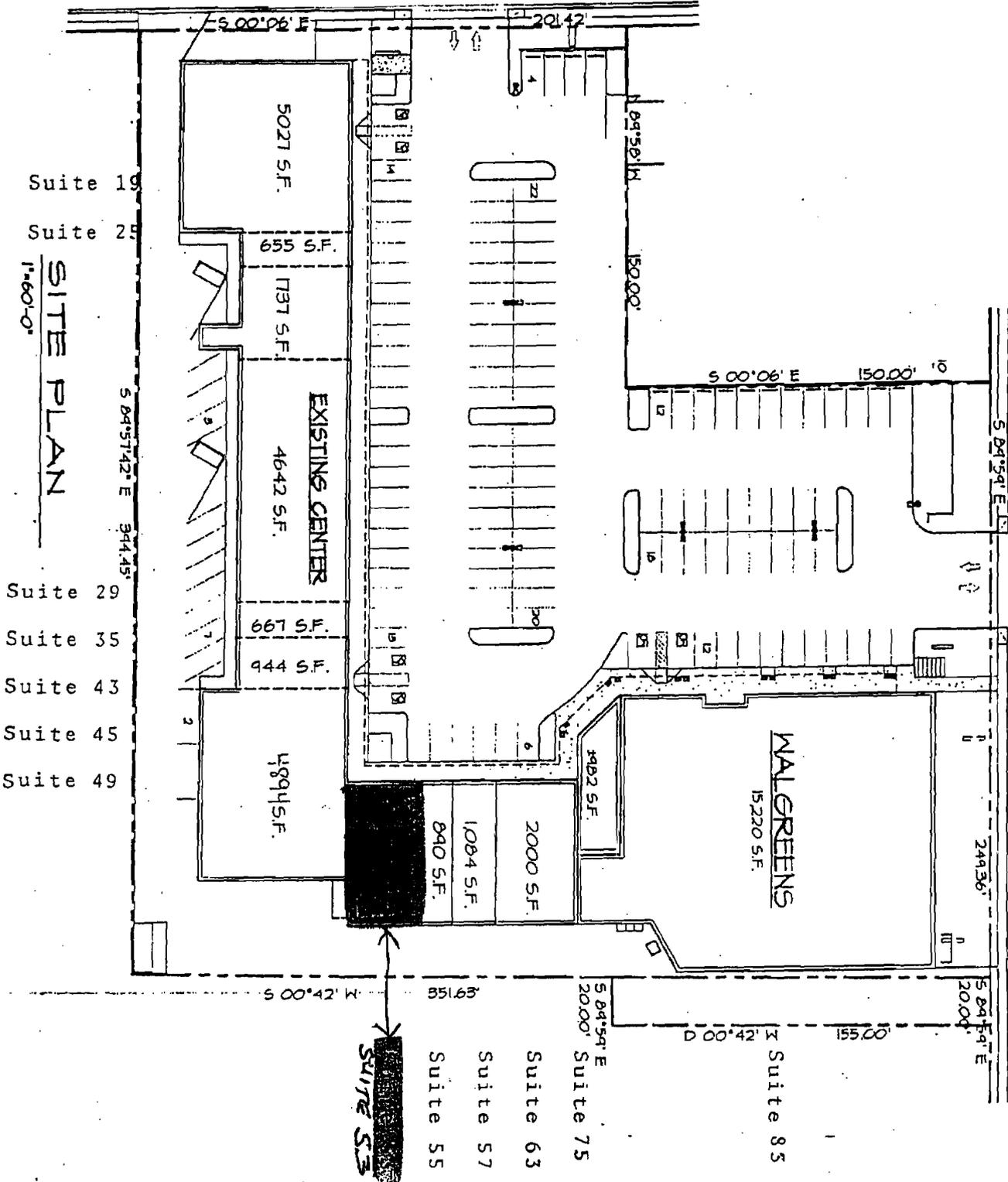
Very truly yours



Anis ben harzallah

MILL AVENUE

BROADWAY ROAD



EXB-1

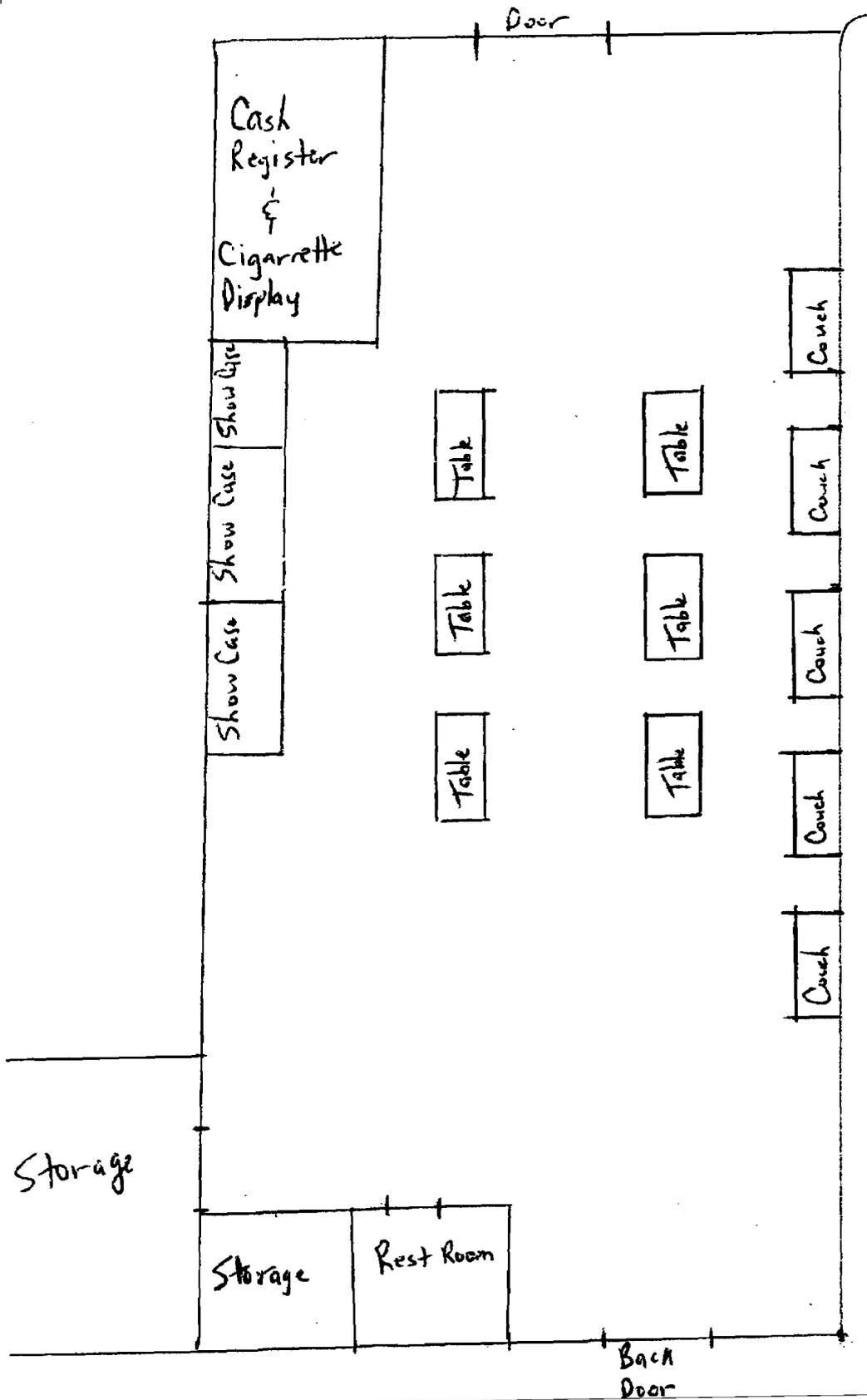
WALGREENS PLAZA
69 E. BROADWAY
TEMPE, ARIZONA
STONEMAN PROPERTIES ATTACHMENT 4

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



City of Tempe
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
480-350-8872 (FAX)



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,

A handwritten signature in black ink that reads 'Lisa Collins'.

Lisa Collins
Planning Director

LC/dm

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

(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



WALGREENS PLAZA- HB TOBACCO

53 EAST BROADWAY ROAD

PL060676

FRONT OF BUSINESS