

# CITY OF TEMPE DEVELOPMENT REVIEW COMMISSION

**Meeting Date: 8/25/2020** 

Agenda Item: 4

**ACTION:** Request a Use Permit to allow a tobacco retailer for AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP, located at 3231 South Mill Avenue, Suite No. 102. The applicant is Archi-CAD Architects, PLLC.

FISCAL IMPACT: N/A

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

BACKGROUND INFORMATION: AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP (PL200123) is proposing to relocate their existing tobacco retail store at 33 West Southern Avenue to a former restaurant building located on the northeast corner of South Mill Avenue and East Southern Avenue in the CSS, Commercial Shopping & Services District. AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP will occupy two suites while the third will be shelled for retail flex uses with an outdoor covered patio. On May 15th, 2018, the Hearing Officer approved a use permit to allow a tobacco retailer for the applicant. In addition, the Community Development Department Planning Division approved a development plan review for the building renovations. However, last fall, both the use permit and development plan review approval expired as a result of the building permit application expiring. On July 1st, 2020, the Community Development Department Planning Division approved a Development Plan Review for the building renovations. The request includes the following:

ZUP200037 Use Permit to allow a tobacco retailer in the CSS, Commercial Shopping and Services District.



Property Owner Aoufe Enterprises, LLC

Applicant Kenneth Eller, Archi-CAD Architects, PLLC

Zoning District CSS
Site Area (net) 9,191 s.f.
Building Area 5,432 s.f.

Lot Coverage 59.1% (50% max. required; legal non-conforming)

Landscape Coverage 22% (15% min. required)
Building Height 22'-0" (35'-0" max. allowed)

Building Setbacks 10'-5" front, 0' north side, 9'-10" south side, 2'-5" rear,

(0', 0', 0', 10' min. required; legal non-conforming)

Vehicle Parking 67 spaces per 11/29/07 Shared Parking Model (34

min. required)

Bicycle Parking 8 spaces (8 min. required)

Hours of Operation 9 a.m. to 1 a.m., M-Th; 9 a.m. to 2 a.m., F-Sa; and 10

a.m. to 1 a.m., Su

Building Code Occupancy A-2

**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, Principal Planner

### **COMMENTS**

Shared Parking is provided off-site at Huntington Square Shopping Center per Shared Parking Report administratively approved on November 29, 2007 by Community Development Department staff. The subject proposed uses (3,836 s.f. of retail and 1,937 s.f. of restaurant/patio) demand less off-street parking than what was originally approved in the Shared Parking Report (restaurant); thus, no further processing is necessary to conform with parking requirements.

### **PUBLIC INPUT**

To date, staff has not received any public comment as of the publishing date of this staff summary report.

### **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) Section 3-202, Permitted Uses in Commercial and Mixed-Use Districts. Furthermore, the proposed use is subject to special standards or limitations pursuant to ZDC Section 3-423, Use Separation Requirements, wherein 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. The closest school is Carminati Elementary School, located approximately 3,312 feet away.

Section 6-308(E) Approval criteria for Use Permit (in italics):

- 1. Any significant increase in vehicular or pedestrian traffic; the proposed retail use will not significantly increase vehicular or pedestrian traffic more than what is typically generated by permitted retail and services uses.
- 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 retail use will not generate emissions greater than ambient levels since operations will be conducted completely within the interior of the suite.
- 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 applicant has operated a number of tobacco retailing business, including two in Tempe, in which no complaints or calls for service were reported. The proposed retail use is consistent with the General Plan 2040 and is a permitted use subject to a use permit in this zoning district.
- 4. Compatibility with existing surrounding structures and uses; the proposed retail use is compatible with adjacent and nearby shopping centers/plazas and uses, both in scale and size.
- 5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public; as the case with the applicant's current operations, the store will be surveilled in the interior and on the exterior to mitigate for potential disruptive behavior.

### **REASONS FOR APPROVAL:**

Based on the information provided by the applicant and the above analysis, staff supports 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: (Non-standard conditions are identified in bold)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

 The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.

- 2. 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.
- 3. Hours of operation to begin no earlier than nine o'clock in the morning (9:00 a.m.) and end no later than one o'clock in the morning (1:00 a.m.), Monday through Thursday; nine o'clock in the morning (9:00 a.m.) and end no later than two o'clock in the morning (2:00 a.m.), Friday and Saturday; and ten o'clock in the morning (10:00 a.m.) and end no later than one o'clock in the morning (1:00 a.m.), Sunday.

#### **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.

### **USE PERMIT:**

- The Use Permit is valid for AOUFE ENTERPRISES LLC D.B.A. SKY HIGH SMOKE SHOP and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- 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 <a href="http://www.tempe.gov/zoning">http://www.tempe.gov/zoning</a> 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.
- All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit
  is void.
- This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.

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October 20, 1983

Design Review Board approved building elevations, site and landscape plans for GOLDEN CORRAL (DR-83.151), located at 3231 South Mill Avenue in the C-2, General Commercial District.

February 28, 1984

Building Safety Department passes the final inspection for the construction of GOLDEN CORRAL, located at 3231 South Mill Avenue in the C-2, General Commercial District.

November 23, 1988 Design Review Board approved a building addition, site and landscape plans for SIZZLER

RESTAURANT (DR-88.284), located at 3231 South Mill Avenue in the C-2, General Commercial

District.

May 15, 2001	Hearing Officer approved Use Permit to allow live entertainment including jazz/blues acts for DON MIGUELS BAJA GRILL (BA010104), located at 3231 South Mill Avenue in the C-2, General Commercial District.
March 5, 2002	Hearing Officer approved the following for THE KNIGHT CLUB (BA020030), located at 3231 South Mill Avenue in the C-2, General Commercial District:  a. Use Permit to allow a sports bar/night club with restaurant and live entertainment; and b. Variance to reduce required off-street parking from 117 to 78 spaces.
February 2, 2004	Hearing Officer approved Use Permit to allow a restaurant for HOUSE OF HONG (BA040001), located at 3231 South Mill Avenue in the C-2, General Commercial District.
April 4, 2006	Development Services Department staff approved the transfer of an existing Use Permit to allow live entertainment for OLIVE BRANCH MEDITERRANEAN RESTAURANT (BA060029), located at 3231 South Mill Avenue in the CSS, Commercial Shopping & Services District.
April 6, 2011	Per Shared Parking Analysis dated November 26, 2007 and approval letter dated November 29, 2007, the peak parking demand on-site for Huntington Square Shopping Center is 302 spaces Monday through Friday and 296 spaces on Saturday and Sunday. A minimum of 302 parking spaces on the Huntington Square site must be maintained to support all uses.
August 23, 2012	Shared Parking Model revised: Car rental facility no longer existing, eliminating the need for 7 dedicated spaces resulting in 413 to 406 required by Code and a -111 space adjustment based on previous model. Proposed Bank of America drive-up ATM eliminates 6 existing spaces, changing provided spaces to 300 spaces.
May 15, 2018	Hearing Officer approved Use Permit to allow a tobacco retailer for AOUFE ENTERPRISES LLC (PL180108), located at 3231 South Mill Avenue in the CSS, Commercial Shopping and Services District.
May 17, 2018	Community Development Department Planning Division approved a Development Plan Review for AOUFE ENTERPRISES LLC (PL180108), consisting of minor site and building elevations, located at 3231 South Mill Avenue in the CSS, Commercial Shopping and Services District.
July 1, 2020	Community Development Department Planning Division approved a Development Plan Review for AOUFE ENTERPRISES LLC (PL20123), consisting of minor site and building elevations, located at 3231 South Mill Avenue in the CSS, Commercial Shopping and Services District.

### **ZONING AND DEVELOPMENT CODE REFERENCE:**

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



## **DEVELOPMENT PROJECT FILE**

## for AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP (PL200123)

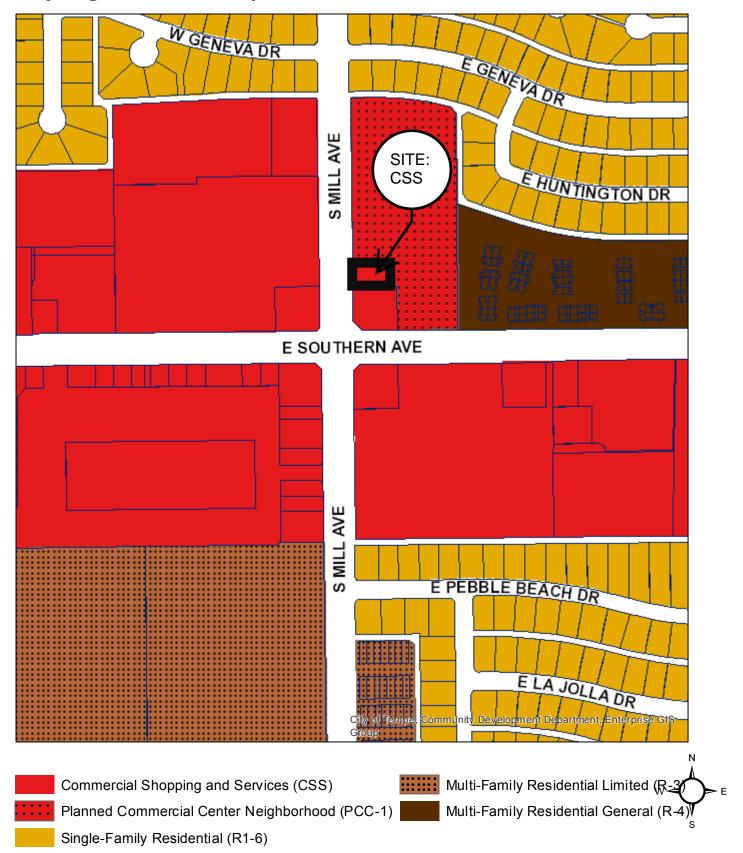
### **ATTACHMENTS**:

- 1. Location Map
- 2. Aerial
- 3. Letter of Explanation
- 4. Site Plan
- 5. Building Elevations
- 6. Floor Plan
- 7-15. Site Context Photos



## **Sky High Smoke Shop**

### PL200123





## **Sky High Smoke Shop**



**Aerial Map** 





Re: Sky High Smoke Shop 3231 S Mill Ave, Suite 102

133-46-134J

July 17, 2020

The applicant, Aoufe Enterprises LLC, is requesting a Use Permit for the sales of tobacco and related products. They have purchased the building and will be applying for building permits to remodel the building. The applicant wants to organize the building into three suites. The initial remodel will occupy two of the proposed suites, 102 and 103, approximately 3,836 sf, for a tobacco sales and related products retail business. The third suite, 101, approximately 1,421 sf, and the patio will be vacant for future tenancy. This building will become the consolidation of their existing businesses at 33 W Southern Ave.

The smoke shop is open seven days a week, from 9 am until 1 am Mon-Thu, 9 am until 2 am Fr-Sat, 10 am - 1 am Sun. The typical staffing is three employees, in two shifts, during business hours. On average, there are seventeen customers in the store per hour, average transaction time is 10 minutes.

The adjacent property is an existing shopping center, APN 133-46-134H, Huntington Square has parking spaces for use by this property. To the south is a separate developed lot, APN 133-46-134K, with separate parking and an existing auto repair building, Brake Masters.

The existing building is approximately 5,432 sf with an existing outdoor patio of approximately 519 sf. The building is a single story structure, approximately 20 feet tall, constructed of stucco over wood framing. The applicant wishes to remodel the exterior elevations of the building to more closely reflect the style of the existing shopping center. The materials will be the same but the roof will be replaced to match the existing shopping center with flat roof and parapets. The roof top mechanical equipment will be screened by the new parapets. The footprint of the building will remain unchanged. The north elevation of the building will be revised with three storefronts to identify the three suites, all under a new covered arched arcade to match the existing shopping center.

Access to the shop is mostly by bus, car, and bicycle. Southern Avenue and Mill Avenue are major thoroughfares and provide access to the property. There is no pedestrian or vehicular traffic impact on neighborhood streets since the site does not have access to the neighborhood. The closest neighborhood street is approximately 650 feet north of the property boundary.

There are no nuisances arising from the store or its operation that exceed the level of ambient conditions. This is a retail operation that is conducted completely within the interior of the suite. There are no outdoor activities for the smoke shop. Smoking is not permitted in the store. The outdoor patio is for the use of the future tenant of the third suite.

The applicant has operated many smoke shops, including two in Tempe. They have never had any neighborhood complaints or calls for service at their other locations. There are no known public or charter schools within 1,320 feet of this lot. As a retail operation it is compatible with the objectives of the General Plan, provided they receive approval of the requested Use Permit.

The overall size of the structure is compatible with the general scale and size of adjacent commercial and residential structures. The smoke shop is one business in a multi-tenancy retail center and is comparable in size, hours of operation and amount of activity with the other tenants in the center.

Their retail stores are under constant video surveillance, inside and at the exterior of the entry. Any disruptive behavior is documented and reported immediately to the police department.

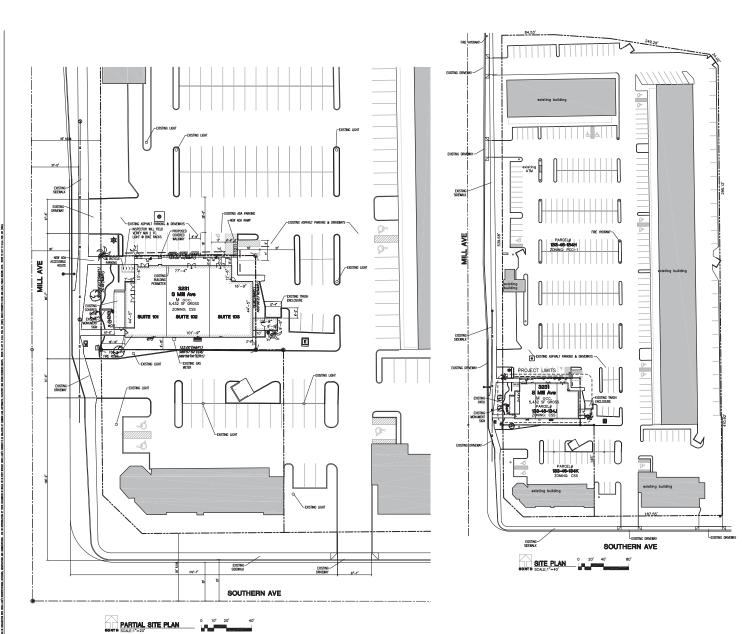
Sincerely.

Kenneth R. Eller, Reg. Arch. Managing Principal of the Firm

ATTACHMENT 3

CERTIFICATE NO

23481 KENNETH R. ELLER



PROJECT TEAM

APPLICANT/OWNER

KASEM AOUFE

ARCHIEGT ARCHI-CAD ARCHITECTS PLLC 2318 S McCLINTOOK DR, SUITE 2 TEMPE, AZ 85282 (480) 962–3823 office (480) 966–2874 fax KENNETH R ELLER AZ REG: 23481

### PROJECT DATA

PROJECT ADDRESS

PROJECT DESCRIPTION REMODEL OF BUILDING SHELL.

PARCEL NUMBER 133-46-134J

PROPERTY DESCRIPTION

ZONING EXISTING ZONING: CSS (NO CHANGE)

LOT SIZE ("LEGAL, NON-CONFORMING.")
GROSS = 13,282 SF (0.30 AC)
NET = 9,191 SF (0.21 AC)
LOT COVERAGE
5,432/9,191 = 0.591 = 59,1% > 50% MAX

SITE LANDSCAPE COVERAGE 2,020/9,191 = 0.2197 = 22% > 15% MIN RIGHT OF WAY LANDSCAPE AREA 931 SF

CONSTRUCTION TYPE
V-B (AFES FIRE SPRINKLER SYSTEM)
REQUESTING DOWNGRADE OF CONSTRUCTION TYPE TO TYPE V-B

OCCUPANCY TYPE

NON-SEPARATED USES PER IBC SECTION 508.3

BUILDING AREA ALLOWABLE (TABLE 506.2) A-2 OCC 24,000 sf ALLOWABLE: 24,000 SF GROSS PROPOSED: 5,432 SF GROSS

BUILDING HEIGHT (STORIES)
ALLOWABLE (TABLE 504.3 and TABLE 504.4)
A-2 OCC 60 FT 2 STORY

ALLOWABLE: 35 FEET (1) PROPOSED: 22 FEET (1)

SUITE FLOOR AREA SUITE 101 VACA

SUITE 101 VACANT :
COVERED PATIO :
SUITE 102 RETAIL (M):
SUITE 103 RETAIL (M):

PARKING CALCULATION

PRECUENCE CAP
VACANT (RESTAURANT) 1418/75 = 19
RETAIL 3836/300 = 13
PATIO 519-300/150 = 2
34 CAR SPACES (2 ADA)

PROVIDED CAR PROMDED CAR LESS INTENSIVE USE PROPOSED THAN EXISTING SITE TOTAL.

SITE TOTAL.

302 (8 ADA COMPLIANT)

(SEE ALSO SHARED PARKING ANALYSIS FOR HUNTINGTON SQUARE SHOPPING CENTER CONDUCTED BY PEW & LAKE, PLO IN DSD PARKING FILE DATED 11–29–07)

BICYCLE
SITE LOCATED WITHIN BICYCLE COMMUTE AREA
REQUIRED:
1/7,500 SF 4 MINIMUM
RESTAURANT 1/500 SF 3 PROVIDED

SIGNS AND SIGNAGE

APPLICABLE CODES
2018 INTERNATIONAL, BILLIDING CODE, on Amended
2018 INTERNATIONAL, RICLIDING CODE, ON Amended
2018 INTERNATIONAL RICLIDING CODE, ON AMENDE CODE, ON

BROADWAY RD ÿ øSITE 4 VICINITY MAP **Aoufe Building Remodel** 

NOTES

3231 S. Mill Ave

Tempe AZ 85282

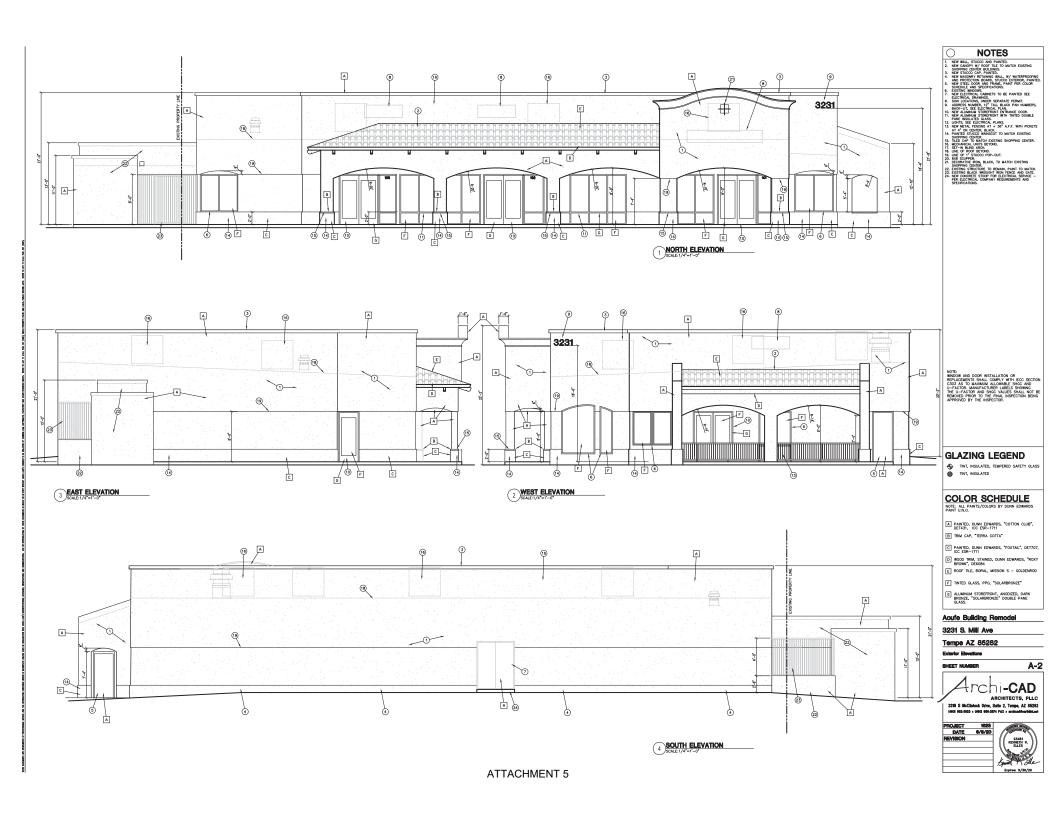
Site Plan

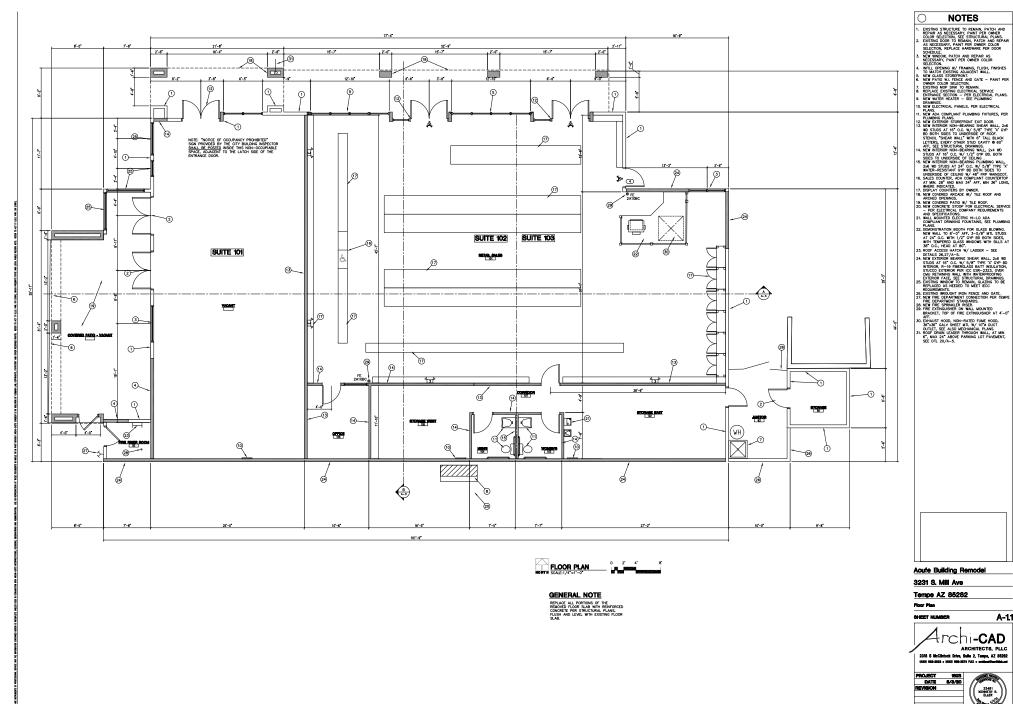
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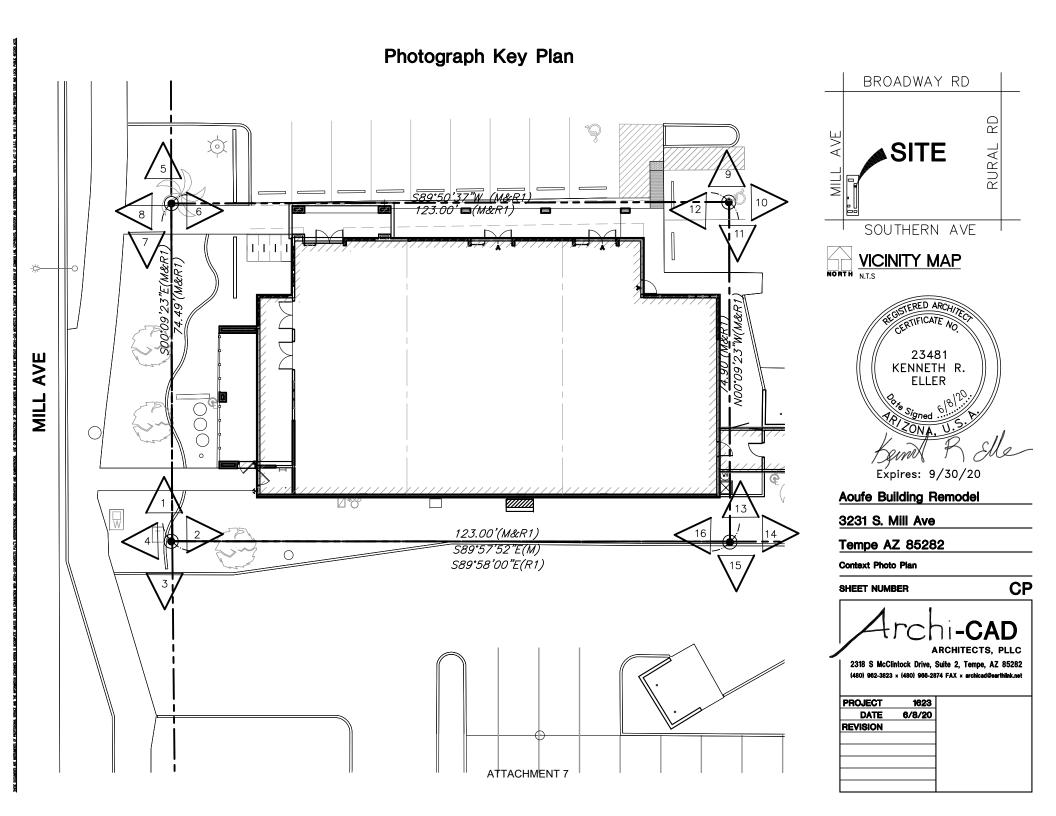




4rchi-CAD ARCHITECTS, PLLC



A-1.1





Station 1



Station 2



Station 3



Station 4



Station 5



Station 6



Station 7



**Station 8** 



Station 9



Station 10



Station 11



Station 12



Station 13



Station 14



Station 15



Station 16