



**CITY OF TEMPE
BOARD OF ADJUSTMENT**

**Meeting Date: 09/25/2024
Agenda Item: 6**

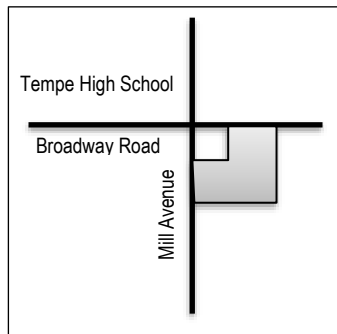
ACTION: Request a variance to reduce the use separation requirement between a tobacco retailer and a public school from 1,320 feet to 250 feet to EXHALE SOCIETY, INC., located at 35 East Broadway Road. The applicant is Rose Law Group.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Deny

BACKGROUND INFORMATION: EXHALE SOCIETY, INC. (PL240244) is proposing to operate a tobacco retailer within a multi-tenant retail center located at the southeast corner of Broadway Road and Mill Avenue. The applicant is seeking relief from the use separation requirements for tobacco retailers, which are required to be no less than a quarter-mile, or 1,320 linear feet, from Tempe High school. The request includes the following:

VAR240004 Variance to reduce the use separation requirement for a tobacco retailer from 1,320 feet to 250 feet.



Property Owner
Applicant
Zoning District
Site Area
Building Area

SEM Investments, LLC
Ryan Hurley, Rose Law Group
CSS (Commercial Shopping and Service)
2.62 acres
14,879 s.f.

ATTACHMENTS: Exhibits

STAFF CONTACT(S): Chris Jasper, Senior Planner (480) 350-8096

Department Director: Jeff Tamulevich, Community Development Director
Legal review by: N/A
Prepared by: Chris Jasper, Senior Planner
Reviewed by: Diana Kaminski, Principal Planner

COMMENTS

The subject site is located at the southeast corner of Mill Avenue and Broadway Road, in the Commercial Shopping and Service (CSS) zoning district. Surrounding uses include office uses to the north, across Broadway Road, assembly and multi-family residential uses to the east, retail and service uses to the south, a pharmacy to the west, across Mill Avenue, and a public high school on the northwest corner of Mill Avenue and Broadway Road.

The applicant is seeking relief from Section 3-423.B of the Zoning and Development Code, which requires that all tobacco retail establishments be located a minimum of 1,320 feet, measured by a straight line, from a lot line of any school, excluding instructional or vocational schools. The Exhale Society is located at 35 E Broadway Road within a 2,948 square-foot suite in the multi-tenant commercial center. Tempe High School is located 250 feet away, as measured from property line to property line, at the opposite corner of the Mill Avenue and Broadway Road intersection (1730 S Mill Ave).

Section 7-121 of the Zoning and Development Code defines Tobacco Retailers as “any person or business who primarily sells or offers for sale, 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.” Because the primary use proposed for the site is analogous to a “Smoking Establishment,” the site is classified as a tobacco retailer, and the aforementioned use separation restrictions apply.

In addition to the Variance, the applicant is required to obtain a Use Permit to operate within the subject zoning district, in addition to regulatory licenses through the City and State.

PUBLIC INPUT

- The applicant held a neighborhood meeting at The Graduate Hotel, located at 225 E Apache Boulevard, from 5:30 to 6:30 p.m. on August 22, 2024. Staff was in attendance.
- One (1) resident attended the meeting and was generally supportive of the Variance request.
- Staff has received one (1) letter of opposition and one (1) letter of support related to this request. The opposition letter indicated concerns associated with the proximity of the business to the school and to her home and homes near the subject site that she rents to families with middle school-aged children. The letter of support was submitted by a neighboring tenant within the commercial center, and stated that undesirable activity within the center decreased since Exhale Society began operation.

CODE ENFORCEMENT

The subject site has been cited by the Code Compliance Division for operating as a tobacco retailer within a quarter-mile of a public high school and for conducting entertainment activities without a Use Permit (see History & Facts).

VARIANCE

The proposed use requires a variance to allow a tobacco retailer within 1,320 linear feet from the lot line of a school, pursuant to Section 3-423 of the Zoning and Development Code, Use Separation Requirements.

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 applicant states in its letter of explanation that the suite in question is located farther from the school than the 250-foot measurement taken from lot line to lot line – however, the measurement from the face of the suite to the high school property building face is approximately 500 linear feet and still fails to meet the quarter-mile threshold required by Code. The applicant also notes the presence of the two arterial roads bounding the site, neither of which represent special circumstances for a commercial use because CSS zoning districts and commercial uses contained therein are almost exclusively located along arterial roads in the City of Tempe. The subject suite is 2,984 square feet in area and is rectangular in shape, and the lot size and shape is typical of a commercial center, and there are no special circumstances related to the property’s size, shape, topography, location, or surroundings. This criteria is not met.

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;* The applicant refers to adjoining uses, including a pharmacy and a bar/restaurant, which are allowed uses within a quarter-mile of a school, but neither fall under the same classification as a tobacco retailer and are thus not subject to the same restrictions. All tobacco retailers are subject to the same use separation requirements in every commercial zoning district other than Residential/Office (R/O), and while the use separation requirement does limit the overall area in which tobacco retailers are allowed to operate, the strict application of the Code is uniformly applied and does not deprive the applicant of privileges enjoyed by properties of the same classification in the same zoning district. For example, there are commercially-zoned approximately a half-mile to the west of the subject site on Broadway Road that are potentially eligible to host tobacco retailers, as are several commercially-zoned properties along the intersection of Rural Road and Apache Boulevard, approximately three-quarters of a mile from the subject site to the northeast. Due to these circumstances, this criteria is not met.
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;* All properties in the same zoning district and within the general vicinity are subject to the same use separation restrictions as they relate to tobacco retailers, and this Variance would constitute a special privilege not available to those properties. This criteria is not met.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.* The applicant refers to a variance case in Phoenix that the city granted, which was subsequently appealed, and the appeal was ultimately overturned by the State Supreme Court in favor of the city (*Pawn 1st, LLC v. City of Phoenix*). Per the Court's ruling, special circumstances are not self-imposed "when they result from externally imposed conditions rather than the owner's actions." The "externally imposed conditions" referenced in the State Supreme Court case were specific physical characteristics that were created due to actions taken by the City of Phoenix through eminent domain. The Court determined that the presence of such pre-existing physical characteristics, if known to an applicant, did not constitute a "self-imposed" condition in an effort to protect an applicants' property rights when "an area variance is required for an intended use allowed on other similarly zoned properties...". This interpretation does not apply to this project because there are no externally-imposed physical conditions that necessitate a Variance application. Tempe High School was constructed in 1953, the commercial center was constructed and opened in 1962, and the Zoning and Development Code section relating to use separation requirements was established in June of 2007, and Exhale Society filed for incorporation with the Arizona Corporation Commission in October of 2023 and began operating illegally in February of 2024. Because the site conditions and the site's proximity to a nearby school is only the result of the business operator's preference. The circumstances necessitating the Variance are self-imposed, and this criteria is not met.

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. This request does not meet the required criteria.

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 for 35 East Broadway, a suite of 2,984 square feet and cannot be transferred or expanded to other areas on this property or elsewhere.
2. 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.
3. A Use Permit for Live Entertainment shall be obtained by January 1, 2025.
4. A Use Permit for a Private Club shall be obtained by January 1, 2025.

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 or purchase from Community Development.

HISTORY & FACTS:

- 1953 Construction of Tempe High School is complete.
- October 8, 1962 The Broadway Plaza commercial center, located at 35 E Broadway, opens.
- February 21, 1985 A Certificate of Occupancy is issued allowing retail sales for 4,498 square feet of building floor area within the Broadway Plaza.
- June 28, 2007 City Council adopts Ordinance 2007.36, establishing a use separation requirement of 1,320 feet, measured in a straight line, from any lot containing a tobacco retailer to the lot line of a charter, private, or public school, excluding instructional or vocational schools.
- October 6, 2023 Exhale Society, Inc. files for incorporation with the Arizona Corporation Commission.
- February 15, 2024 The Code Compliance Division issues a Correction Notice for 35 East Broadway Road (CM240370) for a violation of Section 3-202.A of the Zoning and Development Code. The applicant was instructed to cease all unpermitted cannabis consumption activities on-site.
- March 22, 2024 The Code Compliance Division issues a second Correction Notice for 35 East Broadway Road for a violation of Section 3-202.A and Section 3-423 of the Zoning and Development Code. The applicant was instructed to cease all unpermitted cannabis consumption activities on-site.
- May 17, 2024, The Code Compliance Division issues a Final Correction notice for 35 East Broadway Road for a violation of Section 3-202.A and Section 3-423 of the Zoning and Development Code. The applicant was instructed to cease all unpermitted cannabis consumption activities on-site, or a citation would be issued.
- June 6, 2024 The Code Compliance Division issues a second Final Correction notice for 35 East Broadway Road for a violation of Section 3-202.A and Section 3-423 of the Zoning and Development Code. The applicant was instructed to cease all unpermitted cannabis consumption activities and all unpermitted live entertainment on-site, or a citation would be issued.
- August 21, 2024 The Code Compliance Division issues two citations for 35 E Broadway Road for violations related to Section 3-202.A of the Zoning and Development Code, including operating a tobacco retailer within 1,320 feet of a public school and conducting live entertainment without a Use Permit.

August 22, 2024 Applicant held a neighborhood meeting.

September 25, 2024 This request is scheduled to be heard by the Board of Adjustment.

ZONING AND DEVELOPMENT CODE REFERENCE:

[Section 6-309 Variances](#)

[Section 4-423 Use Separation Requirements](#)



DEVELOPMENT PROJECT FILE

for

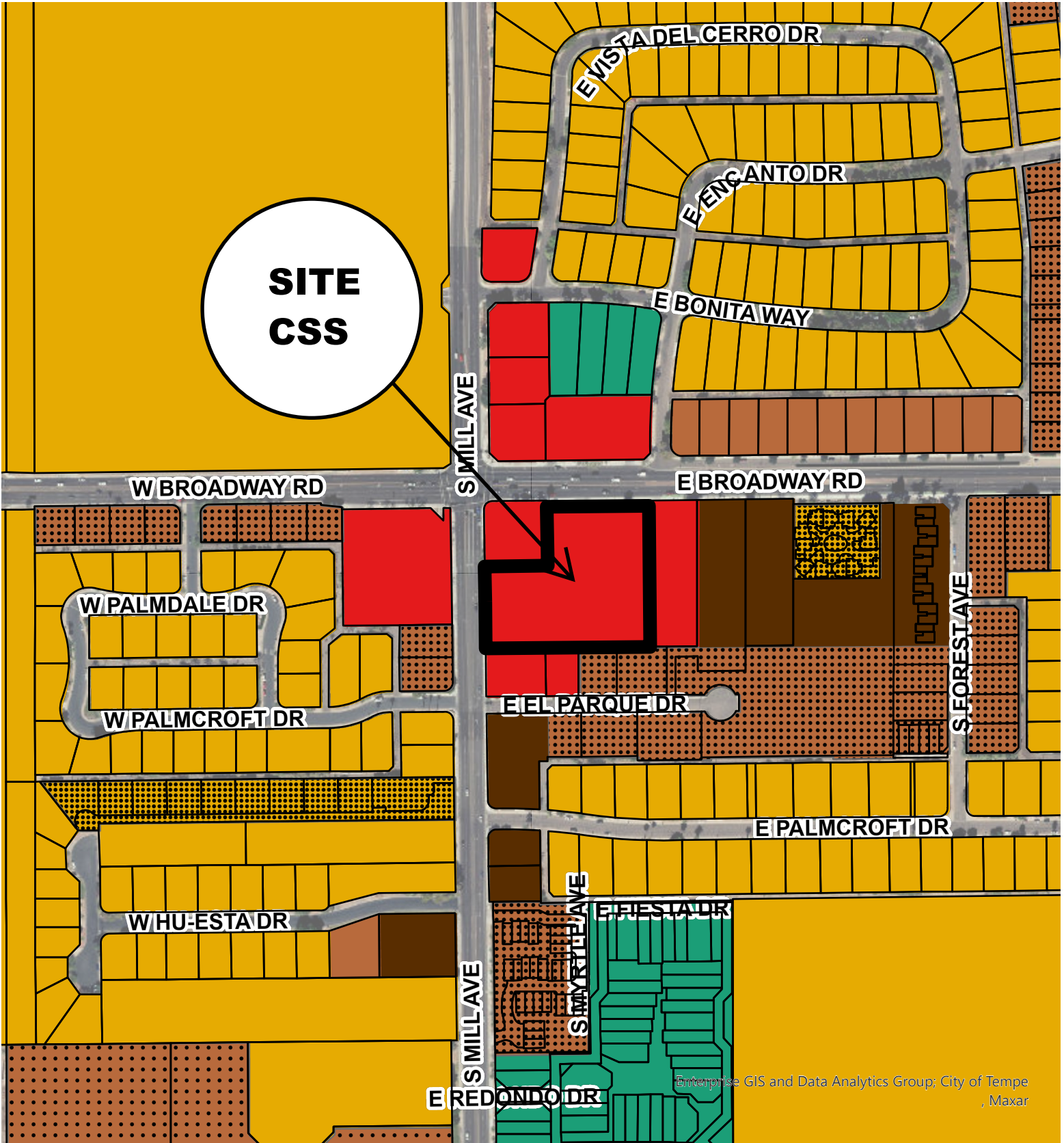
EXHALE SOCIETY INC









(PL240244)

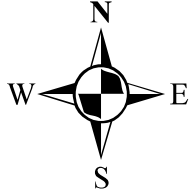
ATTACHMENTS:

1. Zoning Map
2. Aerial Map
- 3-8. Letter of Explanation
- 9-10. Site Plan
11. Floor Plan
12. Building Elevations
- 13-17. Site Context Photos
- 18-36. Neighborhood Meeting Summary
- 37-38. Public Input

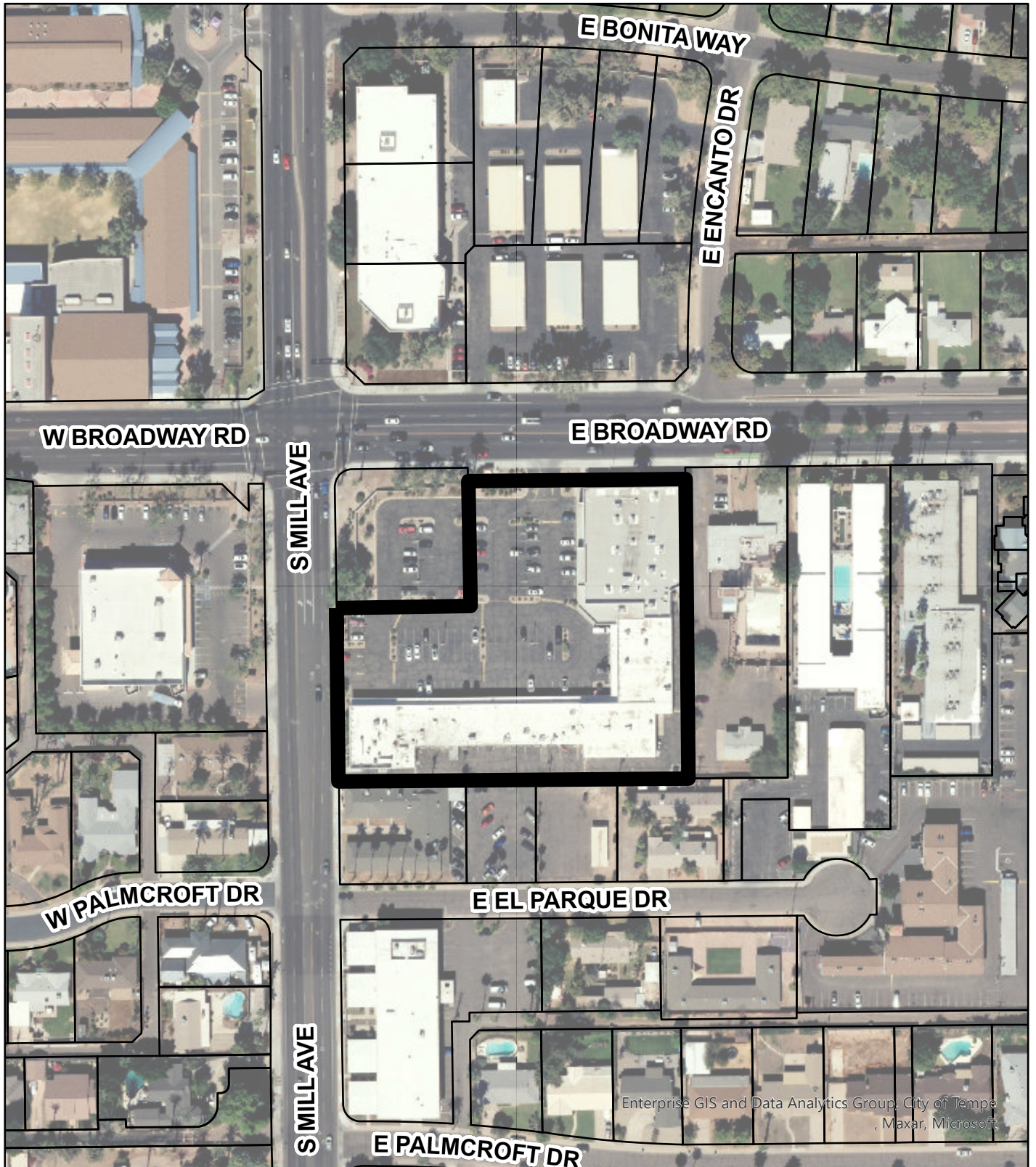
**SITE
CSS**



- | | |
|--|--|
|  Commercial Shopping and Services (CSS) |  Multi-Family Residential (R-2) |
|  Residential/Office (RO) |  Multi-Family Residential Restricted (R-3R) |
|  Single-Family Residential (R1-6) |  Multi-Family Residential Limited (R-3) |
|  Single-Family Residential Planned Area Dev (R1-PAD) |  Multi-Family Residential General (R-4) |

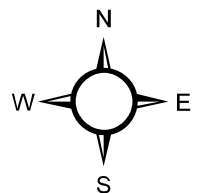


Enterprise GIS and Data Analytics Group; City of Tempe, Maxar



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

Aerial Map



ROSE LAW GROUP^{pc}

RICH ■ CARTER ■ FISHER

M. RYAN HURLEY
7144 E. Stetson Drive, Suite 300
Scottsdale, AZ 85251
Phone 480.944.4191 Fax 480.505.3925
RHurley@RoseLawGroup.com
www.RoseLawGroup.com

July 8, 2024

Reviewer
Community Development Department
City of Tempe
31 East 5th Street, Garden Level
Tempe, Arizona 85281

Re: Variance Application to Permit Tobacco Retailer within a Quarter of a Mile from a School for the Property Located at the Southeast Corner of Broadway Road and Mill Avenue, Tempe

Dear Review:

On behalf of Exhale Society, Inc. (the “Owner” and/or “Operator”), Rose Law Group pc is pleased to submit for your review and comment this variance request to permit a tobacco retailer within a quarter of a mile from a school for the property located at the southeast corner of Broadway Road and Mill Avenue, addressed as 35 E. Broadway Road, and identified as a portion of APN: 133-23-021A (the “Site”) ([Exhibit A](#)). The Site is a portion of a larger retail strip mall that contains nine (9) retail businesses, and the Operator leases a space within this development. The Site is zoned Commercial Shopping and Services (CSS) and is designated as Mixed-Use Low-Moderate and up to 25 du/ac by the City of Tempe’s (“City”) General Plan 2050.

The requested variance would permit a tobacco retailer whose sole operating business is a 21 and older private club for the consumption of marijuana products within the safety and security of the Site (the “Project”). Please note that the sale of marijuana, marijuana products, tobacco products, and alcohol will not be for sale on the Site. The sole use of the Site is for a private club that will offer events for its patrons on an occasional basis and limited retails sale for snacks and non-alcoholic beverages. Exhale Society does not want to, nor do they ever intend to sell tobacco projects.

A. Background

Arizona voters approved the Safe and Smart Act in November 2020 which legalized marijuana for adult personal use creating a myriad of new and undefined uses for cities to address in their land use and development code. While this law created some regulatory framework and boilerplate laws for Arizonian cities to adopt is also left ambiguity for cities to define and interpret as new uses arose from this unprecedented approval. One such use is the consumption of marijuana products within semi-public spaces.

Exhale Society sees the need within the City for people of a legal age (21 and older) to safely consume marijuana in a secure space that is other than their private property. One such reason is being in close proximity to Arizona State University, many students, teachers, and visitors rent their homes, have roommates, or for various other reasons do not have a safe, welcoming, and secure environment to consume marijuana. Another is because of the extreme heat events that the Phoenix Valley is experiencing and the need for cool indoor space where people can consume the products. Exhale Society creates a space where people can responsibly consume marijuana that is closely monitored by experienced staff.

Due to the fact that marijuana private clubs are one of the uses that was left ambiguous by the passing of the Save and Smart Act, the Owner started operations at the Site presuming that because private clubs are permitted in the CSS zoning districts that this was an allowed use. Since then, the City has determined through informal and sometimes conflicting interpretations of the Zoning Code that the Project most closely fits within the “Tobacco Retailer” use resulting in, unfortunately, this existing and thriving business does not meet certain distance standards related to this use, more specifically Section 3-423(B) which states:

***Tobacco Retailer.** Tobacco Retailers shall not be located on a lot within one thousand three hundred twenty (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.*

B. Request

To facilitate the Project at the Site, the Owner respectfully requests to reduce the separation requirement of the Site as outlined in Section 3-423(B) of the Zoning Code from adjacent schools to 250’.

Upon granting of this variance request, the Owner would then need to seek a Use Permit to permit the Project as a tobacco retailer in the CSS zoning district, as outlined in Table 3-202A.

C. Variance Tests

- a. Special Circumstances Applicable to the Property:** *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings; and*

The restrictive separation requirements for tobacco retailers significantly limit the commercial areas within the City where this use would be permitted by-right. The development patterns of the City of Tempe, and the larger Phoenix Metro area, developed along a super grid (defined as major arterials on a one mile by one mile grid), place all commercial zoning along major arterials. This development pattern has resulted in almost all major commercial areas in Tempe, that are not larger

master-planned developments, being within a quarter mile of a school. Due to this, Exhale Society is incredibly limited in where they can site this use. Because this use is not defined or contemplated in the Zoning Ordinance, a variance is needed to accommodate this use effectively.

The Site presents a unique combination of characteristics that necessitate the need for a variance to operate as a tobacco retailer. The Site is a portion of a larger irregularly shaped parcel, and the subject parcel is located within the heart of the retail center, leasing only 2,984 square feet of the 114,301 square foot parcel. This configuration places the proposed tobacco retailer further from nearby schools than if the distance were measured from parcel boundary to parcel boundary. This measurement discrepancy underscores the need for a variance to accommodate the actual use of the space rather than adhering strictly to the less accurate parcel boundary measurements. Additionally, along this vein, while there are schools located within a quarter mile of the Site as the crow flies, the actual path someone would need to take in order to get to the Site is much greater than this distance and includes the natural buffer of two major arterials that effectively create a barrier to even get close to the proposed use.

- b.** Deprivation of Privileges: *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; and*

The strict application of this Code will deprive this property of privileges enjoyed by other property of the same classification in the same zoning district. Applying the zoning code strictly would deprive this property of privileges that other properties in the same classification and zoning district enjoy. Other retail properties in the direct vicinity, such as Walgreens and Mill Social, which sell mind-altering medications and beverages, are able to sell their wares in closer proximity to schools.

Exhale Social submitted a security plan with this application that includes bouncers, enhanced ID verification, and full camera coverage, which is at least as strict as any security for Walgreens, which sells pharmaceutical-grade opiates and other federally regulated narcotics and is open to people of all ages. Exhale Society is only for people 21 and older. These properties can operate more freely without needing a variance, giving them greater commercial property rights.

The restrictive separation requirements for tobacco retailers, specifically the 1,320-foot distance from any school providing elementary or secondary education, severely limit the areas within the City where such a use is permitted by-right. The development patterns of the City of Tempe, and the larger Phoenix Metro area, which are aligned along a super grid of major arterials on a one mile by one mile grid, place almost all commercial zoning along major arterials. As a result, nearly all major commercial areas in Tempe that are not part of larger master-planned developments are within a quarter mile of a school.

Without the variance, this property would remain underutilized compared to other properties in the zoning district that do not face such stringent separation requirements. This restriction places

the property at an unfair disadvantage, preventing it from achieving its full commercial potential and depriving it of the same opportunities available to similar properties.

- c. Consistency with Limitations on Other Properties: *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; and*

Granting this variance will not constitute a grant of special privileges that are inconsistent with the limitations placed upon other properties in the vicinity and zone. Instead, it will bring this property in line with the operational standards of similar retail properties in the area. The variance will ensure that the property can be used in a manner consistent with other commercial properties, thereby maintaining the district's uniformity and supporting local economic activity.

Other retail establishments in the area operate without the constraints imposed by this property's unique characteristics. Allowing the variance ensures that this property can compete fairly and contribute to the commercial vibrancy of the neighborhood. This adjustment aligns the property's use with those of other similarly situated properties, promoting a balanced and equitable commercial environment.

Moreover, the variance supports the city's development goals by ensuring that properties are used effectively and contribute to the community's economic health. The adjustment will not grant an undue advantage but rather correct an imbalance caused by the unique features of the property and the restrictive separation requirements for tobacco retailers.

- d. Special Circumstances Not Self-Imposed: *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.*

The special circumstances that necessitate this variance were not self-imposed by the property owner. These circumstances arise from the inherent characteristics of the property and the broader city development patterns.

In the case of Pawn 1st, LLC v. City of Phoenix, the Court of Appeals established that special circumstances are not self-imposed when they result from externally imposed conditions rather than the owner's actions. Similarly, the restrictive separation requirements for tobacco retailers are a result of an entirely new legal use created by the Smart and Safe Act, city zoning ordinances and the existing development patterns, not decisions made by the property owner. These external conditions create the need for a variance to use the property effectively.

The property owner leased the property with these pre-existing conditions, seeking to use it in a manner permitted to other similarly situated properties. The special circumstances are a result of the broader development patterns and zoning requirements imposed by the city, not by any action taken by the property owner. Therefore, the variance request is justified based on conditions beyond the owner's control, aligning with the precedent set by the court.

D. Operational Notes

To mitigate concerns related to proximity to schools, since not technically germane to the variance request, we would like to note the following:

- Exhale Society does not advertise on the outside of its space, including signage, about what activities take place within the building.
- Exhale Society operates as a private club, which includes membership substantial fees, so full applications and payments, including high scrutiny of proper State issued identification, are required as part of the membership.
- You are unable to see into the store from outside due to glass shading.
- Proper smoke mitigation and filtering take place on site, so there is no offsite smoke or odor generated from the use.
- There is always a staff member (i.e., bouncer) ensuring proper check-in and identification is in place.
- Exhale Society has a strict code of conduct which prohibits overconsumption, obnoxious or dangerous activities and actions, and prohibits guns and alcohol.
- Exhale Society monitors guests' behavior and will contact the police if they are suspicious of someone driving while under the influence.
- Exhale Society has been working closely with all tenants within the development to ensure all point specific concerns are mitigated.
- Exhale Society is willing to meet with local school district superintendents and police to ensure concerns are addressed within the enclosed Security Plan.

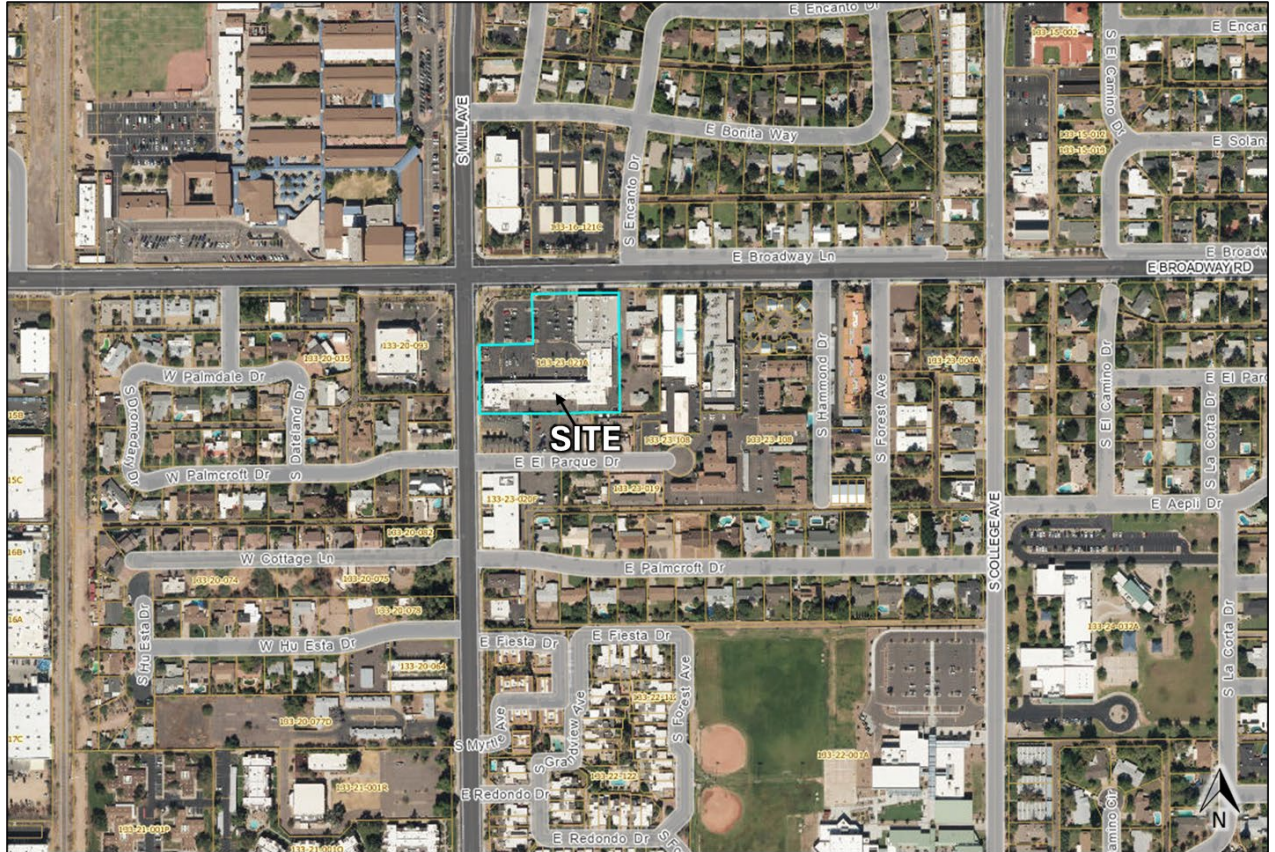
E. Conclusion

To summarize, the requested variance is supported by hardships unique to this property, preventing the Owners from fully enjoying its benefits. Approval of this variance will not grant the property special conditions unavailable to similar properties, nor does it represent a self-imposed hardship. Instead, granting this variance will allow a much-needed use in the community that struggles to fit within the strict application of the Zoning Code. The variance does not permit the Tobacco Retailer by right; further entitlements are needed from the City for them to operate. Granting this variance will not cause any negative off-site impacts but will instead facilitate the City's growth as a desirable destination, offering new and innovative businesses that are well-managed, safe, and secure.

Sincerely,

M. Ryan Hurley

Exhibit A
Site Aerial





EXHALE SOCIETY

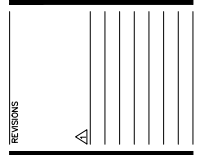
35 E BROADWAY RD. TEMPE AZ 85282

EXHALE

CONTRACT NOTES:
These drawings and specifications are copyrighted and subject to copyright protection in the "architectural work" under sec. 102 of the "copyright act, 17 U.S.C. as amended December 1990. The protection, including the right to sue for infringement, in the drawings and specifications of these drawings and specifications may require the assistance of an attorney, building official, and/or municipal authority.

EXHALE SOCIETY
35 E BROADWAY RD.
TEMPE, AZ 85282

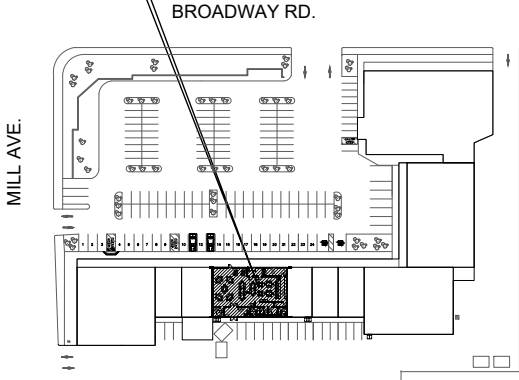
TITLE SHEET



GENERAL NOTES

1. THE CONTRACTOR SHALL FIELD VERIFY ALL CONDITIONS AND DIMENSIONS PRIOR TO ANY WORK AND SHALL BE RESPONSIBLE FOR ALL WORK AND MATERIALS INCLUDING THOSE FUNDED BY THE OWNER.
2. ALL CONSTRUCTION MUST COMPLY WITH ALL THE LOCAL GOVERNING CODES.
3. THE CONTRACTOR SHALL REPORT TO THE ARCHITECT ANY ERROR OR OMISSION HE MAY DISCOVER IN THE DRAWINGS OR ANY INCONSISTENCY BETWEEN THE DRAWING AND FIELD CONDITIONS, PRIOR TO CONSTRUCTION SO THAT THE ARCHITECT MAY ISSUE A WRITTEN CLARIFICATION IN A TIMELY MANNER.
4. DO NOT SCALE DRAWINGS.
5. CONTRACTOR IS RESPONSIBLE FOR PROVIDING ADEQUATE BLOCKING AT THE REQUIRED LOCATIONS FOR ALL WALL MOUNTED SHELVING, TABLES, WALL MOUNTED FIXTURES, WALL MOUNTED SINKS, ETC.
6. ALL LABOR AND MATERIALS USED TO ACCOMPLISH DESIGNATED WORK SHALL BE COORDINATED WITH OWNER.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR INITIATING, MAINTAINING, AND SUPERVISING ALL SAFETY PRECAUTIONS IN CONNECTION WITH THE WORK AND COORDINATE SUCH WITH THE OWNER.
8. CONTRACTOR IS RESPONSIBLE FOR COORDINATING ALL ARCHITECTURAL, MECHANICAL, ELECTRICAL, AND PLUMBING SO TO ENSURE THAT REQUIRED CLEARANCES FOR INSTALLATION AND MAINTENANCE OF ALL EQUIPMENT ARE PROVIDED.
9. ALL CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH GOOD CONSTRUCTION PRACTICES, CURRENT CITY AND BUILDING SAFETY CODES AND STANDARDS SET FORTH BY THE STATE REGISTER OF CONTRACTORS. ALL WALLS SHALL BE CONSTRUCTED STRAIGHT AND TRUE.
10. THE CONTRACTOR SHALL VISIT THE PROJECT SITE AND BECOME FAMILIARIZED WITH ALL THE CONDITIONS AFFECTING THE CONSTRUCTION OF THIS PROJECT.
11. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURERS RECOMMENDATIONS AND SPECIFICATIONS.
12. THE CONTRACTOR SHALL KEEP ALL AREAS OF CONSTRUCTION CLEAN AND FREE OF DEBRIS. AFTER CONSTRUCTION CONTRACTOR SHALL PROVIDE A FINAL CLEAN UP.

EXHALE SOCIETY



VICINITY MAP

SCALE: NTS

BUILDING CODES

THE CITY OF TEMPE HAS ADOPTED THE FOLLOWING CODES:
 2018 INTERNATIONAL BUILDING CODE
 2018 INTERNATIONAL RESIDENTIAL CODE
 2018 INTERNATIONAL PLUMBING CODE
 2018 FUEL GAS CODE
 2018 INTERNATIONAL MECHANICAL CODE
 2018 INTERNATIONAL GREEN CONSTRUCTION CODE (OPTIONAL)
 2018 INTERNATIONAL ENERGY CONSERVATION CODE (OPTIONAL)
 2018 INTERNATIONAL EXISTING BUILDING CODE
 2018 NATIONAL ELECTRIC CODE

SCOPE OF WORK

ALL EXISTING TO REMAIN.
 TENANT SEEKING CHANGE OF USE PERMIT TO PLAY LIVE MUSIC.

PROJECT NARRATIVE

THIS PROJECT APPLICATION IS FOR THE DEVELOPMENT OF A TENANT IMPROVEMENT LOCATED AT 35 E BROADWAY RD, TEMPE AZ. TENANT IS SEEKING A CHANGE OF USE PERMIT TO PLAY LIVE MUSIC.

PROJECT INFORMATION

PROJECT..... EXHALE SOCIETY
 35 E BROADWAY RD
 TEMPE, AZ 85282

PROJECT OWNER.... JOHN AITON
 E. JOHN@EXHALESOCIETY.COM

DEVELOPMENT CONSULTANT.... STUDIO PRING
 PHOENIX AZ 85003
 e.STUDIOPRING@INTERIORS.COM

PROJECT DESCRIPTION.....CHANGE OF USE PERMIT

SUBDIVISION..... TEMPE ACRES
 LOT #..... 6
 ZONING..... C
 MCR..... 3021

LEGAL DESCRIPTION.....TEMPE ACRES LOT 6 EX N 7F & ALSO LOTS 1 2 3 EX BEG NW COR LOT 1 S 7 E 27F TO POB TH E 136F S 150.08FV 150 F N 130 F TH NLY 2.9F NELY ALG OUR 31.36F TO POB EX RD PER DKT 300-360 B EX N 13F RD P/F 93-90261

PARCEL NUMBER..... 133-23-015B & 133-23-021A
 LOT AREA..... 114,301 SQ.FT./14,879 SQ.FT.

BUILDING HEIGHT..... 15'-0" FFE. (30' MAX)

PARKING..... EXISTING; NO MODIFICATIONS

CONSTRUCTION TYPE:..... III-N
 OCCUPANCY:..... B-2
 GROSS LEASED PREMISES:..... 2948 SQ. FT
 OCCUPANT LOAD:

USE	SQ/FT	ALLOWANCES	LOAD
SEATING AREA	1590	15	106
BAR	254	25	2
MERCANTILE/ RETAIL	386	100	4
COMMON	349	200	2
TOTALS:			114

EXIT REQUIREMENTS:..... TWO (2) EXITS REQ., TWO (2) EXITS PROVIDED

EXIT ILLUMINATION:.....EMERGENCY EXIT ILLUMINATION SHALL BE PROVIDED

PLUMBING:.....AT LEAST TWO BATHROOMS REQUIRED BY CODE

SANDPIPES:.....N/A

FIRE SPRINKLERS/ FIRE ALARMS:.....AN AUTOMATIC FIRE SPRINKLER SYSTEM IS EXISTING WITHIN THIS SPACE. THE CONTRACTOR SHALL REWORK AND MODIFY FOR NEW ROOM LAYOUT AND CEILING HEIGHTS IN CONFORMANCE WITH N.F.P.A. 13 STANDARDS AND LOCAL CODES & REGULATIONS. ALL WORK SHALL BE DONE BY A QUALIFIED SPRINKLER CONTRACTOR WHO SHALL DESIGN AND PREPARE SHOP DRAWINGS AND SUBMIT THEM TO THE LANDLORD FOR APPROVAL PRIOR TO FABRICATION AND INSTALLATION. SPRINKLER CONTRACTOR SHALL BE LANDLORD APPROVED. HEADS IN CEILING TILES TO BE CENTERED IN TILES WHEN IN A PUBLIC AREA.

EXHALE

GENERAL NOTES:
 These drawings and specifications are copyrighted and legal in copyright protection on "architectural work" under sec. 102 of the "copyright act" 17 U.S.C. as amended December 1976. The protection, including the right to sue for infringement, shall extend to the author, his heirs, assigns, and successors in title. Any reproduction, distribution, or use of these drawings and specifications may result in criminal liability, civil liability, and/or monetary penalty.

EXHALE SOCIETY
 35 E. BROADWAY RD.
 TEMPE, AZ 85282

SITE PLAN

GENERAL SITEPLAN NOTES

1. ALL NEW UTILITIES WILL BE PLACED UNDERGROUND.
2. STRUCTURES AND LANDSCAPING WITHIN A TRIANGLE MEASURED BACK 10' FROM THE PROPERTY LINE AND 20' ALONG THE PROPERTY LINE ON EACH SIDE OF THE DRIVEWAYS ENTRANCES WILL BE MAINTAINED AT A MAXIMUM HEIGHT OF 3'.
3. STRUCTURES AND LANDSCAPING WITHIN A TRIANGLE MEASURING 33' X 33' ALONG THE PROPERTY LINES WILL BE MAINTAINED AT A MAXIMUM HEIGHT OF 3'.
4. ANY LIGHTING WILL BE PLACED SO AS TO DIRECT LIGHT AWAY FROM ADJACENT RESIDENTIAL DISTRICTS AND WILL NOT EXCEED ONE FOOT CANDLE AT THE PROPERTY LINE. NO NOISE, ODOR, OR VIBRATION WILL BE EMITTED AT ANY LEVEL EXCEEDING THE GENERAL LEVEL OF NOISE, ODOR, OR VIBRATION EMITTED BY USERS IN THE AREA OUTSIDE THE SITE.
5. OWNERS OF PROPERTY ADJACENT TO PUBLIC RIGHTS-OF-WAY WILL HAVE THE RESPONSIBILITY FOR MAINTAINING ALL LANDSCAPING LOCATED WITHIN THE RIGHTS-OF-WAY, IN ACCORDANCE WITH THE APPROVED PLANS.
6. ALL ROOFTOP EQUIPMENT AND SATELLITE DISHES SHALL BE SCREENED TO THE HEIGHT OF THE TALLEST EQUIPMENT.
7. ALL SERVICE AREAS SHALL BE SCREENED TO CONCEAL TRASH CONTAINERS, LOADING DOCKS, TRANSFORMERS, BACKFLOW PREVENTERS AND OTHER MECHANICAL OR ELECTRICAL EQUIPMENT FROM EYE LEVEL ADJACENT TO ALL PUBLIC STREETS OR ADJACENT RESIDENTIAL AREAS.
8. BARBED, RAZOR, OR CONCERTINA WIRE (OR SIMILAR) SHALL NOT BE USED ON THIS SITE WHERE VISIBLE FROM PUBLIC STREETS OR ADJACENT RESIDENTIAL AREAS.
9. ALL SIGNAGE REQUIRES SEPARATE REVIEWS, APPROVALS, AND PERMITS. NO SIGNS ARE APPROVED PER THIS PLAN.

KEYED NOTES

1. OUTLINE OF EXISTING BUILDING - SEE FLOOR PLAN
2. INDICATES AREA OF TENANT IMPROVEMENT - SEE FLOOR PLAN
3. INDICATES FUTURE TENANT SPACE - N.I.C.
4. EXISTING STRUCTURAL POST TO REMAIN
5. EXISTING WALKWAY TO REMAIN
6. EXISTING CURB TO REMAIN
7. EXISTING PARKING STALL TO REMAIN
8. EXISTING H.C. ACCESSIBLE PARKING STALL
9. EXISTING WHEEL STOPS TO REMAIN
10. EXISTING PIPE BOLLARD TO REMAIN
11. EXISTING TRANSFORMER SHOWN FOR REFERENCE ONLY
12. EXISTING GAS METER - SHOWN FOR REFERENCE ONLY
13. EXISTING ELECTRICAL - SHOWN FOR REFERENCE ONLY
14. EXISTING LANDSCAPED AREA TO REMAIN
15. INDICATES EXISTING WALKWAY
16. INDICATES EXISTING PAVING
17. EXISTING DUMPSTERS.

SITE DATA:

PROJECT ADDRESS: EXHALE SOCIETY
 35 E BROADWAY RD.
 TEMPE, AZ 85282

PARCEL NUMBER: 133-23-015B & 133-23-021A

PROPERTY CONTACT: JOHN AITON
 EMAIL: JOHN@EXHALESOCIETY.COM

MCR NUMBER: 3021

LEGAL DESCRIPTION: TEMPE ACRES LOT 6 EX N 7F & ALSO LOTS 1 2 3 EX BEG NW COR LOT 1 S 7 F E 27F TO PDB TH E 130F S 150F BY N 130 F TH NLY 2.9F NELY ALG CUR 31.36F TO PDB & EX RD PER DKT 3010-560 B EX N 15F RD P/F 93-900261

SUBDIVISION: TEMPE ACRES

LOT NUMBER: 6

ZONING: C

S,T/R: 27 1N 4E

TOTAL SQ/FT: 114,301 SQ.FT./14,879 SQ.FT.

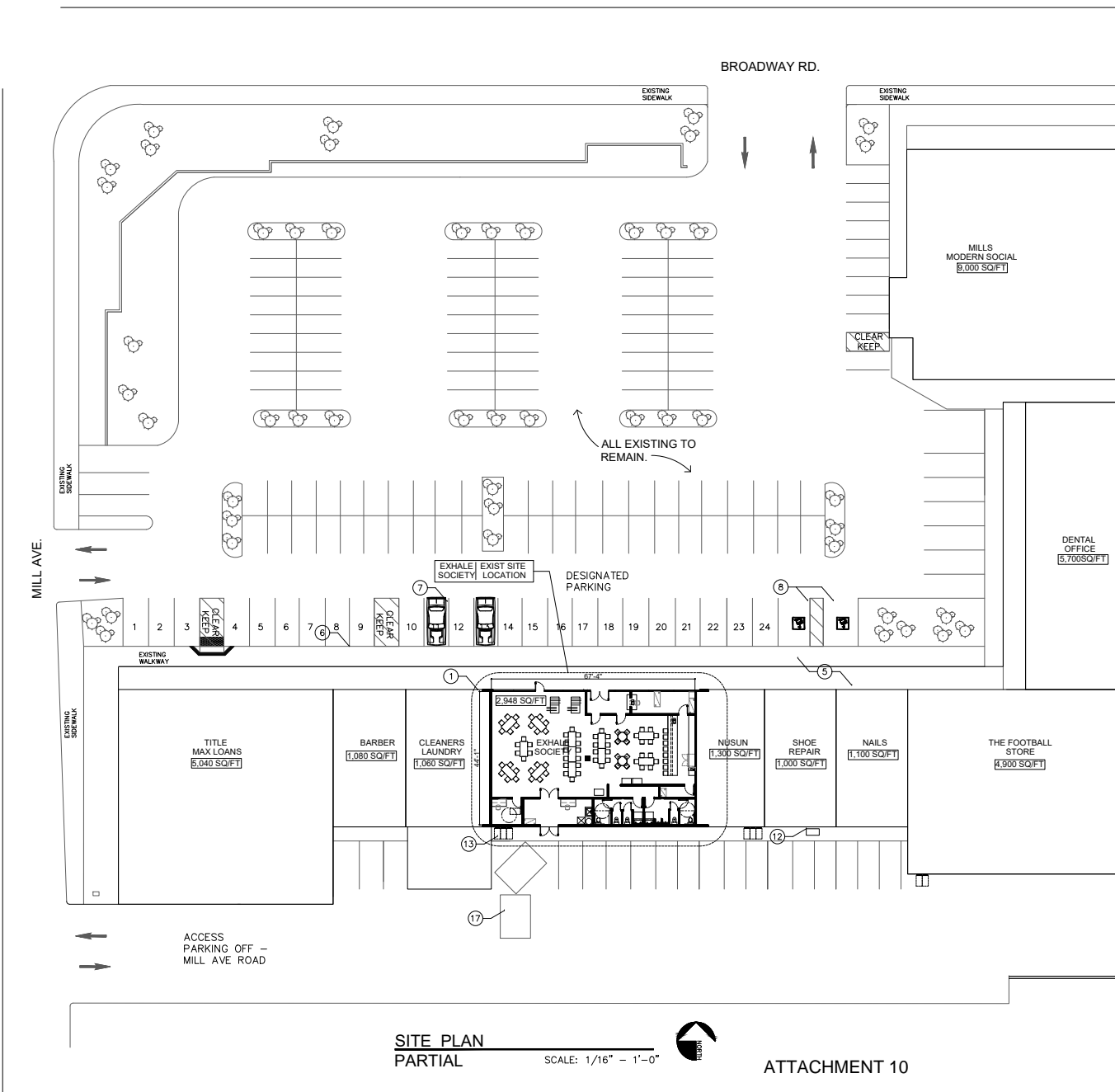
EXISTING LEASED SQFT: 2,984 SQ.FT.

PARKING: EXISTING- NO MODIFICATIONS.



STUDIO
 PRING

DATE: 5/28/2024 SHEET:
 SCALE: 1/16"=1'-0"
 DRAWN BY: RCP
 PROJECT No.: EXHALE 2nd 4



SITE PLAN
 PARTIAL
 SCALE: 1/16" = 1'-0"

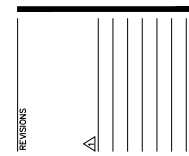
ATTACHMENT 10

EXHALE

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EXHALE SOCIETY
35 E. BROADWAY RD.
TEMPE, AZ 85282

FLOOR PLAN



STUDIO PRING

DATE: 5/28/2024 SHEET:
SCALE: 1/4" = 1'-0"
DRAWN BY: RSP
PROJECT No.: EXHALE 344 4

GENERAL NOTES:

1. ALL DIMENSIONS ARE FROM FACE OF DRYWALL, UNLESS OTHERWISE NOTED.
2. ALL GYPSUM BOARD USED SHALL BE 5/8" TYPE "X" FIRE TAPED.
3. ALL PLYWOOD, PARTICLE BOARD, WOOD BLOCKING, AND FRAMING USED SHALL BE FIRE RETARDANT & STAMPED NON-COMBUSTIBLE.
4. PLACE AND FINISH ALL NEW MATERIALS SO AS TO PROVIDE A SMOOTH & INTEGRAL TRANSITION TO EXISTING FINISHES & MATERIALS.
5. PROVIDE CUTOUTS & TIPS AS REQUIRED TO ACCOMMODATE EQUIPMENT AS SUPPLIED BY OWNER. VERIFY SIZES AND SPECIFICATIONS WITH ACTUAL EQUIPMENT SUPPLIED ON SITE PRIOR TO CUTTING.
6. PROVIDE ADDITIONAL FRAMING/BRACING FOR ALL WALL MOUNTED EQUIPMENT. CHECK SHOP DRAWINGS OF ALL EQUIPMENT PRIOR TO INSTALLATION.
7. GENERAL CONTRACTOR TO PROVIDE REQUIRED FIRE EXTINGUISHER(S) PER CODE.
8. NOT USED
9. FIRE SPRINKLERS: ADDITIONS & MODIFICATIONS AS REQUIRED BY CODE AND NFPA PARAPHE 13. SPRINKLER HEADS CENTERED WITHIN CEILING BEAMS. ANY MODIFICATIONS TO BE DONE BY LANDLORD'S SPECIFIED SPRINKLER CONTRACTOR. ALL COSTS FOR SPRINKLER RE-LOCATION TO CONFORM WITH FIT OUT DESIGN ARE ON THE TENANT.
10. SEE MECHANICAL AND ELECTRICAL SHEETS FOR ALL FUTURE SPECIFICATIONS, WIRING, AND POWER REQUIREMENTS.
11. NEWLY INSTALLED OR RELOCATED DOORS MUST HAVE LEVER TYPE HARDWARE OR OTHER SHAPE WHICH WILL PERMIT OPERATION BY WRIST OR ARM PRESSURE AND WHICH DOES NOT REQUIRE TIGHT GRASPING.
12. ALL DOORS TO PROVIDE 32" MIN. CLEAR OPENING WHEN OPENED TO 90 DEGREE POSITION.
13. FLOORS IN FOOD PREPARATION AREA, DISH WASHING AREA, SERVICE AREA, JANITORIAL AREA, STORAGE AREA, AND ANY AREA WHERE FOR EQUIPMENT IS PLACED SHALL BE SMOOTH, EASILY CLEANABLE, WASHABLE, DURABLE, AND OF COMMERCIAL GRADE MATERIAL AND SHALL HAVE A MINIMUM 3/8" RADIIUS INTEGRAL COVE BASE EXTENDING AT LEAST 4" UP THE WALL. GROUT SPACING FOR TILE SHALL NOT EXCEED 1/4" AND SHALL BE SEALED.
14. GC TO CONTACT NEPLINE DESIGN FOR ADDITIONAL INFORMATION PRIOR TO BIDDING CABINETS.
15. CONTRACTOR SHOULD SUBMIT SHOP DRAWINGS FOR APPROVAL.
16. TENANT'S GC TO COMPLETE SITE VISIT AND VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS - GC TO REVIEW TENANT'S LEASE DURING BID PROCESS TO DETERMINE RESPONSIBILITIES.
17. FLOOR SINKS SHALL BE INSTALLED FLUSH WITH THE FLOOR SURFACE AND BE LOCATED SO AS TO BE READILY ACCESSIBLE FOR CLEANING AND REPAIR.
18. WATERPROOF MEMBRANE MUST BE WATER TESTED & APPROVED BY ON-SITE OPERATING MANAGER.
19. SPRINKLER HEADS AT GYPSUM BOARD CEILINGS MUST BE FULLY RECESSED AND COVERED WITH METAL PLATES FINISHED TO MATCH ADJACENT SURFACE. CENTER SPRINKLER HEADS IN CEILING WHERE APPLICABLE.
20. DEMISING PARTITIONS SHALL BE OF FIRECODE "X" SHEETROCK, TAPED AND SEALED TO DECK ABOVE.
21. SUPPORT WIRING FOR LAY-IN CEILING SHALL NOT BE ATTACHED TO ANY OF THE LANDLORD'S MECH, ELEC, PLUMB, OR FIRE PROTECTION PIPING OR EQUIPMENT.

KEYED NOTES

1. EXISTING WALLS TO REMAIN - PATCH AND REPAIR FOR NEW FINISHES
2. METAL SHELVING RACK - 5 TIER H HEIGHT NOT TO EXCEED 6 FEET
3. EXISTING FLOORSINK FOR INDIRECT DRAIN AS NEEDED
4. RESTROOM HAND SINK
5. 4" 1/2" TURNING CIRCLE, MIN. CLEAR DIMENSION REQUIRED
6. NOT USED
7. EXISTING LAUNDRY
8. EXISTING WATER HEATER
9. TRASH
10. 24" JANITORIAL MOP SINK
11. ELECTRIC PANELS - SEE ELECTRICAL SHEETS
12. WALL-MOUNTED HAND SINK
13. EMPLOYEE LOCKERS
14. QUARRY TILE FLOORING THROUGHOUT KITCHEN
15. FIRE EXTINGUISHER
16. PROVIDE PLYWOOD BACKING FOR SHELVES ABOVE
17. NOT USED
18. NOT USED
19. NOT USED
20. FLOOR TRANSITION STRIP
21. HANDICAP GRAB BARS WITH BLOCKING - SEE DETAIL 2/A6
22. PREP SINK
23. F-2 FLOOR TILE - ROCK OVERALL FLOOR TILE TO BE BRACK LIND
24. HANDSINK IN COUNTER WITH SPLASHGUARD SURROUND BY CONTRACTOR
25. FREEZER MERCHANDISERS ON FLOOR
26. EXISTING DOOR TO REMAIN
27. EXISTING REAR DOOR
28. NOT USED
29. 4 FT. WIDE TROUGH DRAIN

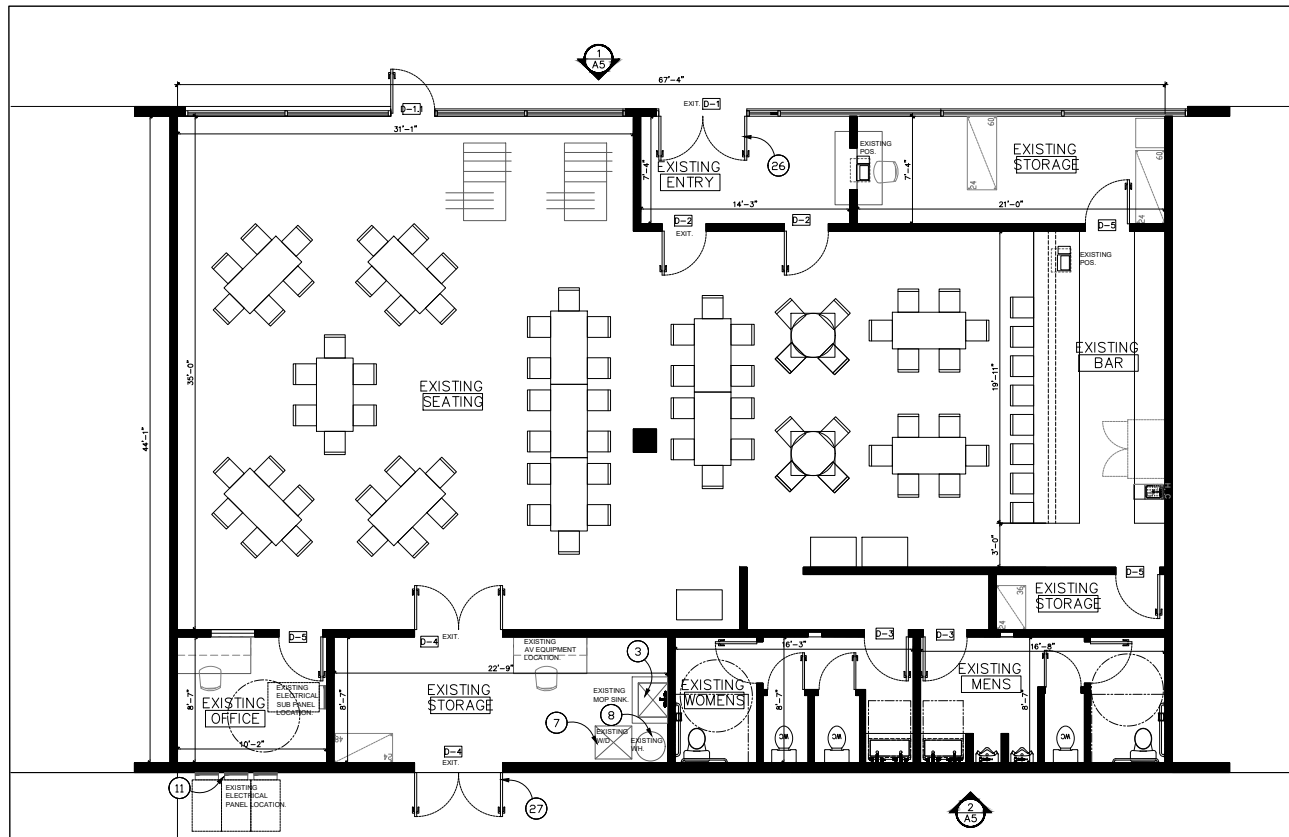
DOOR SCHEDULE

- D-1 ENTRY DOORS (EXISTING TO REMAIN).
EXISTING 6'-0" X 7'-0" STOREFRONT ENTRY DOORS AND FRAME.
- D-13 ENTRY DOORS (EXISTING TO REMAIN).
EXISTING 3'-0" X 7'-0" STOREFRONT ENTRY DOORS AND FRAME.
- D-2 EXISTING DOOR ENTRY TO SEATING.
EXISTING INTERIOR DOOR AND FRAME.
3'-0" W X 7'-0" H WITH LOCK.
- D-3 EXISTING DOOR HALL TO RESTROOM.
EXISTING INTERIOR DOOR AND FRAME.
3'-0" W X 7'-0" H.
- D-4 EXIT DOORS (EXISTING TO REMAIN).
EXISTING 6'-0" X 7'-0" DOUBLE EXIT DOORS AND FRAME.
- D-5 EXISTING DOOR.
EXISTING INTERIOR DOOR AND FRAME.
3'-0" W X 7'-0" H.

NOTES: EXIT DOORS SHALL BE OPENABLE FROM THE INSIDE WITHOUT THE USE OF A KEY OR ANY SPECIAL KNOWLEDGE OR EFFORT.
MAXIMUM PULL FORCES FOR INTERIOR AND EXTERIOR DOOR SHALL NOT EXCEED:
9 LBS. FOR INTERIOR DOORS
7.5 LBS. FOR EXTERIOR DOORS

WALL LEGEND:

- EXISTING WALL TO REMAIN, VERIFY CONDITION PATCH AND REPAIR TO LIKE NEW CONDITION
- 1-HR RATED DEMISING WALL
- NEW WALL
 - 1 LAYER 5/8" GYPSUM BOARD EACH SIDE OVER 3 5/8" 20 GA METAL STUDS AT 16" O.C. TO CEILING. BRACE STUDS @ 4'-0" O.C.
 - 1 LAYER 5/8" GYPSUM BOARD EACH SIDE OVER 5 5/8" 20 GA METAL STUDS AT 16" O.C. TO CEILING. BRACE STUDS @ 4'-0" O.C.



FLOOR PLAN

SCALE: 1/4" = 1'-0"

GENERAL NOTE:
ALL DIMENSIONS ARE TO BE FIELD VERIFIED PRIOR TO CONSTRUCTION.

NOTE:
ALL CONDITIONS TO BE FIELD VERIFIED WITH ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT.

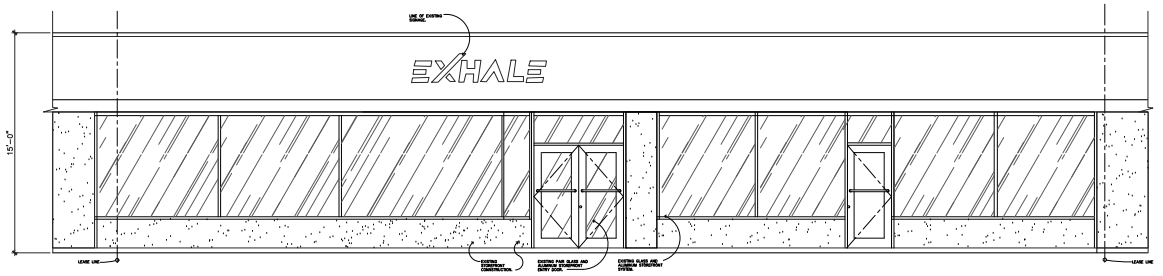
NOTE:
ALL MATERIALS AND FINISHES TO BE VERIFIED WITH OWNER PRIOR TO ORDER AND INSTALLATION.

EXHALE

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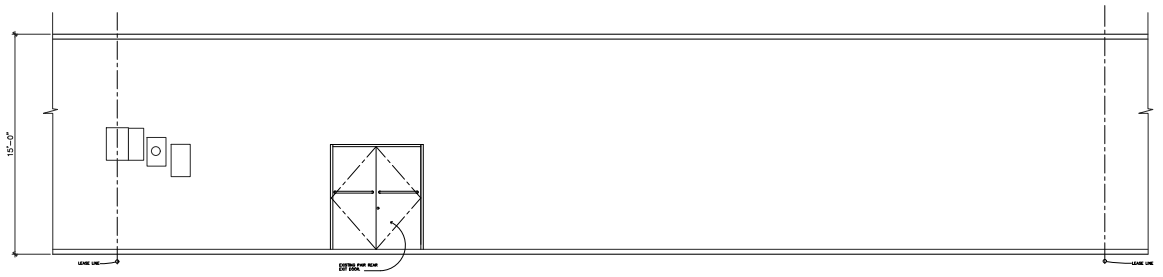
GENERAL NOTES:

- A.) SEE STRUCTURAL DRAWINGS FOR LOCATIONS OF HEADERS, POSTS, BEAMS, AND SPECIAL ANCHORS REQUIRED FOR SHEAR.
- B.) REFER TO STRUCTURAL DETAILS SHEETS FOR STANDARD STRUCTURAL NOTES AND ALL FRAMING AND FOUNDATION DETAILS.
- C.) REFER TO ARCHITECTURAL DETAILS FOR FLASHING, FINISH AND INTERIOR DETAILS. SEE STRUCTURAL DETAILS FOR ALL OTHER DETAILS NOT SHOWN.
- D.) SEE COVER SHEET FOR PROJECT DATA AND SHEET INDEX.
- E.) VERIFY ALL OPTIONS PRIOR TO PERFORMING ANY WORK.
- F.) REVIEW PLANS WITH MECHANICAL, PLUMBING, AND ELECTRICAL CONTRACTORS FOR ROUGH OPENING DIMENSIONS AND CLEARANCES REQUIRED.
- G.) ALL WEATHER EXPOSED SURFACES SHALL HAVE A WEATHER-RESISTANT BARRIER TO PROTECT THE INTERIOR WALL COVERING AND THAT EXTERIOR OPENINGS SHALL BE FLASHED IN SUCH A MANNER TO MAKE THEM WATERPROOF.
- H.) BUILT-UP ROOF SHALL HAVE A MINIMUM CLASS "A" ROOFING ASSEMBLY AND SHALL BE INSTALLED PER MANUFACTURERS WRITTEN INSTRUCTIONS AND RECOMMENDATIONS.
- I.) QUICK FLASH ALL WALL PENETRATIONS.



1 EXTERIOR ELEVATION: PARTIAL

SCALE: 1/4" = 1'-0"



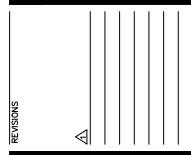
2 EXTERIOR ELEVATION: PARTIAL

SCALE: 1/4" = 1'-0"

KEYED NOTES

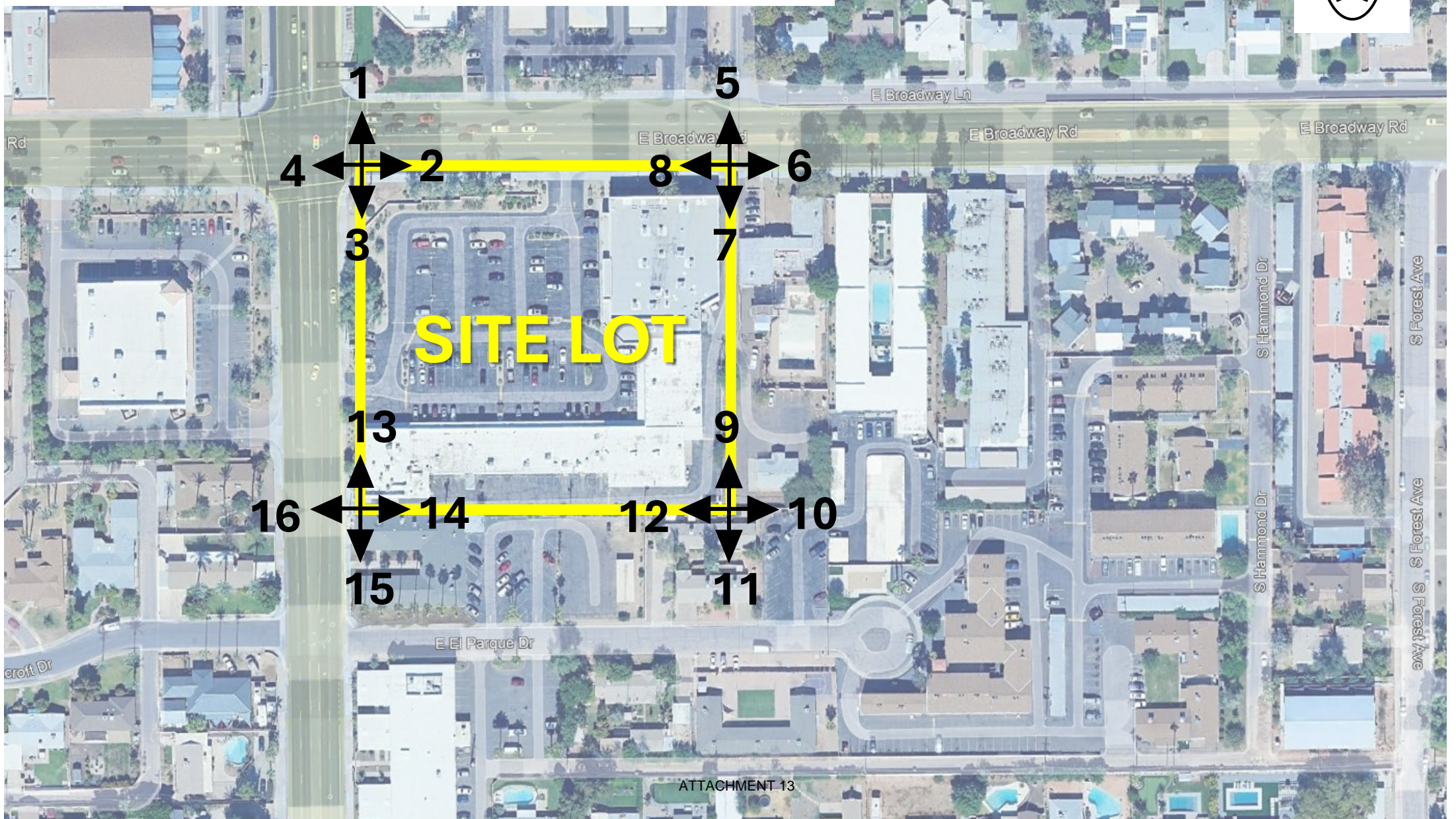
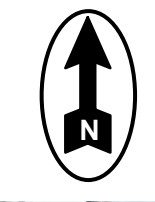
EXHALE SOCIETY
35 E. BROADWAY RD.
TEMPE, AZ 85282

EXTERIOR
ELEVATIONS



**STUDIO
PRING**

EXHALE SOCIETY – 35 E BROADWAY RD PHOTO CONTEXT PLAN



EXHALE SOCIETY – 35 E BROADWAY RD

PHOTO CONTEXT PLAN



EXHALE SOCIETY – 35 E BROADWAY RD PHOTO CONTEXT PLAN



EXHALE SOCIETY – 35 E BROADWAY RD

PHOTO CONTEXT PLAN

9



10



11



12



EXHALE SOCIETY – 35 E BROADWAY RD PHOTO CONTEXT PLAN

13



14



15



16



Exhale Society, Inc.

Public Involvement Report

FOR

Variance Application to Permit Tobacco Retailer at

35 E. Broadway Road, Tempe

(SEC of Broadway Road and Mill Avenue)

Case # PL240244

September 9, 2024

Applicant:

Rose Law Group pc

Ryan Hurley, Esq.:

Email: rhurley@roselawgroup.com

Phone: 480-944-4191

Ty Utton:

Email: tutton@roselawgroup.com

Phone: 480-944-4189

Public Involvement Report

This Public Involvement Report (PIR) is being implemented alongside a variance request to reduce the use separation requirements for a tobacco retailer from a school from 1,320 linear feet to 250 feet. The variance will facilitate the operation of a private club that will permit the consumption of marijuana products on site for 21 and older members. The purpose of this PIR is to detail the results of the implemented Public Involvement Plan, submitted to the City of Tempe on August 4, 2024.

A. Phone and Email Inquiries

In response to the notification letter mailed August 7th (Notification Affidavit attached as Exhibit A), the Applicant team received one (1) phone call and two (2) emails.

The one (1) phone call, received August 13th, was from the School District General Counsel who inquired about the project and what methods are employed to ensure this does not affect students at nearby schools. The Applicant Team walked him through the ID check and security protocols, as well as their impaired driver policy.

Among the two (2) emails received, one (1) expressed opposition to the project with several concerns listed and the Applicant Team responded detailing how they mitigated their concerns and provided the opportunity to walk them through the plans. No follow up response was received, and the email correspondence is attached as Exhibit B.

The second email was inquiring for further information about the project and did not express support or opposition. Once further information was provided, no follow up response was received. The email correspondence is attached as Exhibit C.

B. Neighborhood Meeting

The neighborhood meeting was advertised via two (2) methods, sign postings and mailing notices, as outlined in Section B of the attached **Appendix A – Public Involvement Plan**. The Sign Posting Affidavit is attached as Exhibit D. The meeting was held at the Graduate Tempe (225 E Apache Blvd, Tempe, AZ 85281). One (1) person came in attendance and supported the project. The applicant team was prepared to give a presentation, however, because of the lack of attendees, the meeting ended up following an open house format, where the Applicant Team walked the attendee through poster boards with information related to the request and the use. The sign in sheet is attached as Exhibit E.

EXHIBIT A

Affidavit of Notification

Application: PL240244

Applicant Name: Exhale Society Inc

Location: SEC Broadway Rd and Mill Ave

I confirm that notice as required for the case noted above has been mailed or delivered to the attached list of property owners and neighborhood associations at the addresses noted.

[Signature]
Applicant/Representative Signature

8/7/2024
Date

This instrument was acknowledged before me on this 7th day of August,

2024, by Kayla Amado. In witness whereof

I hereunto set my hand and official seal.



[Signature]
Notary Public

My commission expires MARCH 24, 2025

ROSE LAW GROUP_{pc}

RICH ■ CARTER ■ FISHER

TY UTTON
7144 E. Stetson Drive, Suite 300
Scottsdale, AZ 85251
Phone 480.944.4189 Fax 480.505.3925
TUtton@RoseLawGroup.com
www.RoseLawGroup.com

August 6, 2024

Dear Property Owner or Neighborhood Association Representative,

The purpose of this letter is to inform you that our firm on behalf of Exhale Society, Inc. (the “Owner”), Rose Law Group pc has submitted an application to the City of Tempe for a variance request to allow a tobacco retail business for a property located at the southeast corner of Broadway Road and Mill Avenue (APN: 133-23-021A), addressed as 35 E. Broadway Road (the “Site”).

The Site is a portion of a larger retail strip mall that contains nine retail businesses, and the Owner leases a space within this development. The Site is zoned Commercial Shopping and Services (CSS) and is designated as Mixed-Use Low-Moderate and up to 25 du/ac by the City of Tempe’s General Plan 2050.

The sole operation of the business is a 21 years and older private club (the “Project”). The Owner will not sell tobacco products, nor will they sell marijuana, marijuana products, or alcohol on the premises. The Owner is strictly offering a private club for its patrons.

To facilitate the Project at the Site, the Owner is requesting to reduce the separation requirement of the Site as outlined in Section 3-423(B) of the Zoning Code from adjacent schools from 1,320 feet to 250 feet. Upon granting of this variance request, the Owner would then need to seek a Use Permit to permit the Project as a tobacco retailer in the CSS zoning district.

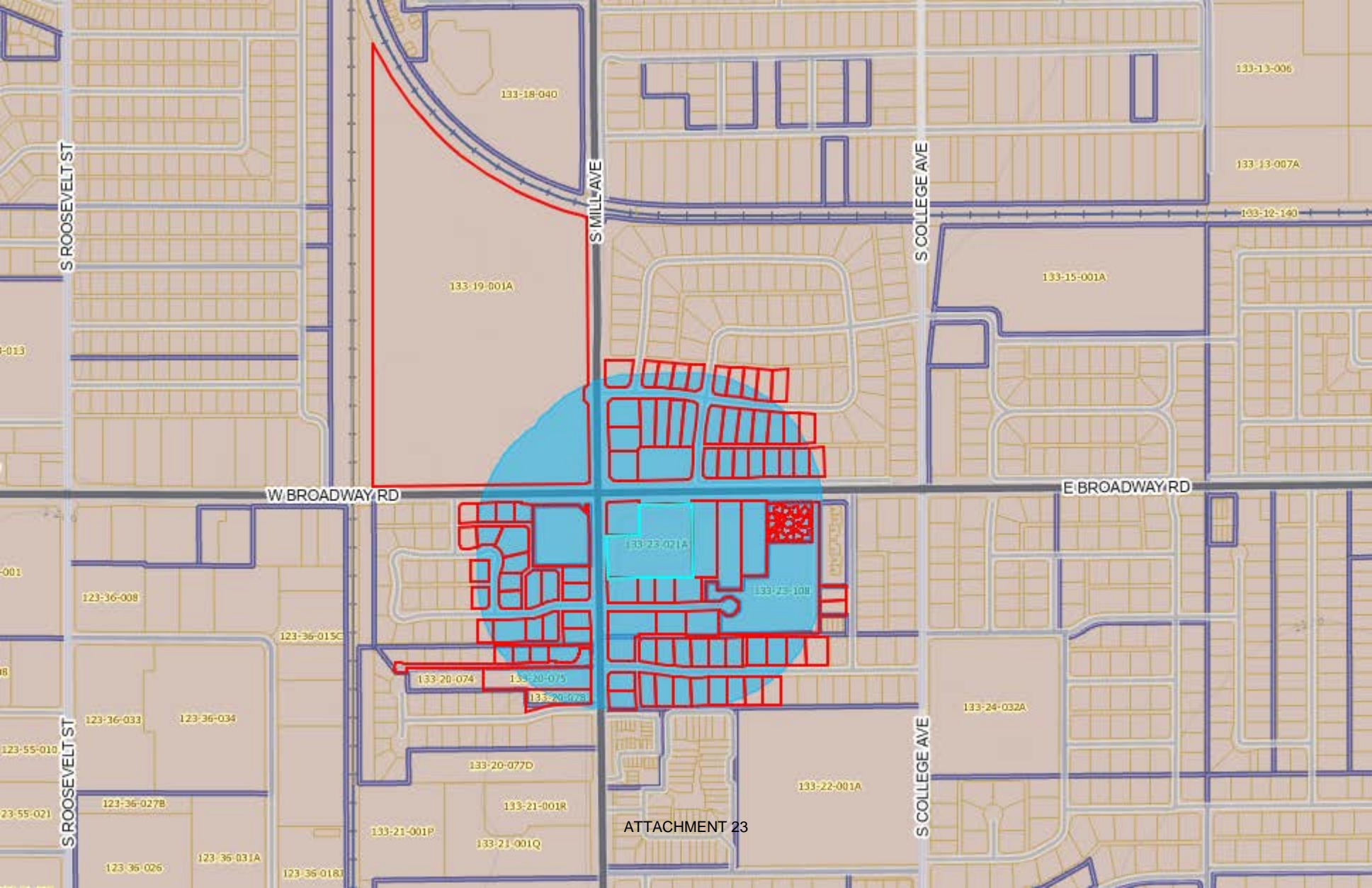
We will be hosting an open house meeting for the public. Please join us to learn more about the Project.

Open House Meeting

Thursday, August 22, 2024
Anytime between 5:30PM to 6:30PM
The Graduate Hotel Tempe
225 E Apache Blvd, Tempe, AZ 85281

If you are unable to attend this open house meeting, please contact me directly at 480 944 4189 or tutton@roselawgroup.com to learn more about the project. I would be happy to answer any questions or hear any comments you may have regarding this project. You may reach me at any time.

Sincerely,
Ty Utton – Rose Law Group pc



S ROOSEVELT ST

S MILL AVE

S COLLEGE AVE

W BROADWAY RD

E BROADWAY RD

S ROOSEVELT ST

S COLLEGE AVE

ATTACHMENT 23

133-18-040

133-19-001A

133-13-006

133-13-007A

133-12-140

133-15-001A

123-36-008

123-36-015C

133-23-021A

133-25-10B

133-20-074

133-20-075

133-20-078

133-24-032A

133-22-001A

133-20-077D

133-21-001R

133-21-001P

133-21-001Q

123-36-026

123-35-031A

123-36-0183

123-36-027B

123-36-033

123-36-034

123-55-010

123-55-021

123-001

123-008

EXHIBIT B

Kayla Amado

From: Ty Utton
Sent: Wednesday, August 21, 2024 1:03 PM
To: Steve Burns
Cc: Ryan Hurley; Kayla Amado
Subject: RE: Re your application for "The Project"

Steve,

Thank you for reaching out regarding this project. The project will permit a private club which will allow customers to consume marijuana on the premise. Because this proposed use is not legally defined in the City's zoning ordinance, they are considering the private club to be a "tobacco retailer" (link to City's definition:

https://library.municode.com/az/tempe/codes/zoning_and_development_code?nodeId=ZONING_DEVELOPMENT_CODE_PT7_DE_CH1_DE_S7-121TDE). The proposed private club has a very strict application and ID checking process to ensure that no minors or unauthorized person may enter the building, which includes an airtight, heavily filtered room to ensure no odors or smoke may escape the consumption area. As stated in the letter, there will be no sales of any tobacco products, marijuana, or alcohol on the premise. Patrons will be required to bring their own marijuana to the location.

As far as what will be happening there, the consumption area is essentially a lounge with TVs. The private club hosts many social events such as bingo and trivia, as well as plays sports on the TVs. The idea is to create a safe place where people can try marijuana for the first time in a safe environment as well as provide a space where people can consume the product without bothering their neighbors.

This is just the first step in getting this project approved. If the variance is approved, we will then have to submit for a use permit with the City of Tempe to permit the private club in this location which will include additional public hearings and meetings.

Thank you for your attention to this matter and please let me know if you have any additional questions.

Best,

Ty Utton
Planner/Project Manager

7144 E Stetson Drive, Suite 300, Scottsdale, AZ 85251
Direct: 480-944-4189
F: 480-505-3925
Mobile: 425-971-3790

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notify the sender by telephone at 480.505.3936 or fax 480.505.3925 and delete or destroy any copy of this message. Thank you.

Ty Utton

Planner/Project Manager



7144 E Stetson Drive, Suite 300, Scottsdale, AZ 85251
Direct: 480-944-4189 F: 480-505-3925 Mobile: 425-971-3790

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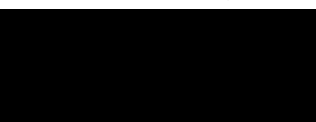
 Think green, please don't print unnecessarily

-----Original Message-----

From: Steve Burns [REDACTED]
Sent: Friday, August 16, 2024 11:39 AM
To: Ty Utton <tutton@roselawgroup.com>
Subject: Re your application for "The Project"

I will not be able to attend the open house on 8/22. You have stated in the letter what the business will not be doing, ie selling tobacco products, marijuana, or alcohol. And yet you are applying for a variance for tobacco use. So, my question is, what is the purpose of the over-21 establishment, and what will be happening there?

Steven C. Burns, M. D.



From the iPad of Steven C. Burns, M. D.

EXHIBIT C

Kayla Amado

From: Ty Utton
Sent: Wednesday, August 21, 2024 1:02 PM
To: Deborah Webster
Cc: planning@tempe.gov; Ryan Hurley
Subject: RE: Regarding variance request for tobacco retail business - The Project

Deborah,

Thank you very much for reaching out to me regarding this request. I understand your concerns and would like to provide you with some additional information that I hope will ease some of your concerns. The location has an entrance area that is completely sealed off from the social lounge with a secure, airtight door and has an ID checking area to ensure only people 21 and older may enter. The purpose of this is multifold, 1) to ensure that only paying members with valid state issued IDs, that are checked via their barcodes to ensure no fake or invalid IDs are used, are admitted to the private club, and 2) to ensure no odors or smoke, may exit the social lounge. The applicant has committed to ensuring that the businesses is non-descript from the outside, ensuring that they are not advertising or promoting the activities that undergo inside. Because the check in area is always staffed, the owners are committed to ensuring that no loitering occurs outside of the premise, both from patrons and from the general public.

Thank you again for your time and please let me know if you have any additional questions.

Best,

Ty Utton
Planner/Project Manager

7144 E Stetson Drive, Suite 300, Scottsdale, AZ 85251
Direct: 480-944-4189
F: 480-505-3925
Mobile: 425-971-3790

The author of this email is not an attorney. This communication does not constitute legal advice and should not be construed as such. The information contained in this message is privileged and confidential. It is intended only to be read by the individual or entity named above or their designee. If the reader of this message is not the intended recipient, you are on notice that any distribution of this message, in any form is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone at 480.505.3936 or fax 480.505.3925 and delete or destroy any copy of this message. Thank you.

-----Original Message-----

From: Deborah Webster [REDACTED]
Sent: Friday, August 16, 2024 2:16 PM
To: Ty Utton <tutton@roselawgroup.com>
Cc: planning@tempe.gov
Subject: Regarding variance request for tobacco retail business - The Project

Hello Ty.

I am responding to a letter received by my HOA for a variance request that you are proposing for a tobacco retail establishment at the corner of Mill and Broadway - "The Project". I see that there is an open house meeting, but I am

unable to attend so wanted to voice my opinion in this email. I have also copied city of Tempe planning department into this email so that they are also informed of my opinion.

I am much against this business being located so close to the high school. I have three properties within a short distance of this location (a primary home and a 2 rental homes). I would definitely hope for a more wholesome business to be located in that area since there are often high school students wandering around that area before and after school. High school students are not legally old enough to partake in this kind of business. It is also within walking distance of all my properties - one of those properties currently includes tenants with middle school aged children.

Rules of not putting this type of a retail establishment near a school are there for a reason. I hope the city will enforce those rules in this situation.

Thank you.

Deborah Webster




EXHIBIT D

Tempe
AFFIDAVIT OF SIGN POSTING

The undersigned Applicant has complied with the City of Tempe's Notification requirements for case PL240244, located at SEC Broadway Rd and Mill Ave on 08/07/24.

See attached photo exhibit.

For applicant:

Rose Law Group

Dynamite Signs
Sign Company Name

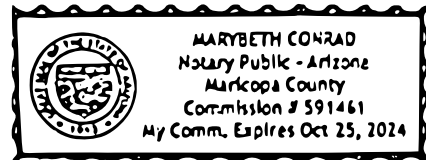
Meghan Liggett
Sign Company Representative

Subscribed and sworn to be on 08/07/24 by

Meghan Liggett

IN WITNESS WHEREOF, I Hereto set my hand and official seal.

Marybeth Conrad
Notary Public



My Commission expires: 10-25-24

EXHALE SOCIETY – SIGNS LOCATION MAP



CITY OF TEMPE PUBLIC NOTICE ZONING

NEIGHBORHOOD MEETING: Thursday, August 22, 2024 from 5:30 - 6:30 P.M.

MEETING LOCATION: The Graduate Hotel Tempe - 225 E Apache Blvd, Tempe, AZ 85281

REQUEST: A reduction of the separation requirement of the Site as outlined in Section 3-423(B) of the Zoning Code from adjacent schools from 1,320 feet to 250 feet. The Variance request is to permit a tobacco retailer within a quarter mile from a school.

Case Number: PL240244

Posting Date: 8/07/2024

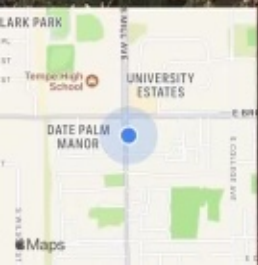
APPLICANT: Ty Utton, Rose Law Group pc

PHONE: 480-944-4189

EMAIL: tutton@roselawgroup.com

Case file available at Community Development Department - Call Planning Division at (480) 350-4311 or email at planning@tempe.gov.

Penalty for removing or defacing sign prior to date of last meeting



August 7, 2024 at 10:17 AM
+33.406743, -111.939558
19 E Broadway Rd
Tempe AZ 85282
United States

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Penalty for removing or defacing sign prior to date of last meeting



EXHIBIT E

Exhale Society, Inc. | Open House Meeting Sign-in Sheet

The Graduate Hotel Tempe

Thursday, August 22, 2024 from 5:30PM – 6:30PM

PL240244

Name	Address	Email	Phone	Y/N to receive project updates
Sarah Schreie				Y
Chris Jasper	City of Tempe			

Jasper, Chris

From: planning
Sent: Friday, August 16, 2024 2:28 PM
To: Jasper, Chris
Cc: Barry, Joanna
Subject: FW: Regarding variance request for tobacco retail business - The Project

Chris,

Is this your project?

Jennifer

-----Original Message-----

From: Deborah Webster [REDACTED]
Sent: Friday, August 16, 2024 2:16 PM
To: tutton@roselawgroup.com
Cc: planning <planning@tempe.gov>
Subject: Regarding variance request for tobacco retail business - The Project

Hello Ty.

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Thank you.

Deborah Webster
[REDACTED]

09-11-2024

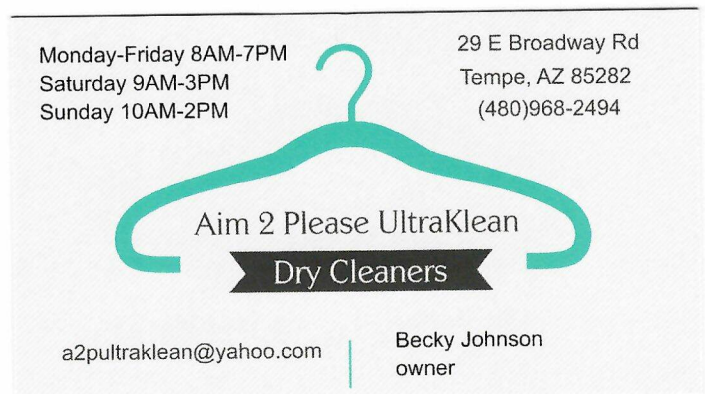
To whom it may concern,

My name is Rebecca Johnson, and I am the current owner of Aim2Please UltraKlean, located at 29 E Broadway Rd in Tempe, AZ. Before Exhale Society moved into the storefront next door, the space was vacant for some time. Most businesses in this strip close around 7pm so that leaves the property dormant until the following day, leaving time for any homeless or undesirable individuals who are up to no good to do damage or to loiter on the property. Since Exhale Society has opened, we have had no negative occurrences, before during, or after hours. They, in my opinion, should be allowed to continue business as they have since they opened. If you have any questions, please feel free to contact me at (480)968-2494. Thank you.

Sincerely,



Rebecca Johnson



Monday-Friday 8AM-7PM
Saturday 9AM-3PM
Sunday 10AM-2PM

29 E Broadway Rd
Tempe, AZ 85282
(480)968-2494

Aim 2 Please UltraKlean
Dry Cleaners

a2pultraklean@yahoo.com | Becky Johnson
owner