

**CITY OF TEMPE  
DEVELOPMENT REVIEW COMMISSION**

Meeting Date: 7/25/2017  
Agenda Item: 3

**Q.J.**

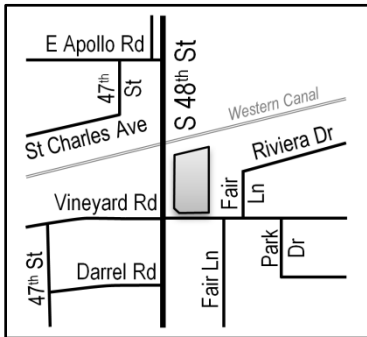
**ACTION:** Hold a public hearing for an appeal of the decision by the Hearing Officer to deny a use permit to allow a tobacco retailer for LAVEEN SMOKE SHOP #6 (PL170157) located at 4325 South 48th Street, Suite 101. The appellant is Lori D. Scott of Mashtah's, LLC.

**FISCAL IMPACT:** There is no fiscal impact on City funds.

**RECOMMENDATION:** Not applicable.

**BACKGROUND INFORMATION:** LAVEEN SMOKE SHOP #6 (PL170157) is proposing to operate at 4325 South 48th Street, Suite 101 in the CSS, Commercial Shopping & Services District. On June 20, 2017, the Hearing Officer heard and denied a use permit to allow a tobacco retailer. On June 26, 2017, an appeal to the Hearing Officer's decision was submitted by the appellant, Lori D. Scott. \*NOTE: THIS ITEM IS A QUASI-JUDICIAL MATTER. PRE-MEETING CONTACT WITH THE COMMISSION ON QUASI-JUDICIAL MATTERS IS PROHIBITED. ANY MATERIALS OR CONVERSATION CONCERNING THE ITEM SHALL ONLY BE PRESENTED TO THE COMMISSION AT THE SCHEDULED PUBLIC HEARING. The request includes the following:

1. Appeal of the Hearing Officer's decision to deny a use permit to allow a tobacco retailer.



|                          |   |
|--------------------------|---|
| Existing Property Owner  | RMA Vineyard LLC/VIA APPIA LLC                  |
| Applicant of Entitlement | Lori Scott, Mashtah's LLC                       |
| Appellant                | Lori Scott, Mashtah's LLC                       |
| Zoning District          | CSS   |
| Site Area                | 39,857 s.f.                                     |
| Building Area            | 9,317 s.f.                                      |
| Suite Area               | 1,292 s.f.                                      |
| Vehicle Parking          | 49 spaces (35 min. required)                    |
| Hours of Operation       | 8 a.m. to 8 p.m., 6 days a week, closed Su or M |

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Suparna Dasgupta, Principal Planner



**DEVELOPMENT PROJECT FILE**  
for  
**LAVEEN SMOKE SHOP #6 APPEAL**  
**(PL170157)**

**ATTACHMENTS:**

- 1-2. Letter of Appeal
- 3-19. Original Staff Report with Attachments
- 20-24. Hearing Officer Meeting Minutes
- 25-29. Late-coming Public Input Provided at Hearing Officer Study Session
- 30-31. Hearing Officer Citizen Request Forms (a.k.a. speaker cards)
- 32. Hearing Officer Decision Letter

*LAVEEN SMOKE SHOP*

6615 S. 51<sup>st</sup> Avenue Suite 20, Phoenix, AZ 85041  
Phone (602)-327-8501 Email: laveensmoke@yahoo.com

June 22, 2017

City of Tempe

To: Development Review Commission:

RE: Appeal of the denial of Use permit for 4325 S. 48<sup>th</sup> Ste Suite 101, Tempe, AZ 85282  
(PL170157)

My name is Lori D. Scott, I am the co-owner of Laveen Smoke Shop. This letter is in regards to the denial of a Use permit to operate Laveen Smoke Shop #6 at the above address.

As previously submitted, I felt that I have met the criteria for the Use Permit.

1. There would not be a significant increase in vehicular or pedestrian traffic. Although I would hope for customers to frequent my business. As this is in a mostly residential neighborhood, (in the valley of the sun) I do not foresee any increase in pedestrian traffic.
2. There would be no nuisance arising from emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions. This is a retail shop.
3. This business would not contribute to the deterioration of the neighborhood, It would increase it, by having a business located there instead of an empty vacant property.
4. No building structure would change. My business is compatible with the existing retail businesses in the shopping center. They do not offer cigars for sale and I don't sell wigs.
5. There is no evidence of any disruptive behavior either inside or outside of the premises that is not already present in the neighborhood.

The closest school is more than ¼ mile away. I have met the city's criteria of being more than a ¼ mile away from a school. If this is not far enough then why is there a criteria in the first place?

In trying to address the main complaints from the neighborhood residents that came to the hearing, one was a decline in property values. There is no evidence that a retail Cigar Shop would bring down property values. They sited crime as problem, this is crime that is already present in their neighborhood. Not associated with my shop. My shop is wired with an alarm hooked to a monitoring company. They were also worried that pedestrian traffic would go through their neighborhood. As stated, I do not foresee an increase in pedestrian traffic at this location. I would venture to guess the only pedestrian traffic would come from neighbors already living near this location.

This building is a half mile from other significant retail locations. This location sits on 48<sup>th</sup> Street, a major thoroughfare as far as streets go. There is no evidence that an increase in traffic would go through the neighborhood when the major street is right there.



Appeal  
Page 2  
June 22, 2017

The main focus of our business is Cigars, with the nearby golf courses, that is the business we are looking to attract. We offer over 100 types of Cigars, with more than a dozen that are rated 90+. We do also plan to sell drinks and water. We will also be selling cigarettes and tobacco products. We buy all of our products from reputable wholesalers in the valley, i.e. Costco, Sam's Club, Sunset Wholesale, etc. All employees have been trained and do not sell to minors. When in doubt they ID customers to assure they are of legal age. My intent is that after the grand opening the flags and signs in the parking lot will come down.

If you have any questions, you may reach me at 623-826-3428, Thank you.

Sincerely,

*Lori D. Scott*

Lori D. Scott

**CITY OF TEMPE  
HEARING OFFICER**

Meeting Date: 6/20/2017  
Agenda Item: 11

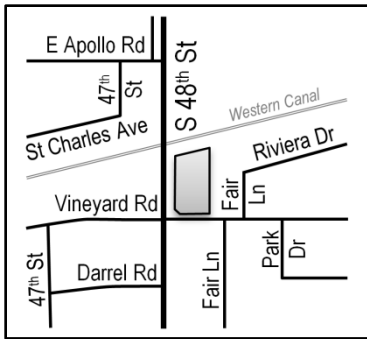
**ACTION:** Request approval of a use permit to allow a tobacco retailer for LAVEEN SMOKE SHOP #6 (PL170157) located at 4325 South 48th Street, Suite 101. The applicant is Lori D. Scott of Mashtah's, LLC.

**FISCAL IMPACT:** N/A

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

**BACKGROUND INFORMATION:** LAVEEN SMOKE SHOP #6 (PL170157) is proposing to operate a smoke shop on the northeast corner of South 48<sup>th</sup> Street and East Vineyard Road in the CSS, Commercial Shopping & Services District. The use permit request is the result of a code violation for operating a tobacco retail store without a use permit. The applicant, Lori Scott, is requesting approval of this use permit to rectify the code violation. The establishment plans to focus on the sales of cigars given the close proximity to golf courses; cigarettes and other tobacco products will also be sold at this establishment. The store will operate from 8 a.m. to 8 p.m., six days a week; closed on Sundays or Mondays. One employee will be on hand with no more than two at a time. The request includes the following:

1. Use permit to allow a tobacco retailer.



|                           |   |
|---------------------------|---|
| Property Owner            | RMA Vineyard LLC/VIA APPIA LLC                  |
| Applicant                 | Lori Scott, Mashtah's LLC                       |
| Code Compliance Inspector | Amy Wozniak                                     |
| Zoning District           | CSS   |
| Site Area                 | 39,857 s.f.                                     |
| Building Area             | 9,317 s.f.                                      |
| Suite Area                | 1,292 s.f.                                      |
| Vehicle Parking           | 49 spaces (35 min. required)                    |
| Hours of Operation        | 8 a.m. to 8 p.m., 6 days a week, closed Su or M |

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

## COMMENTS

Nevitt Elementary School of Tempe School District #3 is located at 6640 South 44<sup>th</sup> Place within the City of Phoenix city limits. The establishment is proposed on property that is approximately 1,340 feet from Nevitt Elementary, lot line to lot line.

## PUBLIC INPUT

To date, two (2) emails in opposition have been received by staff. The emails are provided in the attachments.

## USE PERMIT

The proposed use requires a use permit to allow a tobacco retailer in the CSS, Commercial Shopping & Services District pursuant to City of Tempe Zoning & Development Code (ZDC) §3-202. In addition, the proposed use is subject to special standards or limitations pursuant to ZDC §3-423, *Use Separation Requirements*. 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.

ZDC §6-308(E) Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; the proposed use is not expected to generate more traffic than a typical retail or service use.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; the proposed use is conducted within the building and is not expected to produce emissions greater than ambient conditions.
3. *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 use is expected enhance the area since the leased spaced will no longer remain vacant.
4. *Compatibility with existing surrounding structures and uses*; no changes are proposed to the storefront and the proposed use is compatible with the existing retail and services uses within the shopping center.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; the business does not tolerate disruptive behavior, employees are trained not to sell to minors and will ID customers to assure legal age.

## REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received and the above analysis staff recommends approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

**SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.**

## CONDITION(S) OF APPROVAL:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
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, which may result in termination of the Use Permit.

4. All nonconforming signs, flags, and lighting on the storefront shall be removed.

**CODE/ORDINANCE REQUIREMENTS:**

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for LAVEEN SMOKE SHOP #6 and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/city-hall/community-development/planning/zoning-and-development-code> or purchase from Development Services.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- Any intensification or expansion of use shall require a new Use Permit.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

**HISTORY & FACTS:**

- |               |   |
|---------------|---|
| June 24, 1988 | Building Safety Department issued letter of compliance for a retail shopping center located at 4325 South 48 <sup>th</sup> Street in the CCR zoning district.   |
| May 4, 2017   | Code Compliance Division opened a code violation for a tobacco retailer operating without a use permit for LAVEEN SMOKE SHOP #6 located at 4325 South 48 <sup>th</sup> Street, Suite 101 in the CSS, Commercial Shopping & Services District. |
| May 15, 2017  | Community Development Department accepts use permit application for LAVEEN SMOKE SHOP #6 (PL170157) located at 4325 South 48 <sup>th</sup> Street, Suite 101 in the CSS, Commercial Shopping & Services District.                             |

**ZONING AND DEVELOPMENT CODE REFERENCE:**

- §3-202 Permitted Uses in Commercial and Mixed-Use Districts
- §3-423 Use Separation Requirements
- §6-308 Use Permit

**DEVELOPMENT PROJECT FILE**  
for  
**LAVEEN SMOKE SHOP #6**  
**(PL170157)**

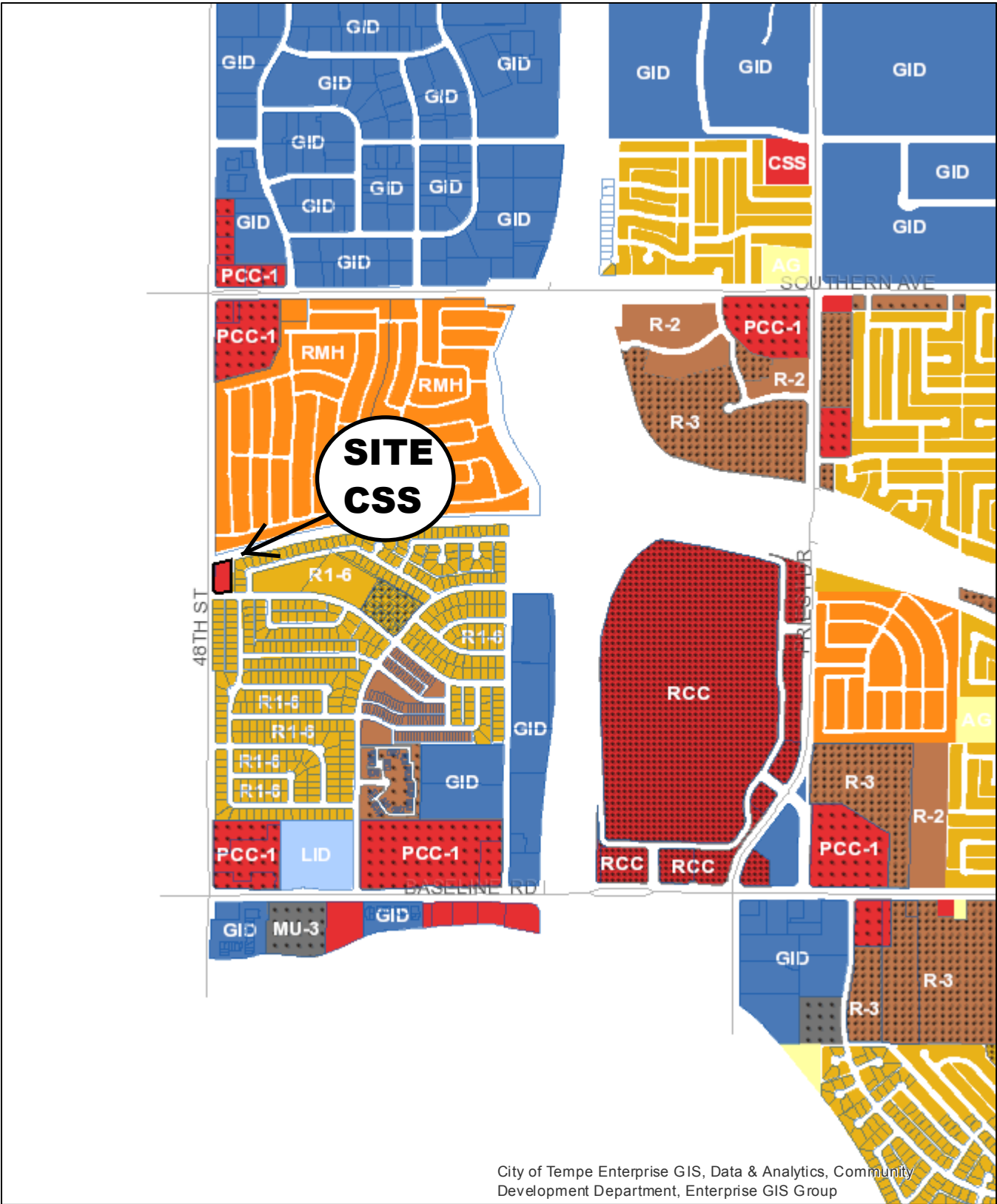
**ATTACHMENTS:**

1. Location Map
2. Aerial Map
3. Letter of Explanation
4. Site Plan
5. Building Suite Layout
6. Floor Plan
7. Storefront Photo (in lieu of building elevations)
- 8-13. Public Input



# LAVEEN SMOKE SHOP #6

PL170157



City of Tempe Enterprise GIS, Data & Analytics, Community Development Department, Enterprise GIS Group

- |  |   |  |
|--|---|--|
| Light Industrial District (LID)                | Regional Commercial Center (RCC)                    | Multi-Family Residential (R-2)             |
| General Industrial District (GID)              | Agricultural (AG)                                   | Multi-Family Residential Restricted (R-3B) |
| Mixed Use Med-High (MU-3)                      | Single-Family Residential (R1-6)                    | Multi-Family Residential Limited (R-3)     |
| Commercial Shopping and Services (CSS)         | Single-Family Residential (R1-4)                    | Mobile Home Residence (RMH)                |
| Planned Commercial Center Neighborhood (PCC-1) | Single-Family Residential Planned Area Dev (R1-PAD) |  |



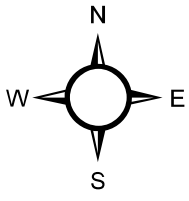
# LAVEEN SMOKE SHOP #6

PL170157



City of Tempe Enterprise GIS, Data & Analytics

## Aerial Map



*LAVEEN SMOKE SHOP*

6615 S. 51<sup>st</sup> Avenue Suite 202

Phoenix, AZ 85041

Phone (602)-327-8501

Email: laveensmoke@yahoo.com

May 16, 2017

City of Tempe

To whom it may concern:

RE: 4325 S. 48<sup>th</sup> Ste Suite 101, Tempe, AZ 85282

My name is Lori D. Scott, I am the co-owner of Laveen Smoke Shop with 5 other valley locations. This letter is in regards to the address above in which I would like to obtain a Use permit to operate Laveen Smoke Shop #6.

As required, Opening a Smoke Shop in this location should not have any significant vehicular or pedestrian traffic affects. There is plenty of parking for our needs and the needs of our neighbor retailers.

There would be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare that would affect ambient conditions.

This retail shop would not contribute to the deterioration of the neighborhood or to the downgrading of property values. In fact it will only enhance the neighborhood by filling vacant property.

The retail shop is completely compatible with the existing surrounding uses.

This business does not tolerate disruptive behavior from either inside or outside the premises.

The closest school is more than ¼ mile away.

The main focus of our business is Cigars, with the nearby golf courses, that is the business we are looking to attract. We offer over 100 types of Cigars. We do also plan to sell drinks and water. We will also be selling cigarettes and tobacco products. All employees have been trained and do not sell to minors. When in doubt they will ID customers to assure they are of legal age. After the grand opening the flags in the parking lot will come down. I will also check with our sign design vendor and see about reducing the light from our sign.

We plan to be open 6 days a week. 8:00 am to 8:00 pm. The shop will be closed on either Sunday or Monday. We do not plan on having more than 2 employees working at any one time. Most times there will only be one employee.

If you have any questions, you may reach me at 623-826-3428, Thank you.

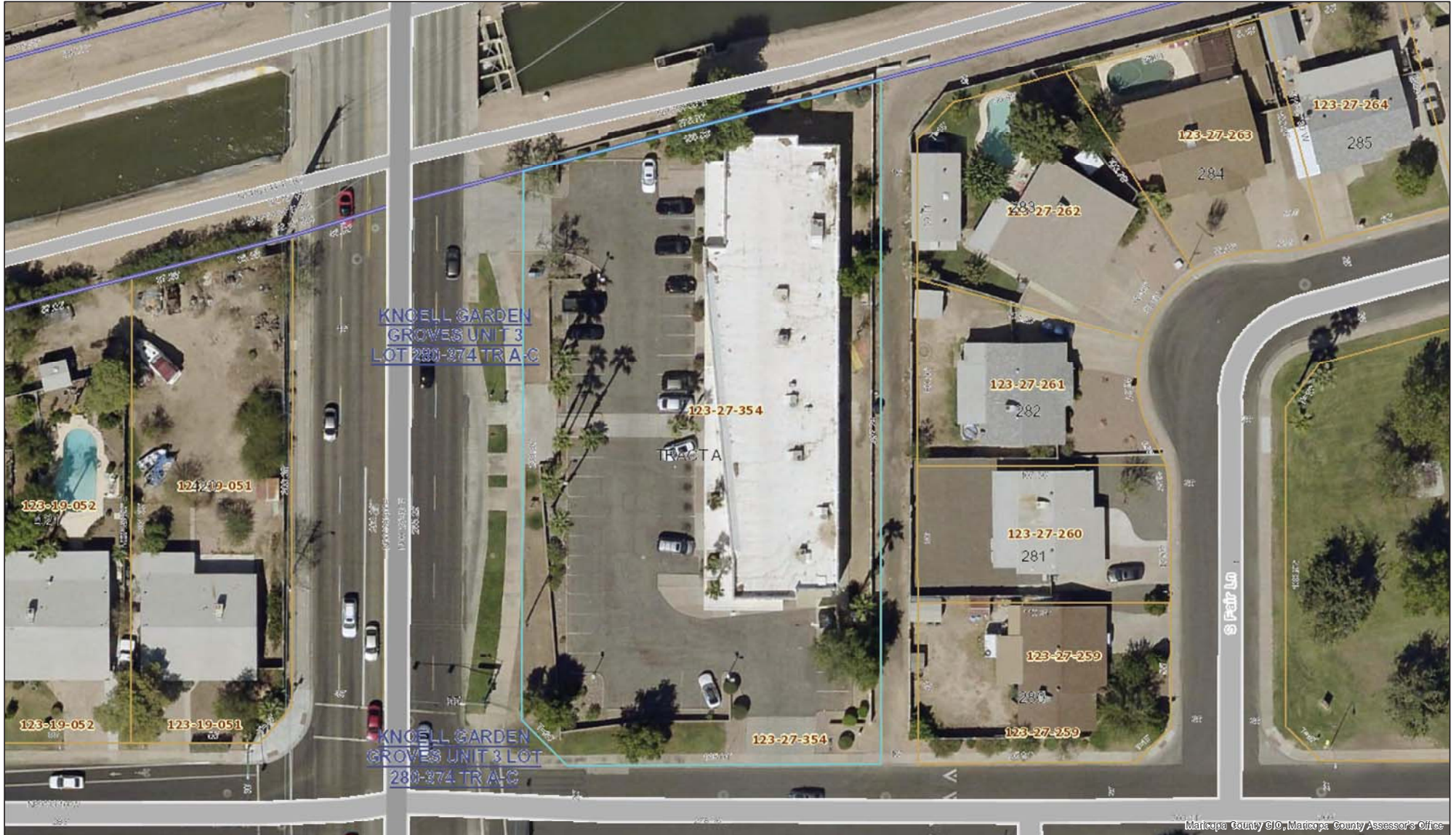
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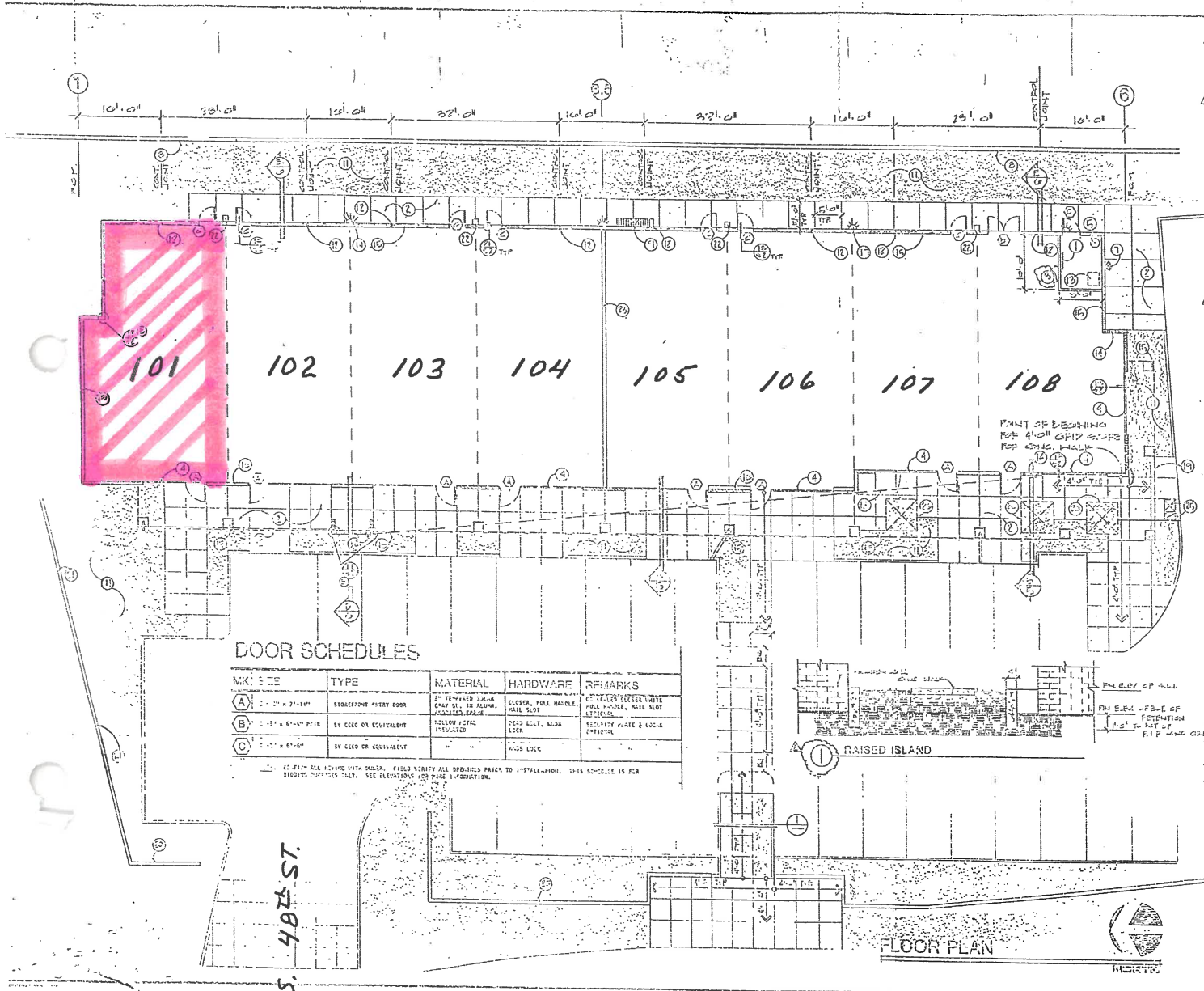
*Lori D. Scott*

Lori D. Scott



# LAVEEN SMOKE SHOP #6 at 4325 S 48th St, STE 101





DOOR SCHEDULES

| MK. SEE | TYPE                 | MATERIAL   | HARDWARE                          | REMARKS   |
|---------|----------------------|--|-----------------------------------|---|
| A       | 2'-0" x 7'-11"       | 2 1/2" THICK VENEER<br>TOP 1/2" IN ROOM,<br>GLASS DOOR | CLOSER, POLE HANDLE,<br>MAIL SLOT | CEILING COVER WHITE<br>PAINT, HANDLE, MAIL SLOT<br>SCHEDULE |
| B       | 2'-0" x 6'-0" (1/2") | BY CODE OR EQUIVALENT                                  | 2 1/2" SLIT, ALUM<br>LOCK         | SEPARATE PLATE & LOCK<br>SCHEDULE                           |
| C       | 2'-0" x 6'-0"        | BY CODE OR EQUIVALENT                                  | ALUM LOCK                         |   |

1. ALL DOOR SCHEDULES SHALL BE AS SHOWN UNLESS OTHERWISE NOTED. FIELD VERIFY ALL DIMENSIONS PRIOR TO INSTALLATION. THIS SCHEDULE IS FOR  
SCHEDULES NOTED ELSEWHERE. SEE ELEVATIONS FOR MORE INFORMATION.

4325 S. 48th ST.

FLOOR PLAN

**NOTES**

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**VINEYARD CENTER**  
40th STREET and VINEYARD  
40th STREET and VINEYARD  
40th STREET and VINEYARD

FEB 8 1988

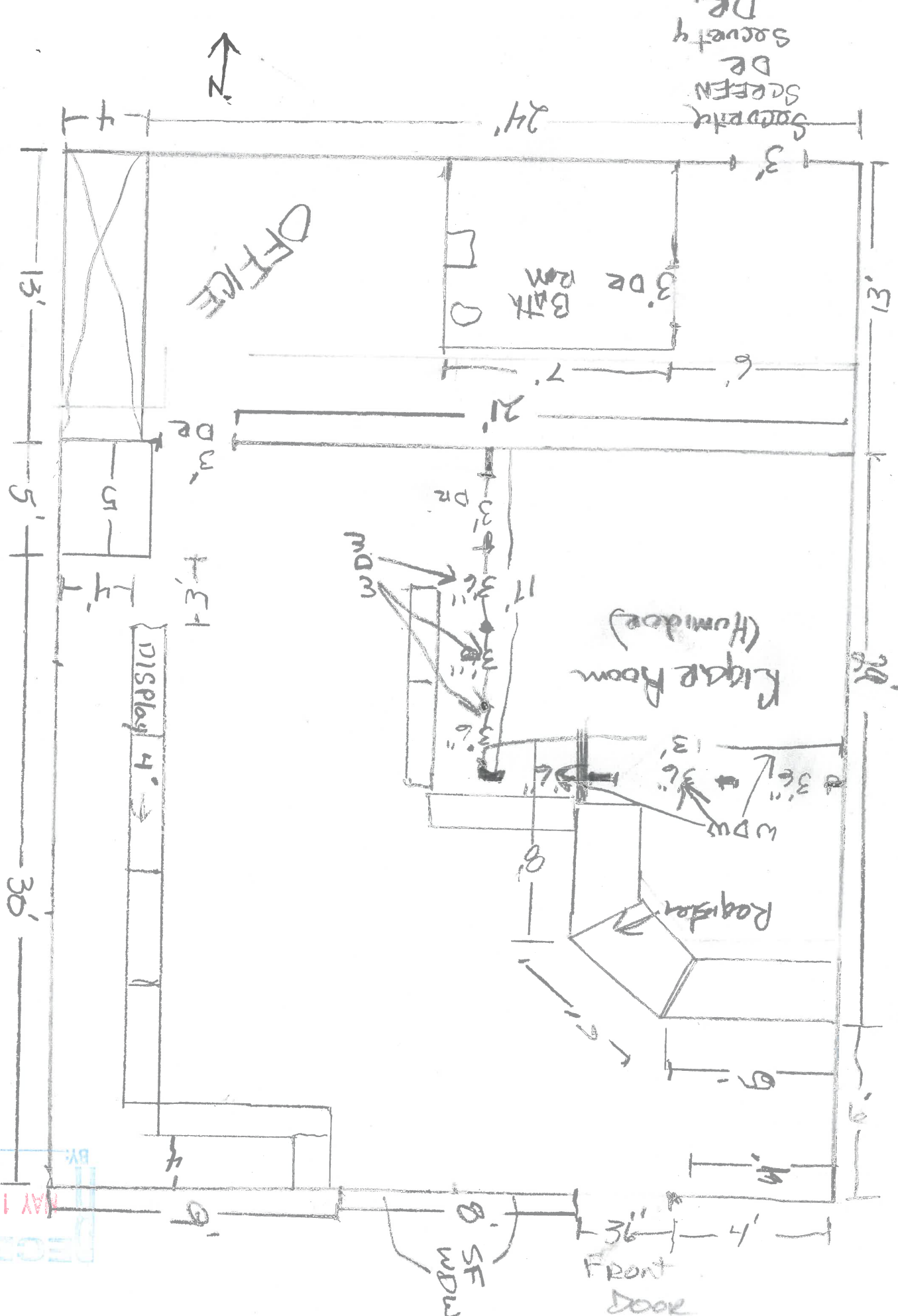
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SUITE'S REASS  
6-15-88  
Hugh Whitehead

NW32 TIN

4325 S. 48th St.

Security  
SCREEN  
DE  
Security  
DR.



FIR. Plan

LAVEN Smoke Shop #

4325 5<sup>th</sup> 48<sup>th</sup> ST Tampa, AZ 85282

← 48<sup>th</sup> St →

RECEIVED  
MAY 17 2017  
BY:

→ 2nd St ←



## Jimenez, Lee

---

**From:** [REDACTED]  
**Sent:** Friday, June 02, 2017 5:58 PM  
**To:** Jimenez, Lee  
**Subject:** Lavene Smoke Shop #6 hearing for June 20th

Hello Lee Jimenez,

I live on St Charles Avenue and can see the bright sign for this smoke shop in the shopping center on the corner of 48th St and Vineyard thru my family room window. I thought it was already open for business as there are grand opening signs. Can it be open before the hearing?

I do not like it as this is a residential area and smoking is just not healthy. I would rather if there has to be smoke shops they are in larger shopping centers away from residential dwellings.

I also find the bright sign really annoying and all the flag banners strung about this little shopping center look tacky. It reminds me of how years ago used car lots would string flags around the lot.

Since the applicant is from Fountain Hills perhaps they could put their shop closer to her home. The young people in our neighborhoods do not need easy access to self destructive products.

I am unable to attend the hearing meeting on the 20th due to a class I take.

Can you please read my concerns at the meeting.

Thank you for your time.

Ms Moonshadow



**Jimenez, Lee**

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**From:** M BROWNELL FOR [REDACTED]  
**Sent:** Tuesday, June 13, 2017 6:37 AM  
**To:** Jimenez, Lee  
**Cc:** JANE DOUG NEWTON-FAIR; BARB BROOKS-DESIREE  
**Subject:** Fw: Smoke shop

*Good morning Mr Jimenez*

*On June 1 or so we received a notice from the city about Laveen Smoke Shop wanting to open a site at 48th street & Vineyard. One of our neighbors was surprised to see that the signs for the Smoke Shop (see attached photos) were already up & working on the inside.*

*Our questions are:*

- 1) do we have a choice or not if this is what we want in our area.*
  - 2) we have gone to the web site & have seen that not only do they sell cigars but also things that could be used for marijuana. What other things will they be selling*
  - 3) what impact will this have in our area*
  - 4) what about traffic, will there be a increase*
  - 5) there is a smoke shop on Southern & 48 st by McDonald's, will we have the same problems of people loitering like they do*
- The business that are there now are doing good & so far we have not had any problems. We would like to keep it that way. We also hope that this will not add to our cut thru traffic that is still a problem & & we have not resolved that issue.*

*Please make the board members aware of our concerns.*

*Thank you,  
Marion Brownell, Barb Brooks, Jane Newton*

---









Sent from my iPad

6. Request approval of a use permit to allow a tobacco retailer for the **LAVEEN SMOKE SHOP #6 (PL170157)** located at 4325 South 48<sup>th</sup> Street, Suite 101. The applicant is Lori D. Scott of Mashtah's LLC.

Lee Jimenez, Senior Planner, gave an overview of this case as follows:

- Laveen Smoke Shop #6 is proposing a tobacco retail store on the NEC of West Vineyard Road and South 48<sup>th</sup> Street in the CSS, Commercial Shopping and Services District.
- The establishment plans to sell cigars and other tobacco products with proposed hours of operation from 8AM – 8PM, six days a week.
- They have yet to determine the day they will be closed but it is anticipated it will be either Sunday or Monday.
- In the City of Tempe, tobacco retailing is a separated use, and cannot be located within a ¼ mile or 1,320 feet of a charter, private or public school which provides elementary or secondary education. The proposed smoke shop is approximately 1,340 feet from Nevitt Elementary School, located at 6640 South 44<sup>th</sup> Place within the limits of the City of Phoenix.
- At the time the Staff Summary Report was published, staff had received two (2) e-mails in opposition. Since that time, two (2) more e-mails and two (2) phone calls in opposition have been received.
- The opposition cites concern for the downgrading of property values, compatibility with nearby uses, and secondary effects caused by potential disruptive behavior.
- Staff believes this request meets the approval criteria for the use permit and supports the request subject to the assigned Conditions of Approval.
- Staff recommends adding the standard condition of approval requiring a review of compliance with the Conditions of Approval within six (6) months of operation as follows:

"Return to the Hearing Officer for review of compliance with the Conditions of Approval within six (6) months. The timing for the six (6) month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one (1) year, the use permit will lapse."

Mr. Williams questioned Mr. Jimenez as to the current status of this business operation. Mr. Jimenez responded that the business had been in operation without the required use permit at this location for an unspecified amount of time. Mr. Jimenez noted that there is no security plan required, and that the Tempe Police had indicated that there had been no calls for service at this business location.

Mr. Williams noted that the City has a General Plan and that business operations within its boundaries are required to meet the Zoning and Development Code. He stated that he did understand that there were concerns by the nearby residents regarding the amount of commercialization near their neighborhood(s).

Mr. Williams questioned what the proposed hours of operation are for this business. Mr. Jimenez responded that the applicant has indicated that the proposed hours of operation are from 8AM to 8PM, six days a week. The applicant plans to remain closed on either Sunday or Monday.

Mr. Williams noted that this is a concern about underage individuals (i.e. youth, teenagers, etc.) patronizing this establishment. Mr. Williams indicated that sometimes it is hard to determine how a situation will develop when there is this type of business, and whether this type of business will affect nearby property values.

Mr. Abrahamson, Principal Planner, stated that, in the past, it takes more than a few months for a business to be in active operation before it can be determined how it will affect the nearby neighborhoods, on both the issue(s) of property values and having a negative impact due to the clientele that patronizes the business.

In response to a question from Mr. Williams, the Hearing Officer, Mr. Abrahamson explained that there is a 1.8% transaction tax which applies to the sale of both alcohol and tobacco.

Lori Scott of Mashtah's LLC was present to represent this case. She acknowledged receipt of the Staff Summary Report and her understanding of the assigned Conditions of Approval.

Ms. Scott explained that the main focus of the shop is to sell cigars and that they offer over 100 types of cigars. In addition, they will be selling cigarettes and tobacco products as well as drinks and water and small snack items. She noted that her business was currently operating in five (5) other valley locations, and that they do not tolerate disruptive behavior (such as selling to minors) She stated that currently she is not sure if they will be closed on Sunday or on Monday, but that the shop would be in operation from 8AM to 8PM, the other six (6) days of the week.

Mr. Williams questioned whether any of the other five (5) shops were operating in Tempe. Ms. Scott responded that they were not located in Tempe, but were in operation in other parts of the valley.

Mr. Williams questioned the issue of signs, including both the grand opening signs/flags as well as the lighted signage that is currently installed. Ms. Scott responded that all of her signs are in compliance, and that after the grand opening, the signs/flags in the parking lot will be removed; and that she has contacted her sign vendor to see if the glare from the lighted sign can be reduced.

Mr. Williams asked Ms. Scott if she was aware of the neighborhood concerns in relation to her request for this use permit. Ms. Scott responded that she was aware of the concerns, however this business was on private property.

Mr. Williams indicated that he had speaker requests and that he would call those individuals at this time.

The following individuals spoke:

Chris Hoover, Tempe resident, spoke in opposition to this request. She stated that she had lived in the area for 34 years and raised her family there. She indicated that the nearby neighborhood(s) fostered a family environment and that she felt certain that this type of business (smoke shop) would negatively affect the property values. She explained that there is a pawn shop as well as two (2) checking cashing places nearby as well as two (2) other smoke shops in the vicinity. The addition of this business would increase the saturation of both traffic and undesirable elements from the patrons. Ms. Hoover emphasized how she cares about her neighborhood and wants to see the family environment maintained. She noted that in the parking lot of the nearby Fry's Grocery Store, she has seen individuals conducting drug sales but that the management of Fry's has informed her that they can do nothing about what occurs. Ms. Hoover stated that this situation is very bothersome and that a lot of things can happen when these type of business endeavors establish themselves nearby.

Mr. Williams suggested that placing a call for service with the Tempe Police Department may alleviate some of these problems, however Ms. Hoover indicated that has not helped in the past.

Mr. Williams asked where the pawn shop and other smoke shop locations were situated in relation to this proposed smoke shop. Mr. Jimenez presented a location map and pointed out the areas where these were located.

Mr. Williams asked staff if the applicant can appeal the decision of the Hearing Officer. Mr. Jimenez responded that is correct. That the applicant and/or interested citizens did have the opportunity to appeal any decision made by the Hearing Officer at today's public hearing. The appeal would need to be submitted in writing and an applicable fee would be assessed. Any appeal(s) of use permits are heard by the DRC (Development Review Commission).

Ms. Hoover noted that she had personally walked from house to house in her neighborhood, and that everyone (i.e. residents) had a vested interest in maintaining the quality of the neighborhood.

Marion Brownell, Tempe resident, spoke in opposition to this request. She indicated that there were other smoke shops in the area of 48<sup>th</sup> Street and Southern, as well as Hardy and Baseline. She referred to the undesirable element that businesses of this nature, as well as the nearby pawn shop, attracted, including the loitering of these individuals in the area. She noted that this business would cause an increase in traffic, and expressed concern that items being sold there could also be used for marijuana. She stressed that the nearby neighborhood(s) were a family environment with children and family residing in the area.

Ms. Brownell asked indicated that many of the existing smoke shops do not appear to be closely monitored by the city of Tempe to make sure that they are in compliance with the codes, such as no smoking within the allotted clear space, no loitering, etc.

Ms. Brownell stated that when she went by at 4:15 PM this afternoon there was no sign posted that there was a public hearing to review this request tonight.

Mr. Williams asked staff what the public notification requirements are for pending requests.

Mr. Jimenez responded stating that all agendas are placed in the legal advertisement section of the newspaper. In addition, postcard notifications are mailed to all property owners within 600 feet of the business location. All representatives of Homeowner Associations and Neighborhood Associations within 1320 feet receive both an e-mail notification as well as a mailed postcard notification. A public hearing sign is posted by City staff at the business location 15 days or more prior to the public hearing and that posted sign remains until the case has been heard by the Hearing Officer and a determination/decision is made.

Moonshadow, Tempe resident, spoke in opposition to this case. She noted that she lived nearby and could see the bright sign for the smoke shop thru her family room window. The glare from this sign affected her enjoyment of her home, she stated. She questioned how this applicant could erect grand opening signs and flags as well as the glaringly bright lighted sign without first obtaining a use permit for the operation of the business.

Moonshadow indicated that we are living in an age where the focus is on healthier living and that young people do not need to be encouraged with easy access to self-destructive tobacco products. This type of business



would be better suited elsewhere such as a shopping center away from a residential family neighborhood. She emphasized what the nature of this business could encourage, such as crime, loitering and other issues that would have a detrimental effect on her neighborhood.

Mr. Williams questioned where Moonshadow resided. She indicated on the location map where her residence was located in relation to the nearby canal.

Barb Brooks, Tempe resident, spoke in opposition to this request. She pointed out that with only one employee working in the store, it would be difficult for that person to monitor persons entering and exiting the store. Are they planning on having cameras everywhere? She expressed her concern over the unsavory clientele who would be attracted to this type of business, who may loiter or hop over the alley fence to burglarize the nearby homes; a possible scenario which scares her. Residents should not have to live in fear because of illegal activity or due to an increased risk of safety due to additional business operation(s) that attract those who wish to engage in unlawful encounters. In addition, the impact this business would have by generating increased traffic in the area was a real concern. She explained that due to the Burger King, Pawn Shop, Pay Day Loan/Check Cashing and other nearby businesses as well as the traffic generated from the intersection of 48<sup>th</sup> Street and Baseline Road this additional smoke shop would have a negative impact on the quality of life for nearby residents and their property values.

Mr. Williams thanked each of the speakers and expressed his appreciation for their time in attending this public hearing to voice their concerns. He acknowledged the validity of those concerns.

Mr. Williams asked if there was anyone else in the audience who wished to address this request. There was no one else who wished to do so.

Ms. Scott returned to the podium. Mr. Williams asked if she had any response to the concerns voiced by the nearby residents. Ms. Scott emphasized that this business was her livelihood and that scenarios expressed by those in opposition existed prior to her opening her business. She stated that her employee(s) have been trained to monitor customers and they do not sell to minors. When in doubt they will ID customers to assure that they are of legal age. No children or youths would be allowed in the store, unless accompanied by a parent or responsible adult.

Mr. Williams questioned staff as to the separation requirements of the Tempe zoning and development Code.

Mr. Jimenez responded that the use separation requirements required that 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. The proposed business is approximately 1,340 feet from Nevitt Elementary, lot line to lot line.

Mr. Williams acknowledged the issues and concerns regarding the property maintenance and increased possibility of crime. He stated that he considered staff's recommendation along with the information and input received from the residents at tonight's public hearing. While he did not feel that the issues and concerns originated with this specific business, he did acknowledge the validity of the neighborhood concerns.

Mr. Williams indicated that, based on his review, of the information presented he would deny this use permit.

Mr. Abrahamson requested that Mr. Williams read the use permit criteria in relation to this request into the record.

Mr. Williams stated that the criteria for a use permit is as follows:

1. Any significant increase in vehicular or pedestrian traffic; Mr. Williams indicated that based on the neighborhood input and the existing businesses in the area, the addition of this request would impact the level of traffic.
2. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions; the proposed use is conducted within the building and is not expected to produce emissions greater than ambient conditions.
3. 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; based on the neighborhood input, it appears that this business would impact property values in a negative manner, especially due to the fact that there are two (2) other similar businesses nearby.
4. Compatibility with existing surrounding structures and uses; Mr. Williams noted that, as discussed, there is a concern about property maintenance and the nearby residential homes; he noted that the separation requirements, as discussed, were a concern.
5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public; the residents have expressed that business may cause increase activity by persons who loiter or engage in illegal activity. There is concern due to the family environment of the nearby neighborhood(s) which include children, youths and families.

**DECISION:**

Mr. Williams denied the use permit to allow a tobacco retailer for the Laveen Smoke Shop #6 located at 4352 South 48<sup>th</sup> Street, Suite 101.

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**ANNOUNCEMENTS**

- The next Hearing Officer public hearing is scheduled for Wednesday, July 5, 2017 at 5:00 PM with a study session scheduled for 4:30 PM.

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With no further business, the public hearing adjourned at 6:00 PM.

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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



Steve Abrahamson, Principal Planner  
For David Williams, Hearing Officer  
SA:dm

**Jimenez, Lee**

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**From:** M BROWNELL FOR [REDACTED]  
**Sent:** Tuesday, June 20, 2017 1:07 PM  
**To:** Jimenez, Lee  
**Cc:** BARB BROOKS-DESIREE; JANE DOUG NEWTON-FAIR; Christina Hoover  
**Subject:** Smoke Shop application

*Lee,*

*We would like to add to our concerns regarding the Smoke shop permit.*

*Would the committee please take into consideration that this is a "neighborhood" with young, old, children & people that have been paying taxes for years.*

*You may consider us to be a "clusters of secondary effects" that we still have feelings & should be thought of as "people living in a Tempe community". What would be their thoughts if this would come up in their neighborhood, would they let it slide. Maybe they are the fortunate ones that do not live in a "cluster" area & do not have to worry.*

*If in deed we are a "cluster of secondary effects" we would like an impact study done to see what it will do to home values and quality of life. We would also ask if the Police Dept has been asked for their input and if not could that be included in the impact study. We are asking for a delay in the decision until the study has been done and homeowners notified. We have seen what happens when a "smoke shop" comes into a mall area. From what we have seen these places do not seem to be monitored by the city to make sure they are in compliance with codes: no smoking within the allotted clear space, loitering etc.*

*If they let this go through will the next thing be a "porn shop" like they tried to let in by Tempe Town Lake?*

*We understand that Tempe is a island & that you need the revenue. Please think about what you are allowing in that will garner the revenue & how that looks to the people coming into Tempe. If we are the "cluster of secondary effect" because we are on the outskirts of Tempe, you are not sending a very good message.*

*Please take a second to think about this before you make a decision. The applicants have already taken upon themselves to start operating even before the permit was granted, that does not bode well for them. They are thinking about their income not following the law.*

*Thank you for listening to our concerns,  
Marion Brownell, Barb Brooks, Jane Newton*

## Jimenez, Lee

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**From:** [REDACTED]  
**Sent:** Tuesday, June 20, 2017 2:33 PM  
**To:** Jimenez, Lee  
**Subject:** re: Laveen Smoke Shop - 4325 South 48th Street, Suite 101 - June 20th HO Agenda Item No. 11

Mr Jimenez,

I am writing this to formally let you and others know that I am very much against this smoke shop in this area. I have lived in my home on Fremont in Tempe for over 40 years, and before that went to ASU so I am very much a long time Tempe resident. This shop would have a detrimental effect on this whole neighborhood. We all know what they will be selling, and I'm not talking about cigars to golfers. Please. Golfers at the golf courses near this area will not be shopping at this place. We don't need more businesses in this area to bring down our way of life and increase the problems with crime. I love living here, or would have moved a long time ago.

Please consider the people who live every day in this neighborhood, who pay their taxes, support local businesses and schools and try to keep this a nice, safe neighborhood. Putting in this shop will one more nail in the coffin for this area, and a huge black mark against Tempe. I don't think that I should have to pay for an increase in the expense for this shop either. The increase cost of having the police there a lot, of the crime it will bring, of the increase in my taxes.

Thank you,  
Nichole Brown

## Jimenez, Lee

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**From:** R&P Leonard [REDACTED]  
**Sent:** Tuesday, June 20, 2017 12:07 PM  
**To:** Jimenez, Lee  
**Subject:** re: Laveen Smoke Shop (PL170157)

Mr. Jimenez:

We would like to submit our opposition to the proposed business at 4325 S. 48th St., Ste 101. Though it is technically "far enough" from the nearby school, it is far too close to the neighborhood park and homes which are directly to the east of this strip mall. We must also mention that one of the neighboring establishments is a martial arts gym which attracts a constant stream of minors who would not benefit from the temptation the smoke shop might offer.

This location being a gateway from Phoenix to Tempe, our hope (and hopefully that of the city) is that we do not want this to be someone's first impression of Tempe or our neighborhood. Having a smoke shop and the people who frequent it nearby could increase the likelihood of more trouble in Svob Park and negative effects on the surrounding residences. Tempe is a nice place to live and we want to keep it that way.

As other neighbors have pointed out, the area is in no way deficient of smoke shops. We ask you to protect our neighborhood, our property values, and the children who would be constantly exposed to this business and its clientele.

Thank you for your consideration,  
Rich & Paula Leonard  
2509 W. Dunbar Dr.

## Jimenez, Lee

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**From:** Paula Walling [REDACTED]  
**Sent:** Monday, June 19, 2017 4:31 PM  
**To:** Jimenez, Lee  
**Cc:** Tom walling  
**Subject:** Smoke Shop at 48th & Vineyard

Hi Lee,

I wanted to express my displeasure with the idea of a smoke shop going in at the 48th Street and Vineyard shopping center. My husband and I live at 4304 S. Fair Ln. which is directly behind this shopping center. We have witnessed illegal activity going on in the alley that butts up against the shopping center. Gang members graffiti both sides of the alley wall and jump between the alley and the backside of the shopping center all the time. To my knowledge, three out of the four homes on Fair Lane that butt up against this alley/shopping center have been broken into in the last five years. That's three homes that pay taxes and abide by the law. We are good people who work hard and have to fear that our homes could be broken into again.

This shopping center attracts unsavory individuals for a lack of a better word. Adding another unsavory business would just add to the number of unsavory people who would be in close proximity to our homes (and children). I'm not against businesses in that shopping center, but for the love of God, we do not need another unsavory business in that shopping center. There are so many people who beg at the corner of 48th Street and Southern who would have easy access to a smoke shop that they can spend their money at. They should be spending that money on food and water.

This will do nothing for our property values. I know that Tempe sees this as a positive from a tax perspective, but this is one citizen's voice who is vehemently against a smoke shop going into the shopping center behind my house. Our little neighborhood is turning into the hood of Tempe. We look out for one another and I love my neighbors. But I hate the crap that creeps up into this neighborhood like smoke shops, payday loan centers, pawn shops, etc.

Thanks for your time,  
Paula Walling

HEARING OFFICER



CITIZEN REQUEST FORM

Name: Barb Brooks

City/Zip Code: Tempe 85282 2007 W Desiree

Date: 6/20/17

I wish to address Agenda Item # 411 Case Number PL \_\_\_\_\_

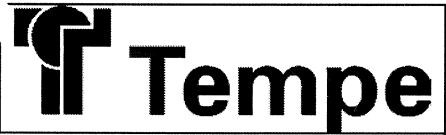
Case Name \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please submit this form to a Planning Division staff member.  
Information contained on this form will become part of the case and considered public record.

HEARING OFFICER



CITIZEN REQUEST FORM

Name: MARION Brownell

City/Zip Code: 85282

Date: 6-20-17

I wish to address Agenda Item # 11 Case Number PL 170157

Case Name \_\_\_\_\_

Comments:

We have other smoke shops in area 48st Southern  
Handy's Baseline  
No sign rig hearing until 4PM today  
Marshal at store + w/ig store service out area + PM  
loitering in alley

Please submit this form to a Planning Division staff member.  
Information contained on this form will become part of the case and considered public record.



HEARING OFFICER



CITIZEN REQUEST FORM

Name:

Chris Hoover

City/Zip Code:

Tempe, AZ 85282

Date:

6-20

I wish to address Agenda Item # 11 Case Number PL \_\_\_\_\_

Case Name

Laveen Smoke Shop

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please submit this form to a Planning Division staff member.  
Information contained on this form will become part of the case and considered public record.

HEARING OFFICER



CITIZEN REQUEST FORM

Name:

Moorshadaw

City/Zip Code:

Date:

6/20/17

I wish to address Agenda Item # 11 Case Number PL \_\_\_\_\_

Case Name

Laveen Smoke Shops

Comments:

Do not want this business in my neighborhood

\_\_\_\_\_  
\_\_\_\_\_

Please submit this form to a Planning Division staff member.  
Information contained on this form will become part of the case and considered public record.

City of Tempe  
P. O. Box 5002  
31 East Fifth Street  
Tempe, AZ 85280  
www.tempe.gov



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Community Development  
Planning  
(480) 350-4311 (Phone)

June 21, 2017

Ms. Lori Scott  
Mashtah's LLC  
3724 North Pleasant Lane  
Phoenix, Arizona 85041  
laveensmoke@yahoo.com

**RE: LAVEEN SMOKE SHOP #6  
4325 SOUTH 48<sup>TH</sup> STREET, SUITE NO. 101  
PL170157**

Dear Ms. Scott:

You are hereby advised that at the hearing held June 20, 2017, 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:

Denied the request by **LAVEEN SMOKE SHOP #6 (PL170157)** located at 4325 South 48<sup>th</sup> Street, Suite No. 101, in the CSS, Commercial Shopping & Services District for the following:

1. Use Permit to allow a tobacco retailer.

Any appeal of the Hearing Officer's decision regarding a use permit must be made to the Development Review Commission within fourteen (14) days of the hearing. You have until **July 5, 2017** to file a formal appeal in writing to the Development Review Commission if you so desire. **Should you decide to submit this written appeal, the appropriate fee will be assessed.**

If you have any questions, please contact me at (480) 350-8486.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lee Jimenez'.

Lee Jimenez  
Senior Planner

cc: Amy Wozniak/Code Compliance; File