

**CITY OF TEMPE
BOARD OF ADJUSTMENT**

**Meeting Date: 01/23/2019
Agenda Item: 2**

ACTION: Request to appeal the Hearing Officer’s decision to deny a variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for **8611 SOUTH PRIEST DRIVE**, located at 8611 South Priest Drive, Suite 102. The appellant is PARC Dispensary. (PL180173)

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

RECOMMENDATION: None

BACKGROUND INFORMATION: 8611 SOUTH PRIEST DRIVE (PL180173) is a proposed Medical Marijuana Dispensary located in a suite within a commercial condominium complex north of the northeast corner of Priest Drive and Warner Road. In December 2015, the City of Tempe approved a Use Acceptance Request for Natural Herbal Remedies (PL150478), another medical marijuana dispensary, at the same location as the subject site. The dispensary authorized by that approval never opened, and as a result, the use acceptance decision issued by the Community Development Department expired, based on the conditions of approval in the letter.

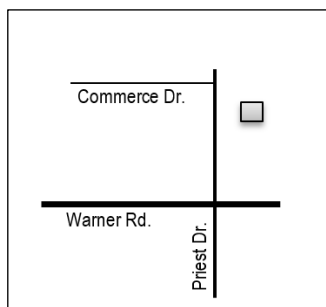
On August 14, 2017, the property owner filed an Administrative Review application for PARC Dispensary (PL170260), for zoning clearance for a Medical Marijuana Dispensary. After review of the request, a determination was made on August 30, 2017 that the subject property did not comply with Tempe’s new Medical Marijuana Ordinance (Ord. No. O2017.25), effective May 25, 2017, regarding the separation requirements from a child care facility (1,500 feet) and from a parcel solely devoted to a residential use (1,320 feet), and conflicted with a site previously approved for a medical marijuana dispensary use (Natural Herbal Remedies). Following denial of the Administrative Review request, the owner appealed the decision. On October 25, 2017, the Board of Adjustment upheld the Zoning Administrator’s decision and denied the appeal for PARC Dispensary. The subject site of 8611 SOUTH PRIEST DRIVE (PL180173) is the same suite that was the subject of PARC Dispensary.

The appellant submitted a variance application on June 14, 2018 to reduce the separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility. On July 17, 2018, the Hearing Officer denied the variance request.

This case was originally scheduled to be heard at the November 28, 2018 Board of Adjustment hearing but was continued at the applicant’s request.

This request includes the following:

- VARA180002 Appeal the July 17, 2018 Hearing Officer decision to deny a variance (VARA180005) to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use (from 1,320 feet to 890 feet) and a child care facility (from 1,500 feet to 1,430 feet).



Property Owner
Appellant
Zoning District
Net site area
Building area

Image Productions
John Vatistas, PARC Dispensary
PCC-1 (Planned Commercial Center Neighborhood)
2.99 acres
2,383 gross s.f.

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Karen Stovall, Senior Planner (480-350-8432)

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Karen Stovall, Senior Planner

Reviewed by: Ryan Levesque, Deputy Community Development Director – Planning

DEVELOPMENT PROJECT FILE
for
8611 SOUTH PRIEST DRIVE
(PL180173)

ATTACHMENTS:

1. Letter of Appeal, dated July 23, 2018
 - 2-7. Supplement to Appeal Petition, dated August 2, 2018
 - 8-19. Applicable portions of the July 17, 2018 Hearing Officer hearing minutes
 - 20-32. Letters of opposition
- Staff report from the July 17, 2018 Hearing Officer hearing (in original order and pagination)
- 1-27. Original Development Project File



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July 23, 2018

VIA HAND-DELIVERY

Community Development Department
Planning Division, City of Tempe
Tempe City Hall
31 East 5th Street
Second Floor
Tempe, Arizona 85281

Re: PARC Dispensary/Natural Herbal Remedies/Image Productions, LLC
8611 South Priest Drive, Suite 102
DS-170828: PL-180173: VAR-180005

Notice of Appeal to Board of Adjustment

Dear Sir or Madam:

This office represents Patient Alternative Relief Center/Image Productions, LLC regarding the above-referenced matter. This letter is a formal Notice of Appeal from the denial of a variance, as memorialized in the Planning Division's letter of July 18, 2018, in relation to the hearing of July 17, 2018. Enclosed herein is a copy of the original Project Submittal Application, and a check in the amount of \$400.00, the appeal fee. The condition upon which the appeal is based is the Planning Division's denial of the requested variance seeking a reduction of the separation requirements for a medical marijuana dispensary from a residential use and a childcare facility.

Please contact me if you have any questions in these regards. Thank you.

Very truly yours,

Dennis I. Wilenchik, Esq.

August 2, 2018

VIA HAND DELIVERY AND EMAIL

Karen Stovall
Community Development Department
Planning Division, City of Tempe
Tempe City Hall
31 East 5th Street
Second Floor
Tempe, Arizona 85281
Karen_Stovall@tempe.gov

**Re: PARC Dispensary/Natural Herbal Remedies/Image Productions, LLC
8611 South Priest Drive, Suite 102
DS-170828: PL-180173: VAR-180005**

Supplement to Appeal Petition to Board of Adjustment

Dear Ms. Stovall:

This office represents Patient Alternative Relief Center/Image Productions, LLC regarding the above-referenced matter. Pursuant to your request and Zoning and Development Code, Section 6-803, this letter serves as a Supplement to Appeal Petition, from the denial of requested variances, as memorialized in your letter of July 18, 2018, in relation to the hearing of July 17, 2018. We have previously provided a copy of the original Project Submittal Application, and a check in the amount of \$400.00 for the appeal fee. The condition upon which the appeal is based is the Hearing Officer's denial of the requested variances seeking a reduction of the separation requirements for a medical marijuana dispensary from a residential use and a childcare facility. We respectfully request that the Board of Adjustment reverse the Hearing Officer's decision and grant the requested variances.

The Hearing Officer erred in denying the requested variances on the following specific grounds:

- 1. Special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings.**

The Hearing Officer erred in finding there are no special circumstances applicable to the property. The property is located in a commercial condominium complex. The site was entitled as a medical marijuana dispensary in late 2015 and purchased in 2016 by one of the Applicants, and the Applicants planned, permitted and constructed the dispensary with the City's approvals in 2016. The property received the City's use acceptance letter for the property's use as a medical marijuana dispensary in 2015, and it was built in 2016, followed by the City issuing its certificate of occupancy. The property met all requirements stated in the City of Tempe Zoning and Building Ordinances.

After the dispensary approvals were obtained in 2015-2016, the City of Tempe amended Zoning Code requirements applicable to medical marijuana dispensaries by first limiting the number of dispensaries to two, then eliminating that requirement but increasing the required distances by 164% for a parcel solely devoted to residential use and 13% for childcare facilities, causing the City to determine that the site was now too close to these uses. Intervening modifications to the Code in 2017 increased separation requirements, and now the site is unable to operate as a dispensary, even though it had been purchased, permitted and constructed as a dispensary before the 2017 Code changes.

The site was previously viewed as an acceptable location for any user (e.g., Natural Remedies, PARC) prior to the latest Code update in May 2017. Nothing else about the site has changed, and it will be utilized for the same use that it was improved for previously and as was shown on the draft separation May 2017 code update example maps. This is not an application on a new site location which was not previously considered and approved for a dispensary. This was previously approved and accepted as an appropriate site. Since the original application for this dispensary in 2015, the suite in question has not operated as anything other than a potential dispensary with a lease in place, and has been sitting vacant for over three years because it was a previously approved and designated site by the City. Thus, the property evidences special circumstances supporting the requested variances.

2. The strict application of the Zoning and Development Code will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

The Hearing Officer erred in finding that strict application of the Zoning and Development Code does not deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district. The property was approved by the City of Tempe in December 2015 for use as a medical marijuana dispensary pursuant to the then-effective Zoning Code, Section 3-426 of the City of Tempe Zoning and Development Code (2015), and the Arizona Medical Marijuana Act,

A.R.S. §§ 36-2801 *et seq.* (the "AMMA"). The former Applicant, Natural Remedies, intended to transfer its State-issued dispensary certificate from a location outside Maricopa County to this property, which is permitted by the AMMA if the dispensary had been operated for three years in its first location. The State's approval to transfer the Applicant's dispensary certificate was pending when the landlord and the intended dispensary operator were unable to agree upon lease terms. The previous Applicant's certificate has not been transferred to the site and is still in use at a different location and cannot be transferred while in use to this site.

Natural Remedies had an ongoing application with the Arizona Department of Health Services and was prepared to do an inspection of the site at the end of 2016. This site previously met the medical marijuana zoning code and was compliant with those separation requirements of 1320 feet from a childcare facility and 500 feet from a residential use. The previous dispensary was permitted here, received building permits and a certificate of occupancy, and met the preferred surrounding property requirements and compatible business type. The site and businesses have not changed. We seek a variance to the new separation distance standards to utilize the site as previously allowed prior to the Code change, when the property was purchased and the building received the tenant improvements and certificate of occupancy for its use.

If these requested variances are granted, an Applicant will transfer a dispensary certificate to the site with the State's approval and in conformance with the AMMA.

If the requests are denied, there will be a significant loss of privilege and economic income for the Applicants, whose use as a dispensary had been approved by the City of Tempe's December 22, 2015 use acceptance letter and the subsequent issuance of building permits and a certificate of occupancy for the constructed dispensary in November 2016. The Applicants made substantial investments in and took on debt for the acquisition, planning and construction of the dispensary facility. And because there are so few dispensaries in Tempe and only a few possible dispensary locations remaining, the Applicants' opening of this property as a dispensary is expected to produce substantial revenues for Applicants and benefits to the community. The State is not currently issuing additional dispensary certificates, and it is unknown if and when any additional certificates will be awarded. There are a substantial number of patients holding State-issued identification cards who live or work in or travel through the City and these persons could be gaining medical assistance at the property if the variance requests are granted.

Other medical marijuana facilities approved by the City before the 2017 Zoning Code change to separation requirements are able to operate today as a non-conforming use. Like these other facilities, the Applicants' property was purchased and granted dispensary approvals prior to the 2017 Zoning Code modifications. Thus, a denial of the property's application for variances would deprive Applicants of benefits currently enjoyed by other, similarly-situated property owners.

3. The variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

The Hearing Officer erred in finding that the variances would constitute a grant of special privileges inconsistent with the limitations of other properties. As described above, this property was approved for use as a medical marijuana dispensary in 2015 and its construction approved in 2016. The owner applied for, obtained permits and completed construction of a medical marijuana dispensary on the Property in 2016, thereby becoming vested in zoning entitlements, including the use acceptance letter and certificate of occupancy according to the City of Tempe's development requirements.

Other medical marijuana facilities approved by the City before the 2017 Code change are able to operate today as a non-conforming use and do. The use at this site was allowed under the previous code and approved. No new daycare facilities or residential uses have infringed closer to the site since 2015. The site would be allowed to operate under Natural Remedies ownership in its current state. A simple change in ownership has therefore made the site unable to operate as previously approved.

Because this site has already been approved as a medical marijuana facility through multiple development stages by the City of Tempe, there are no special privileges being acted upon by granting these variances. This site will be in operation and compliance with all City and State regulations set forth previously and will not negatively impact the area.

Dispensaries may open, close and transfer their certificates similar to any other type of business, as is done with liquor permits. They open and close as locations are found to be good locations or not. Not allowing another dispensary to operate in a previously acceptable location presents a business *disadvantage* when the owner cannot guarantee the space is viable for the same use when a tenant leaves, without going through a new zoning approval.

4. The special circumstances applicable to the property are not self-imposed by the property owner.

The Hearing Officer erred in finding there are no special circumstances applicable to the property. As described above, this property was approved for use as a medical marijuana dispensary in 2015 and its construction approved in 2016. This request is to allow for the operation of a previously approved medical marijuana site. In May 2017, the City of Tempe modified the Zoning Code to impose greater separation requirements between a dispensary and uses such as daycare and residential. This change in requirements precludes the property's use as a dispensary and diminishes the value of the property and its associated improvements, which were required by the City of Tempe for the 2016 construction and certificate of occupancy.

The applicant has proceeded through the proper channels and found the site to be suitable for the medical marijuana use, as confirmed by the City. This location was also noted as an existing location in the 2017 Code update per the City's own maps. The variances for the separation requirements are not self-imposed, but necessitated because of a change in the City Zoning Code *after* the property was acquired by Applicants and the building was completed and received City approvals.

CONCLUSION

For the foregoing reasons, we respectfully ask the Board to reverse the Hearing Officer's decision and approve the variance requests. The facility is a positive addition for this complex and will operate in accordance with all previously approved regulations by the City and State. By allowing this site to operate as a medical marijuana facility, the community and patients benefit economically and medically. The site meets the City's intent to locate such facilities in commercial office and industrial areas and is within an area of high visibility and access within the complex to provide CPTED (Crime Prevention Through Environmental Design) and ensure a safe environment for patrons of the facility as well as neighboring businesses making this a prime location for this use.

Please contact me if you require further information. Thank you.

Very truly yours,

A handwritten signature in blue ink, reading "Dennis I. Wilenchik". The signature is written in a cursive, flowing style with a prominent initial "D".

Dennis I. Wilenchik, Esq.

MINUTES HEARING OFFICER JULY 17, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:40 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Karen Stovall, Senior Planner
Dalton Guerra, Planning Technician
Blake Schimke Administrative Assistant II

There were 24 interested citizens present at the study session.

- Staff and Hearing Officer discussed overview of the scheduled cases

REGULAR SESSION 5:00 PM

Present:

There were 32 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Vanessa MacDonald. They stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by July 31, 2018 at 3:00 PM, to the Community Development Department.

1. The following was noted: -----

- **Agenda Item No. 1**

July 3, 2018 Hearing Officer Minutes

Vanessa MacDonald, Hearing Officer, stated that the July 3, 2018 Hearing Officer Minutes had been reviewed and were approved.

Ms. MacDonald also noted that she would be changing the order of tonight's hearing in respects to the applicants. She disclosed she would be moving switching agenda item number 6 & 7.

2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. Any expansion of the existing drive-way shall not exceed thirty-five percent (35%) of the front and side yards visible from the street.

6. Request a variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for **8611 SOUTH PRIEST DRIVE**, located at 8611 South Priest Drive, Suite 102. The applicant is The Planning Center. **(PL180173)**

Karen Stovall, Senior Planner, gave the following overview of the case:

- This Variance request is for the property located at 8611 South Priest Drive. The property is zoned PCC-1.
- The subject site is a suite located within a commercial condominium complex north of the northeast corner of Priest and Warner.
- The applicant is requesting the reduction of two Medical Marijuana Dispensary separation requirements.
- The first is to reduce the separation between a Dispensary and a residential use from 1,320 feet to 890 feet
- The second is to reduce the separation between a Dispensary and a child care facility from 1,500 feet to 1,430.
- To provide some background, the Planning Division approved a use acceptance request, which is basically zoning clearance for the use, in December 2015 for Natural Herbal Remedies, which was a dispensary proposed at the same center and in the same suite as the subject application. That dispensary never opened, and that 2015 approval is now void.
- Revisions to the Zoning Code as it pertains to Medical Marijuana uses were made twice in 2015 and once in May of 2017. Some of those changes include increased separation requirements between Medical Marijuana uses and other land uses.
- In August 2017, the property owner filed a use acceptance request for PARC Dispensary, and after review of that request, the Planning Division denied the application. It was determined that the site did not meet the separation requirements from a residential use or from a child care facility.
- The denial of the PARC Dispensary request was appealed to the Board of Adjustment, and in October 2017, the Board upheld the denial, so PARC Dispensary was not permitted to open.
- The applicant is now requesting the two Variances before you tonight to reduce the separation requirements and allow Dispensary to open.
- A neighborhood meeting was not required for this application.
- But following public notification for this hearing, staff received one letter of opposition to the request, and that was provided to you at the study session.
- I'd like to briefly go over the Variance Approval Criteria as they apply to this case:
- The first criteria is that there is a special circumstance applicable to the property.
- The applicant claims that the 2015 approval of Natural Herbal Remedies is a special circumstance.
- A copy of that 2015 approval letter was included in the attachments to our staff report. In reviewing the stipulations of that approval, the first one requires that the applicant submit an application to the Arizona Department of Health Services within 60 calendar days of the approval in order to receive a dispensary certificate for the location and that "Any person or business other than those identified herein must file a new application to determine compliance with zoning regulations."
- The 2017 submittal for PARC Dispensary was made by both a different applicant and business, which is one of the reasons a new application was necessary in 2017.

- The new use acceptance request failed to comply with the code in place at the time of submittal, so it was determined that the site is non-compliant, and any new application for the subject site would also be non-compliant.
- There is no special circumstance applicable to the property.
- The second criteria is that strict application of the Code would deprive the property of privileges enjoyed by other properties of the same classification and in the same zoning district.
- All use acceptance requests for Medical Marijuana facilities are reviewed under the code in place at the time of application submittal, regardless of previous approvals on a site.
- The process used to review the application for PARC dispensary is no different than the way any other dispensary is reviewed, so the property has not been deprived of privileges enjoyed by other properties.
- The third criteria is that the requested adjustment shall not constitute granting of special privileges.
- The conditions tied to the 2015 approval for Natural Herbal Remedies were not met, and that approval is now void.
- If the two Variances are approved and the applicant is permitted to open a dispensary that does not comply with the separation requirements of the code, it would constitute a grant of special privileges.
- Lastly, the variance may not be granted if the special circumstances are self-imposed.
- There are no special circumstances applicable to this site as it relates to the necessary separation requirements for a Dispensary.
- Zoning clearance granted to a previous applicant does not run with the land and is not transferable to other businesses.
- Based on the information submitted by the applicant and review of the Variance criteria, staff recommends denial of the requested variances.
- However, if you approve the variances, there are two stipulations listed in the staff report that we recommend be attached to an approval.

Ms. MacDonald invited up the applicant.

Jessica Sarkissian, from the Planning Center, was present to represent the case.

Ms. Sarkissian wanted to express that what they are here for is separate from what should have happened. That they are here for the first step which is to receive the variance and zoning clearance letter. She presented a presentation showing the site location and site information.

She explained that the size of the unit was 1500 square feet zoned in PCC-1 and that a zoning clearance letter had been given to that property for a medical marijuana facility in 2015. The site had also received its C of O and building permits in November of 2016.

Ms. MacDonald asked Ms. Sarkissian that Natural Herbal Remedies had indeed gotten their C of O and building permits, however did not open.

Ms. Sarkissian agreed that yes, they had received the zoning verification letter and were approved for a C of O and building permits under the site location versus the owner. She also added that yes, they never opened because there were issues with the lease agreement.

Ms. MacDonald asked if the TI's interior was built out.

Ms. Sarkissian responded that everything is done.

Ms. MacDonald replied that everything they had done was at-risk essentially.

Ms. Sarkissian stated that no, it had been done prior to the 2017 code update.

Ms. Sarkissian resumed her presentation stating that the City of Tempe revised their code in May 2017 increasing the separation requirements of medical marijuana facilities to 1500' for a licensed child care facility and 1320' for a parcel solely devoted to residential use. She emphasized that they sought a new zoning clearance letter under PARC dispensary but were denied based on the new separation requirements. Ms. Sarkissian stated that they were just seeking the two variances. Again, she states that they are not seeking a transfer of certificate for this variance since that would be the next step in the process.

Ms. Sarkissian continues to show the current zoning of the district the district surrounding the site. Next, she shows an "as the crow flies" map showing the distances between the child care facility and the residential area. She states the child care facility is within the lifetime fitness center. She also added that the fitness center isn't required to have a child care license however, were encouraged to get one from people against the dispensary going in.

Ms. MacDonald asked that the deviation she was asking for the 1500' to be collapsed to 1430' and the 1320' to be collapsed to 890'.

Ms. Sarkissian responded that was indeed correct. She added that previously it had been 1320' for child care and 500' residential. At the time of the approval, the furthest child care facility was 3,647 ft because the lifetime fitness license had yet to be recognized by the City.

Ms. Sarkissian indicated that they did do their own neighborhood outreach even though it was not required. She states they did not receive any interaction. She presents a tenant list and states that many of the tenants are for health and wellness.

She states that they feel this site is similar to that of a CVS/Pharmacy because their product is only for medicinal uses. The site would operate from 8 AM – 8 PM as required by the city code. She further shows the old C of O and permits.

Ms. Sarkissian shows an attachment that lists all other present dispensaries in the area and the effect that they have had on property values.

Ms. MacDonald asks where the nearest dispensary is.

Ms. Stovall responds by saying that there is one located on Kyrene and Elliot about one and a quarter mile away.

Ms. Sarkissian presented a number of dispensaries and their locations along with the correlated surround property values. She indicates that all properties surrounding the dispensaries have gone up according to the Maricopa County Assessor over the past 5 years.

Ms. MacDonald responded by asking if the applicant meant the dispensaries were contributing to these value increases. To which she responded no, just that they had no negative effect on the property values.

Ms. Sarkissian continues in saying that prior to the 2017 code update, the site, was compliant with all of the necessary separation requirements. She adds that the update removed two dispensaries and increased the already existing separation requirements. She presents more items from the code update file that show the new separation requirements and where the current site is. The current site, if it did not have the problems it did, Ms. Sarkissian states, would be in operation today.

Ms. Sarkissian states that they are seeking the two variances to reduce the separation requirements.

In the Ms. Sarkissian's 4 findings she believes that they do have a special circumstance. Previously to the May 2017 amendment to the code, not allowing the site to operate even though it has been purchased, permitted and constructed as a dispensary. She explains that nothing has changed since then and they simply want to operate the dispensary.

She also explains that there will be a significant financial burden to the applicant after they have already invested in the site as a dispensary.

In addition, the owner went into litigation with the Maricopa County Courts regarding the condo and lease agreement which ruled in favor of the applicant. She expressed that they have gone through significant outlets to they still had entitlement to that site with their original intentions.

Ms. Sarkissian stated that they further believe there are no special privileges since there are three other dispensaries that were approved before the May 2017 code update. They are now classified as non-conforming because of this update and she believes that because of the update a simple name change has not allowed this site to operate.

The site will meet all of the other requirements imposed by the state as well as the agreements made with the condo agency that the site will never become a residential use facility.

Ms. Sarkissian also states that the circumstances are not self-imposed because they had previously met all of the requirements pre-the code and because the construction and completion was finished on 2016.

Ms. Sarkissian shows some examples of the facilities inside and the staff at one of the dispensaries.

Ms. Sarkissian presents a map of the walking distances from the facility to each of properties in question from the project site. She states that if you were to walk from the site to the door of the Lifetime Fitness it would be 2646' and it would be 2113' to the entrance of the San Sanoma apartments. She adds that there is also a Circle K gas station and she presumes there to be a liquor store as well in front of the San Sanoma Apartments on Warner Rd.

Ms. Sarkissian restates that the site was previously viewed as an acceptable location for any user whether that be PARC or Natural Herbal Remedies prior to the last code change. She adds that if any of the existing dispensaries were to change and need zoning verification letters they would be found noncompliant. This is also similar to a liquor use permit, those are able to be moved around or sold off as needed. She also states that there will be significant economic impact for the applicant after doing the improvements and obtaining the site. A change in ownership has made the site unable to operate. Also, that the separation requirements are not self-imposed, rather occurred because of a change in code.

Ms. Sarkissian states that the council had maps with previous locations of the dispensaries which were not taken off.

Ms. MacDonald responds by asking if this map is in the zoning and development code.

Ms. Sarkissian responded by saying the map was simply an exhibit from the project file submitted to the council.

Ms. MacDonald then responds by saying that the map isn't created by the city and it just an exhibit much as her presentation was an exhibit. She also stated that it doesn't have as much substance as a general plan map would for example.

Ms. Sarkissian responds that if that were the case then they wouldn't need to go through this process to get the variances. The May 2017 update grew the residential buffer 184% in separation distance, which she believes whipped everything out and if you look on a map you can see that. She also adds that they had approved dispensaries that were legal non-conforming.

Ms. Sarkissian states she will be around to answer any questions

Ms. MacDonald responds with her main question and thing she wants to understand is that there are two dates: the 2015 granting of the Use acceptance letter and December 2017 passage of the new ordinance. She states that there is quite a bit of time in-between there and the entire year of 2016 when this dispensary from whatever extenuating circumstance was not able to become up and running. If they were they would be legal non-conforming just as the other dispensaries are.

Ms. Sarkissian clarified that the 2015 date was at the end of that year on December 22, 2015 and in the middle of 2016 is when the negotiation with the lease agreement started to fall through. Which is when a new owner came in and building permits were issued in November of 2016. There was also a lawsuit happening simultaneously with the condo association to ensure that the site was useable to the tenant. In November the lawsuit was settled, and they were able to continue to still be present there.

Ms. MacDonald invited up members of the public to speak.

Mr. Brian Baily spoke on behalf of his wife who operates Adobe Behavioral health, wanted to correct the hours that were listed for his establishment as the last patient leaving at 7 pm and his wife leaving the establishment around 8 pm most nights.

Mr. Chandler Travis, spoke on behalf of Warner Village Office Condominiums Association and its board of directors. He presented that the project would be within that complex and that they were seeking a variance. He also stated that timing is everything. That the applicant was trying to recreate events that have previously happened i.e. Natural Herbal Remedies obtaining a medical marijuana license as then allowed for under the current ordinance. He states that because of issues between his client Image Productions and Natural Herbal Remedies, they elected to not open a dispensary at this location. He also mentioned that the two parties ended up being in litigation. He believes with the Hearing Officer in saying the applicant made the tenant improvements at risk. He also states that because the marijuana license was given to the site address and not the applicant, Natural Herbal Remedies could operate whereas Image Productions would not. Again, he states timing is everything and continues saying that the City updated their ordinance in May of 2017. He states that in the later months PARC dispensary is created and therefore this isn't a simple name change, it is a change of entities. On behalf of the association he asks that the request for the variances be denied, the ordinances of the City are clear. Mr. Travis voices some concerns of the association by stating that many members were against the idea in the first place. They have concern to the traffic that will be present in the complex, longer hours of operation and security plan that has been proposed. Mr. Travis states that the Hearing Officer stay true to the zoning ordinances.

Mr. William Bishop, was the President of the Warner Village Office Condominiums Association board at a lot of the relevant time that things happened with the dispensary and the association. Mr. Bishop started by stating he wanted to add some things to what was said by Mr. Travis and emphasize that the tenant made the T's at-risk. The association had denied Natural Herbal Remedies a variance on the CC & R's and stated that the unit was for professional use only. Mr. Bishop continues to state that even though Natural Herbal Remedies had the green light from the City, they did not from the condo association. The applicant was very much on notice that the association considered them to be a violation of those CC & R's. He also indicated that the applicant would be moving into a

professional spot whereas the applicant had indicated to be retail, which is a different HOA. The applicant would need to abide by the professional CC & R's. He also stated that the applicant cannot backdoor off Natural Herbal Remedies because they were in violation of the CC & R's. He further states the code is there for a reason and the rules are there for a reason. He explains that as of the most recent board meeting most tenants are against the idea of having a dispensary. He also explains that there is a dispensary down the street, so this one doesn't have to be in this location amongst the lawyer, doctors and accountants.

Mr. Jack Wilborn, he is a speaker on behalf of an organization called L.E.A.P. which stands for Law Enforcement Acts in Partnership and he explains that he comes out to speak based on safety, which should be a high priority. He starts off by saying that dispensary associates have to submit two finger prints, a photograph, and a background check for the state and federal government. He mentions that all of the places he's been too have a security guard, cameras outside, and cameras inside. Mr. Wilborn doesn't know of any other business that provides that much protection for their patients. He states that 80% of the patients are chronic pain patients, noting that a high majority of them do not smoke. He also points out that the system is highly regulated, and the state knows how much and what you are buying. Mr. Wilborn states that to his knowledge there are no dispensaries that allow for consumption on the property. He gave an example of a study that was done in California that showed the crime rates dropped where a dispensary was permitted.

Mr. Daniel Schweiker, was speaking on behalf of two of the businesses located within 300' of the proposed dispensary. The businesses are opposing the variance and had letters of opposition from the two businesses.

Ms. MacDonald read into the record the names of the two persons in opposition: Eugene Lupario and Dr. Rima Peters DDS. Mr. Lupario, in his letter, voiced that he was against the dispensary because of its proximity to his business.

Ms. Brandy Williams, who has an 8-year-old son whom has many life-debilitating diseases, needs cannabis to stay alive. Ms. Williams stated that she did not know why there weren't as many accessible dispensaries until she came to this meeting. She felt upset that there were many members in the community opposing a substance that is saving so many people's lives. She stated that Arizona is a medical cannabis state and that there are hundreds of children who need access to this medicine. She is very frustrated that she must drive two hours across the state to receive his medicine because more shops aren't being allowed to open. Ms. Williams states that she represents over 400 Moms in the Maricopa County area who also need cannabis to keep their children alive. She also states that this new dispensary would be 9 miles from her home, rather than her having to drive out of city limits.

Ms. MacDonald responded to Ms. Williams that there are several dispensary locations nearby.

Ms. Williams responded with saying that not all cannabis is created equal. Some is grown with chemicals that she didn't want to give her child as a patient. She stated that this dispensary in question is the only one that she has trusted with the quality of product. She also added that she is the leader of her group, Moms Advocating for Medical Marijuana, where she lobbies at the capitol, but that not all cannabis is created equal. Ms. Williams also adds that she knows many moms who go to this dispensary who are in financial crisis and receive medical cannabis at no cost to them.

Mr. Shawn Simpson was called, however, was out so Ms. MacDonald read into record his comment. It stated, My son's seizures are controlled by cannabis, along with symptoms from autism. It's very important to have as many options because he is very strain specific. Tempe is closer than other dispensaries we frequent outside of Maricopa county. And makes it easier to keep my son safe.

Mr. Bob Chilten, co-founder of Rain Strategies a professional management company in the cannabis industry. He states they mostly manage turn-key operations, distressed assets and court appointed receiverships. He states that similar to other business industries, the cannabis industry must obtain licenses from regulatory bodies such as: The City of Tempe business license, paying state sales tax and many other regulatory bodies. He states that the cannabis industry is different and that there are other regulatory bodies they must be compliant with. The Arizona Department of Health Services is the primary one as well as they need to stay in compliance with the Arizona Medical Marijuana Act. He further states that cannabis is just like any other business that would be in this complex or in this area however it is held to a higher standard. He states that they are in the health and wellness industry, so they again are held to a higher standard by the state and the federal government. Mr. Chilten adds that this business will provide over 30 fulltime jobs and contracts to other local businesses.

Ms. Jennifer Gote, the partner of Mr. Chilten, stated that through being able to run a dispensary they have been able to provide a lot of community support and jobs within the community. The dispensaries offer an alternative to conventional medicine, sponsor children and work with low-income families. Ms. Gote states that they work very hard to provide the best medicine for their patients. She also adds that there are not many locations that test to make sure the medicine is clean for their patients or even themselves. The neighbors of the other dispensaries enjoy having them present because they add another level of security on the property. She states that the bottom line is that it is just a piece of paper and the dispensary should be allowed to operate.

Mr. Michael Calisi, a business owner within the complex, states that speaking to the better quality of life is a way to divert the issue of when this application went through it did not meet the cities requirements. The applicant tried to use maps and other information which only truly showed how many options they have within a close proximity. Mr. Calisi states that there are many locations within a 5-mile radius and that the applicant is still trying to sell an illegal substance within the city. He states that at one time this location would have been suitable, however, now it is not. He also felt that as a parent there is no greater obligation than to separate their children from illegal drugs. He stated that there is no rational reason to allow a business such as this open so close to a child care facility.

Ms. Brittany Beaulieu, an employee at a dispensary states that she has never worked in the medical field before. She states that being involved with cannabis has changed her life in the ways she has seen the community truly need medical marijuana. She states that she, herself is a user of medical marijuana due to her debilitating pain and anxiety. She states that the dispensary brings jobs to the community and helps people who may not be able to get jobs within their career path. She states that the industry has an open door as long as you have a passion of selling to the patients. The dispensaries try and help make a comfortable atmosphere for their clients because many of them have never been there before. They want to be like the local pharmacy and give them the medicine they need as well as options. She states she understands the issue of being close to childcare, however the dispensary is more than the distance needed for the variance based on the distance to the front door. She also states she understands the distance needed for the residential, but again they once had the everything approved. She states that she also understands there is a dispensary a mile away but that isn't their entity, they are different, and their product is not harmful.

Ms. Janet Waibel, the suite owner next to the applicant wanted to state the pressure this business would place on the complex from a traffic standpoint. There is a cross axis easement that they share with Honeywell and when their development went in, they share a drive with the Honeywell staff. She states that during shift changes there is a tremendous amount of traffic. The site in question is small, so she is worried about the traffic that this business would bring to their development. She states that the dispensary's parking allotment is for a professional office use and that she has seen lines at other dispensaries where the parking would not be sufficient for the number of customers they're hoping to attract. She further states she has children and grandchildren who visit the office and that there are other businesses that service children within the development. She states that she has seen lines on the weekend of

50, 75, or even 100 people waiting to get their product. Tempe had a reason for changing the ordinance and Ms. Waibel is concerned that if this variance is approved a new precedent will be set for staff and further applicants.

Mr. Robert Cox, Arizona State University Government Relations Director, stated that on behalf of ASU they are against granting this variance agreeing with staff that the application doesn't meet the requirements and the hardship is self-imposed. He states that ASU was involved during discussion when the Tempe City Council last considered the zoning ordinance, the university expressed publicly that they were against the expansion of the dispensary locations within the city and this remains unchanged. He states that there is a dangerous precedent that could be set should this variance be granted. If there is concern with the policy, it should be addressed at the council level and that the time for this issue to be addressed was more than 14 months ago when the issue was before the council.

Mr. Cox submitted an op-ed piece to the Hearing Officer in regard to the university's view on the subject of medical marijuana.

Ms. MacDonald stated into the record that she had received a letter of opposition from Tom Tate a developer for the Emerald Center, who voiced his adamant opposition to this variance request.

Ms. MacDonald invited back up Ms. Sarkissian to the stand.

Mr. John Vatistas came up to speak.

Mr. Vatistas, property owner, wanted to clarify a few things. He states the association had sent out a letter to come to the meeting and oppose the proposal. He states they signed an agreement to not have recreational marijuana and as long as that was the case, they approved it voluntarily.

Mr. Vatistas states that the only work he has done to the property was gutting some flooring and one wall.

He also states that the woman who shares a wall with him is upset with him because she wanted him to purchase the whole building.

He states that he has four kids himself and is against recreational use of marijuana and had no problem signing an agreement not to sell recreational marijuana.

Mr. Vatistas states he entered in an agreement with both Mr. Travis and Mr. Bishop, who was the president of the association. He states that their testimonies were dishonest in his opinion.

Mr. Vatistas states that he did this with no risk because he was under the impression he had an agreement with the condo association and he went to the City and got approval and further states that Ryan Levesque tried his best to stop him from getting. He states he got the permit, did the work, and gave him a C of O to operate as a medical marijuana dispensary. The police had been there, and they had gone through all the proper channels.

Ms. MacDonald asks if he could clarify who "they" was.

Mr. Vatistas responds by saying Natural Herbal Remedies.

He continues by saying everything that was done, was done in compliance with the CC & R's.

Mr. Vatistas states that he had conversations with Ryan Levesque where Mr. Levesque says that he should just withdraw his application. Furthermore, he states that when they went to the Board of Adjustment, he was there to oppose.

Mr. Vatistas added that he was very disappointed and wanted to voice the facts as they were, that he didn't go at-risk and he got approval from the City and went to an expense to get the business open. He also adds that he was supposed to own Natural Herbal Remedies which is now PARC and doesn't understand how changing ownership can cause all of what has been happening.

Ms. Sarkissian approached the stand.

She mentions that she wants to address some of the questions and reiterate some things.

She states that this is a patient driven business, so the patients have certificates from the Doctor and they go through the state process. Also, the suite is operating under the same conditions as the rest of the facility, nothing will be changing upon opening.

She addresses the traffic by saying that the dispensary is located on Priest Dr. and Honeywell's entrance is on the other side. The applicant went through the traffic safety and met of the requirements put in place by the city.

Ms. Sarkissian states a complaint made by Eugene, who is located off of Elliot, is not 300' from the location but in fact further.

She addresses Ms. Williams the other mother, in saying the certificate for the other location is located in Wickenburg and would be transferred to this location. She mentions that this location would carry the various strains that the one operating in Wickenburg does. She also adds that this location would provide an added convenience to those that do have to travel out of town to receive their medicine.

Ms. Sarkissian states that the only reason Lifetime Fitness is a licensed child care facility is because someone suggest they get their license to oppose another medical marijuana facility near that site. She further states that they are not required by the state to have a child care license.

She stated that having people wrap around the building would not be allowed per the security plan. This variance is site specific. They are not using the former approval, yet they are using the formal approval in a sense that it was previously sent to Hearing, shown on maps and previously shown. Other locations have not have that to on their background. This location has a site history, which is why the case history is so important.

Ms. Sarkissian add that she noticed in the PCC district there are things that require a variance and use permits to go through the process. Things such as: outdoor dining, drive-thru's, outdoor sales, weekend hours and a smoke shop.

Ms. MacDonald clarified that a use permit and a variance are two separate things. She believes that there is nothing in the code that requires a use. Use variances they do not allow, they allow variances from development standard but not for uses in general.

Ms. Sarkissian states she is only referencing it because staff has said the rest of the complex has been able to operate without anything else happening, such as a use permit or variance. She points out there are some items in there that do require needing to go through other processes whether it being a variance or a use-permit. She states there is a Dunkin' Donuts that has a drive-thru and an outdoor restaurant.

Ms. MacDonald replied saying that those entities would have to get a use permit to operate.

Ms. Sarkissian responds that yes, and that was her point, in rebut to the staff comment.

Ms. Sarkissian states that this is a special circumstance because of the previous applications and site history that happened on the site. The zoning letter doesn't transfer but it does show what happened in the background. The site was approved and was going to operate on the grounds of its approval. She stated they missed the deadline to apply before the code change but that is why they are seeking the variance. She feels that because of the history, they have a special circumstance.

She states that Natural Herbal Remedies had an ongoing application with the department of health who was prepared to do the inspection, however, it was paused. They received approval from all the proper channels to do their tenant improvements. However, a chain of event happened, and the owners of the dispensary changed. This is where a problem arose, even though he had invested time and resources and made the necessary modifications.

Ms. Sarkissian stated that there are no special privileges because dispensaries close and open, transferring certificates like any other type of business permits. She states that not allowing a business to open where it previously was allowed prevents a disadvantage when the new owner cannot guarantee the space is viable for the same use when the tenant leaves without going through a new zoning approval. She states that the applicant is at the mercy of the code changes. She states that this is a very temperamental market and that one doesn't know what is going to happen.

She restates that it is not self-imposed. They did not put those restrictions upon themselves, it was a working site and that is why they are seeking the variance.

She states it is about the 4-finding in which she feels they meet.

Ms. MacDonald clarifies it's a variation for separation not setbacks.

Ms. Sarkissian that nothing has changed: no new apartment, no zoning change and they have kept the same criteria as well as the same standard around it.

She states that the project fits in perfectly with the surrounding area because it is a patient health and wellness facility. She also states that it is right off of Priest but isn't visible. They comply with the sign requirements and that everything is remaining the same.

She states that they are simply seeking the variance so that they can receive a zoning verification letter, so that even if the shop changes ownership it can remain in that location.

She feels that in this situation the City is overstepping to the State level. She states that nothing has changed and why this location is no longer acceptable.

Mr. Vatisas returns to the stand to ask one more question.

Mr. Vatisas asks "That if an association had allowed you to open a medical marijuana dispensary and then they say sorry, sue us, which they were forced to do. If you had a dispensary license and you wanted to move into my location, would you do that while there's pending litigation?"

Ms. MacDonald responds by saying she isn't going to answer.

Mr. Vatisas responds by saying she doesn't have to, but she had previously asked why so long between the dates and that was why they missed the deadlines.

Ms. MacDonald responds by saying she knows how important this is to the applicant.

Ms. MacDonald states that she doesn't take into account her own view on medical marijuana nor take into account the merits of the medication itself. She states that she understands many people feel strongly about it, either way, that is not the topic of discussion. They are not there to talk about the economic benefits of a medical marijuana facility.

Ms. MacDonald further states that she reads a statement at the beginning of the hearing precisely to remind people during a hearing. One of the things she read was "I have the duty to carry out the provisions and the intent of the zoning and development code and the general plan." This allows her to keep her focused on what is important and what her job is here.

She states that they are there for two variances to reduce the separation requirements from a child care facility and from a residential use. She mentions that the one from the child care facility is a very small distance which didn't trouble her, however the request to collapse the residential separation is extensive. The request was to take it from 1300' to 890' which to her is significant. Which makes it a higher level of scrutiny. She further states that per the state statute if one is going to vary from the code they must meet the very strict requirements.

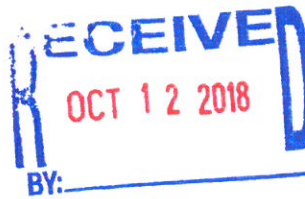
Ms. MacDonald explains that this is unlike a use permit and they are not talking about compatibility and hours of operation.

Ms. MacDonald referred to the Zoning and Development Code Section 6-309 D. Variance Approval Criteria (*in italics*) as follows:

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;*
Ms. MacDonald doesn't believe that this property has any special circumstance. It is in a clearly defined office complex
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;*
Ms. MacDonald does not believe the strict application of the code will deprive this property of privileges enjoyed by properties in the same zoning district.
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;*
Ms. MacDonald stated that she was not satisfied that this criteria had been met.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;*
Ms. MacDonald stated that the special circumstances were self-imposed.

DECISION:

Ms. MacDonald denied the Variance contained in (PL 180173) to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for **8611 SOUTH PRIEST DRIVE**, located at 8611 South Priest Drive, Suite 102.



480-682-3921

jg@berryriddell.com

October 12, 2018

HAND-DELIVERED

City of Tempe Board of Adjustment
Harry E. Mitchell Government Center
Tempe City Hall – City Council Chambers
31 E. 5th Street
Tempe, AZ 85281

Re: Variance for Medical Marijuana Dispensary, 8611 South Priest Drive, Suite 102,
VAR180005

Dear Board Members:

This firm represents Emerald I-10 LLC (“Emerald I-10”), which owns Emerald Center at the corner of Warner Road and Priest Drive. An application was filed for a variance to reduce the City’s residential and child care facility separation requirements for a proposed medical marijuana dispensary at 8611 South Priest Drive, which is located across Priest Drive from Emerald Center.

Emerald I-10 is a neighboring property owner within 300 feet of the proposed dispensary parcel, and its only economic interest is in maintaining the value and integrity of its property. Given its close proximity, Emerald I-10 will be affected by increases in noise, traffic, and other nuisances if the proposed variances are granted. Tom Tait, a principal of Emerald I-10, submitted a letter to the hearing officer on July 11, 2018, noting his concerns about the detrimental impact that the proposed facility would have on their property, including a decrease in value.

At a hearing on July 17, 2018, the hearing officer denied the application because it failed to meet any of the four variance criteria listed in the City’s Zoning and Development Code. The applicant has now appealed the hearing officer’s decision. We urge the Board of Adjustment to uphold the hearing officer’s denial of the variance for the reasons expressed by Mr. Tait in his letter and as follows. To summarize:

- The applicant is asking for a variance based on a Use Acceptance issued in December 2015, nearly three years ago (“2015 Use Acceptance”). The recipient of the 2015 Use Acceptance, Natural Herbal Remedies, never satisfied the conditions required for issuance of the 2015 Use Acceptance. Therefore, the 2015 Use Acceptance expired. Because the prior approval expired, this is a new application, and the new applicant must comply with the current zoning spacing requirements.

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- The 2015 Use Acceptance was issued only to Natural Herbal Remedies/Jenifer Corey and was not transferable. PARC Dispensary is treated as a new applicant and cannot claim the benefit of the prior approval. As a new applicant, PARC is subject to the current zoning spacing requirements.
- Arizona law establishes a strict test for issuance of a variance. A variance may only issue if, among other factors, there are “special circumstances” or unreasonable hardship. Being required to comply with current zoning spacing standards, just like any other new applicant, is not a special circumstance or a hardship. Granting a variance in these circumstances would also give the applicant special privileges not enjoyed by other similarly situated property owners.
- Arizona law also prohibits issuance of a variance when the need for it was self-imposed. The need for this requested variance was caused by the failure of the parties to satisfy the conditions of the 2015 Use Acceptance and to open for business. Thus, the conditions were self-imposed and cannot justify a variance.
- The dispensary is not a “non-conforming use.” To be a legal non-conforming use entitled to protection from changes to zoning ordinances, there must be an actual, existing use of property. The dispensary never opened. Therefore, there is no use that could be considered non-conforming, and the present facility is not entitled to protections that would prevent the 2017 spacing requirements from applying to it.
- The applicant does not have “vested rights” based on prior approvals or improvements to the property in 2016. Any rights that accrued (and we dispute there were any), accrued to Natural Herbal Remedies. The 2015 Use Acceptance did not “run with the land,” and was not transferrable to PARC, so PARC acquired no rights from the prior applicant. In any event, rights to a continued use of property only “vest” if there has been substantial work done in reliance on a permit. The 2015 Use Acceptance expired for failure to satisfy the conditions, and any work in 2016 was not in reliance on it.

I. A VARIANCE SHOULD NOT BE GRANTED BECAUSE THE MANDATORY CRITERIA ARE NOT MET.

A. A Variance Must Meet The Four-Part Test Of A.R.S. § 9-462.06.

As you know, this Board’s powers are strictly limited to those granted by the statute creating the Board. *Arkules v. Bd. of Adjustment of Town of Paradise Valley*, 151 Ariz. 438, 440 (App. 1986). A.R.S. § 9-462.06(G) allows the Board to approve a variance from the terms of the zoning ordinance “only if, because of special circumstances applicable to the property, including

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its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district” (emphasis added). The Board may not “make any changes in the uses permitted in any zoning classification or zoning district” or “grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.” A.R.S. § 9-462.06(H).

Therefore, for a variance to be approved the property owner *must* show *all* of the following: (1) that there are special circumstances applicable to the property, (2) strict application of the zoning will deprive the owner of privileges enjoyed by similarly situated property, (3) the Board would not be changing the uses permitted in the zoning district, and (4) that the need for the variance was not self-imposed. *See also* Tempe Development Code § 6-309(D).

Our courts have held that the Board’s “power and authority to grant a variance is to be exercised sparingly and under exceptional circumstances, if the integrity of the zoning code is to be maintained.” *Ivancovich v. City of Tucson Bd. of Adjustment*, 22 Ariz. App. 530, 535 (1974). No exceptional circumstances exist here. As the hearing officer correctly concluded, the applicant cannot make the statutorily required showing of *any* of the four elements.

B. No Special Circumstances Are Applicable To The Property.

No special circumstances or hardships apply to the property. The property and its size, shape, topography, location, and surroundings are similar to many other sites in Tempe.

According to the variance application and staff report, the City issued a Use Acceptance for Medical Marijuana on December 22, 2015, to a prior applicant. This 2015 Use Acceptance was issued contingent upon compliance with conditions, the first of which was:

The determination for NATURAL HERBAL REMEDIES DISPENSARY and its applicant, Jenifer Corey, will expire after sixty (60) calendar days of this letter (December 22, 2015) unless an application is submitted to the Arizona Department of Health Services in order to receive an approved dispensary certificate for this location. An expiration of the State’s application process will result in expiration of this determination. Any person or business other than those identified herein must file a new application to determine compliance with zoning regulations. (Emphases added).

This condition required the applicant to submit an application within 60 days to the Arizona Department of Health Services (“DHS”) to receive an approved dispensary certificate for the location. According to the staff report, “sufficient evidence has not been provided to demonstrate that Natural Herbal Remedies ever submitted an application to the Arizona Department of Health Services.” Thus, there is no evidence that the condition was satisfied.

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The condition also provides that the acceptance was for “Natural Herbal Remedies Dispensary” and “applicant, Jenifer Corey” and that any “person or business other than those identified herein must file a new application to determine compliance with zoning regulations.” In other words, the 2015 Use Acceptance was not transferrable. The Natural Herbal Remedies Dispensary never opened for business at this location and was purchased by the current applicant in 2016. The current applicant admits in its Variance Letter of Explanation that the first condition cannot be met (page 4 says “the previous applicant’s certificate ... cannot be transferred ... to this site”).¹ The applicant also admits the condition was not met and the business was never opened because of disputes with the landlord.

Because the dispensary never opened, the prior applicant is no longer involved, and the conditions of approval have not and cannot be met, staff properly concluded in the staff report to the hearing officer that the 2015 Use Acceptance expired.

In May 2017, after the 2015 Use Acceptance expired, the City increased its distance separation requirements for all new medical marijuana dispensaries. The City had a right to change its zoning ordinance and to require all new applications to comply with the changes. *City of Tempe v. Rasor*, 24 Ariz.App. 118 (1975) (a property owner has no right to the continuing existence of zoning). Because the 2015 Use Acceptance expired and was not transferrable in any event, this is a new application by a new owner, who must now comply with the current zoning requirements just like any other new applicant. Being forced to comply with applicable zoning requirements is not a “special circumstance” or hardship.

C. Strict Application Of The Code Will Not Deprive The Property Of Privileges Enjoyed By Other Property Of The Same Class In The Same Zoning District.

Denying the variance will not deprive the property of any privileges enjoyed by other similar properties. The certificate of occupancy issued by the City in November 2016 was for the property to be used as a “business office suite.” Even if a medical marijuana dispensary is no longer allowed on the property, there surely are a wide variety of other businesses that can operate on the property. The fact that a medical marijuana dispensary may be more profitable than other businesses and that the lack of a variance may result in a loss of income does not justify granting a variance. There is always an economic benefit when zoning restrictions are reduced or waived.

¹ The variance application dated June 11, 2018, identifies the current applicant as “PARC Dispensary, Natural Herbal Remedies Dispensary, Image Productions, LLC, and Assigns.” But the Variance Letter of Explanation says that the “former Applicant” intended to transfer its dispensary certificate but the landlord and “intended dispensary operator” were unable to agree upon lease terms. Based upon these statements, Natural Herbal Remedies Dispensary is no longer involved in this site.

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Financial loss is not a proper basis for granting a variance. *Haynes v. City of Tucson*, 162 Ariz. 509, 510 (1989) (“One cannot choose a particular use and then contend that that use will only be profitable if a variance is granted”).

The applicant seems to think that it is similar to medical marijuana dispensaries that were approved before the City’s Code changed in 2017 and now operate as legal nonconforming uses. However, the applicant ignores the fact that the 2015 Use Acceptance was a conditional approval; it was specifically issued to the prior applicant Natural Herbal Remedies and, because it was not transferrable, PARC was required to file a new application. The conditions were not met, the 2015 Use Acceptance expired, and there is a new applicant. Thus, the expired 2015 Use Acceptance gives PARC no rights to evade the 2017 zoning ordinance changes.²

In addition, the fact that the building may have been improved in 2016 with a medical marijuana dispensary in mind has no bearing. Those improvements were made at-risk, subject to obtaining new approvals after the 2015 Use Acceptance expired. The business never opened. Therefore, there was no existing “use” to be considered legally non-conforming. See A.R.S. § 9-462.02(A) (“Nothing in an ordinance or regulation authorized by this article shall affect existing property or the right to its continued use for the purpose used at the time the ordinance or regulation takes effect, nor to any reasonable repairs or alterations in buildings or property used for such existing purpose”) (emphasis added); *Rotter v. Coconino County*, 169 Ariz. 269, 271-72, (1991) (“A nonconforming use, however, is a source of vested rights only if it was in *actual* existence and use before the effective date of the ordinance”) (emphasis in original).

D. The Adjustment Would 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 the variance will give the property a special privilege by exempting it from the separation requirements that all other medical marijuana dispensaries must obey. Once the 2015 Use Acceptance expired, the property became just like any other property in Tempe with regard to the 2017 separation requirements. As discussed above, neither the 2015 Use Acceptance nor the improvements to the building made the property a legal non-conforming use. Reducing the separation requirements for this property, when it is in the same position as any other property in the same zone, would grant it special privileges.

² As noted in the staff report, PARC submitted an application for a use acceptance for a medical marijuana dispensary in 2017. The application was denied because the site failed to meet the City’s residential and child care facility separation requirements. PARC then appealed to this Board, which upheld the decision to deny the use acceptance request. There is no reason to reconsider that decision.

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The applicant argues that granting the variance would not be a special privilege because the property became “vested” in the 2015 Use Acceptance and the 2016 certificate of occupancy. An owner who reasonably relies upon an approval by spending substantial sums may have vested rights to continue under the approval despite a subsequent change in the zoning. By its terms, any rights to the 2015 Use Acceptance could only vest in the named applicant – the condition specifically said that any person or business other than those named “must file a new application.” It would be unreasonable for PARC, which was not named in the 2015 Use Acceptance, to claim rights when the condition of approval expressly states that a new business must file a new application. In addition, the conditions were not met, and the 2015 Use Acceptance expired. Therefore, no rights could vest based on later actions, such as improvements in 2016. *Fidelity Nat. Title Ins. Co. v. Pima County*, 171 Ariz. 427 (1992) (expenditures incurred by the owner for uses that were not yet authorized by permit are insufficient to establish vested rights); 4 Rathkopf, *The Law of Zoning and Planning* § 70:13 (4th ed.) (“Where these conditions are not met by the permittee, the permit may be revoked and the rights conferred thereby may be withdrawn”).

E. The Variance May Not Be Granted Because the Special Circumstances Applicable to the Property Are Self-Imposed by the Property Owner.

The alleged special circumstances are the issuance of the 2015 Use Acceptance and the 2016 improvements. However, the prior applicant allowed the 2015 Use Acceptance to lapse, failed to submit an application to DHS and never had the DHS certificate transferred to the new owner. The causes apparently were connected to a lease dispute with the landlord and the change in ownership. All these actions, including the failure to satisfy the 2015 Use Acceptance conditions, the sale to PARC, the at-risk nature of the tenant improvements, and the inability to agree upon a lease, were caused by the applicant and/or its predecessor. Therefore, the conditions giving rise to the requested variance were self-imposed and cannot support issuance of a variance.

II. CITY STAFF CORRECTLY APPLIED THE DISTANCE SEPARATION REQUIREMENTS

The applicant seemed to argue that Life Time Fitness does not contain a child care center or facility that should be protected by the distance separation requirements for medical marijuana dispensaries. But as the City’s staff report points out, the childcare center (or child care facility) at Life Time Fitness is licensed by the State of Arizona and meets the definition of “childcare centers” under the City’s Code; it deserves the protection provided by the separation distance between child care facilities and medical marijuana dispensaries that the City enacted in 2017.

Board of Adjustment
October 12, 2018
Page 7

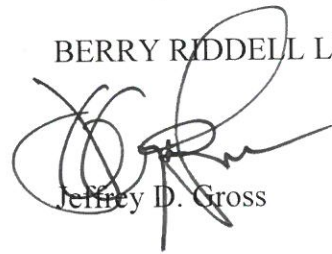
PARC also seems to argue that the 2017 separation requirements should not apply to child care facilities and residential uses when there are “buffers” between these uses and a proposed medical marijuana dispensary, such as commercial businesses. But the City did not include an exception from the separation requirements for properties that have “buffers,” and the presence or absence of intervening uses is not among the criteria to be considered in granting a variance.

III. CONCLUSION.

For the reasons listed above, we ask the Board to deny a variance in case VAR180005 to allow a medical marijuana dispensary to be located at 8611 South Priest Drive, Suite 102.

Sincerely,

BERRY RIDDELL LLC

A handwritten signature in black ink, appearing to read 'Jeffrey D. Gross', is written over the typed name. The signature is stylized and somewhat illegible.

Jeffrey D. Gross

Enclosures
JDG/lk

L& R PETERS INVESTMENTS LLC
8675 SOUTH PRIEST DRIVE, SUITE 101
TEMPE, AZ 85284

October 15, 2018

HAND-DELIVERED

Board of Adjustment
Harry E. Mitchell Government Center
Tempe City Hall – City Council Chambers
31 E. 5th Street
Tempe, AZ 85281

Re: Variance for Medical Marijuana Dispensary at 8611 South Priest Drive, Suite 102

Dear Sir/Madam:

An application was filed for a variance to shorten the City's residential and child care facility separation requirements for a proposed medical marijuana dispensary at 8611 South Priest Drive, Suite 102. At a hearing on July 17, 2018, the hearing officer denied the application because it failed to meet any of the four variance criteria listed in the City's Zoning and Development Code. The applicant has now appealed the hearing officer's decision and I urge the Board of Adjustment to also deny the variance.

I am a taxpayer that owns property located at 8675 South Priest Drive, Suite 101, within the City of Tempe. My property is within 300 feet from the medical marijuana dispensary proposed for 8611 South Priest Drive, Suite 102. Because my property is located in close proximity to the proposed dispensary, I will be affected by a decrease in property value and an increase in traffic, noise, and other nuisances if the dispensary is permitted to operate at that location. I oppose the variance for the following reasons.

I. A VARIANCE SHOULD NOT BE GRANTED TO THE MEDICAL MARIJUANA DISPENSARY BECAUSE THE APPROVAL CRITERIA ARE NOT MET.

A. No Special Circumstances Are Applicable to the Property.

No special circumstances or hardships apply to the property. The property and its size, shape, topography, location, and surroundings are similar to many other sites in Tempe.

According to the variance application and staff report, the City issued a Use Acceptance for Medical Marijuana on December 22, 2015, to a prior applicant. This 2015 Use Acceptance was issued contingent upon compliance with seven listed conditions. The first condition says that the determination was for "Natural Herbal Remedies Dispensary" and "applicant, Jenifer Corey" and that any "person or business other than those identified herein must file a new

application to determine compliance with zoning regulations.” The first condition also requires the applicant to submit an application within 60 days to the Arizona Department of Health Services to receive an approved dispensary certificate for the location.¹ The Natural Herbal Remedies Dispensary has not opened for business at this location and the property was purchased by the current applicant in 2016. The current applicant admits in its Variance Letter of Explanation that the first condition cannot be met (page 4 says “the previous applicant’s certificate ... cannot be transferred ... to this site”).² Because the conditions of approval cannot be met, the 2015 Use Acceptance has either been abandoned or has expired.

Since the 2015 Use Acceptance was issued, the City has increased its distance separation requirements for all new medical marijuana dispensaries. The City has a right to change its zoning ordinances and to require all new applications to comply with the changes when prior approvals are abandoned or the conditions of prior approvals cannot be met. Wanting to open a new medical marijuana dispensary in a location where it is no longer allowed is not a special circumstance or hardship; otherwise, distance separation requirements would be meaningless because any dispensary could get a variance for any location.

B. Strict Application of the Code Will Not Deprive the Property of Privileges Enjoyed by Other Property of the Same Classification in the Same Zoning District.

If the City strictly applies the distance separation requirements for medical marijuana dispensaries to the property, the property will not be deprived of any privileges enjoyed by other similar properties. The certificate of occupancy issued by the City in 2016 was for the property to be used as a “business office suite.” Even if a medical marijuana dispensary is no longer allowed on the property, there are a wide variety of other businesses that can operate on the property. The fact that a medical marijuana dispensary may be more profitable than other businesses and that the lack of a variance may result in a loss of income does not justify granting a variance. There is always an economic benefit when zoning restrictions are reduced or waived. Financial loss is not a proper basis for granting a variance.

¹ According to the staff report, the 2015 Use Acceptance is no longer valid because “sufficient evidence has not been provided to demonstrate that Natural Herbal Remedies ever submitted an application to the Arizona Department of Health Services.”

² The variance application dated June 11, 2018, identifies the current applicant as “PARC Dispensary, Natural Herbal Remedies Dispensary, Image Productions, LLC, and Assigns.” But the Variance Letter of Explanation says that the “former Applicant” intended to transfer its dispensary certificate but the landlord and “intended dispensary operator” were unable to agree upon lease terms. Based upon these statements, Natural Herbal Remedies Dispensary is no longer involved in this site. As noted in the staff report, PARC Dispensary submitted an application for a use acceptance for a medical marijuana dispensary in 2017. The application was denied because the site failed to meet the City’s residential and child care facility separation requirements; PARC Dispensary then appealed to the City’s Board of Adjustment, which upheld the decision to deny the use acceptance request.

The applicant seems to think that it is similar to medical marijuana dispensaries that were approved before the City's Code changed in 2017 and now operate as legal nonconforming uses. However, the applicant ignores the fact that the 2015 Use Acceptance was a conditional approval; it was specifically issued to the prior applicant and required any other business to file a new application. Additionally, the presence of a legal nonconforming use does not justify granting a variance to another use that does not comply with the City's Code.

C. The Adjustment, If Authorized, Would Constitute a Grant of Special Privileges Inconsistent with the Limitations upon Other Properties in the Vicinity and Zone in which such Property Is Located.

If the City allows the property to be exempt from the separation requirements for medical marijuana dispensaries, then the property would have a special privilege. The property would be exempt from the separation requirements that all other medical marijuana dispensaries must obey. And, if this variance is approved reducing the separation requirements required by the City's Code, it would open the door for other sites to claim they are entitled to similar variances.

The applicant argues that granting the variance would not be a special privilege because the applicant became "vested" in the 2015 Use Acceptance and the 2016 Certificate of Occupancy. An owner who relies upon an approval by spending substantial sums may have vested rights to continue under an approval despite a subsequent change in the zoning. However, vested rights do not apply if the conditions of approval are not met. It would be completely unreasonable for an applicant who was not named in the 2015 Use Acceptance to acquire the property and make improvements in reliance upon an approval that specifically said that any person or business (other than those named) "must file a new application." Any rights to the 2015 Use Acceptance could only vest in the named applicant and then only if all of the other conditions were met.

D. The Variance May Not Be Granted Because the Special Circumstances Applicable to the Property Are Self-Imposed by the Property Owner.

The property has no special circumstances or hardships. Instead, the property owner simply wants to use the property for a use that is not allowed in that location. The property is simply too close to a child care facility and too close to residential property to be used for a medical marijuana dispensary. The City's increase of its separation requirements before the applicant applied for approval of a medical marijuana dispensary on the property is not a special circumstance.

E. The Variance Would Make a Change in the Uses and Densities Permitted in the Zoning Classification or Zoning District.

Allowing a variance from the distance separation requirement for medical marijuana dispensaries would allow a use in a location where it is not currently permitted. Granting the requested variances would reduce the distance that the City imposed to protect residential

Board of Adjustment

Variance for Medical Marijuana Dispensary at 8611 South Priest Drive, Suite 102

October 15, 2018

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property and child care facilities from the effects of medical marijuana dispensaries and change the character of the surrounding area. The impact of such a variance on the properties of others is much greater than if the use was permitted in the location and the applicant was merely seeking a variance from circumstances within its own property (such as a setback, frontage, or height requirement).


II. CITY STAFF CORRECTLY APPLIED THE DISTANCE SEPARATION REQUIREMENTS.

The applicant seems to argue that Life Time Fitness does not contain a child care center or facility that should be protected by the City's distance separation requirements for medical marijuana dispensaries. But as the City's staff report points out, the childcare center (or child care facility) at Life Time Fitness is licensed by the State of Arizona and meets the definition of "childcare centers" under the City's Code; it deserves the protection provided by the separation distance between child care facilities and medical marijuana dispensaries that the City enacted in 2017. The applicant also seems to argue that the separation requirements enacted by the City should not apply to child care facilities and residential uses when there are "buffers" between these uses and a proposed medical marijuana dispensary. But the City did not include an exception from the separation requirements for properties that have "buffers" and "buffers" are not among the criteria to be considered in granting a variance.

For the reasons listed above, I ask the Board of Adjustment to deny any variance that would allow a medical marijuana dispensary to be located at 8611 South Priest Drive, Suite 102.

Sincerely,

L & R PETERS INVESTMENTS LLC



Dr. Rima Peters, Member

City of Tempe Board of Adjustment
Wednesday, October 24, 2018 at 6:00 PM

Item 2. Request to appeal the Hearing Officer's decision to deny a variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for 8611 SOUTH PRIEST DRIVE, located at 8611 South Priest Drive, Suite 102. The appellant is PARC Dispensary. (PL180173)

ASU is opposed to this variance request. This is consistent with ASU's opposition to the Amendment to the Medical Marijuana Ordinance that would allow more dispensaries to operate in Tempe.

ASU's opposition to allowing more dispensaries to operate in Tempe was expressed at the Development Review Commission hearing on March 23, 2017 and at the City Council Regular Meetings on April 20, 2017 and May 25, 2017.

ASU was opposed to that amendment, and is opposed to this variance, as we feel there are already enough dispensaries in Tempe and we do not need anymore.

Furthermore, at those hearings, we asked for the following stipulations:

- 1) The separation requirement is increased to one (1) mile or 5,280 feet, similar to surrounding municipalities, and
- 2) ALL post-secondary education property be added to the list of uses that require the separation of one (1) mile.

The request before you tonight to reduce the required separation requirements is in direct conflict with our request to increase separation requirements to one (1) mile or 5,280 feet.

ASU strongly opposes this variance and additional dispensaries in Tempe.

I have attached the Op-Ed article in the Tempe Republic on April 13, 2017, from Dr. Michael Crow, President of ASU, which further articulated why ASU strongly opposes additional dispensaries in Tempe.

As ASU continues to advance, we have an obligation to provide a positive environment for our students and their families. Approving this variance and increasing medical marijuana dispensaries would be a step backward, not forward. I ask you to formally reject additional dispensaries in our community. Thank you for your time and consideration.

Sincerely,

Robert Cox
Director, Community & Municipal Relations
Office of Government & Community Engagement
Arizona State University
O/480-727-0571 C/480-815-0227

Tempe does not need more marijuana clinics



In 2015, researchers at UCLA studied the impact of medical marijuana dispensaries on their surrounding neighborhoods in California. They found that

the more dispensaries opened in a given area, the greater the frequency of marijuana use, as well as an increase in the number of marijuana-related hospitalizations.

“Policymakers may want to consider regulations that limit the density of dispensaries,” they concluded.

Later this month, the Tempe City Council will be considering an expansion of medical marijuana dispensaries in the city from its current number of two to as many as 34. Although Arizona passed medical marijuana laws for limited use, it’s useful to ask whether the city of Tempe — and particularly our young people — benefit from expanding its availability.

According to a 2015 national “Monitoring the Future” survey, the rate of “daily or near-daily” use of marijuana by young adults is on the rise. It now surpasses cigarette smoking, reaching its highest level since 1980, when the drug was only about one-fourth as potent as it is today. What group holds the highest number of medical marijuana cards in Arizona? Men ages 18 to 30.

Long-term harm

As an educator, I am deeply concerned about both the short-term and long-term harm that increased marijuana use may have on the development of our young people and on society. As a 2014 *New England Journal of Medicine* article noted, from childhood to about the age of 21, the brain is “intrinsicly more vulnerable than a mature brain to the adverse long-term effects of environmental insults, such as exposure to tetrahydrocannabinol, or THC, the primary active in marijuana.” Smoking marijuana, the article’s authors explained, can impair “neural connectivity” in specific brain regions.

The effect on cognitive function is a reason for alarm. It can impair short-term memory and activities that require alertness and awareness, making it hard

to retain information and learn. It can undermine motor coordination, affecting the ability to drive and increasing the risk of accidents and injuries. And this increased incapacity can make it more challenging to complete school work, leading to poor grades — and ultimately undermine success in life. As the journal’s authors summarized, “Heavy marijuana use has been linked to lower income, greater need for socioeconomic assistance, unemployment, criminal behavior and lower satisfaction with life.”

Current Tempe zoning requires a quarter-mile separation of dispensaries from schools, although this now applies only to elementary and secondary schools. Current state law requires only a 500-foot separation from public or private schools. The neighboring cities of Phoenix, Mesa and Chandler all require a one-mile separation. If the council decides that limiting the number of dispensaries is not appropriate, it would certainly make sense for the city of Tempe to follow the practice of its neighbors and approve a one-mile separation, adding our university property to its definition of school.

Keep dispensaries distant

Reducing the proximity of marijuana dispensaries from our campuses is one way we can reduce the enticement. But I urge both our citizens and councilors to consider whether making this drug more available by increasing the number of distribution points is worth endangering some of our most vulnerable family members and neighbors.

Our state’s prosperity depends on increasing the number of able, educated citizens and making use of all the brain power we can rally. As Arizona State University continues to expand and advance, it is our responsibility to provide the most positive environment for our students and their families.

Increasing the number of medical marijuana dispensaries would not be a step forward. I hope Tempe citizens will let their representatives know that they reject a plan to add more dispensaries in our community.

Michael M. Crow is the president of Arizona State University.

**CITY OF TEMPE
HEARING OFFICER**

**Meeting Date: 07/17/2018
Agenda Item: 6**

ACTION: Request a Variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for 8611 SOUTH PRIEST DRIVE, located at 8611 South Priest Drive, Suite 102. The applicant is The Planning Center.

FISCAL IMPACT: N/A

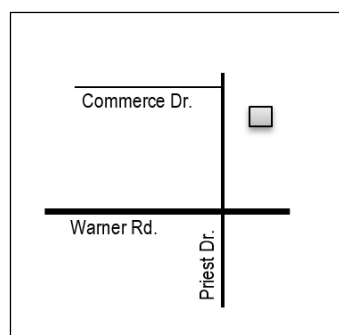
RECOMMENDATION: Staff – Deny

BACKGROUND INFORMATION: 8611 SOUTH PRIEST DRIVE (PL180173) is a proposed Medical Marijuana Dispensary located in a suite within a commercial condominium complex north of the northeast corner of Priest Drive and Warner Road. In December 2015, the City of Tempe approved a Use Acceptance Request for Natural Herbal Remedies (PL150478), another medical marijuana dispensary, at the same location as the subject site. The dispensary authorized by that approval never opened, and as a result, the use acceptance decision issued by the Community Development Department expired, based on the conditions of approval in the letter.

On August 14, 2017, the property owner filed an Administrative Review application for PARC Dispensary (PL170260), for zoning clearance for a Medical Marijuana Dispensary. After review of the request, a determination was made on August 30, 2017 that the subject property did not comply with Tempe's new Medical Marijuana Ordinance (Ord. No. O2017.25), effective May 25, 2017, regarding the separation requirements from a child care facility (1,500 feet) and from a parcel solely devoted to a residential use (1,320 feet), and conflicted with a site previously approved for a medical marijuana dispensary use (Natural Herbal Remedies). Following denial of the Administrative Review request, the owner appealed the decision. On October 25, 2017, the Board of Adjustment upheld the Zoning Administrator's decision and denied the appeal for PARC Dispensary.

The subject site of 8611 SOUTH PRIEST DRIVE (PL180173) is the same suite that was the subject of PARC Dispensary. The request includes the following:

VAR180005 Variance to reduce the separation requirements for a Medical Marijuana Dispensary from a residential use (from 1,320 feet to 890 feet) and a child care facility (from 1,500 feet to 1,430 feet).



Property Owner
Applicant
Zoning District
Site Area
Building Area

Image Productions
Jessica Sarkissian, The Planning Center
PCC-1 (Planned Commercial Center Neighborhood)
2.99 acres
2,383 gross s.f.

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Karen Stovall, Senior Planner (480) 350-8432

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A
Prepared by: Karen Stovall, Senior Planner
Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

The City of Tempe first adopted Medical Marijuana regulations in 2011, through Ordinance No. 2011.01. Amendments to these regulations have occurred a total of three times, twice in 2015 and once in 2017. The current ordinance (No. O2017.25) is attached.

Pursuant to the Zoning and Development Code, Section 3-426, Medical Marijuana regulations, dispensary related uses are allowed in commercial and industrial districts, subject to compliance with the separation requirements found in the code and other operational requirements (no use permit requirement). As a result, an applicant must file a zoning administrative application to seek a "Use Acceptance" of a medical marijuana dispensary facility. The use acceptance letter, if granted, allows the applicant to complete the remaining steps of filing an application with the Arizona Department of Health Services and subsequent application of building permits for related tenant improvements, before the use goes into operation.

Part of the administrative review process includes verifying whether the proposed site complies with the necessary separation requirements in the Zoning and Development Code (Sec. 3-426), which includes but are not limited to: a 1,500-foot separation from the parcel lines of a proposed dispensary to the property lines of a parcel containing a child care facility; a 1,320-foot separation from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district; and a 5,280-foot separation from one dispensary to another. These distances are measured by a straight line, from parcel line to parcel line, in all directions, without regard to intervening structures or objects.

When evaluating the request for a medical marijuana dispensary at the subject site for PARC Dispensary (PL170260) in 2017, it was determined that the property is less than 1,500 feet away from a child care facility. The subject site on Priest Drive is approximately 1,430 feet away from a child care facility licensed by the State of Arizona Department of Health Services to Life Time Fitness, located at 1616 West Ruby Drive. The Zoning and Development Code (ZDC) Part 7, Chapter 1 – Definitions, defines "childcare centers" to mean:

"any use, regulated by the State of Arizona involving the care of other people's children during the day and that accommodate more than four (4) children for childcare. Some instruction may be offered in connection with such care. The use shall not be considered a "school" within the meaning of this Code. See also, nursery and day care school."

For purposes of reviewing the request, "child care facility" and "childcare centers" are considered to be the same use and are used interchangeably.

It was also determined that the subject property is less than 1,320 feet away from a parcel "solely devoted to a residential use." The subject site is approximately 890 feet away from the San Sonoma Apartments located at 9010 South Priest Drive, just south of Warner Road. The property is zoned MU-3 (Mixed-Use, Medium-High Density). While it is in a mixed-use zoning district, the only use on the site is residential.

As a result, and through the City's administrative review process, the subject property was determined not in compliance with the above two use separation requirements.

The City of Tempe approved a use acceptance request for Natural Herbal Remedies (PL150478), another medical marijuana dispensary, at the same location as the subject site, on December 22, 2015. At the time the Natural Herbal Remedies application was submitted, Ordinance No. 2011.01 was in effect, with separation requirements of 1,320 feet from a child care facility and 500 feet from parcel solely devoted to a residential use. These separation requirements were increased with the adoption of Ordinance No. 2017.25 (current ordinance). At this point in time, sufficient evidence has not been provided to demonstrate that Natural Herbal Remedies ever submitted an application to the Arizona Department of Health Services, so that approval is no longer valid.

The applicant, who represents the same business owner as the PARC Dispensary project, requests a Variance to reduce the separation requirements from a residential use and childcare facility to allow a Medical Marijuana Dispensary.

The applicant has submitted maps identifying distances of 951 feet from the nearest residential use and 1,461 feet from the nearest child care facility; however, measurements using both the measurement tool and the buffer tool on the Maricopa County Assessor's Website show that the subject site is within 890 feet of a residential use and 1,430 feet of a child care facility.

PUBLIC INPUT

- A neighborhood meeting was not required for this request.
- No public input has been received as of the completion of this report.

VARIANCE

The proposed use requires a variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and child care facility within the PCC-1 zoning district. The specific separation reductions are as follows:

- a. Reduce the required separation from a parcel solely devoted to a residential use from 1,320 feet to 890 feet.
- b. Reduce the required separation from a child care facility from 1,500 feet to 1,430 feet.

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 claims there is a special circumstance related to the previous approval of the site for the Natural Herbal Remedies Medical Marijuana Dispensary in 2015. As explained above, zoning clearance approvals for Medical Marijuana facilities are non-transferable. The last sentence of stipulation #1 of the 2015 letter for Natural Herbal Remedies reads:

“...Any person or business other than those identified herein must file a new application to determine compliance with zoning regulations.”

When the new use acceptance request was filed, Planning staff reviewed the site based on the code in place at that time and determined that the site was non-compliant and remains non-compliant today.

The property is a unit within a commercial condominium complex. The condominium was platted in 2006 and tenants have since operated a variety of businesses without the need for deviation from the ZDC. The request to locate a business that must comply with separation requirements on this particular site is the applicant's choice, unrelated to the property itself. There are no special circumstances applicable to the property, including its size, shape, topography, location, or surroundings.

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;*

On May 25, 2017, the City Council approved Ordinance No. O2017.25, which amended the location requirements for Medical Marijuana land uses. All zoning clearance requests for Medical Marijuana facilities submitted after the effective date of the ordinance, including the application submitted for PARC Dispensary, are subject to the location requirements set forth in the most recent Code. The strict application of the Code does not deprive the subject property of privileges enjoyed by other properties of the same classification in the same zoning district.

The applicant's letter of explanation claims that other Medical Marijuana facilities granted zoning clearance prior to the recent code adoption can operate as non-conforming uses if they do not comply with the current code. This claim is correct; however, the subject site never had a Medical Marijuana dispensary operating on it. If it is somehow demonstrated that Natural Herbal Remedies has had an ongoing application with the Arizona Department of Health Services since the 2015 approval, Natural Herbal Remedies may open a dispensary at the subject site. It would be allowed as a legal non-conforming use, based on the current code requirements. The proposed business intended with the subject application, however, is not Natural Herbal Remedies.

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,*

The applicant's letter of explanation states that Natural Herbal Remedies, after receiving City of Tempe approval in 2015, was unable to agree upon lease terms with the landlord; therefore, Natural Herbal Remedies continues to operate a dispensary elsewhere in the state. If the requested variances are granted, the applicant intends to transfer a dispensary certificate to the subject site that is not the certificate issued to Natural Herbal Remedies.

As explained above, zoning clearances for Medical Marijuana facilities are not transferable. If the variances are granted and the applicant can transfer a different dispensary certificate to the subject site, this would constitute a grant of special privileges inconsistent with the limitations upon other properties.

4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.*

There are no special circumstances applicable to the property as it relates to the required separation requirements for a Medical Marijuana dispensary. The zoning clearance granted to a previous applicant does not run with the land and is not transferable to other businesses.

REASONS FOR DENIAL:

Based on the information provided by the applicant and the above analysis staff recommends denial of the Variance. This request does not meet the required criteria for Variance approval.

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.
2. The applicant shall submit a new Administrative Review application for zoning clearance in order to receive approval prior to start of operation.

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.

- 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/planning/documents.htm or purchase from Development Services.

- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.

HISTORY & FACTS:

October 29, 2010	Staff provided City Council a Friday memo update outlining the City of Tempe's current involvement with the Arizona League of Cities and Towns with potential provisions for the proposed Proposition 203, cited as the Arizona Medical Marijuana Act.
November 2, 2010	Election date, including the ballot initiative for Proposition 203, Arizona Medical Marijuana Act.
November 23, 2010	Development Review Commission held a study session with staff presenting an outline of proposed draft amendments regarding the regulation of medical marijuana.
December 1, 2010	Neighborhood Advisory Commission received a presentation by staff of an outline of proposed draft amendments regarding the regulation of medical marijuana.
December 14, 2010	Development Review Commission recommended approval of a Code Text Amendment for AZ MEDICAL MARIJUANA ACT Ordinance No. O2011.01.
December 17, 2010	The Arizona Department of Health Services (ADHS) posts initial draft of rules governing the regulatory system for the medical marijuana program.
January 13, 2011	City Council introduced and held the first public hearing for MEDICAL MARIJUANA ACT, Ordinance No. O2011.01 (PL100378), consisting of changes within the Zoning and Development Code and City Code regarding Proposition 203, a voter approved initiative for the Medical Marijuana Act.
January 27, 2011	City Council held the second and final public hearing and adopted an ordinance for MEDICAL MARIJUANA ACT, Ordinance No. O2011.01, (PL100378), consisting of changes within the Zoning and Development Code and City Code regarding Proposition 203, a voter approved initiative for the Medical Marijuana Act.
September 22, 2015	Development Review Commission recommended approval of a Code Text Amendment for MEDICAN MARIJUANA CULTIVATION, Ordinance No. O2015.48. (PL150267), consisting of changes within the Code that regulate the location and operation requirements for cultivation facilities in Tempe.
October 22, 2015	Introduction and first public hearing to adopt an ordinance for a Code Text Amendment for MEDICAL MARIJUANA CULTIVATION, Ordinance No. O2015.48 (PL150267), consisting of changes within the Zoning and Development Code, Section 3-426 that regulate the location and operation requirements for cultivation facilities in Tempe.
December 22, 2015	Community Development Department, Planning Division approved the Use Acceptance request for a Medical Marijuana Dispensary for NATURAL HERBAL REMEDIES (PL150478), located at 8611 South Priest Drive, Suite 102 (Unit 104).
November 12, 2015	City Council held the second and final public hearing and adopted an ordinance for MEDICAL MARIJUANA CULTIVATION, Ordinance No. O2015.48 (PL150267), consisting of changes within the Zoning and Development Code, Section 3-426 that regulate the location and operation requirements for cultivation facilities in Tempe.

- December 3, 2015 City Council held the third and final public hearing and adopted an ordinance for a Code Text Amendment for MEDICAL MARIJUANA DISPENSARIES, Ordinance No. O2015.49 (PL150361), consisting of changes within the Zoning and Development Code, Section 3-426 that regulate operation requirements and total number of dispensaries in Tempe.
- February 2, 2017 City Council Issue Review Session regarding the one-year review and evaluation of Ordinance No. O2015.49. Staff received direction from Council to proceed with an ordinance amendment to remove the dispensary limitation (2).
- March 23, 2017 Development Review Commission recommended approval of a Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, Ordinance No. O2017.25 (PL170076) consisting of changes within the Code that regulate the location, operation requirements, and number of dispensaries in Tempe.
- April 5, 2017 Neighborhood Advisory Commission meeting reviewed this request for a Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, Ordinance No. O2017.25 (PL170076) consisting of changes within the Code that regulate the location, operation requirements, and number of dispensaries in Tempe.
- April 20, 2017 City Council introduction and first public hearing for a Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, Ordinance No. O2017.25 (PL170076) consisting of changes within the Code that regulate the location, operation requirements, and number of dispensaries in Tempe.
- May 25, 2017 City Council approved the Code Text Amendment for MEDICAL MARIJUANA AMENDMENT, Ordinance No. O2017.25 (PL170076) consisting of changes within the Code that regulate the location, operation requirements, and number of dispensaries in Tempe.

HISTORY OF SUBJECT SITE:

- December 22, 2015 Community Development, Planning Division approved the Use Acceptance request for NATURAL HERBAL REMEDIES (PL150478), located at 8611 South Priest Drive, Suite 102 (Unit 104).
- August 14, 2017 Application submitted for Use Acceptance request for a Medical Marijuana Dispensary for PARC DISPENSARY (PL170260), located at 8611 South Priest Drive, Suite 102 (Unit 104).
- August 30, 2017 Community Development Department, Planning Division denied the Use Acceptance request for a Medical Marijuana Dispensary for PARC DISPENSARY (PL170260), located at 8611 South Priest Drive, Suite 102 (Unit 104).
- September 13, 2017 Appeal of the Zoning Administrator’s decision for PARC DISPENSARY (PL170260) was filed by the aggrieved party of record. Appeals of ZA decisions are forwarded to the Board of Adjustment.
- October 25, 2017 Board of Adjustment denied the appeal of PARC DISPENSARY (PL170260) and upheld the Zoning Administrator’s decision to deny the Use Acceptance request for the proposed Medical Marijuana Dispensary located at 8611 South Priest Drive, Suite 102 (Unit 104).

ZONING AND DEVELOPMENT CODE REFERENCE:

- Section 3-426 Medical Marijuana
- Section 6-309 Variance

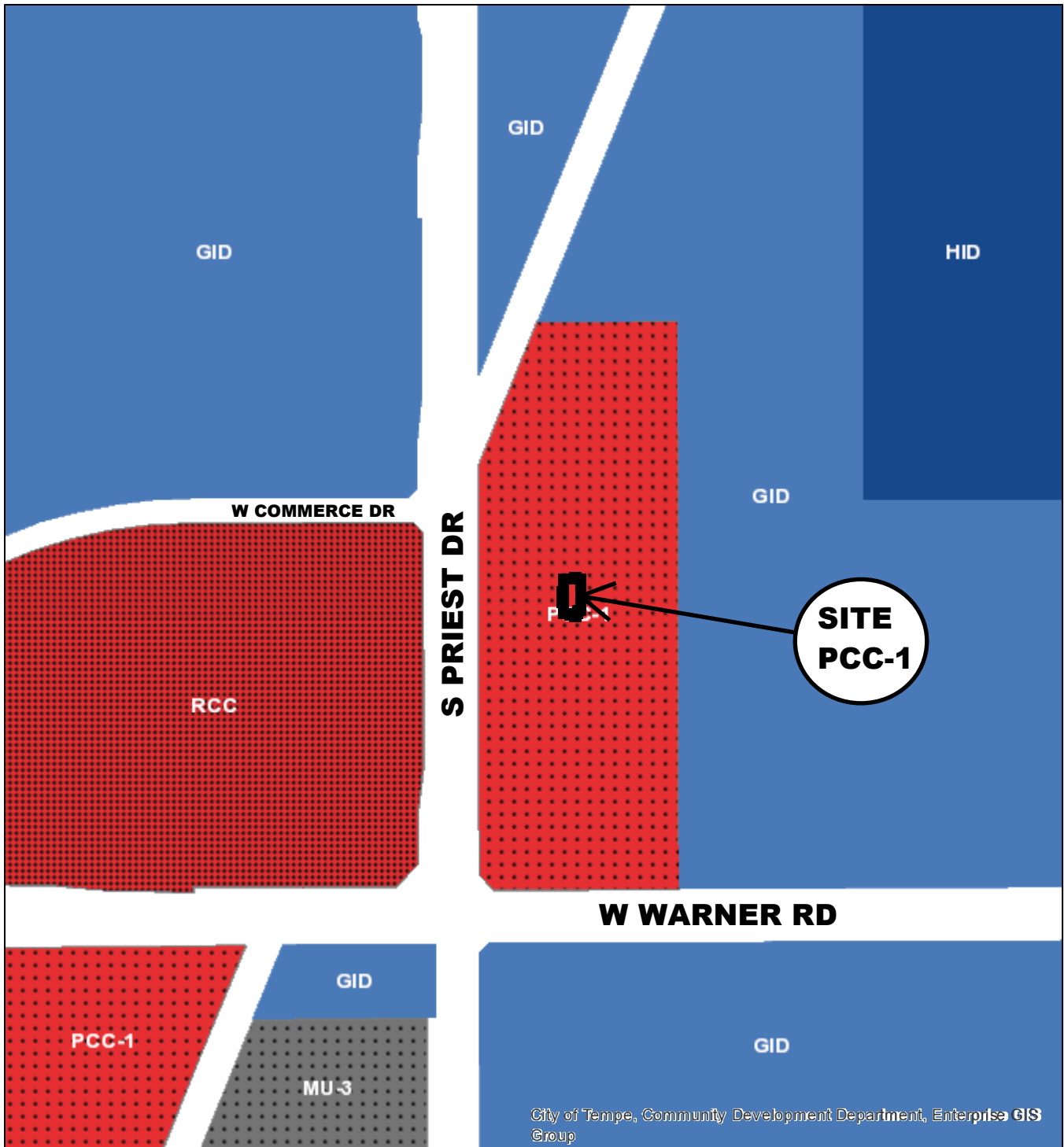
DEVELOPMENT PROJECT FILE
for
8611 SOUTH PRIEST DRIVE
(PL180173)

ATTACHMENTS:

1. Location map
2. Aerial
- 3-4. Tempe Medical Marijuana Ordinance (Ordinance No. 2017.25)
5. Map showing separation distance between 8611 South Priest Drive and residential use
6. Map showing separation distance between 8611 South Priest Drive and child care facility
- 7-17. Letter of explanation with supporting information
18. Site Plan
- 19-20. Egress plan and floor plan
- 21-23. Site photos
- 24-25. Natural Herbal Remedies Medical Marijuana Use Acceptance letter, dated December 22, 2015
26. Zoning Administrator's decision letter for PARC Dispensary, dated August 30, 2017
27. Board of Adjustment's decision letter for PARC Dispensary appeal, dated October 27, 2017

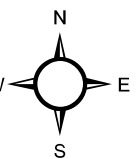
8611 South Priest Drive

PL180173



City of Tempe, Community Development Department, Enterprise GIS Group

- General Industrial District (GID)
- Heavy Industrial District (HID)
- Planned Commercial Center Neighborhood (PCC-1)
- Mixed Use Med-High (MU-3)
- Regional Commercial Center (RCC)

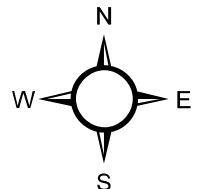


8611 South Priest Drive

PL180173



Aerial Map



Section 3-426 - Medical Marijuana.

- A. **Purpose.** The purpose of this section is to implement Arizona Revised Statutes, Title 36, Chapter 28.1; entitled "Arizona Medical Marijuana Act".

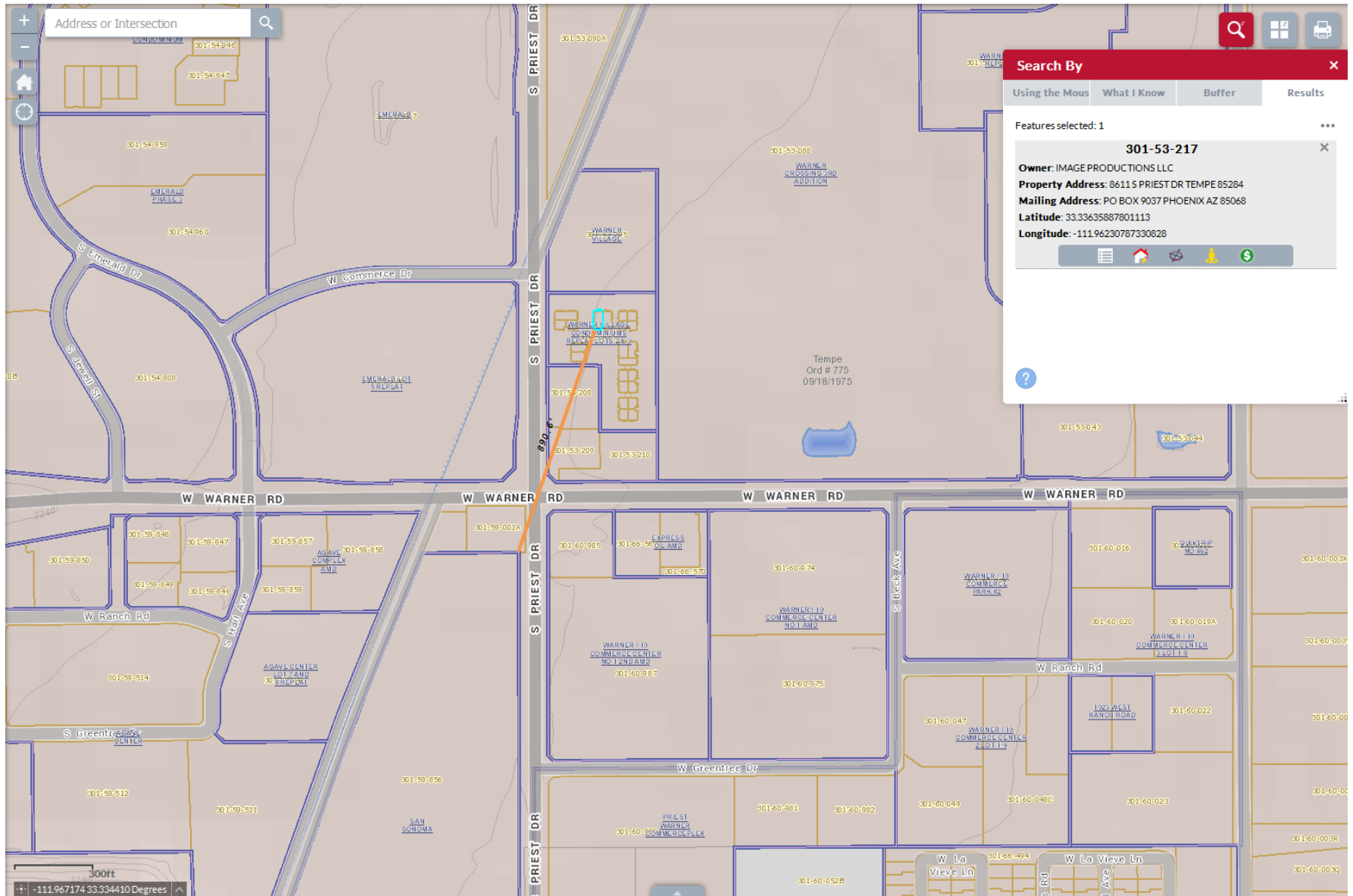
Cross reference— See also the following definitions in Part 7 of this Code: *medical marijuana*, *medical marijuana cultivation facility*, and *medical marijuana dispensary*.

- B. **Location Requirements.** A *medical marijuana dispensary*, without *cultivation*, is allowed in the CSS, CC, PCC-1, PCC-2, RCC, and LID districts. A *medical marijuana dispensary* or *cultivation facility* is allowed in the GID and HID zoning districts. The locations are limited to the following:
1. A *medical marijuana dispensary* shall not be operated or maintained on a parcel within five thousand two hundred eighty (5,280) feet (1 mile) from another *medical marijuana dispensary*, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing such use.
 2. A *medical marijuana dispensary* shall not be operated or maintained on a parcel, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing the following:
 - a. Within one thousand five hundred (1,500) feet from a child care facility;
 - b. Within one thousand five hundred (1,500) feet from a *charter school*, *private school*, or *public school*, which provides elementary or secondary education;
 - c. Within one thousand three hundred twenty (1,320) feet from a church, synagogue, temple or similar religious worship building;
 - d. Within one thousand three hundred twenty (1,320) feet from a public park, library, or public community building; or
 - e. Within one thousand three hundred twenty (1,320) feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district.
 3. A *medical marijuana cultivation facility* shall not be operated or maintained on a parcel within one thousand three hundred twenty (1,320) feet, measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing the following:
 - a. A child care facility;
 - b. A *charter school*, *private school*, or *public school*, which provides elementary or secondary education;
 - c. A *church*, synagogue, temple or similar religious worship *building*; or
 - d. A public park, library, or public community *building*.
 4. A *medical marijuana cultivation facility* shall not be operated or maintained on a parcel within five hundred (500) feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district measured by a straight line in all directions, without regard to intervening structures or objects, from the nearest point of the property line of a parcel containing such use.
 5. *Medical marijuana cultivation* for a caregiver or patient's residence in a residential district is not permitted, unless sufficient evidence exists that the location is greater than twenty-five (25) miles from a *medical marijuana dispensary* within the State of Arizona.
- C. **Operation Requirements.** Any *medical marijuana dispensary* or *cultivation facility*, except within a residential home, shall comply with the following requirements, as well as those contained within Arizona Revised Statutes, Title 36, Chapter 28.1:

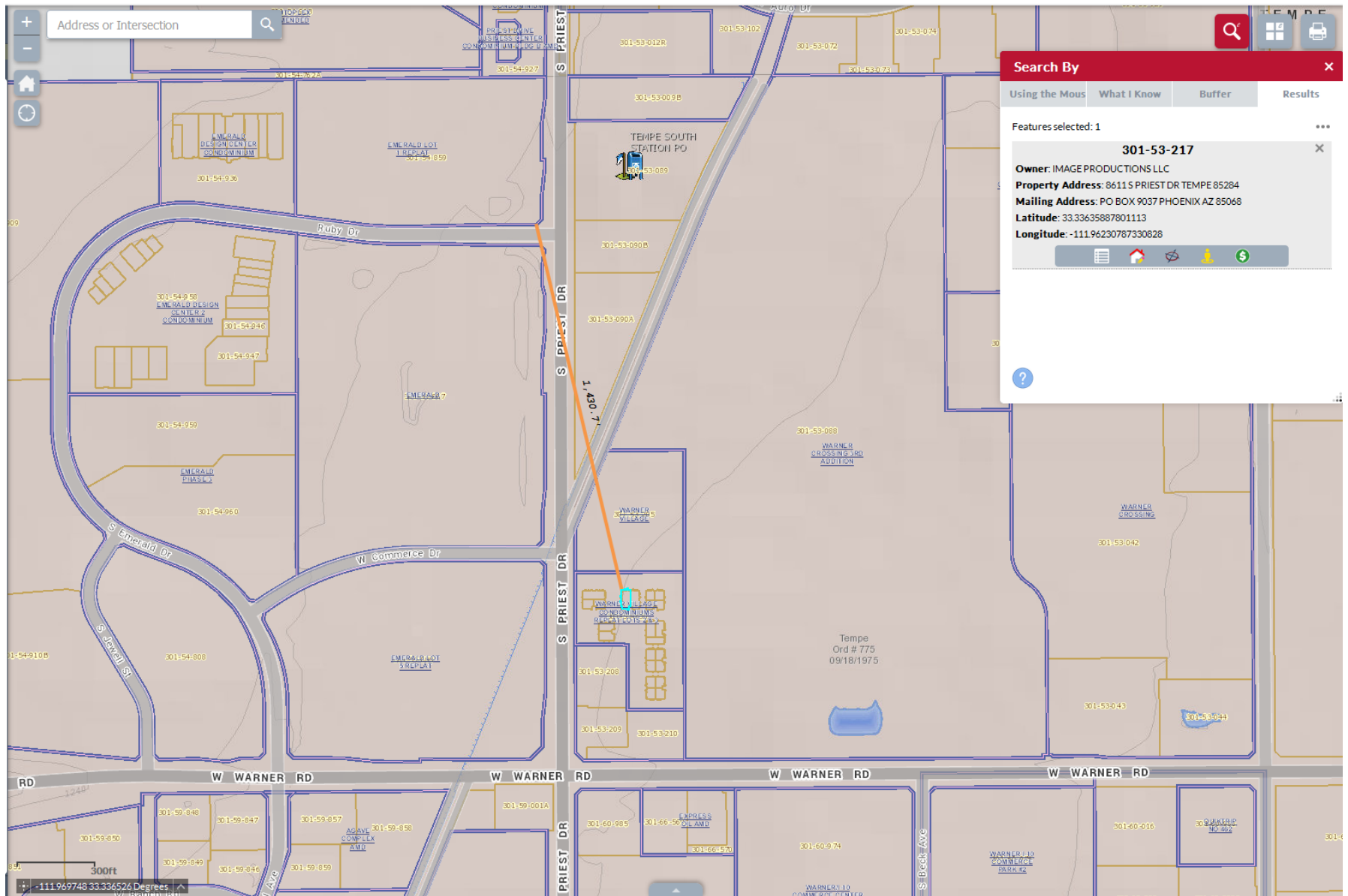
1. The business shall be located in a permanent building, with an engineered foundation that meets Tempe Building Code, and not located in a *mobile home* , *trailer* , cargo container, motor vehicle, or similar personal property.
 2. The maximum size for a *medical marijuana dispensary* shall be no more than five thousand (5,000) square feet. The maximum size for a *cultivation facility* shall be no more than twenty-five thousand (25,000) square feet.
 3. The business and tenant space must comply with Tempe's applicable Building Code and Fire Code requirements.
 4. Drive-through facilities are prohibited.
 5. The *medical marijuana dispensary* is limited to the hours of operation not earlier than 8:00 a.m. and not later than 8:00 p.m.
 6. *Medical marijuana* remnants or bi-products shall be disposed of according to an approved plan and not placed within the facilities exterior refuse containers.
 7. There shall be no emission of dust, fumes, vapors, or odors into the environment from the premise.
 8. A security plan is required, which shall include, but is not limited to, the following:
 - a. All exterior doorways for the facility shall provide a security vision panel pursuant to Section 4-406, Employee Service Entrances and Exits, or a one hundred eighty (180) degree rotatable viewer. If doorway is transparent, the door shall be designed with a material that is either impact resistant or restricts entry by means of a wrought iron gate;
 - b. Closed circuit television cameras, operating twenty-four (24) hours a day, shall be provided at the building's exterior entrances and inside the building at a designated service area;
 - c. All lighting for the site shall be brought into conformance with the current lighting standards identified in Part 4, Chapter 8, Lighting. The building entrance of the business shall be illuminated from dusk till dawn activated by photocell relay to the lighting controller;
 - d. No one under the age of eighteen (18) shall enter the medical marijuana dispensary; and
 - e. Any person, prior to entering the establishment, shall remove all hats, sunglasses or other similar objects, to avoid obstruction of physical identification.
- D. **Use Acceptance.** A zoning administrative application shall be processed, certifying that all City of Tempe regulations for the *medical marijuana dispensary or cultivation facility* are in compliance with the provisions set forth in Section 3-426 of this Code. The use shall not commence without the zoning administrator, or designee, acceptance letter. The application shall include, but is not limited to, the following items:
1. A project submittal form with applicable fee;
 2. The property owner's letter of authorization for the use;
 3. The name and location of the dispensary's off-site *medical marijuana cultivation facility* , if applicable;
 4. A map showing the location in compliance with the separation requirements listed in Section 3-426(B);
 5. A copy of operating procedures adopted in compliance with A.R.S. 36-2804(B)(1)(c);
 6. A site plan;
 7. A floor plan of the building or tenant space;
 8. If applicable, Building permits (Separate submittal) in compliance with Tempe's Building Code and Fire Code; and
 9. A Security Plan, in compliance with Section 3-426(C).

(Ord. No. 2011.01, 1-27-2011; Ord. No. 2015.48, 11-12-2015; Ord. No. 2015.49, 12-3-2015; Ord. No. [O2017.25](#), 5-25-17)

Approximate 890-foot separation between 8611 South Priest Drive, Suite 102 (highlighted in teal) and parcel solely devoted to a residential use (9010 South Priest Drive).



Approximate 1,430-foot separation between 8611 South Priest Drive, Suite 102 (highlighted in teal) and a child care facility (1616 West Ruby Drive)





**VARIANCE LETTER OF
EXPLANATION FOR
*8611 S. PRIEST DRIVE***



Submitted to:
City of Tempe Planning Division
31 E. Fifth Street
Tempe, AZ 85281

Prepared for:
**John Vatistas, PARC Dispensary, Natural Herbal Remedies Dispensary,
Image Productions, LLC and Assigns**
4167 N. Marshall Way
Scottsdale, AZ 85251
Ph: (602) 451-3919

Prepared by:
**The Planning Center
Jessica Sarkissian**
1270 E. Broadway Road, Suite 203
Tempe, AZ 85282

June 2018

Variance Narrative
8611 S. Priest Drive

Summary. This request is to allow for a previously-approved (2015-2016) medical marijuana dispensary site to remain and operate on approximately 1,500 square feet of PCC-1 zoned property located on the east side of Priest Drive and north of Warner Road in a commercial condominium complex. This request is to allow variances to shorten the residential and childcare facility separation requirements of Section 3-426 of the City of Tempe Zoning and Development Code (2017). No changes to the property have occurred since the dispensary was built and received a certificate of occupancy in 2016, although the Code was changed.

The Property. The site is located within the Commercial land use category in the Tempe General Plan and zoned PCC-1 for a Planned Commercial Center. This request anticipates there will be no additional construction to the site because the medical marijuana dispensary use was already approved in 2015 and built in 2016 in accordance with State of Arizona laws and regulations and City of Tempe Development Standards for a medical marijuana dispensary. The site is a one-story building located within the Warner Village Condominiums community of 23 commercial suites. The site is bordered by Priest Drive to the west, vacant property to the north, a parking lot to the east, and numerous commercial offices and businesses on Warner Road to the south.

The property was constructed in 2016 in compliance with the Arizona Medical Marijuana Act, Ariz.Rev.Stat. §§ 36-2801 *et seq.* (the "AMMA"), which requires the dispensary to have limited, designated hours of business, a medical director to oversee operations, a hazardous materials handling plan, and a security plan including exterior lighting, electronic monitoring, video cameras, battery backup, panic buttons, and policies and procedures to prevent loitering, to restrict access to State-licensed persons only and to monitor the identities of persons affiliated with the dispensary. If the requested variances are granted, the State will have access to the dispensary at all times for the purpose of inspecting, monitoring and auditing its operations. The Applicants currently operate 2 successful dispensaries in Maricopa County.

Two Variances Requested. This variance application is requesting 2 deviations to Section 3-426 of the current City of Tempe Zoning and Development Code (2017).

1. *Separation from Parcel Solely Devoted to Residential Use.* The first request is in reference to the separation requirement applicable to "a parcel solely devoted to a residential use in a zoning district", referenced in Code Section 3-426 B, 2. (e) (2017). In 2015-2016, when the Dispensary Approvals were granted by the City, the property met all separation requirements applicable to medical marijuana dispensaries. But the current Code (2017) lengthened the residential separation requirement to 1,320 feet The property is 950 feet from a parcel solely devoted to a residential use in a zoning district; that property is a residential multifamily complex (the "San Sonoma Apartments") located at 9010 S. Priest Drive, which is zoned MU-3.

Between the dispensary and the Apartments are numerous commercial businesses including a GID zoned parcel, a Circle K gas station, an RCC parcel, several PCC parcels and numerous retailers and service providers. Therefore, as to the dispensary located at 8611 S. Priest Drive, we request the separation requirement from a parcel solely devoted to residential use be reduced to 950 feet, reflecting more closely the 2015 and 2016 Code separation requirements in effect at the time the Dispensary Approvals were granted by the City. The substantial buffers provided by robust and

Variance Narrative
8611 S. Priest Drive

diverse commercial business uses between the property and the Apartments should additionally persuade the City to grant this request for variance.

2. *Separation from Child Care Facility.* The second request is in reference to the separation requirement from a "child care facility". Currently, the Code (2017) requires a 1,500-foot separation between a dispensary and a child care facility. The Code (2017) does not define the term "child care facility", but "childcare centers" is defined in the Code (2017) as a "use, regulated by the State of Arizona involving the care of other people's children during the day".

The City's denial of the 2017 Application pointed to a small portion in the Lifetime Fitness gym facility located at 1616 W. Ruby Drive as an impediment to locating a dispensary on the property. The subject child care facility is 1,466 feet from Applicants' property. According to the gym's online regulations, parents and guardians of children in the gym are *required to stay* on the premises at all times. The State of Arizona does not regulate a sports facility's day care when parents are required to care for their children on the premises. Thus, Lifetime Fitness is not required to be licensed or regulated by the State, but has voluntarily chosen to do so as part of its own business practices; and for tax purposes, the County Assessor does not classify the Lifetime Fitness as a "child care facility". This facility's care of children is short term (not exceeding 2 hours), infrequent and sporadic, and not regulated by law. Contrast its care against care provided by Sunrise Preschools, which operate within the traditional sense of the word "child care". These are child care facilities; the Lifetime Fitness facility is not.

As with the residential separation requirement, the child care separation requirement is further minimized by the substantial buffers provided by robust and diverse commercial business uses between the property and Lifetime Fitness.

Therefore, as to the property we request the separation requirement of the current Code (2017) be reduced to 1,460 feet, reflecting more closely the 2015 and 2016 Code separation requirements in effect at the time the Dispensary Approvals were granted by the City.

1. Special Circumstances. There are special circumstances or conditions applying to the property, including its size, shape, topography, location or surroundings.

The property is located in a commercial condominium complex. The site was entitled as an MMJ dispensary in late 2015 and purchased in 2016 by one of the Applicants, and the Applicants planned, permitted and constructed the dispensary with the City's approvals in 2016. The property received the City's use acceptance letter for the property's use as a medical marijuana dispensary in 2015, and it was built in 2016, followed by the City issuing its COO, the property met all requirements stated in the City of Tempe Zoning and Building Ordinances. After the Dispensary Approvals were obtained in 2015-2016, the City of Tempe amended Zoning Code requirements applicable to MMJ dispensaries by first limiting the number of dispensaries to 2, then eliminating that requirement but increasing the required distances by 164% for a parcel solely devoted to residential use and

Variance Narrative
8611 S. Priest Drive

13% for child care facilities, causing the City to determine that the site was now too close to these uses. Intervening modifications to the Code in 2017 increased separation requirements, and now the site is unable to operate as a dispensary, even though it had been purchased, permitted and constructed as a dispensary before the 2017 Code changes. Thus, the property evidences special circumstances supporting the requested variances.

2. Burdensome Effect. The strict application of the Zoning and Development Code will deprive such property of privileges enjoyed by other properties of the same classification in the same zoning district.

8611 S. Priest Drive, Unit 102 was approved by the City of Tempe in December 2015 for use as a medical marijuana dispensary pursuant to the then-effective Zoning Code, Section 3-426 of the City of Tempe Zoning and Development Code (2015), and the Arizona Medical Marijuana Act, Ariz.Rev.Stat. §§ 36-2801 *et seq.* (the "AMMA"). The former Applicant intended to transfer its State-issued dispensary certificate from a location outside Maricopa County to this property, which is permitted by the AMMA if the dispensary had been operated for 3 years in its first location. The State's approval to transfer the Applicant's dispensary certificate was pending when the landlord and the intended dispensary operator were unable to agree upon lease terms. The previous applicant's certificate has not been transferred to the site and is still in use at a different location and cannot be transferred while in use to this site.

If these requested variances are granted, an Applicant will transfer a dispensary certificate to the site with the State's approval and in conformance with the AMMA.

If denied this request, there will be a significant loss of privilege and economic income for the Applicants whose use as a dispensary had been approved by the City of Tempe's December 22, 2015 use acceptance letter and the subsequent issuance of building permits and a certificate of occupancy for the constructed dispensary in November 2016. The Applicants made substantial investments in and took on debt for the acquisition, planning and construction of the dispensary facility. And because there are so few dispensaries in Tempe and only a few possible dispensary locations remaining, the Applicants' opening of this property as a dispensary is expected to produce substantial revenues for Applicants and benefits to the community. The State is not currently issuing additional dispensary certificates, and it is unknown if and when any additional certificates will be awarded. There are a substantial number of patients holding State-issued identification cards whom live or work in or travel through the City and these persons could be gaining medical assistance at the property if the variance requests are granted.

Other medical marijuana facilities approved by the City before the 2017 Zoning Code change to separation requirements are able to operate today as a non-conforming use. Like these other facilities, the Applicants' property was granted Dispensary Approvals prior to the 2017 Zoning Code modifications. Thus, a denial of the property's application for variances would deprive Applicants of benefits currently enjoyed by other, similarly-situated property owners.

3. No Special Privileges. The adjustments authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which this property is located.

As described in greater detail above, this property was approved for use as a medical marijuana dispensary in 2015 and its construction approved in 2016. The owner applied for, obtained permits and completed construction of a medical marijuana dispensary on the Property in 2016, thereby becoming vested in zoning entitlements, including the use acceptance letter and certificate of occupancy according to the City of Tempe's development requirements.

Because this site has already been approved as a medical marijuana facility through multiple development stages by the City of Tempe, there are no special privileges being acted upon by granting these variances. This site will be in operation and compliance with all regulations set forth previously and will not negatively impact the area.

4. 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.

As described in greater detail above, this property was approved for use as a medical marijuana dispensary in 2015 and its construction approved in 2016. This request is to allow for the operation of a previously approved medical marijuana site. In May 2017, the City of Tempe modified the Zoning Code to impose greater separation requirements between a dispensary and uses such as day care and residential. This change in requirements precludes the property's use as a dispensary and diminishes the value of the Property and its associated improvements which were required by the City of Tempe for the 2016 construction and certificate of occupancy.

The applicant has proceeded through the proper channels and found the site to be suitable for the medical marijuana use, as confirmed by the City. The variances for the separation requirements are not self-imposed, but incurred because of a change in the City Zoning Code after the building was completed and received City approvals.

In conclusion, we respectfully ask you to approve the variance requests and review the project history of the site and site photos for familiarity. The facility is a positive addition for this complex and will operate in accordance with all previously approved regulations by the City and State. By allowing this site to operate as a medical marijuana facility, the community and patients benefit economically and medically. The site meets the City's intent to locate such facilities in commercial office and industrial areas and is within an area of high visibility and access within the complex to provide CPTED (Crime Prevention Through Environmental Design) and ensure a safe environment for patrons of the facility as well as neighboring businesses making this a prime location for this use.

8611 S. PRIEST DRIVE TEMPE, ARIZONA


NOTIFICATION MAP

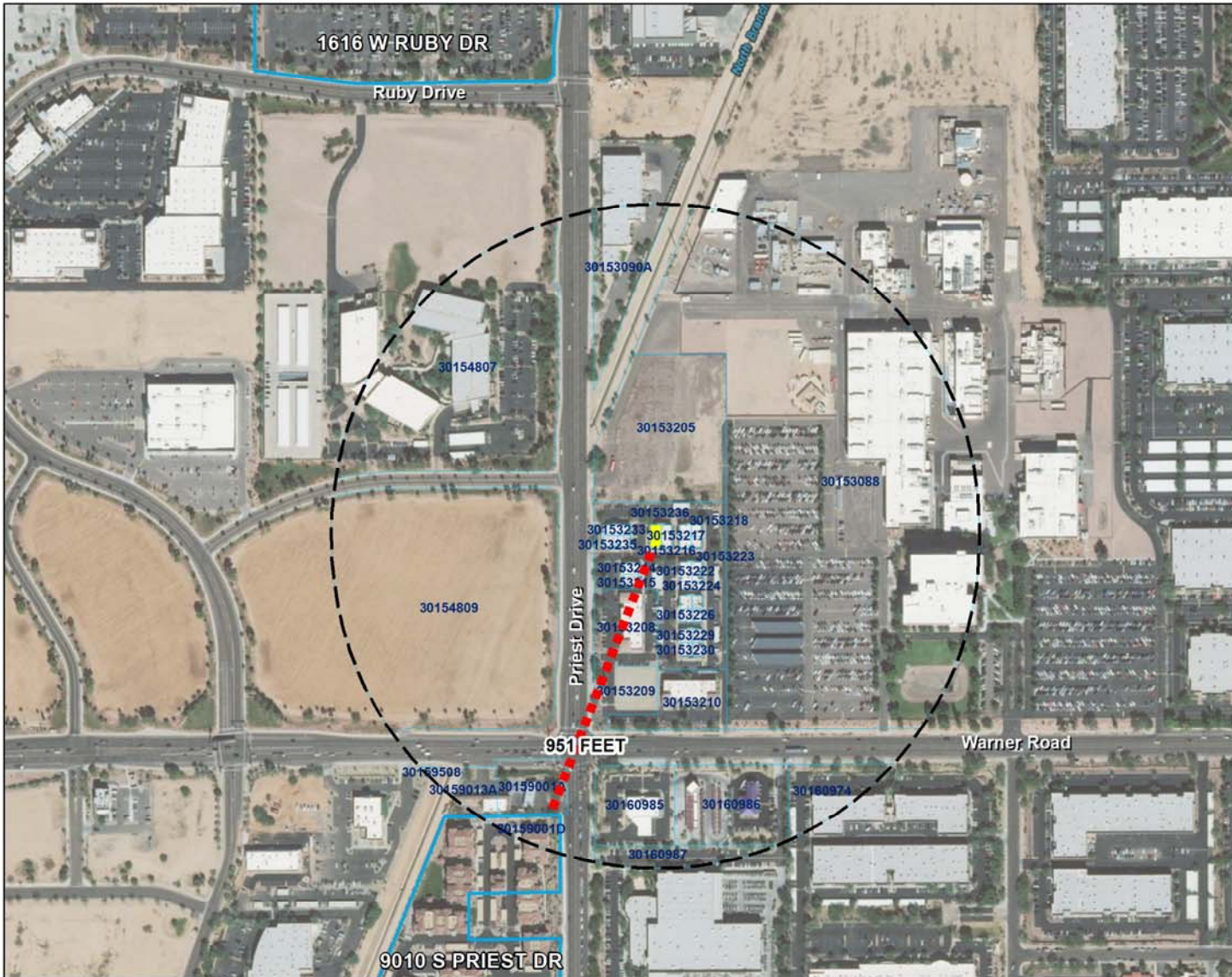
 Project Location



8611 S. PRIEST DRIVE
TEMPE, ARIZONA

1000 FEET

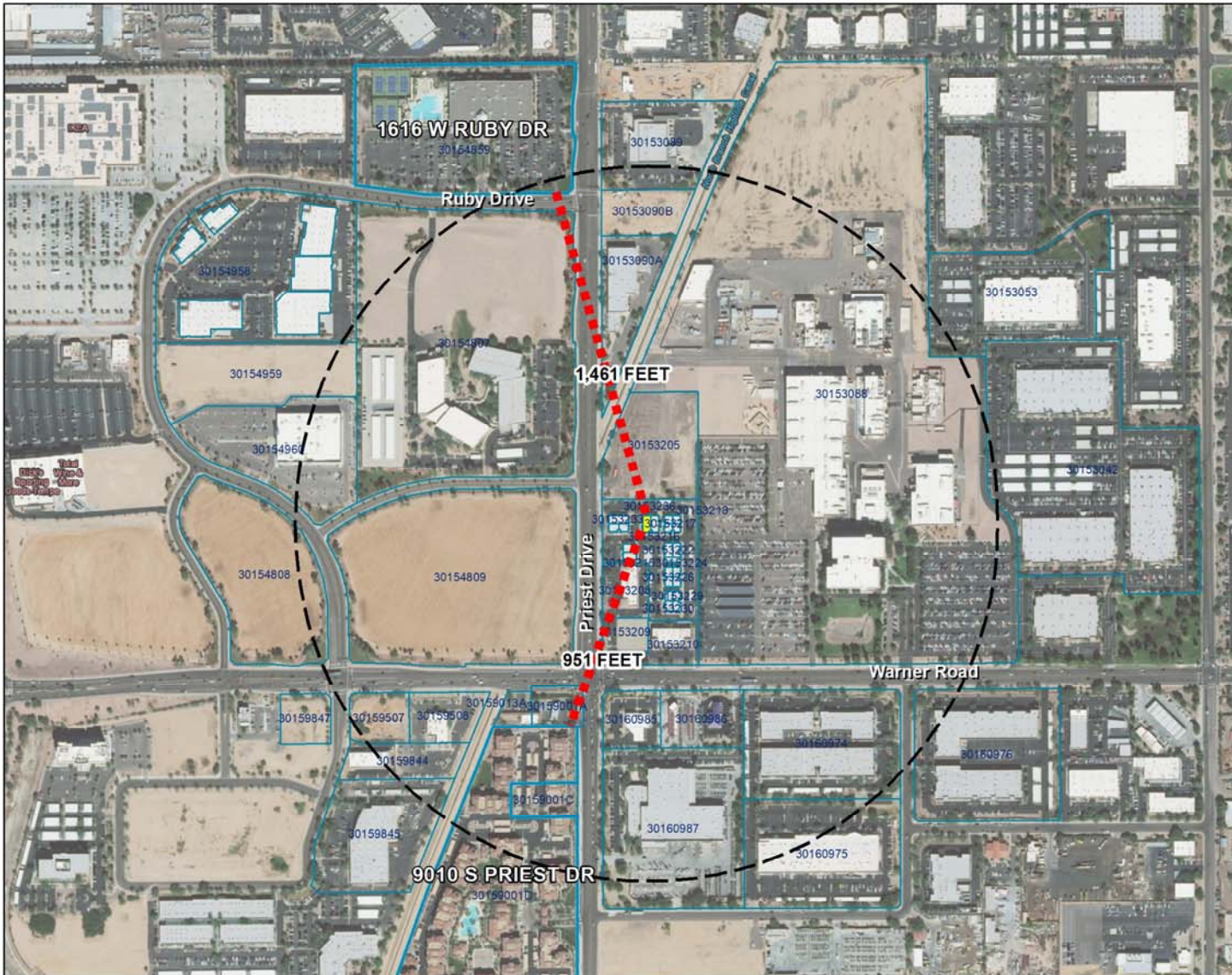
-  Site
-  1000' Boundary
-  Parcels within 1000 ft
-  Residential Property



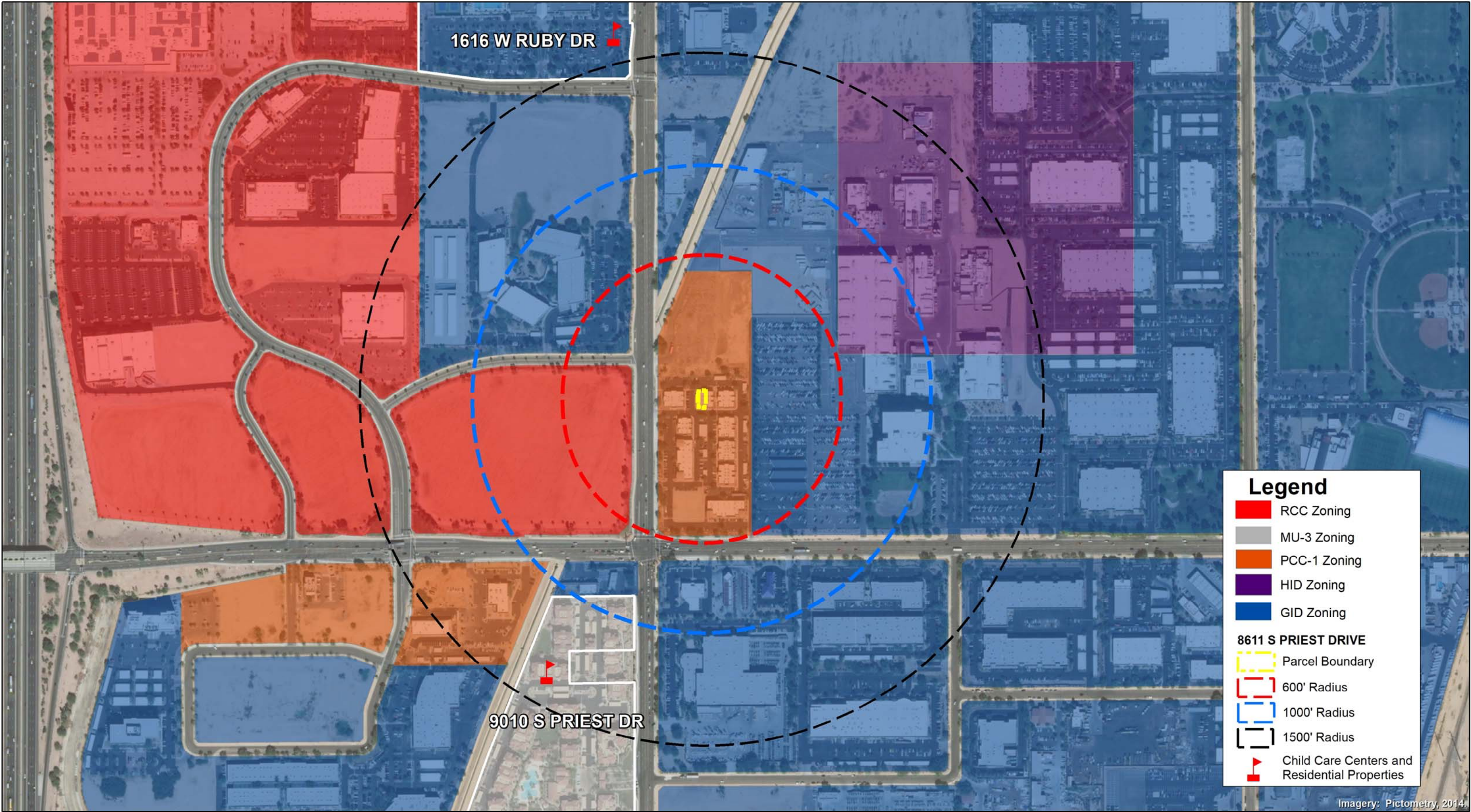
8611 S. PRIEST DRIVE TEMPE, ARIZONA

1500 FEET

- Site
- 1500' Boundary
- Parcels within 1500 ft
- Residential and Day Care Properties

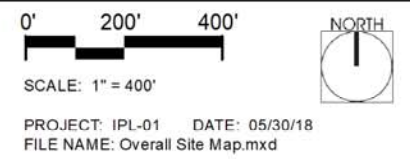


VARIANCE APPLICATION



8611 S PRIEST DRIVE

Site Acreage: 0.1-Acre Parcel
Site Location: Warner Village Condominiums
Replat, Lots 2 & 3, MCR 858-10, Unit 104 BLDG B
Parcel ID: 301-53-217



Imagery: Pictometry, 2014.

CERTIFICATE OF OCCUPANCY



Address of Building: 8611 S PRIEST DR STE102

Any change of use of occupancy must be approved by the Development Services Division.

This certifies that so far as ascertained by or made known to the undersigned, the building at the above address complies with the applicable requirements of the Tempe City Code as to permitted uses for the following occupancies.

Certificate Issuance Date: 11/3/2016	Permit Number: BP161483	Code Addition: 2012
Construction Type: VB	AFES: Yes	

Uses: Business Office Suite 102

<u>Occupancy Group</u>	<u>Occupancy Load</u>	<u>Occupancy Area</u>
B	49	2383

Building Official

By: **Fernando Prats**

POST THIS CARD AT OR NEAR FRONT OF BUILDING



**COMMUNITY DEVELOPMENT DEPARTMENT
BUILDING SAFETY DIVISION
INSPECTION RECORD**

Building Inspection Requests -
(IVR) 480-350-8072

Building Inspections Information
480-350-8341 - (Option 1)**

**** For estimated time of arrival call between
6:00 a.m - 6:30 a.m. day of inspection ****

Address: 8611 S PRIEST DR Suite/Lot#: STE102

Permit#: BP161483

Date Issued: 9/23/16

Type: Tenant Improvement

**DO NOT COVER WORK UNTIL
INSPECTOR HAS SIGNED THE
APPROPRIATE SPACE(S)**

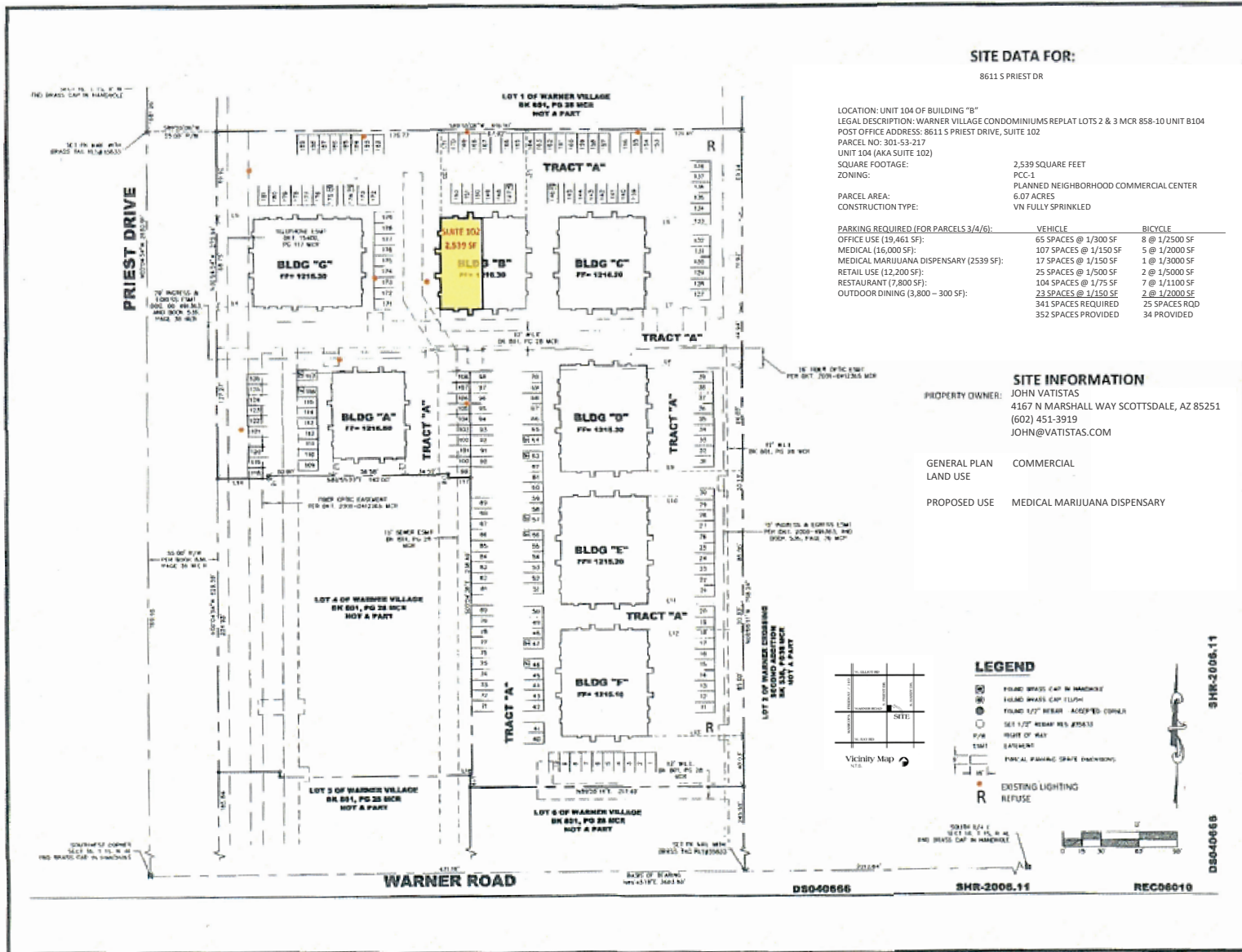
Code	STRUCTURE	Date/ Inspector
101	*Footing Trench & Rebar	
103	*Stem Wall/Retaining Wall	
105	Building Pre-Slab	
107	*Reinforced Masonry Pre-Grout	
109	*Structural Steel Frame	
111	*Fit Panels	
113	*Deck Weld/Welding	
115	*Structural Concrete	
117	*Epoxy Anchors	
125	Exterior Strap & Shear	
127	Roof Nail (Commercial)	
131	Framing (includes any MEP)	10-3-16 CH
132	Rough Energy	
133	Insulation (Sound / Energy)	
134	Stucco / Energy Lath	
145	Gypsum Wallboard	10-3-16 CH
151	*Fire Safing / Spray Applied Fire-Proofing	
153	Fire Caulking / Sound Control Caulking	
155	*Smoke/Fire Dampers/Test	
161	Above Ceiling (Suspended)	
191	Building Demolition Final	
198	Energy Final	11-3-16
199	Building Final	11-3-16 SG for FP
	ELECTRICAL	
205	Ufer	
206	Underground	
207	Rough-In	
208	Panels	
235	Service Equipment	
255	Temp Pole / Pedestal	
256	Service / Panel(s) Power	
265	Service Upgrade / Replacement	
291	Demolition Final	
299	Final	

Code	PLUMBING	Date/ Inspector
305	Drain, Waste & Vent (Underground)	
335	Water Piping (Underground)	
341	Sewer	
345	Water Service	
351	Rough (Water Piping / DWV)	
355	Medical Gas / Test	
361	Gas Piping / Test	
391	Demolition Final	
399	Final	
	MECHANICAL	
405	Underground	
435	Rough	
436	Duct Sealant	
437	Duct Insulation	
460	Hood System	
475	Duct Smoke Detector / Test	
491	Demolition Final	
499	Final	

Code	PLANNING	Date/ Inspector
	Site Lighting	11/2/16
605	(Photometric Night Test Wed Only)	
699	Planning Final	11/2/16
	POOL / SPA	
805	Pre-Gunite	
835	Electric	
841	Gas Piping / Test	
898	Pool / Spa Energy Final	
899	Pre-Plaster / Final	
	ENGINEERING	
	Final Approval	
	ENVIRONMENTAL	
344	Grease Trap/Interceptor	

When requesting an inspection through the automated inspection line (480-350-8072), select ATTACHMENT 17. If you would like to leave a message for the inspector, you will be prompted to do so. You will be given a confirmation number at the end of the process. Please NOTE this number. If you have difficulty scheduling an inspection, call 480-350-8072 and press '0' between the hours of 8:00 am and 5:00 pm for assistance.

(* indicates a Special Inspection MAY be required. Special Inspections are in addition to not in lieu of the Building Safety inspections.



SITE DATA FOR:

8611 S PRIEST DR

LOCATION: UNIT 104 OF BUILDING "B"
 LEGAL DESCRIPTION: WARNER VILLAGE CONDOMINIUMS REPLAT LOTS 2 & 3 MCR 858-10 UNIT B104
 POST OFFICE ADDRESS: 8611 S PRIEST DRIVE, SUITE 102
 PARCEL NO: 301-53-217
 UNIT 104 (AKA SUITE 102)
 SQUARE FOOTAGE: 2,539 SQUARE FEET
 ZONING: PCC-1
 PLANNED NEIGHBORHOOD COMMERCIAL CENTER
 6.07 ACRES
 VN FULLY SPRINKLED

PARCEL AREA:
 CONSTRUCTION TYPE:

PARKING REQUIRED (FOR PARCELS 3/4/6):

OFFICE USE (19,461 SF):	VEHICLE	BICYCLE
	65 SPACES @ 1/300 SF	8 @ 1/2500 SF
MEDICAL (16,000 SF):	107 SPACES @ 1/150 SF	5 @ 1/2000 SF
MEDICAL MARIJUANA DISPENSARY (2539 SF):	17 SPACES @ 1/150 SF	1 @ 1/3000 SF
RETAIL USE (12,200 SF):	25 SPACES @ 1/500 SF	2 @ 1/5000 SF
RESTAURANT (7,800 SF):	104 SPACES @ 1/75 SF	7 @ 1/1100 SF
OUTDOOR DINING (3,800 - 300 SF):	23 SPACES @ 1/150 SF	2 @ 1/2000 SF
	341 SPACES REQUIRED	25 SPACES RQD
	352 SPACES PROVIDED	34 PROVIDED

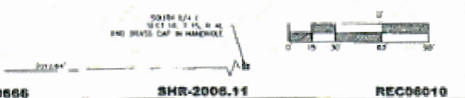
SITE INFORMATION

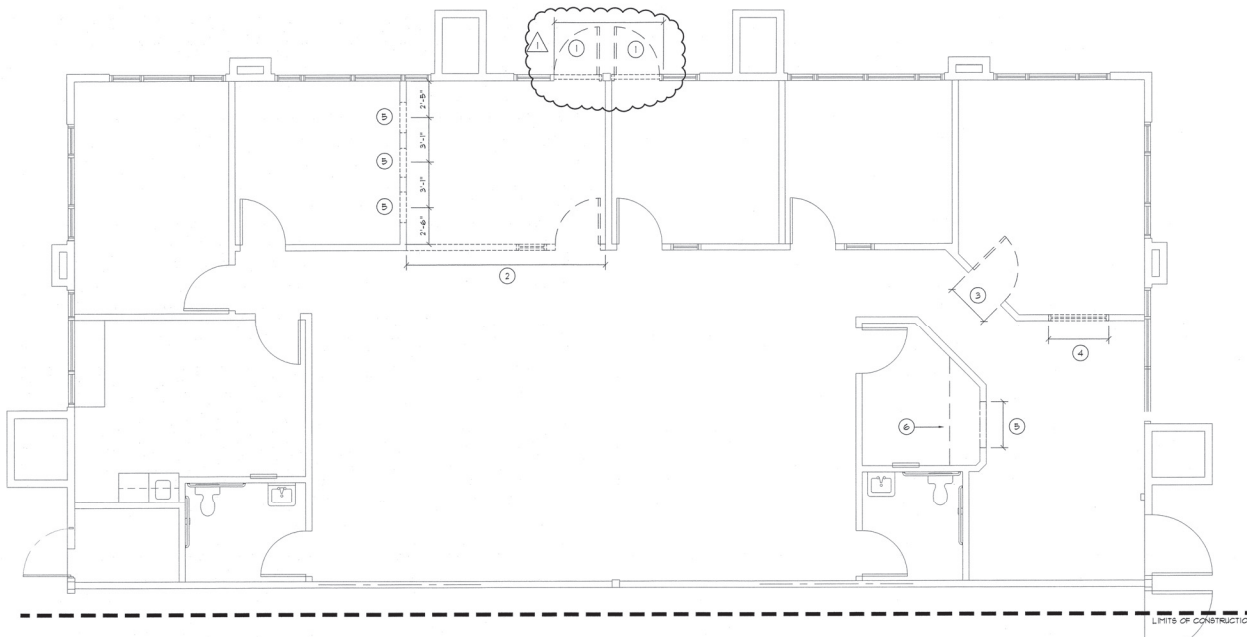
PROPERTY OWNER: JOHN VATISTAS
 4167 N MARSHALL WAY SCOTTSDALE, AZ 85251
 (602) 451-3919
 JOHN@VATISTAS.COM

GENERAL PLAN: COMMERCIAL
 LAND USE:
 PROPOSED USE: MEDICAL MARIJUANA DISPENSARY

LEGEND

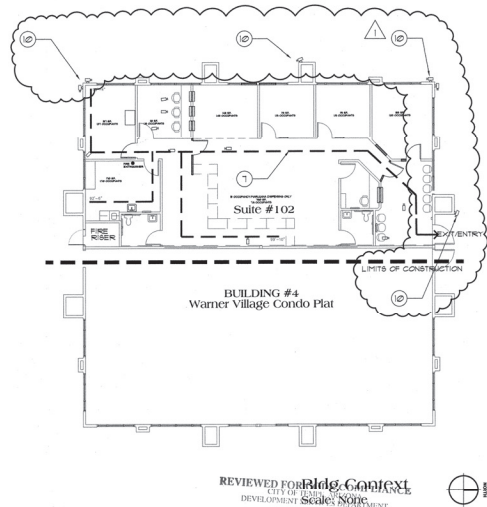
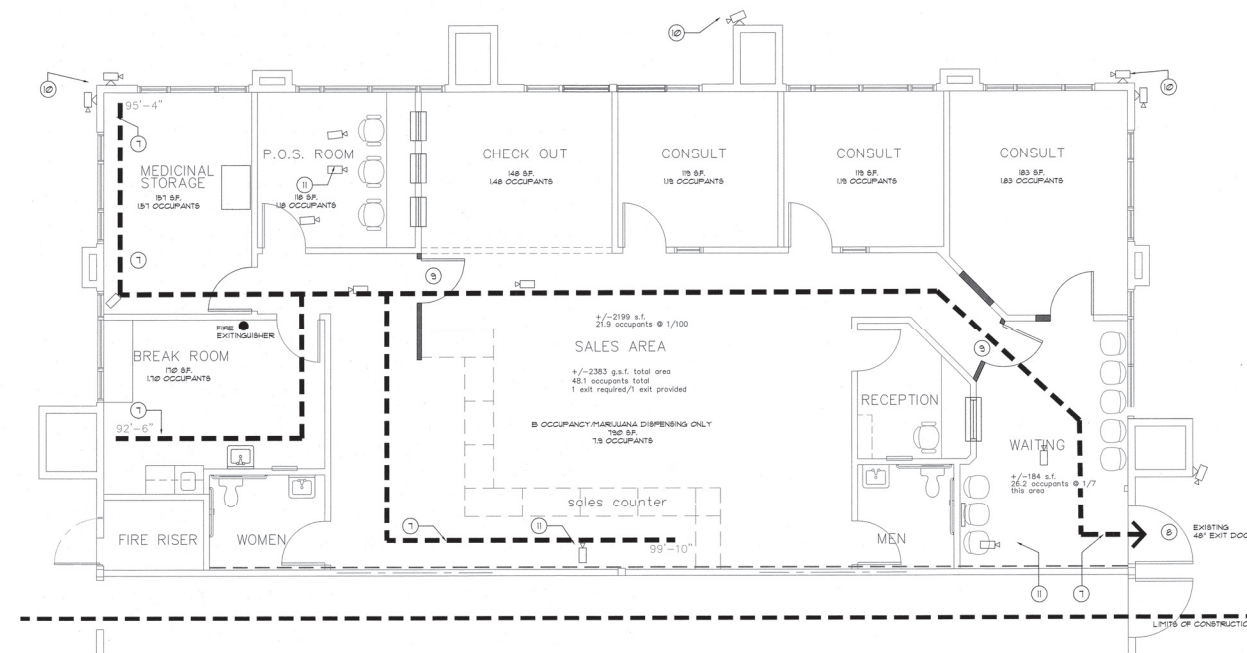
- FOUND BRASS CAP IN HANDHOLE
- FOUND BRASS CAP FLOOD
- FOUND 1/2" REBAR ACCEPTED CORNER
- SET 1/2" REBAR RES #75413
- RIGHT OF WAY
- EASEMENT
- PARCEL FINANCING GRATE DIMENSIONS
- EXISTING LIGHTING
- REFUSE





- KEYNOTES**
- EXISTING ALUMINUM STOREFRONT ENTRY DOORS, DOORS TO BE REMOVED. - DOORS TO BE ABANDONED TO MEET TEMPE ZONING ORDINANCE LIMITING PERMITTEE TO ONE EXIT DOORS NOT REQUIRED FOR EGRESS/OCCUPANT CALCULATIONS. SEE FLOOR PLANS. TYPICAL BOTH DOORS WILL BE REPLACED WITH MATCHING ANODIZED ALUMINUM FRAME AND GLASS TO MATCH EXISTING CONDITION (COLOR/TINT AND GLAZING INSULATED). DEMO EXISTING WALL, DOOR AND FRAME THIS LOCATION TO A HEIGHT OF 9'-0" AFF. LEAVING REMAINS 9" OF WALL AT CEILING GRID TO STAY. PATCH FRAMING AND DRILLALL FINISH AND PAINT TO MATCH EXISTING CONDITION. EXISTING SOLID CORE DOOR TO BE REINSTALLLED AT FRONT ENTRY OFFICE. KEYNOTE #4).
 - REMOVE EXISTING DOOR AND FRAME ASSEMBLY. SALVAGE FOR OWNER'S USE.
 - REMOVE EXISTING WINDOW AND FRAME SYSTEM THIS LOCATION. EXISTING DOOR TO BE RELOCATED THIS LOCATION.
 - REMOVE EXISTING WALL FRAMING AND BALCONARD FINISH AS REQUIRED TO INSTALL BLOCKING AND NEW TRANSECTION WINDOW THIS LOCATION. SEE FLOOR PLANS AND TRANSECTION WINDOW TYPES ROUGH FRAMING REQUIREMENTS.
 - REMOVE EXISTING MILLWORK, CABINETS, THIS LOCATION FOR NEW RECEPTION DESK INSTALLATION.
 - EXIT PATH - MAX. USE LINEAR PATH OF TRAVEL.
 - EXISTING 48" WIDE EXIT ENTRY DOOR WITH LETTERING ABOVE STAYING. THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS TO REMAIN NO WORK. SEE LIGHTING LEVEL REQUIREMENTS SHEET AS22 THIS AREA.
 - NEW SECURITY DOOR WITH PANIC HARDWARE AND VISION PANEL/EXIT THIS LOCATION PER PLANS.
 - WALL MOUNTED SECURITY CAMERA AROUND BUILDING SITE PERMITTER PER STATE OF AZ DEPT HEALTH SERVICES.
 - EXTERIOR SECURITY CAMERA CEILING MOUNTED. SEE RCR.

Demolition Plan
Scale: 1/4"=1'-0"



Exit/Egress Plan
Scale: 1/4"=1'-0"

DATE: 08/15/19
DRAWN BY: DVA/AL
CHECKED BY: DVA/AL
FILE NUMBER: 201901
PROJECT: 8611 S. PRIEST DRIVE
SHEET: 01 OF 02
REVISIONS:
NO. DESCRIPTION
1. CONSTRUCTION DOCUMENTS
2. CITY ZONING

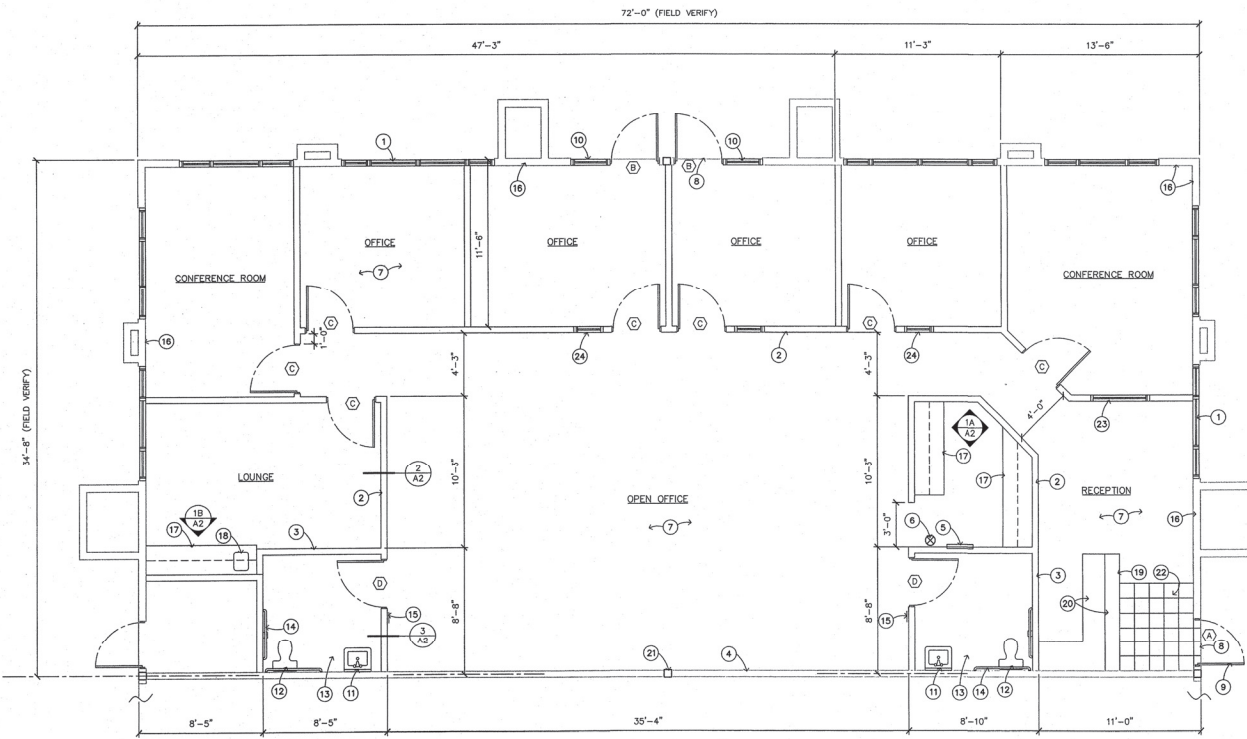
NOSTDAHL LIFTACK
ARCHITECTS
3008 NORTH CENTRAL AVENUE
SUITE 1000
PHOENIX, ARIZONA 85004
TEL: 602.266.0000
FAX: 602.266.0000

Natural Herbal Remedies
Tenant Improvements @ Warner Village
8611 S. Priest Drive #102-104
Tempe, AZ

REVIEWED FOR: **City of Tempe**
DEVELOPMENT SCALE: 1/4"=1'-0"
Filing Date: _____
Building Safety Fee: _____
Permit Number: _____
FIRE WITH: _____

REGISTERED ARCHITECT
32567
LIFTACK
8/15/19
EXPIRES 8/30/2019

Demlo & Egress Plans
Scale: 1/4"=1'-0"
SHEET NO. **A2.0**

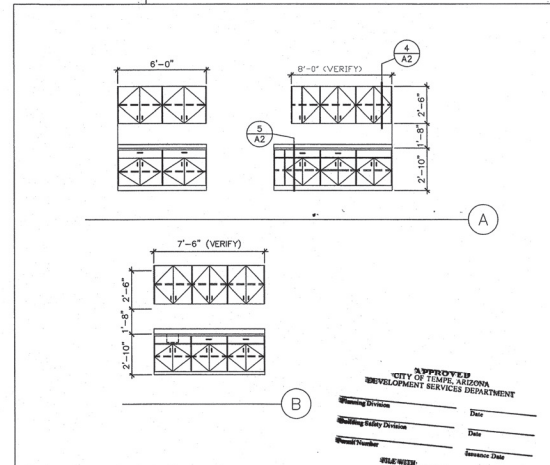


FLOOR PLAN
1/4" = 1'-0"

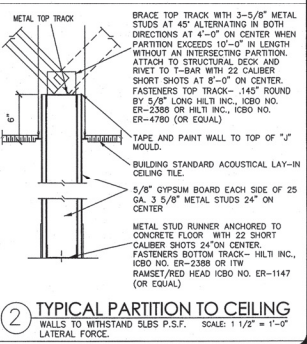
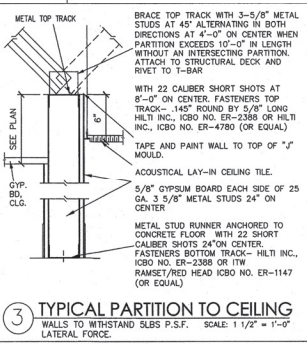
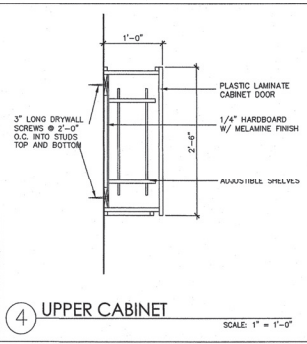
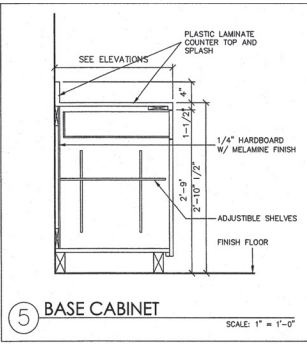
PLAN NOTES

- Existing aluminum window wall system.
- Partition to be 3-5/8" x 25 gauge metal studs at 2'-0" o/c with 5/8" gypsum board both sides to 8' above finish ceiling.
- Partition to be 3-5/8" x 25 gauge metal studs at 2'-0" o/c with 5/8" gypsum board both sides to 8' above ceiling. Provide sound insulation in walls and on ceiling life of Rest Rooms. Provide moisture gypsum board for walls in Rest Room.
- Demisting wall to be 5" x 22 gauge metal studs at 1'-4" o/c with 5/8" gypsum board on one side in underside of roof deck with R-10 Batt insulation.
- Electrical panel - see electrical plan.
- 2x10/12C fire egress/lighter mounted to wall at 45'-0" above finish floor.
- Carpet flooring throughout - verify with tenant.
- Existing landing on each side of exit door in level and threshold in not more than 1/2" inch high.
- Existing entry door with sign slotting. These doors to remain unlocked when building is occupied mounted at interior.
- Existing tempered glass.
- Accessible handicap sink.
- Accessible handicap toilet.
- Ceramic tile flooring with 5" high ceramic tile base with full height ceramic tile on walls behind and adjacent to toilet, urinal and sink. Ceramic tile to be mounted on 5/8" moisture resistant gypsum board.
- Grab bars.
- Provide label wall sign meeting ADA requirements including man and woman symbol with raised Braille lettering at least 3" high or per ADA requirements.
- 5/8" gypsum board on existing wood studs to 4' above finish ceiling.
- Plastic laminate counter top with upper and lower cabinetry.
- 3" x 3" x 1/2" wide x 2'-10" high accessibility counter.
- 2'-10" high plastic laminate counter top with 1'-0" wide x 3'-6" high check writing counter.
- Existing structural column.
- Entry ceramic tile.
- 4'-0" x 8'-0" sidelight in aluminum frame to match door frames.
- 2'-0" x 8'-0" sidelight in aluminum frame to match door frames.

Existing construction notes:
 A. Existing floor is poured concrete.
 B. Existing roof structure in steel truss and wood deck.
 C. Existing exterior wall is concrete masonry unit.



Cabinetry Notes:



REVISIONS	BY



Paul O'Connor & Associates
 Architect and Planning
 8036 North 10th Avenue
 Phoenix, Arizona 85021
 Phone: (602) 944-0699 Fax: (602) 870-0655

The Upland Group at
 Warner Village
 8611 S. Priest Dr. Suites # 102-104
 Tempe, AZ

DESIGN	
CHECK	
DATE	
SCALE	
AS NOTED	
DATE	
SCALE	
AS NOTED	
DATE	
SCALE	
AS NOTED	
DATE	
SCALE	
AS NOTED	
DATE	



Warner Village Condos looking east from Warner Rd



8611 S Priest looking East



8611 S Priest Drive, Suite 102

Community Development Dept.
Planning Division

December 22, 2015

Jenifer Corey
Zoning Strategies
4120 East Thistle Landing Drive
Phoenix, AZ 85044
jenifercorey@zoning-strategies.com

RE: NATURAL HERBAL REMEDIES

Use Acceptance for Medical Marijuana
8611 South Priest Drive, Suite 102 (Unit 104)
Tempe, AZ 85284
PL150478 / DS151041

Dear Ms. Corey:

For the purpose of zoning clearance, based on the information provided by the applicant, the Community Development Department, Planning Division has reviewed and determined that the site located at 8611 South Priest Drive, Suite 102 is in compliance with the Zoning and Development Code Section 3-426.B, Location Requirements for a medical marijuana dispensary *without* cultivation.

The site is in the PCC-1 (Planned Commercial Center Neighborhood) zoning district. This approval will allow a medical marijuana dispensary in Suite 102. This same building area is also identified as Building B, Unit 104 of the Warner Village Condominium plat.

This determination is contingent upon compliance with the following conditions:

1. The determination for NATURAL HERBAL REMEDIES DISPENSARY and it's applicant, Jenifer Corey, will expire after sixty (60) calendar days from the date of this letter (December 22, 2015) unless an application is submitted to the Arizona Department of Health Services in order to receive an approved dispensary certificate for this location. An expiration of the State's application process will result in expiration of this determination. Any person or business other than those identified herein must file a new application to determine compliance with zoning regulations.
2. Medical Marijuana Cultivation for this site is prohibited within the PCC-1 district, which restricts the facility from cultivating, manufacturing, or incorporating medical marijuana into consumable goods on site.
3. All necessary permits and clearances required by the Development Services Division shall be obtained prior to the use becoming operational.
4. All regulations outlined in Zoning and Development Code Section 3-426, Medical Marijuana, must be complied with. This includes, but is not limited to, the following:
 - a. A final security plan must be approved by the City of Tempe Police Department before issuance of building permits. Prior to receiving a certificate of occupancy, the owner must receive approval of a final inspection by the Crime Prevention Unit of the Police Department. Please contact 480-858-6330.

- b. The site must conform to current lighting standards identified in the Zoning and Development Code Chapter 8, Lighting.
 - c. A refuse disposal plan for medical marijuana remnants and bi-products must be reviewed and approved by the Community Development Department.
5. Separate Development Plan Review process is required for signs in accordance with requirements of ZDC Part 4 Chapter 9 (Signs). Obtain sign permit for identification signs.
 6. Any intensification or expansion of the use shall require the application to submit a new application for review. All submittal requirements and review fees will apply.
 7. Prior to submittal of plans for a building permit, the applicant shall provide any revised floor plans with legible dimensions and room labels, for the Planning records. Please submit sheet sizes 24" x 36" and 8.5" x 11".

If permits are required, your next step is to submit construction plans to the Development Services Division. Please submit a completed Project Submittal Application, two (2) complete sets of drawings, and the required plan check fee for processing. Submittal checklists are available here: <http://www.tempe.gov/city-hall/community-development/building-safety/permit-issuance-plan-review/submittal-checklists>. If you have any questions about this process, please contact Development Services at 480-350-8341 or visit <http://www.tempe.gov/city-hall/community-development/building-safety>.

If you have any questions, please contact me at (480) 350-8432 or karen_stovall@tempe.gov.

Sincerely,



Karen Stovall
Senior Planner

KS/dm

Enclosure: PL150478 Preliminary Building Safety Division Comments for Natural Herbal Remedies Dispensary, dated December 3, 2015

Copy: William Douglass / Pathfinder TRF Six LLC, billd@uplandgroup.com
Jerry Chesler / Natural Herbal Remedies, jerry.chesler@gmail.com

Community Development Dept.
Planning Division

August 30, 2017

John Vatisas
PARC Dispensary
4167 North Marshal Way
Scottsdale, AZ 85251
john@johnvatisas.com

RE: PARC DISPENSARY

Use Acceptance Request for Medical Marijuana Dispensary
8611 South Priest Drive, Suite 102 (Unit 104, APN: 301-53-217)
PL170260 / DS170828

Dear Mr. Vatisas:

The Community Development Department, Planning Division received your application submitted on August 14, 2017 for a Medical Marijuana Dispensary located at the site identified above. The location proposed at this time does not comply with the Zoning and Development Code, Section 3-426 B, Medical Marijuana Location Requirements due to the following:

1. It is located on a parcel within 1,500 feet of a child care facility located at 1616 West Ruby Drive.
2. It is located on a parcel within 1,320 feet of a parcel solely devoted to a residential use located at 9010 South Priest Drive.

Additionally, the City of Tempe approved the use acceptance request for Natural Herbal Remedies (PL150478), a medical marijuana dispensary, at this same location on December 22, 2015. Until sufficient evidence is provided to the Planning Division to demonstrate that Natural Herbal Remedies' application with the Arizona Department of Health Services has expired, that approval will remain active.

If you are aggrieved by this decision you may appeal to the Board of Adjustment within fourteen (14) calendar days, from the date of this letter, by filing a notice of appeal with the Community Development Department or City Clerk, specifying the grounds for such appeal, and any applicable fees. After receipt of an appeal letter, a public hearing for the appeal will be scheduled at the next regular meeting of the Board of Adjustment.

If you have any questions, please contact me at (480) 350-8432 or karen_stovall@tempe.gov.

Sincerely,



Karen Stovall
Senior Planner

KS/dm

Copy: Ryan Levesque, Deputy Community Development Director – Planning

Community Development Dept.
Planning Division

October 27, 2017

John Vatisas
PARC Dispensary
4167 North Marshal Way
Scottsdale, AZ 85251
john@johnvatisas.com

RE: PARC DISPENSARY

Use Acceptance Request for Medical Marijuana Dispensary – Appeal of ZAO denial
8611 South Priest Drive, Suite 102 (Unit 104, APN: 301-53-217)
PL170260 / DS170828

Dear Mr. Vatisas:

You are hereby advised that at the public hearing held on October 25, 2017, the Board of Adjustment, acting in accordance with the Zoning and Development Code, took the following action:

Denied the appeal and upheld the Zoning Administrator's decision to deny the proposed Medical Marijuana Dispensary location at 8611 South Priest Drive, Suite 102 (Unit 104) for **PARC DISPENSARY (PL170205)**.

Any person or municipal officer aggrieved by any decision of the Board of Adjustment may appeal by filing an action with Maricopa County Superior Court within thirty (30) days of the decision.

If you have any questions, please contact me at (480) 858-8432 or karen_stovall@tempe.gov.

Sincerely,

A handwritten signature in black ink that reads 'Karen Stovall'.

Karen Stovall
Senior Planner

KS/dm

Copy: Ryan Levesque, Deputy Community Development Director – Planning
Janet Jackim/Sacks Tierney P.A. (janet.jackim@sackstierney.com)