



**CITY OF TEMPE  
BOARD OF ADJUSTMENT**

**Meeting Date: 09/25/2024  
Agenda Item: 4**

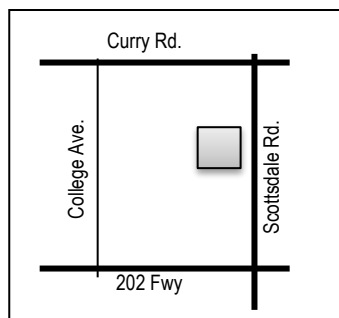
**ACTION:** Request a variance to reduce the separation requirement between a tobacco retailer and charter school from 1,320 feet to 900 feet for RED STAR VAPOR, located at 904 North Scottsdale Road, Suite 106. The applicant is Red Star Vapor.

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** Staff – Deny

**BACKGROUND INFORMATION:** RED STAR VAPOR (PL240156) is proposing to operate a tobacco retailer on the west side of Scottsdale Road between Curry Road and the Loop 2020 Freeway in the GID, General Industrial, zoning district. The applicant is seeking relief from the separation between a tobacco retailer and charter school. Pursuant to Tempe Zoning and Development Code Section 3-423B, tobacco retailers shall not be located within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter, public, or private school. The proposed tobacco retailer is located approximately 925 feet from Ombudsman - Charter Northeast, a charter school. In addition to the Variance, a Use Permit will also be required to operate the proposed tobacco retailer, which would be subject to Development Review Commission approval. The request includes the following:

VAR240003 Variance to reduce the separation requirement between a tobacco retailer and charter school from 1,320' to 900'



Property Owner	904 Scottsdale LLC
Applicant	Mike Williams, Red Star Vapor
Zoning District	GID (General Industrial District)
Site Area	0.4 acres
Building Area	8,025 s.f.
Lot Coverage	46% (No Standard)
Building Setbacks	No changes
Landscape Area	No change
Vehicle Parking	No change
Bicycle Parking	No change

**ATTACHMENTS:** Exhibits

**STAFF CONTACT(S):** Lucas Jensen, Planner II (480) 350-8023

Department Director: Jeff Tamulevich, Community Development Director  
Legal review by: N/A  
Prepared by: Lucas Jensen, Planner II  
Reviewed by: Diana Kaminski, Principal Planner

## COMMENTS

The proposed tobacco retailer is located approximately 925 feet from Ombudsman Charter – Northeast, which is located at 1290 North Scottsdale Road in Suite 130. The company Red Star Vapor operates two other tobacco retailers along Rural/Scottsdale Road approximately two miles to the north and four miles south of the project site, in addition to numerous locations around the valley.

The applicant visited the planning counter on January 1, 2024 to inquire about the separation requirements for a tobacco retailer at this location and was notified that the site met separation requirements for a tobacco retailer. This guidance was based on the most recent public-school data available and did not capture the location of the charter school north of the site.

## PUBLIC INPUT

- A neighborhood meeting was held on August 26, with no one from the public in attendance.
- Staff has received one call in opposition to the request.

## VARIANCE

The proposed use requires a variance to reduce the separation requirement between a tobacco retailer and charter school within the GID zoning district.

Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* the lot is rectangular shaped, 0.4 acres, and has approximately 153 feet fronting Scottsdale Road is typical for properties in the surrounding area. There are no special circumstances applicable to this property and;
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;* all properties in the GID and adjacent CSS zoning district are required to obtain Use Permit approval for a tobacco retailer with separation from schools. Strict application of this Code treats all properties equally without special privilege and;
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;* granting of this Variance would constitute special privileges to this property as all other properties are subject to Use Permit approval and separation requirements for tobacco retail uses in the same zoning district; and
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;* the school property began operating in July 2016, and the application for a Use Permit was submitted on May 1, 2024. The tenant consulted with planning to verify conformance with the Zoning and Development Code in regard to separation requirements from public, private, and charter schools. Although it meets the separation requirements for public schools, the charter school was identified at the time of Use Permit submittal at the northwest corner of the commercial plaza. The commercial plaza is a large, irregular shaped lot that extends from McKellips on the north approximately 685 feet to the south, therefore conflicting with separation requirements. If the tenant were to locate approximately 400 feet south of the subject site or in Maricopa County island to the east, the Variance would not be necessary.

## REASONS FOR DENIAL:

Based on the information provided by the applicant, the public input received, and the above analysis staff recommends denial of the requested Variance as this request does not meet all of the required criteria for a variance.

**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. This Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.

**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.

DEADLINE: Approval shall be void if the development is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the approval is granted or within the time stipulated by the decision-making body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the development plan.

ZONING AND DEVELOPMENT CODE: 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 [www.tempe.gov/zoning](http://www.tempe.gov/zoning) or purchase from Community Development.

**HISTORY & FACTS:**

- October 17, 1956            Subject property was annexed into the City of Tempe. Zoning Ordinance 209 was in effect and did not contain separation requirements for tobacco retail uses.
- July 7, 2016             Building Safety issued a Certificate of Occupancy for Ombudsman Charter Northeast, the charter school in conflict with the separation requirements.
- May 1, 2024             Use Permit application submitted for this project.
- May 20, 2024            Staff provided comments on their submittal that separation requirements cannot be met and the application cannot be processed unless a Variance is obtained.
- June 19, 2024           Applicant submitted documents for the Variance application.
- August 26, 2024        Applicant held a neighborhood meeting. No members of the public were in attendance.
- September 25, 2024    The Board of adjustment is scheduled to hear the request for a Variance to reduce the separation requirements between a tobacco retailer and a school.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

[Section 6-309 Variances](#)



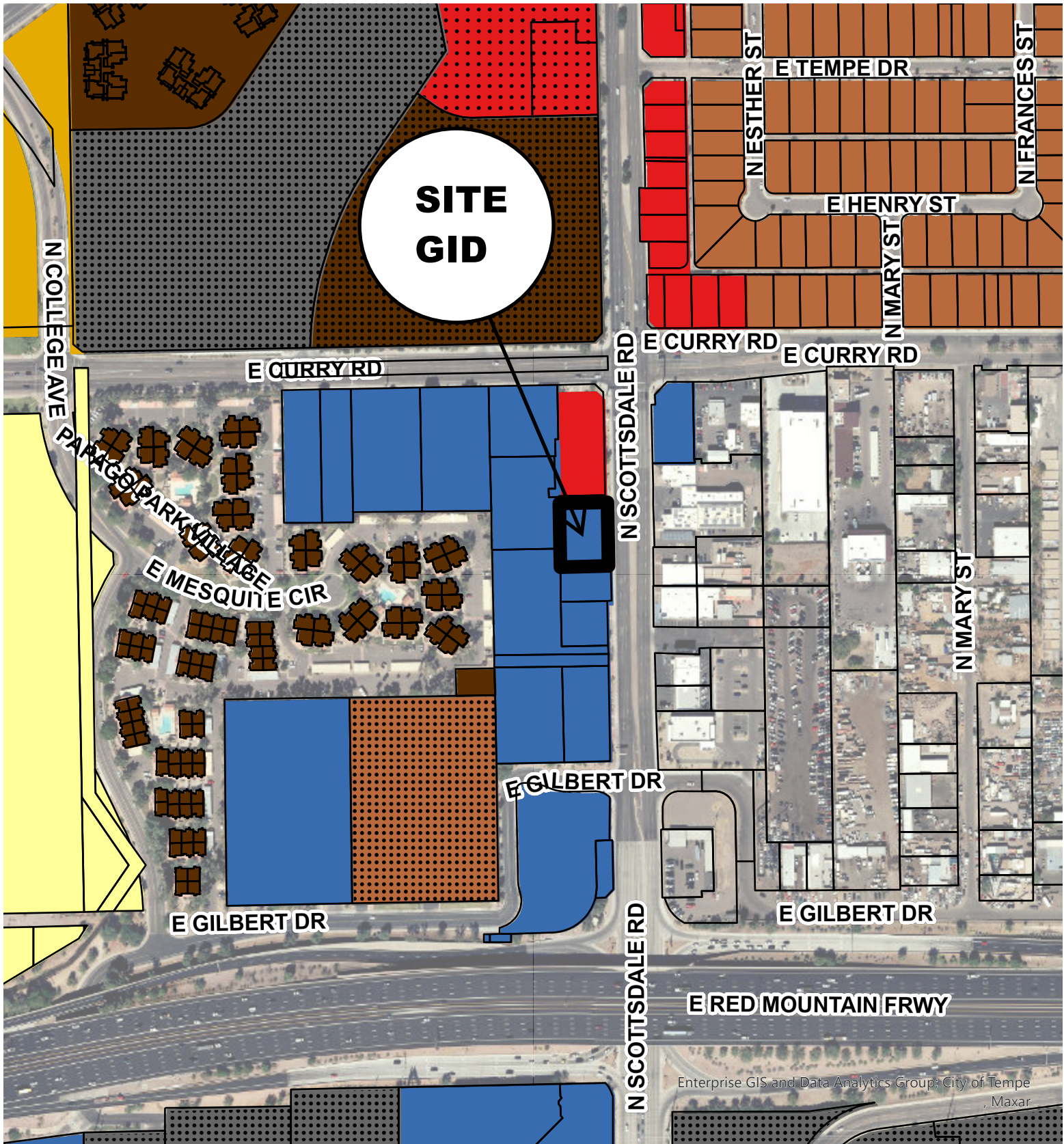
**DEVELOPMENT PROJECT FILE**  
for  
**RED STAR VAPOR**  
**(PL240156)**

**ATTACHMENTS:**

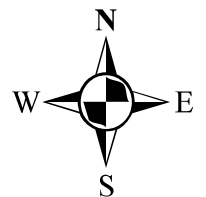
1. Zoning Map
2. Aerial Map
3. Letter of Explanation
4. Site Plan
- 5-6. Required and Proposed Separation Requirement Aerial Map
7. Floor Plan
- 8-12. Site Context Photos
13. Neighborhood Meeting Summary



RED STAR VAPOR



- |  |  |   |  |
|--|--|---|--|
|  | General Industrial District (GID)              |  | Single-Family Residential (R1-6)       |
|  | Mixed Use High (MU-4)                          |  | Multi-Family Residential (R-2)         |
|  | Commercial Shopping and Services (CSS)         |  | Multi-Family Residential Limited (R-3) |
|  | Planned Commercial Center Neighborhood (PCC-1) |  | Multi-Family Residential General (R-4) |
|  | Agricultural (AG)                              |  | Multi-Family Residential High (R-5)    |



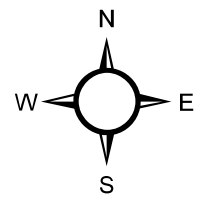


# RED STAR VAPOR



Enterprise GIS and Data Analytics Group; City of Tempe  
Maxar, Microsoft

## Aerial Map



**Variance**  
**Letter of Explanation**

Date: August 8, 2024

Project: PL240156

To the City of Tempe,

I, Michael Williams, represent RSV Holdings, LLC, operating under the trade name Red Star Vapor, and I am writing to formally request a variance for the Use Permit for the aforementioned premises located at Suite 106, 904 N Scottsdale Rd, within the ownership of 904 Scottsdale, LLC. The leased suite spans approximately 1,233 square feet and is situated within a plaza on the West side of N Scottsdale Rd, positioned between E Curry Rd to the North and Red Mountain Fwy (Loop 202) to the South.

The reason we are requesting the variance is due to the discovery of a charter school, Ombudsman Charter School, that is in the Hayden Plaza to the North of Curry Rd, the same plaza as Goodwill. If the location were to be measured from suite to suite, by the nearest point, instead to the nearest point of plot line to plot line, separation of approximately 953 feet, there would be a separation of approximately 1,380 feet. Hayden Plaza is a large lot, approximately 715 feet from plot line to plot line. The Ombudsman Charter school is at the very back of the Hayden Plaza to the North of the Goodwill just off E Weber Drive. Therefore we are requesting the minimum separation agreement be reduced from 1,320 feet to 900 feet.

Red Star Vapor intends to utilize the premises as a retail store specializing in the sale of vapor/nicotine products and related accessories, offering an alternative to conventional tobacco products like cigars, cigarettes, and smokeless tobacco. Our standard operating hours are Sunday through Thursday from 11:00 a.m. to 8:00 p.m., and Friday to Saturday from 11:00 a.m. to 9:00 p.m., excluding Thanksgiving and Christmas holidays. We do allow testing/smoking our vapor products inside our premises and allow our employees to vape on premises while they are working. Our floor plan also shows we would have a table and chairs for our customs to sit at for maintaining their purchase vapor products, such as changing coils on tanks and filling tanks with purchased e-juice.

The primary objective of Red Star Vapor is to provide cessation alternatives to traditional tobacco products, thereby serving the needs of our local communities. It's important to note that all our retail establishments strictly serve customers aged 21 and above. We enforce this policy rigorously, requiring all patrons to present valid identification verifying their age before entering our premises or purchasing any of our products. This requirement is prominently displayed through signage both inside and outside our establishments.

As to items required in the Letter of Explanation.

- a) There will be no change to the property's size, shape, topography, location or surroundings of the suite. Only a change in a separation requirement.
- b) There is no other company in the area listed with our type of use. Therefore, no company will be deprived of its privileges.
- c) The adjustment if authorized would not constitute a grant of any special privileges enjoyed. There is no company of our type of use and our use would not affect anyone in the vicinity.
- d) We are requesting a variance to change the separation requirement from 1,320 feet to 900 feet. This request is not due to any self-imposed special circumstances, structural, or zoning issues created by the property owner. The variance is solely due to the presence of a charter school within the current 1,320 feet separation requirement when measured property line to property line. Therefore, the need for this variance is not a result of any actions or decisions made by the property owner, but rather due to existing external factors that are beyond the owner's control.

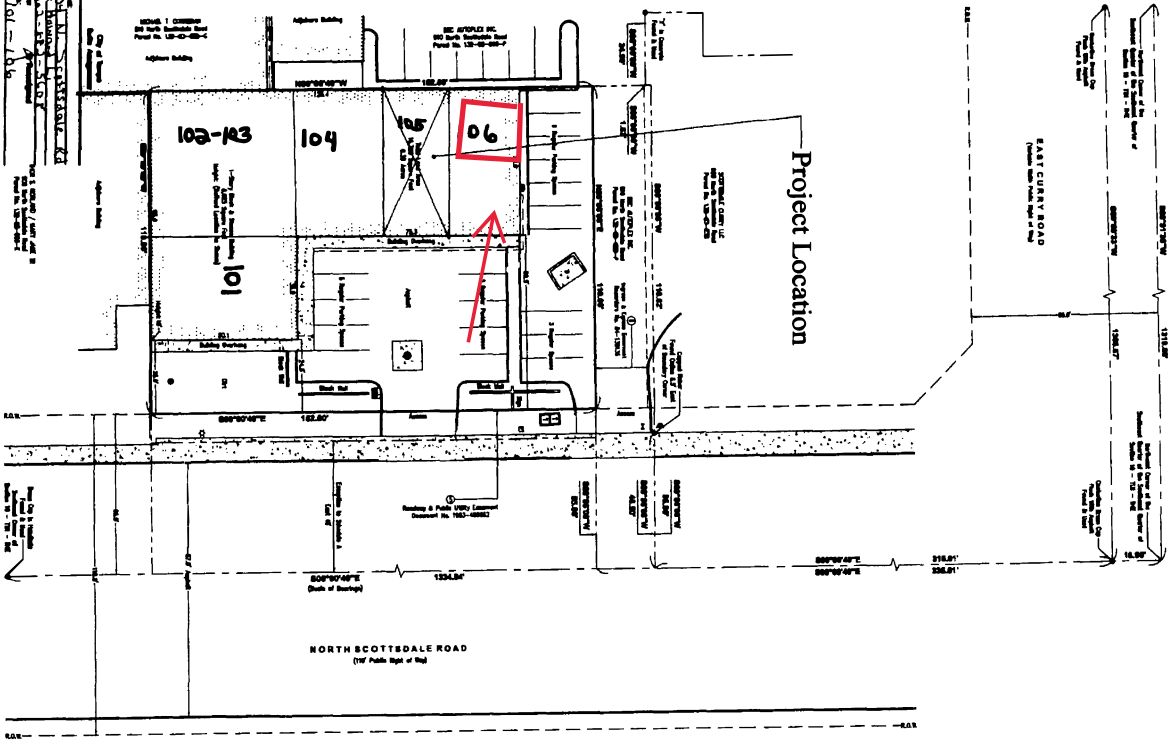
Thank you for your attention to this matter.

Sincerely,

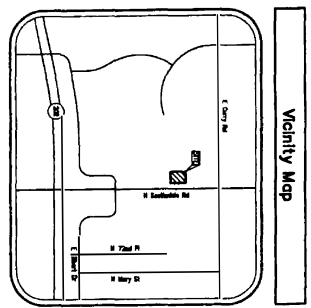
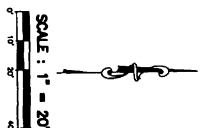
Michael Williams

A handwritten signature in black ink that reads "Michael Williams". The signature is written in a cursive, slightly slanted style.

Red Star Vapor, LLC



904 N. Scottsdale Rd.  
 SITE PLAN



**Project Data:**

Tract: BELLA NAU AND SPA  
 904 N. SCOTTSDALE RD.  
 TEMPE, AZ  
 Owner: Derry, B.  
 Consultant: PDC VISION-SPRINGER  
 Original Local BUSINESS AREA 1150700-12  
 Zoning: C1  
 Building Code: 2003 IBC  
 2003 IBC  
 1997 IBC  
 1996 IBC  
 1994 IBC  
 1994 ADAMS

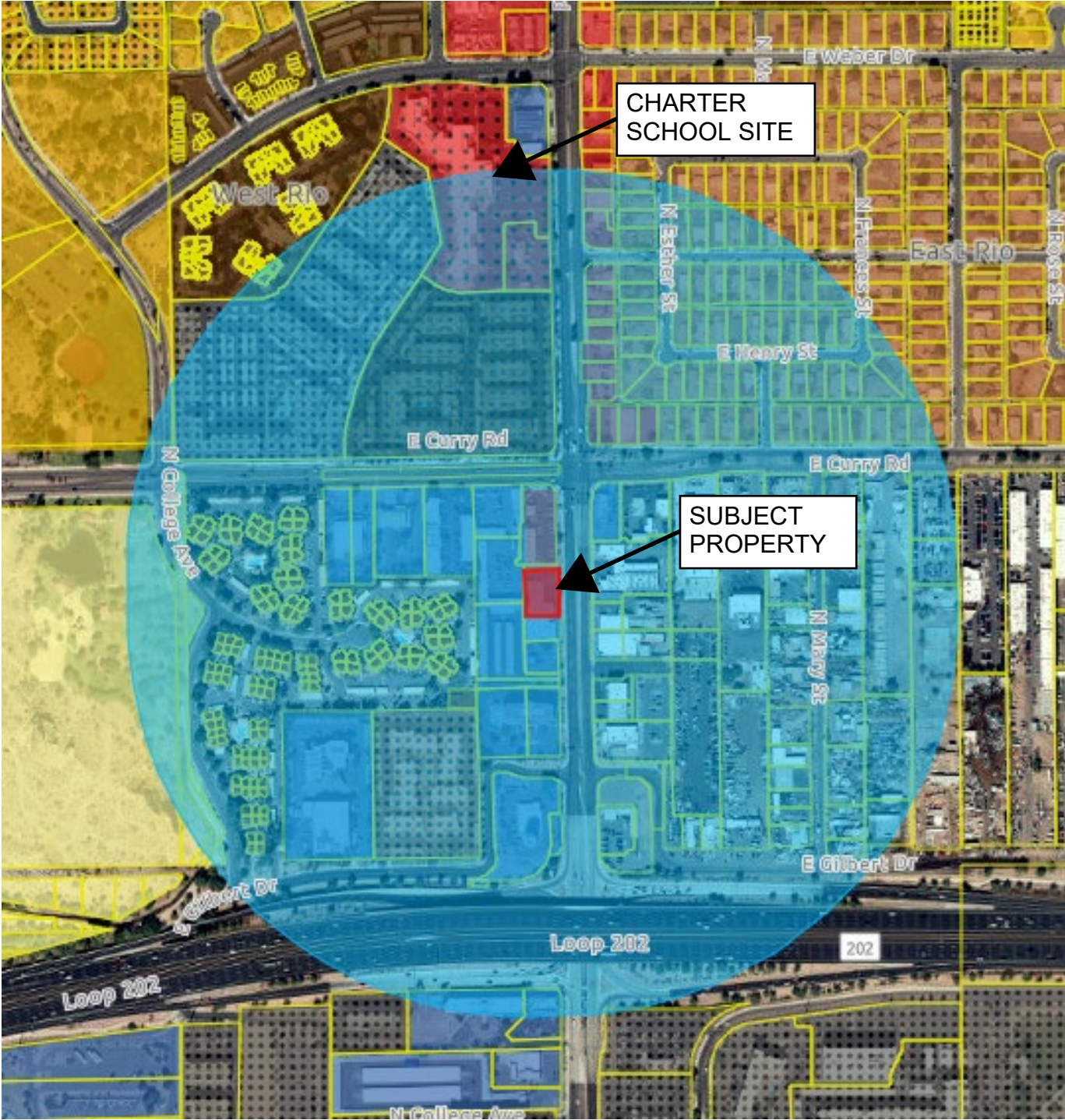
**Sheet Index:**

A1 Site Plan  
 A2 Floor Plan  
 A3 Red Star Vapor  
 A4 Mechanical  
 A5 Electrical  
 A6 Plumbing  
 A7 Fire Protection  
 A8 Structural  
 A9 Foundation  
 A10 Landscaping

APPROVED  
 DEC 19 2007

		<p><b>PDC</b>          PDC VISION-SPRINGER          3040 North Anderson Dr., Mesa, Arizona 85207          480-988-8888</p>	
<p><b>SITE PLAN</b></p>		<p>Tenant Improvement For:  <b>Red Star Vapor, LLC</b>          904 N. SCOTTSDALE RD.          TEMPE, AZ</p>	
<p><b>A1</b></p>		<p>PROJECT NO. AND SHEET NO.</p>	





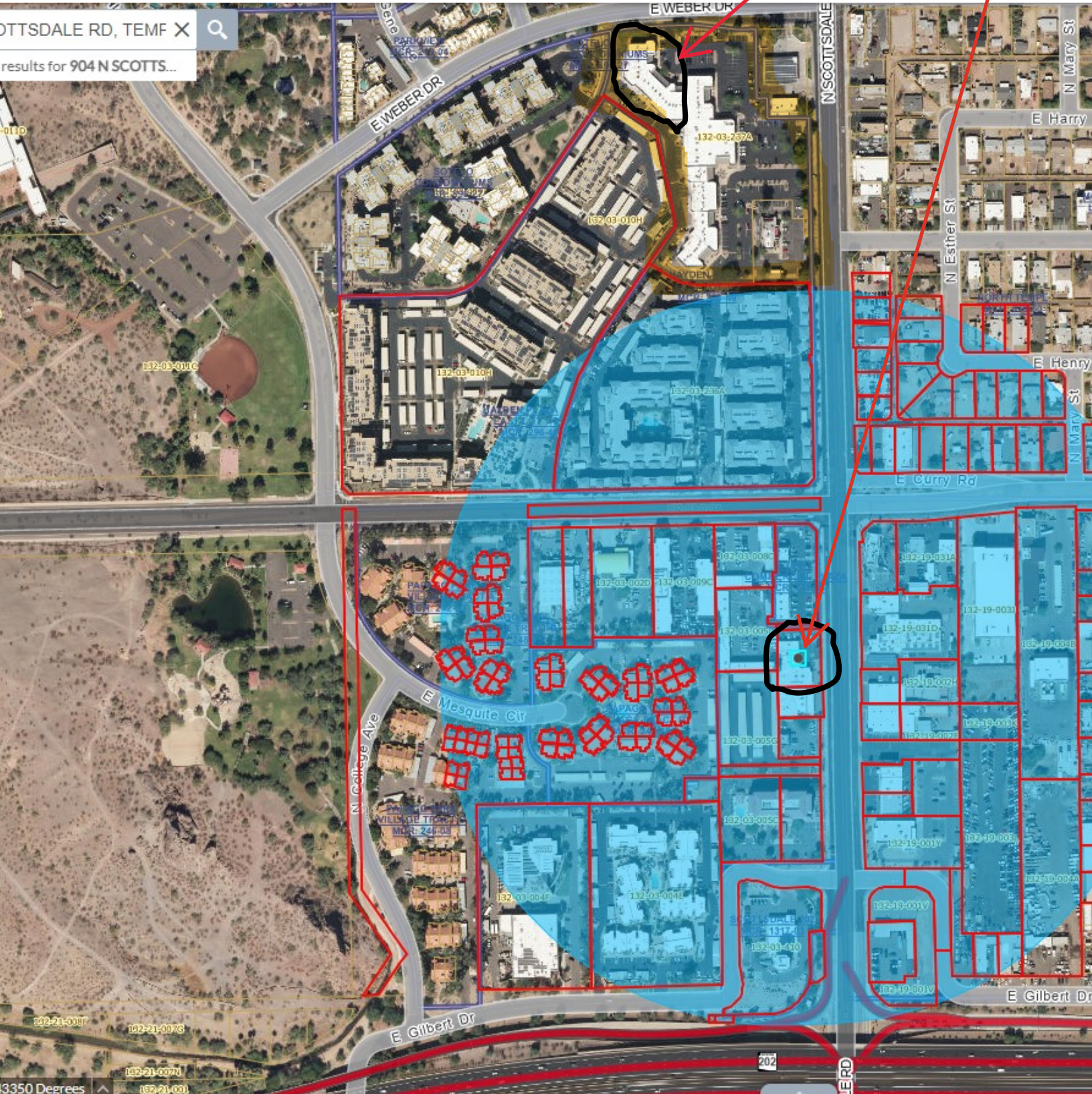


# Exhibit A

Separation Requirement Adjustment Request  
From 1,320 feet to 900 feet.

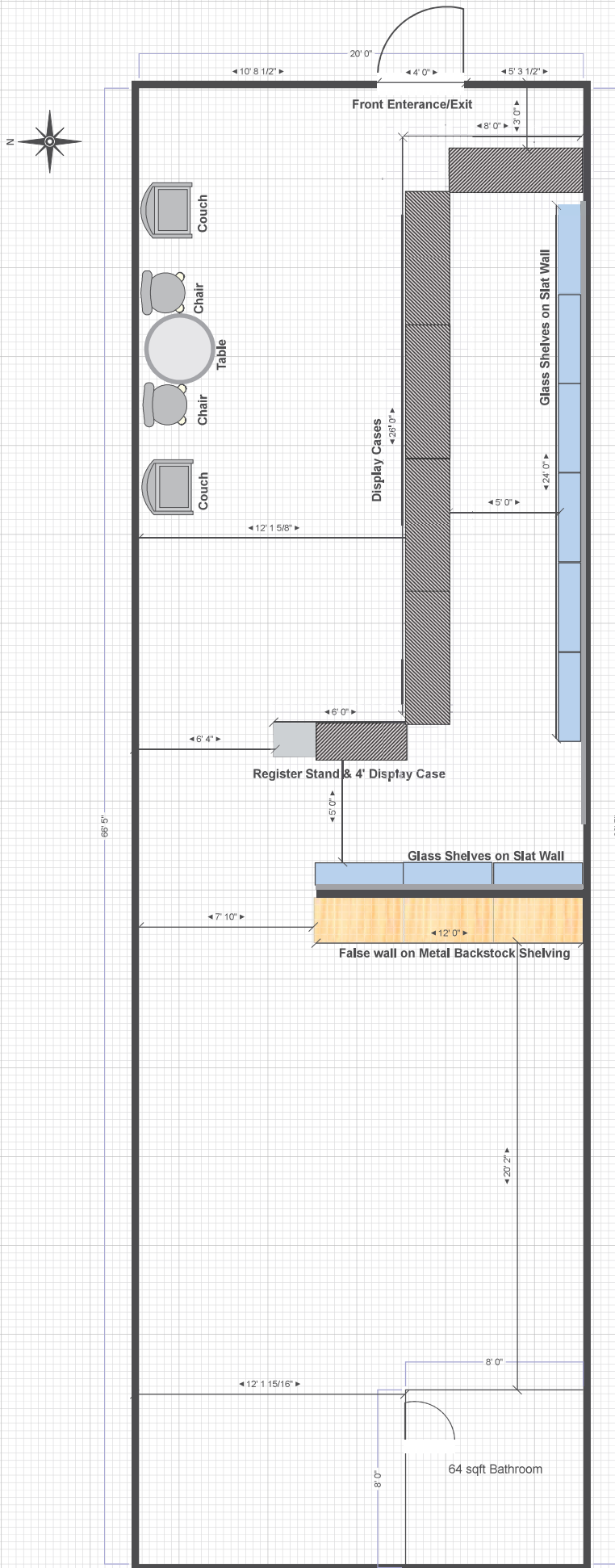
Red Star Vapor

Charter School





RSV Curry, LLC dba Red Star Vapor - Floor Plan



904 N Scottsdale Rd. Suite 106, Tempe, AZ 85281



View to the North sidewalk facing North towards Curry Rd (suite to the West, or left of photographer).

**AVAILABLE**  
**ROSE**  
REAL REAL ESTATE TCN  
**47.0600**  
se.com  
**Y/DAVIS**

**904**





East facing at sidewalk (suite 106 behind photographer)





South facing from suite 106 (ste 106 is on the right of the photograph)





West view, suite facing East





North view towards Curry Rd. (Suite 106 to left of photographer)

**AVAILABLE**  
**LEVROSE**  
COMMERCIAL REAL ESTATE  
**480.947.0600**  
levrose.com  
**DUFFY/DAVIS**

**NextCare**  
URGENT CARE

**Nails + Spa**  
904

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**LEVROSE**  
COMMERCIAL REAL ESTATE  
**480.947.0600**  
levrose.com  
**DUFFY/DAVIS**

## Neighborhood Meeting – Meeting Notes

**Project:** PL240156

**Date:** Monday, August 26th, 2024

**Location:** 904 N Scottsdale Rd, Ste 106, Tempe, Arizona

**Time:** 6:00 p.m.

I, Michael Williams, Director of Human Resources for Red Star Vapor, arrived at the meeting location at approximately 5:00 p.m. to unlock and prepare the suite for the neighborhood meeting. The purpose of the meeting was to discuss my request for a variance to the separation requirements for a tobacco retailer from a school, specifically reducing the required distance from 1,320 feet to 900 feet.

At approximately 5:45 p.m., Lucas Jensen from the City of Tempe arrived to observe the neighborhood meeting.

Lucas and I remained on-site from 6:00 p.m. until approximately 6:45 p.m. Unfortunately, no one attended the meeting to discuss or express any opposition or support for the variance request. Given the absence of attendees, I respectfully request to proceed with the variance process and be placed on the agenda for the upcoming City of Tempe Board of Adjustment Meeting, scheduled for Wednesday, September 25th, 2024.