

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 9/13/2022
Agenda Item: 6**

ACTION: Request a Use Permit to allow a tobacco retailer for ELBO SMOKE SHOP, located at 3121 South Mill Avenue. The applicant is Elbo Headshop, LLC.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: ELBO SMOKE SHOP (PL220199) is proposing to operate a tobacco retail store in the Huntington Square Shopping Center, located on the northeast corner of South Mill Avenue and East Southern Avenue in the PCC-1, Planned Commercial Center Neighborhood District. Retail sales will include tobacco items such as cigars, cigarettes, hookah products, glass and water pipes, glass art, electronic cigarettes, shirts, hats, hippie trinkets, and other smoking related accessories and items. The smoke shop will occupy approximately 900 s.f. and will operate Monday through Saturday from 10 a.m. to 1 a.m., and Sundays from 12 p.m. to 8 p.m. The business partners will be the only employees until future staff is needed. The request includes the following:

ZUP220039 Use Permit to allow a tobacco retailer (smoke shop).



Property Owner	Huntington Square Baceline, LLC
Applicant	Jonathan Penley and Mike Fedak, Elbo Headshop, LLC
Zoning District	PCC-1
Site Area	229,823 s.f. (5.28 ac).
Building Area	46,912 s.f.
Suite Area	900 s.f.
Lot Coverage	20% (50% max. allowed)
Building Setbacks	16' front, 34' side, 0' street side, 67' rear (0', 30', 0', 30' min. required)
Vehicle Parking	No Change in Parking Demand
Bicycle Parking	No Change in Parking Demand
Hours of Operation	10 a.m. to 1 a.m., M-Sa; and 12 p.m. to 8 p.m., Su

ATTACHMENTS: Development Project File

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

Department Director: Jeff Tamulevich, Community Development Director

Legal review by: N/A

Prepared by: Lee Jimenez, Senior Planner

Reviewed by: Steve Abrahamson, Principal Planner

COMMENTS

A tobacco retailer is a person or business who primarily sells or offers for sale the following: tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to tobacco shops, cigars and pipe retailer, cigarette or electronic cigarette retailer, and smoking establishments.

PUBLIC INPUT

Staff has not received any public comments to date.

USE PERMIT

The proposed use requires a use permit to allow a tobacco retailer in the PCC-1 zoning district pursuant to City of Tempe Zoning and 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 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*; the store will have 24/7 surveillance monitoring the interior and exterior of the store.

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.

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. Hours of operation shall begin no earlier than 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.), Monday through Saturday. Hours of operation shall begin no earlier than noon (12:00 p.m.) and end no later than eight o'clock in the evening (8:00 p.m.), on Sundays.

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 ELBO 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 <http://www.tempe.gov/zoning> 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.

HISTORY & FACTS:

February 24, 1982	Board of Adjustment approved a Use Permit to allow a cocktail lounge for TIME OUT LOUNGE, located at 3129 South Mill Avenue in the C-2 zoning district.
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: <ul style="list-style-type: none"> 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.

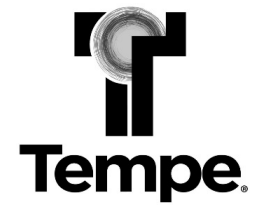
- February 2, 2004 Hearing Officer approved Use Permit to allow a restaurant for HOUSE OF HONG (BA040001), located at 3231 South Mill Avenue in the C-2, General Commercial District.
- April 4, 2006 Development Services Department staff approved the transfer of an existing Use Permit to allow live entertainment 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 AOUFÉ 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 AOUFÉ 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 AOUFÉ ENTERPRISES LLC (PL20123), consisting of minor site and building elevations, located at 3231 South Mill Avenue in the CSS, Commercial Shopping and Services District.
- August 25, 2020 Development Review Commission approved a Use Permit to allow a tobacco retailer for AOUFÉ ENTERPRISES, L.L.C. D.B.A. SKY HIGH SMOKE SHOP (PL200123), located at 3231 South Mill Avenue in the CSS, Commercial Shopping And Services District.
- October 26, 2021 Development Review Commission approved a Use Permit to allow entertainment (live singing, dancing, and music) for TIME OUT LOUNGE (PL210287), located at 3129 South Mill Avenue in the PCC-1, Planned Commercial Center Neighborhood 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

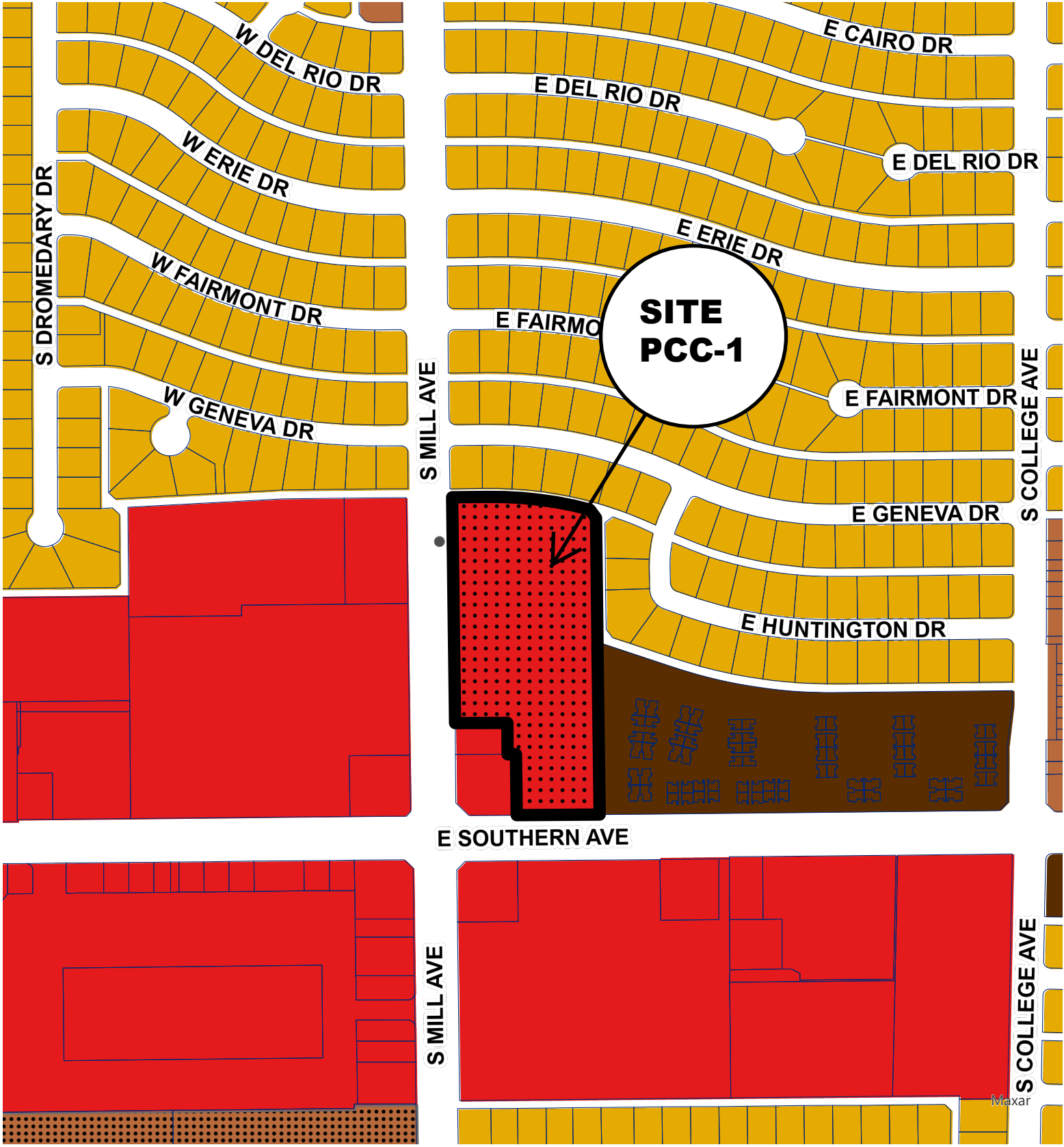
ELBO SMOKE SHOP

(PL220199)

ATTACHMENTS:

1. Location Map
2. Aerial
3. Letter of Explanation
4. Site Plan
5. Floor Plan
6. Storefront Photo (in lieu of blackline elevations)

ELBO SMOKE SHOP



- Commercial Shopping and Services (CSS)
- Multi-Family Residential (R-2)
- Single-Family Residential (R1-6)
- Multi-Family Residential Limited (R-3)
- Multi-Family Residential General (R-4)





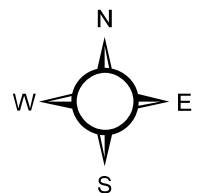
Tempe

PL220199

ELBO SMOKE SHOP



Aerial Map



Elbo Headshop LLC Letter of Explanation for Use Permit

Elbo Headshop is a proposed retail tobacco shop within a multi-tenant shopping center located at 3121 S Mill Ave, Tempe Az 85282. Retail sales will include tobacco items such as cigars, cigarettes, hookah products, glass pipes and water pipes, glass art, electronic cigarettes, shirts, hats, hippy trinkets, and other smoking related accessories and items. The lease space is approximately 900 square feet; the hours of operation are Monday through Saturday from 10am-1am, Sunday noon to 8pm.

The city of Tempe's Zoning Development Code's tobacco retailer separation requirements, which took effect in June 2007, prohibit tobacco retailer from locating within 1,320 feet of a school. The closest school is Carminati Elementary School located well beyond the minimum required distance. Carminati Elementary School nearly 4,000 feet from Elbo Headshop and there's no other schools within that radius of the store.

This will be our first valley location and we would be absolutely thrilled to be in this area, one shop owner grew up very close to this store and attended Marcos de Niza High School while the other grew up in Ahwatukee and attended Mount Point High School.

We will be the only employees for the first year, perhaps two, until we can manage to get 2 employees to start covering shifts for us. The local area would not be affected by (our) hour(s) (of) business and we feel that the demand for our products is at an all-time high.

Elbo will not hold any type of promotional events at our location that will exceed our maximum capacity. We will not tolerate loitering on or in front of the premises nor will we allow any disruptive behavior which may create a nuisance to the surrounding area or general public as that goes against our business model and practice. We take pride in our professionalism and practice heavy business ethics for a successful future where we can grow with the community. Elbo Headshop does not have gas, vibrations, dust, heat, smoke or glare exceeding normal operations of retail business.

There will always be a manager on site and any employees will be personally trained by one of the two owners/managers of Elbo to professionally handle any complaint or disturbance in the community and will immediately contact one of the store owners to notify of any concerns they may have. We will have all necessary signage posted regarding tobacco laws and smoking will be prohibited in and outside of the shop. We will comply with all city ordinances and requirements and any complaints will be handled immediately. If any other signs are requested by the renters we will be happy to comply and post immediately.

We don't expect customers to stay for over 10 minutes each therefore traffic into the complex isn't significant and won't cause traffic problems and have no problem complying with the surrounding businesses to ensure a happy working environment for our neighbors. We will also have 24/7 surveillance monitoring the store and parking lot, inside and outside the shop and we are very cautious and aware of guests and their actions and plan to take every precaution necessary to eliminate unsafe and dangerous behavior or customers that could risk the safety of themselves and our employees and current shopping center neighbors.

As in binding with the landlord, our tenant improvements will include the following: Paint, Applying fixtures, Exterior Signs (all properly permitted and approved by the city of Tempe). Elbo Headshop will not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives, and policies of the city. We will not be making any changes to the exterior of the building other than the sign that will require the city of Tempe's approval. The use will be contained inside the building, there will be proper emergency exit signs, handicap accessibility, and up to code restrooms. We will have the place exterminated for pest control every 3 months. We will also not conflict with the city's goals and expansion efforts in any way possible. If Tempe grants us this Special Use Permit it would accomplish a childhood goal for us, I think we will be very successful and we look forward to working with the community that we grew up in and have loved since the 80's.

Thanks you,

Mike Fedak & Jonathan Penley



Title: Elbo Smoke Shop

Site Address: 3121 S Mill Ave Unit A9, Tempe, Az 85282, Parcel # 133-46-134H

Elbo Smoke Shop



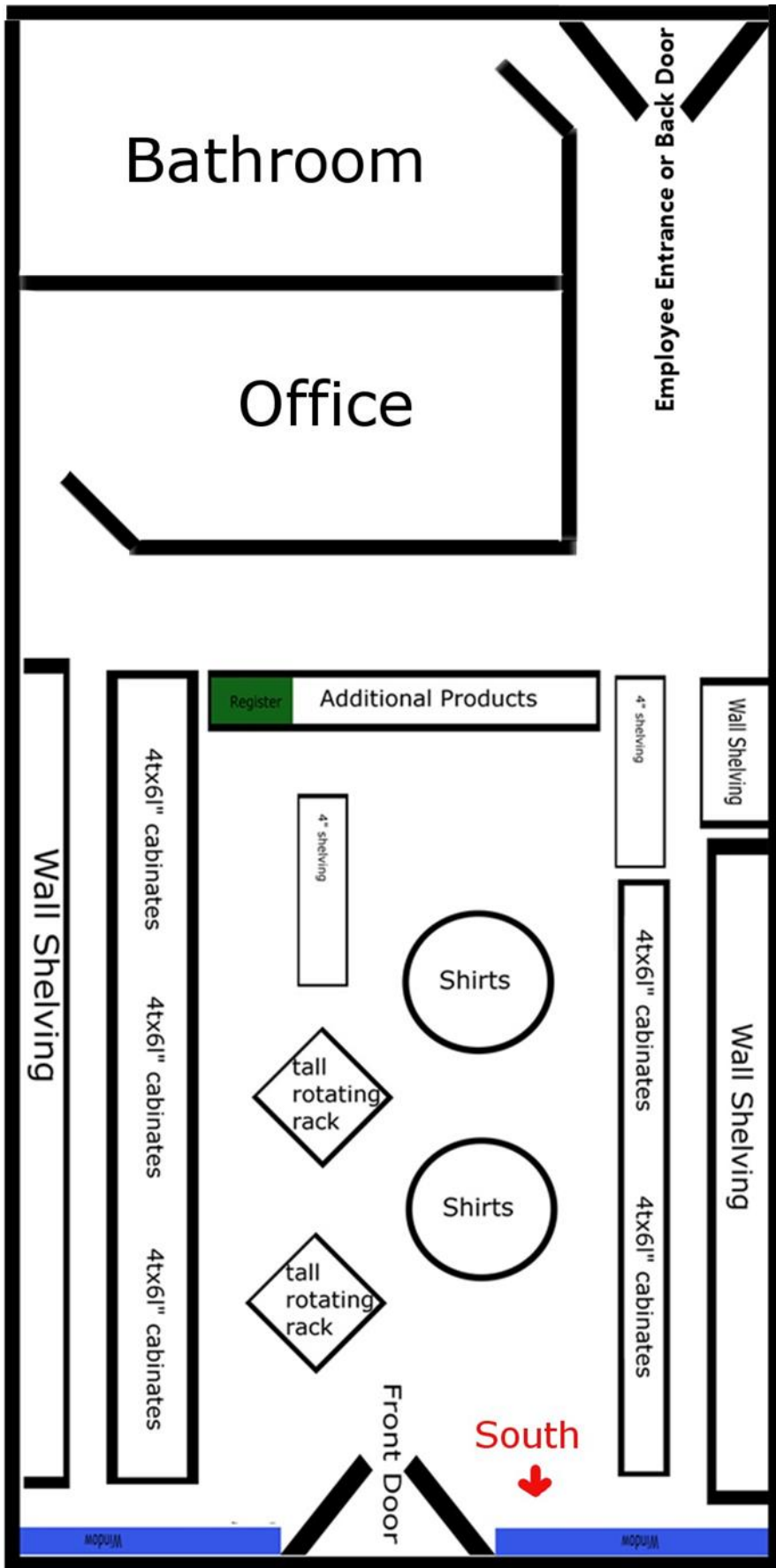




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Google
Street View - Dec 2021

