

Staff Summary Report



Hearing Officer Hearing Date: November 3, 2010

Agenda Item Number: 5

SUBJECT: This is a public hearing for a request by **ROLL YOUR OWN TOBACCO** located at 1845 East Broadway Road, Suite No. 102, for one (1) use permit.

DOCUMENT NAME: 20101103cdsl01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **BROADWAY SQUARE - ROLL YOUR OWN TOBACCO (PL100313)** (Mike Gallagher/ODM Marketing LLC, applicant; Red Mountain Asset Fund I LLC, property owner) located at 1845 East Broadway Road, Suite No. 102 in the CSS, Commercial Shopping & Services District for:

ZUP10118 Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

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

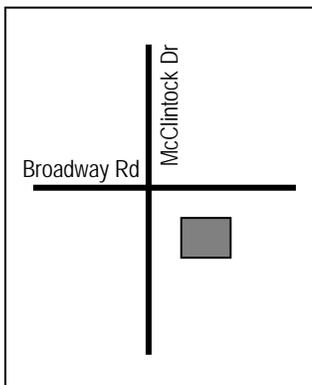
LEGAL REVIEW BY: N/A

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

FISCAL NOTE: There is no fiscal impact on 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 tobacco retail store. The business will involve the sale of tobacco-related products, lighters, e-cigarettes and other convenience store type items including canned and bottled drinks. 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; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

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

COMMENTS:

The proposed store will be located within the shopping Center at 1845 East Broadway at the southeast corner of the intersections of McClintock Drive and Broadway Road. The balance of the shopping center is a mix of retail, restaurants and services. The shopping center is surrounded by multi-family and single family residences. 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 PCC-1, Planned Commercial Center District. Additionally, tobacco retailers must meet ZDC separation requirements and may not be located within 1,320 feet of a school.

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.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public:
 - The proposed use is a retail establishment will not create a nuisance.

Conclusion

Staff recommends the use permit, subject to conditions.

REASON(S) FOR APPROVAL:

1. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
2. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.
3. Traffic generated by this use should not be excessive.
4. The use appears to be compatible with the building, site and adjacent property.

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 Smoke World 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. Since smoking will 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.
6. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
7. The applicant shall submit a security plan to the City of Tempe Crime Prevention Unit. Contact Crime Prevention at 480-858-6330 within 30 days of this approval (December 3, 2010).

HISTORY & FACTS: No pertinent history for this case.

DESCRIPTION: Owner – Red Mountain Asset Fund I LLC
Applicant – Mike Gallagher/ODM Marketing LLC
Existing Zoning – CSS, Commercial Shopping & Services District

ZONING AND DEVELOPMENT CODE REFERENCE: Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts
Part 6, Chapter 3, Section 6-308 – Use Permit



BROADWAY SQUARE - ROLL YOUR OWN TOBACCO (PL100313)

City of Tempe
Development Services
31 East Fifth Street
Tempe, AZ 85280-5002

RE: Letter of Explanation

To whom it may concern;

I am seeking a use permit to operate a retail store that will sell roll your own cigarettes, 6-7 of the most popular brand of cigarettes, canned and bottled drinks, lighters, e-cigarettes. Regarding the roll your own portion of the business, the store will have two types of rentable machines, (i) One that rolls the cigarettes for the customer and (ii) one that is manual requiring the customer to fill each cigarette by one.

The hours of operation will be 8:00 am to 6:00 pm. The maximum number of employees will be 3. The customer base will be smokers interested in saving money if willing to spend a little time with the process of roll your own tobacco. The store will have a positive effect on the area because it will bring customers to the shopping center which is currently approximately ½ occupied. The new customers will have a positive effect on the existing tenants as well.

The store will not cause significant vehicular or pedestrian traffic in the area because the estimated maximum amount of customers per day is 100.

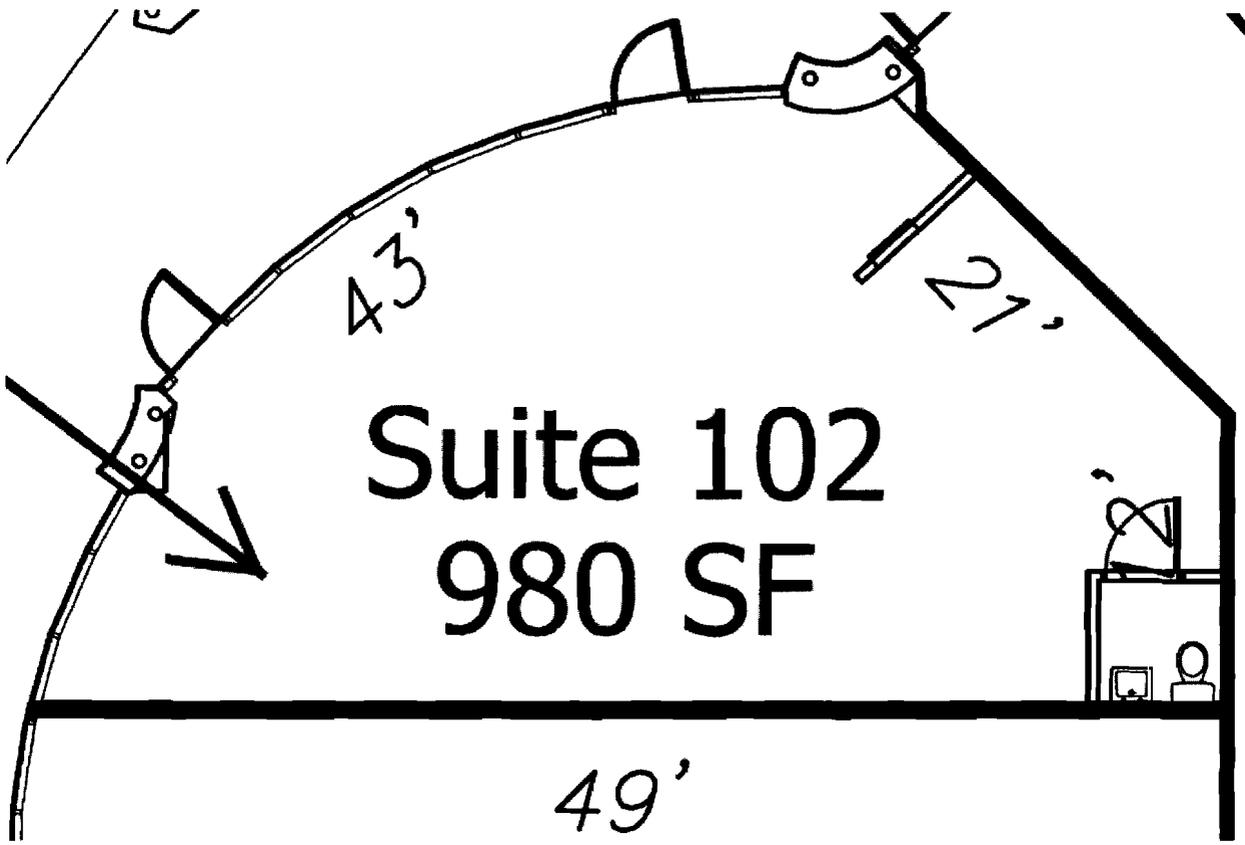
The roll your own machines, and anything in the store will not cause any nuisance such as odor, gas, vibration, smoke, heat or glare. The machine that rolls the cigarettes for the customer does make noise but it is the equivalent of the copy machine.

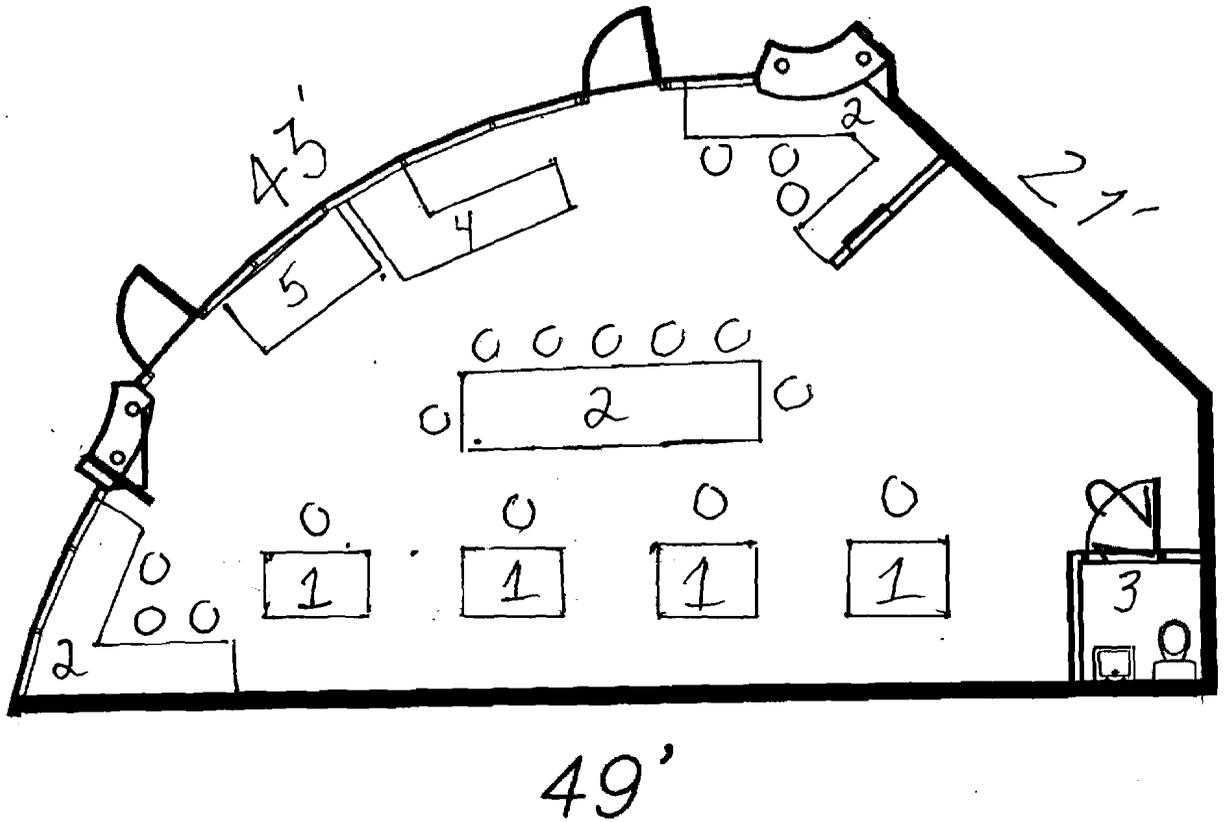
The store will not contribute to any deterioration of the neighborhood or be in conflict of any goal, objectives and policies of the City because this service will allow customer to save money.

The store will be compatible with the existing surrounding structures because it will be inside an existing space of an existing shopping center.

Thank you for your consideration.

Mike Gallagher
ODM marketing LLC





- Legend:
- 1 Ryo Machine
 - 2 Prep area
 - 3 Restroom
 - 4 Check out - cash register
 - 5 Cooler - cold drinks
 - 0 - Chairs



1" = 8'

1845 E. Broadway Rd. Suite #102

Project Name:
Roll your own
tobacco



BROADWAY SQUARE – ROLL YOUR OWN TOBACCO

1845 E BROADWAY RD., SUITE NO. 102

PL100313

FRONT OF BUSINESS

