

Staff Summary Report



Hearing Officer Hearing Date: October 21, 2008

Agenda Item Number: 5

SUBJECT: This is a public hearing for a request by **SMOKE WORLD (PL080366)** located at 3415 South McClintock Drive, Suite No. 109 for one (1) use permit.

DOCUMENT NAME: 20081021dssd03

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **SMOKE WORLD (PL080366)** (Rupal Pala, applicant; Pacific West Asset Management Corporation, property owner) located at 3415 South McClintock Drive, Suite No. 109, in the CSS, Commercial Shopping and Services District for:

ZUP08154 Use permit to allow a tobacco retailer.

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

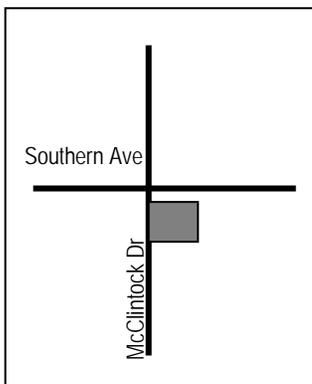
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval subject to Conditions

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 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. 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(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site plan
5. Floor Plan
6. Staff Photograph(s)

COMMENTS:

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 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 proposed store will be located within the shopping Center at 3415 South McClintock Drive at the southeast corner of the intersections of McClintock Drive and Southern Avenue. The balance of the shopping center is a mix of retail, restaurants and services. To the south and east the shopping center is adjacent to the R-3 Multi-Family Residential Zoning District; PCC-1 to the north and west across both Southern Avenue and McClintock Drive. To date, staff has received no public input concerning this request.

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.

The applicant will also be required to meet the 2003 International Mechanical Code that requires a "smoking lounge" to meet outside air and ventilation requirements if Smoke World is to allow smoking inside the business. Mr. Pala was made aware of this regulation and in his letter of explanation he states their will be "No Smoking inside the premise."

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.

REASON(S) 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.

CONDITION(S) OF APPROVAL:

1. The use permit is valid for Smoke World 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. 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.
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. Contact Crime Prevention at (480) 858-6330 within 30days of this approval by November 21, 2008.

HISTORY & FACTS: None Pertinent to this request

DESCRIPTION:

Owner – Pacific West Asset Management Corporation
Applicant – Anis Ben Harzallah
Existing Zoning – CSS, Commercial Shopping & Services District
Total site area – 227,564 s.f. / 5.20 acres
Total building area – 21,490 s.f.
Proposed tenant lease space – 1,400 s.f.
Total site parking required – 151 spaces
Total site parking provided – 159 spaces

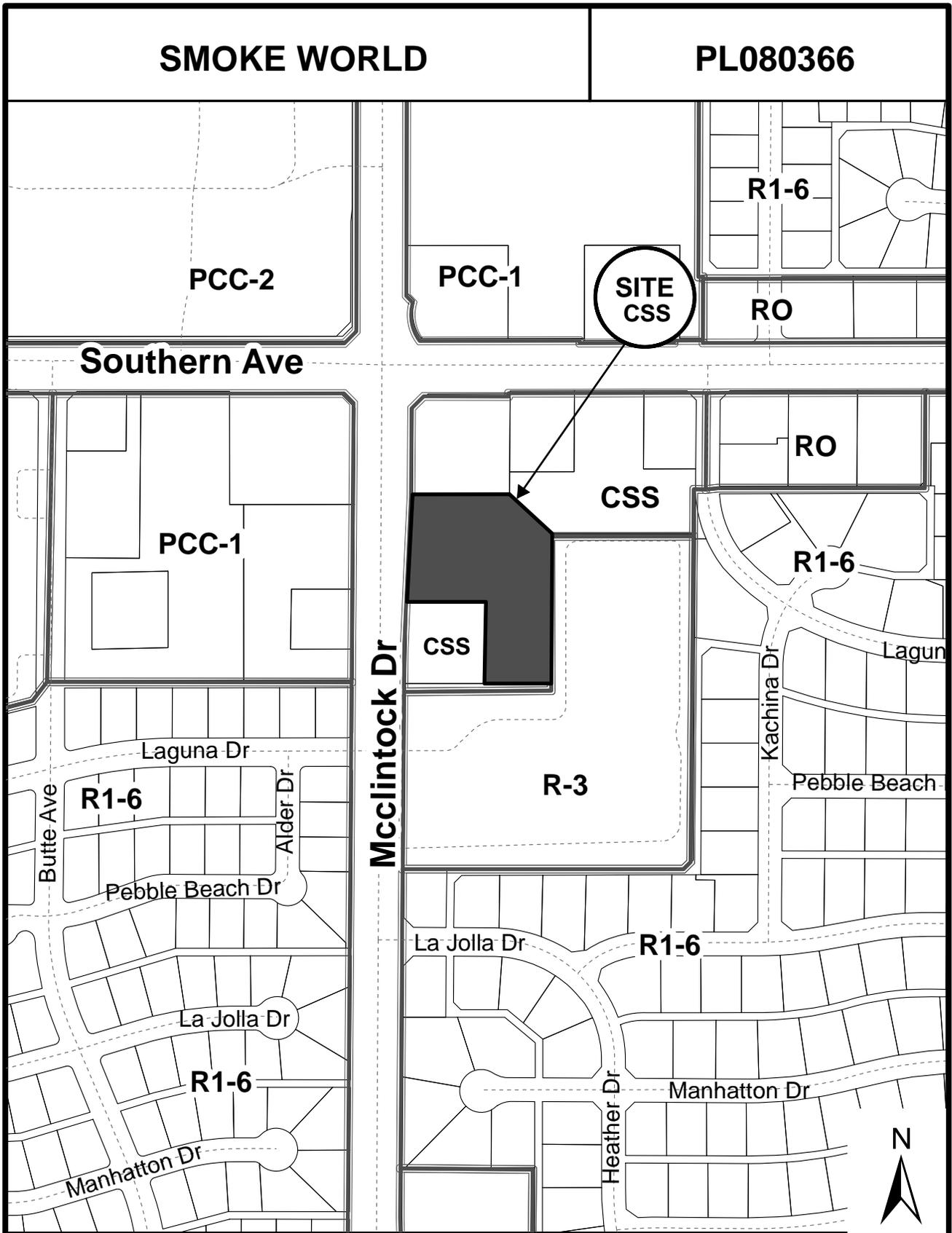
**ZONING AND
DEVELOPMENT**

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.

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



Location Map



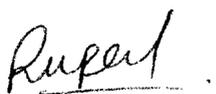
SMOKE WORLD (PL080366)

LEGAL DESCRIPTION OF SMOKE WORLD

Smoke World is a retail tobacco shop located on 3415 S. McClintock Dr. Suite # 109 Tempe, AZ. The owner of Smoke World is Rupal Pala. Rupal Pala manages the business and there are no other employees. The store will be open from 9:00AM to 8:00PM Monday through Saturday and from 11:00AM to 6:00PM Sunday. The sole purpose of the store is to sell tobacco products and accessories. There will no smoking inside the premise. The main clientele of Smoke World shall be the customers of the complex where Smoke World is located. The minimum age for a customer to enter the store is 18 years. Anyone under the age of 18 years needs to be accompanied by an adult or legal guardian. The variety of products carried by Smoke World is listed below.

- Cigarettes
- Cigarette Cartons
- Cigars
- Cigarillos
- Tobacco Wraps
- Specialty cigarettes
- Energy drinks
- Bottled soda
- Oil Burners
- Tobacco rolling machines
- Injector tubes
- Candies and Gum
- Tobacco burners
- Medications
- Sunglasses
- Caps/Hats
- Incense

The products listed above are a generalized list of all the products carried at Smoke World.



Rupal Pala
Owner – Smoke World





SMOKE WORLD

3415 S. McCLINTOCK DR

PL080366

FRONT OF BUSINESS