



**CITY OF TEMPE  
BOARD OF ADJUSTMENT**

**Meeting Date: 06/26/2019  
Agenda Item: 2**

**ACTION:** Request a variance to reduce the required separation requirement for a Medical Marijuana Dispensary from a residential zoning district for HARVEST DISPENSARY OF TEMPE, located at 710 West Elliot Road, Suites 102 & 103. The applicant is Withey Morris, PLC. (PL190075)

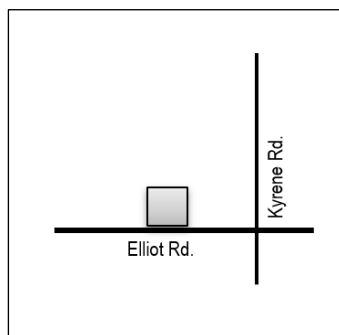
**FISCAL IMPACT:** N/A

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

**BACKGROUND INFORMATION:** HARVEST DISPENSARY OF TEMPE (PL190075) is an existing dispensary located within a multi-suite commercial building. In May 2011, the City of Tempe approved a use acceptance request for a Medical Marijuana Dispensary in Suite 102. The use acceptance for the same suite was re-issued in April 2012. At that time, the Zoning Ordinance limited dispensaries to a maximum of one exterior doorway, thereby limiting the tenant space permitted for each dispensary. The ordinance also required a minimum separation distance of 500 feet between a parcel containing a dispensary and a residential zoning district. Due to Medical Marijuana ordinance amendments, the operating business became legal non-conforming; the property on which the business is located is only 876 feet from the nearest residential zoning district where a minimum of 1,320 feet is now required. In January 2018, the City of Tempe granted a new Use Acceptance request for SVACCHA, LLC (DBA HARVEST) (PL180012), operating in the same suite, Suite 102.

The applicant now proposes to expand into Suite 103, which is in the same building and to the east of the existing suite. The expansion would increase the tenant space from 1,290 square feet to 2,580 square feet. No changes to the exterior of the building are proposed. The current ordinance no longer restricts the number of exterior doorways but instead limits dispensaries to a maximum area of 5,000 square feet. The proposed suite area is below the maximum size permitted of new dispensaries. The request includes the following:

VAR190001 Variance to reduce the separation requirement for a Medical Marijuana Dispensary from a residential zoning district from 1,320 feet to 876 feet.



Property Owner	BRLS Properties I, LLC
Applicant	Adam Baugh, Withey Morris, PLC
Business Name	Harvest Dispensary of Tempe
Zoning District	PCC-1 (Planned Commercial Center Neighborhood)
Site Area	1.24 acres
Building Area	2,580 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.

The original 2011 ordinance required a minimum 500-foot separation between a parcel containing a Medical Marijuana Dispensary and a residential zoning district. Use acceptance for the existing Dispensary in Suite 102 was issued under that code. The 2017 amendment increased the separation requirement from 500 feet to 1,320, thus making the existing Dispensary legal non-conforming; the parcel on which it is located is only 876 feet from a residential zoning district.

Zoning and Development Code Section 3-504 permits a non-conforming use to be expanded to an extent not exceeding twenty-five (25%) of the building floor area devoted to the use at the time it became legal non-conforming, subject to a use permit. The building area of the existing Dispensary is 1,290 square feet, and a use permit would allow an expansion of the existing use up to 1,613 square feet. Suite 103 is identical in size to Suite 102, so the proposed expansion would increase the business area to 2,580 square feet, beyond that allowed by use Permit. The expansion of the business would be inconspicuous from the perimeter of the property. No changes to the exterior of the building or to the site are proposed.

The applicant's letter of explanation is attached. Please note that the 1,011-foot separation that the applicant states would be provided was measured from the wall of Suite 3 and the residential zoning district. The Zoning and Development Code measures separation distances from the property line of the lot on which the dispensary is operated to the residential zoning district.

It should be noted that the original owner of this dispensary filed a code text amendment in 2015. The amendment for medical marijuana dispensaries, with some modifications, was adopted by City Council. Among other changes, the ordinance removed the single exit requirement that limited the allowable size of the tenant's current space to approximately 1,300 square feet. The restriction was amended to allow a maximum tenant suite of 5,000 square feet.

## PUBLIC INPUT

- Neighborhood meeting was held May 21, 2019 at 6:00 p.m. at 710 West Elliot Road, Suite 103.
- No members of the public attended the meeting.

## VARIANCE

The proposed use requires a variance to reduce the required separation requirement for a Medical Marijuana Dispensary from a residential zoning district from 1,320 feet to 876 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;* Zoning clearance for this dispensary was approved at a time that the code restricted the tenant space, not by size, but by the number of exterior doorways. Now that the code has been amended, the property's proximity to a residential zoning district limits the business from expanding. Dispensaries approved following the 2017 ordinance amendment are permitted a maximum floor area of 5,000 square feet.
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;*

Strict application of the code prevents the business from increasing in size, restricting it to an area significantly less than that permitted for other dispensaries in the City.

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 requested Variance will not grant special privileges inconsistent with the limitations upon other properties. The existing tenant space of 1,290 square feet is significantly less than the maximum 5,000 square feet that other dispensaries are permitted. The proposal would not change the physical characteristics of development on the site, which comply with the Zoning and Development Code in place at the time of development. Additionally, the modification of separation requirements for this property only will not result in additional medical marijuana dispensaries not already permitted by the current code.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.*  
The special circumstance applicable to the property is not self-imposed by the property owner. The medical marijuana regulations were amended by the City of Tempe after the business was approved and operating. The original owner was granted an amendment to the medical marijuana ordinance to allow future expansion of this site. The 2017 code amendment for medical marijuana inadvertently limited such expansion.

**REASONS FOR APPROVAL:**

Based on the information provided by the applicant and the above analysis staff, recommends approval of the requested Variance. The request meets the variance approval criteria.

**SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.**

**CONDITION(S) OF APPROVAL:**

1. The applicant shall submit for an administrative review of a use acceptance application for an official zoning clearance letter for the expanded use prior to submittal of tenant improvement/permit plans to the Building Safety Division.
2. This Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
3. The variance from the residential separation requirement is valid for this fact and situation only and for the current lot the business is located on.

**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.

- Approval shall be void if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months of the approval or within the time stipulated by the hearing body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the variance.
- 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 <https://www.tempe.gov/government/community->

[development/planning/zoning-and-development-code](#) or purchase from Community Development.

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

**HISTORY & FACTS:**

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) posted 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.
November 12, 2015	City Council held the second 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:**

November 15, 2000 Design Review Board approved the building elevation, site plan and landscape plan for EL DORADO CROSSING, LOT 32, BUILDING B (DRB00332), located at 710 West Elliot Road.

January 11, 2001 City Council approved the Amended General and Final Plan of Development and a Variance to reduce the required side yard setback from 40 feet to five (5) feet for Parcel 2 for EL DORADO CROSSING (CC00085 / SGF-2000.74), located at 710 and 760 West Elliot Road.

December 4, 2001 Hearing Officer approved the Variance request to reduce the required parking spaces from 69 to 53 spaces until such time a parking-by-demand model is processed through City Council for ELLIOT & KYRENE RETAIL CENTER (BA010300), located at 710 West Elliot Road.

August 3, 2004 Hearing Officer approve the following for EL DORADO CROSSING (BA040134), located at 710, 720, 744, 752 and 780 West Elliot Road:

- a. Use Permit to allow parking-by-demand.
- b. Variance to allow parking-by-demand for a center with less than 100,000 s.f. of building area.

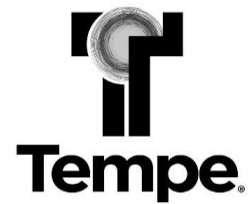
May 3, 2011 Community Development, Planning Division approved the Use Acceptance request for VERDE DISPENSARY, INC. (PL110080), located at 710 West Elliot Road, Suite 102.

April 26, 2012 Community Development, Planning Division re-issued approval of the Use Acceptance request for VERDE DISPENSARY, INC. (PL110080), located at 710 West Elliot Road, Suite 102.

January 26, 2018 Community Development, Planning Division granted a new Use Acceptance request for SVACCHA, LLC (DBA HARVEST) (PL180012), located at 710 West Elliot Road, Suite 102.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

Section 3-426 Medical Marijuana  
 Section 6-309 Variance



# DEVELOPMENT PROJECT FILE

for

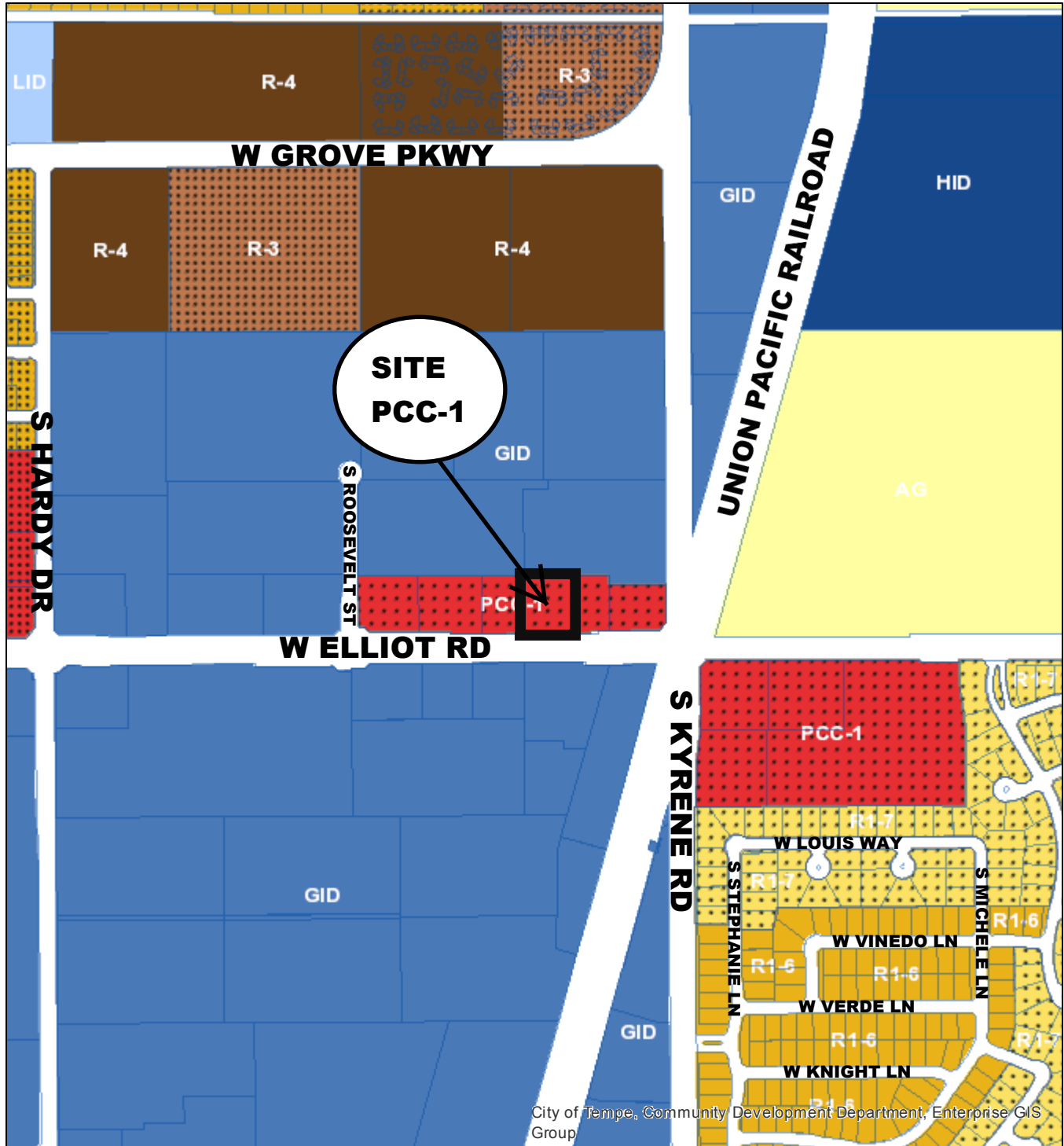
## HARVEST DISPENSARY OF TEMPE (PL190075)

### ATTACHMENTS:












1. Location Map
2. Aerial
- 3-4. Tempe Medical Marijuana Ordinance (Ordinance No. 2017.25)
5. Map showing separation distance between 710 West Elliot Road and nearest residential zoning district
6. Map showing 876-foot radius from 710 West Elliot Road, which touches the nearest residential zoning district
- 7-26. Letter of explanation with supporting information
27. Site Plan
- 28-29. Floor plans
- 30-33. Site photos

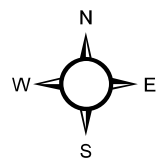
# HARVEST DISPENSARY OF TEMPE

PL 190075



City of Tempe, Community Development Department, Enterprise GIS Group

- |  |  |
|--|--|
|  Light Industrial District (LID)                |  Single-Family Residential (R1-7)       |
|  General Industrial District (GID)              |  Single-Family Residential (R1-6)       |
|  Heavy Industrial District (HID)                |  Single-Family Residential (R1-4)       |
|  Planned Commercial Center Neighborhood (PCC-1) |  Multi-Family Residential Limited (R-3) |
|  Planned Commercial Center General (PCC-2)      |  Multi-Family Residential General (R-4) |
|  Agricultural (AG)                              |  |

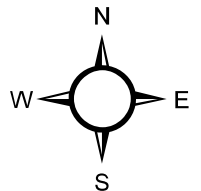


# HARVEST DISPENSARY OF TEMPE

PL 190075



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".

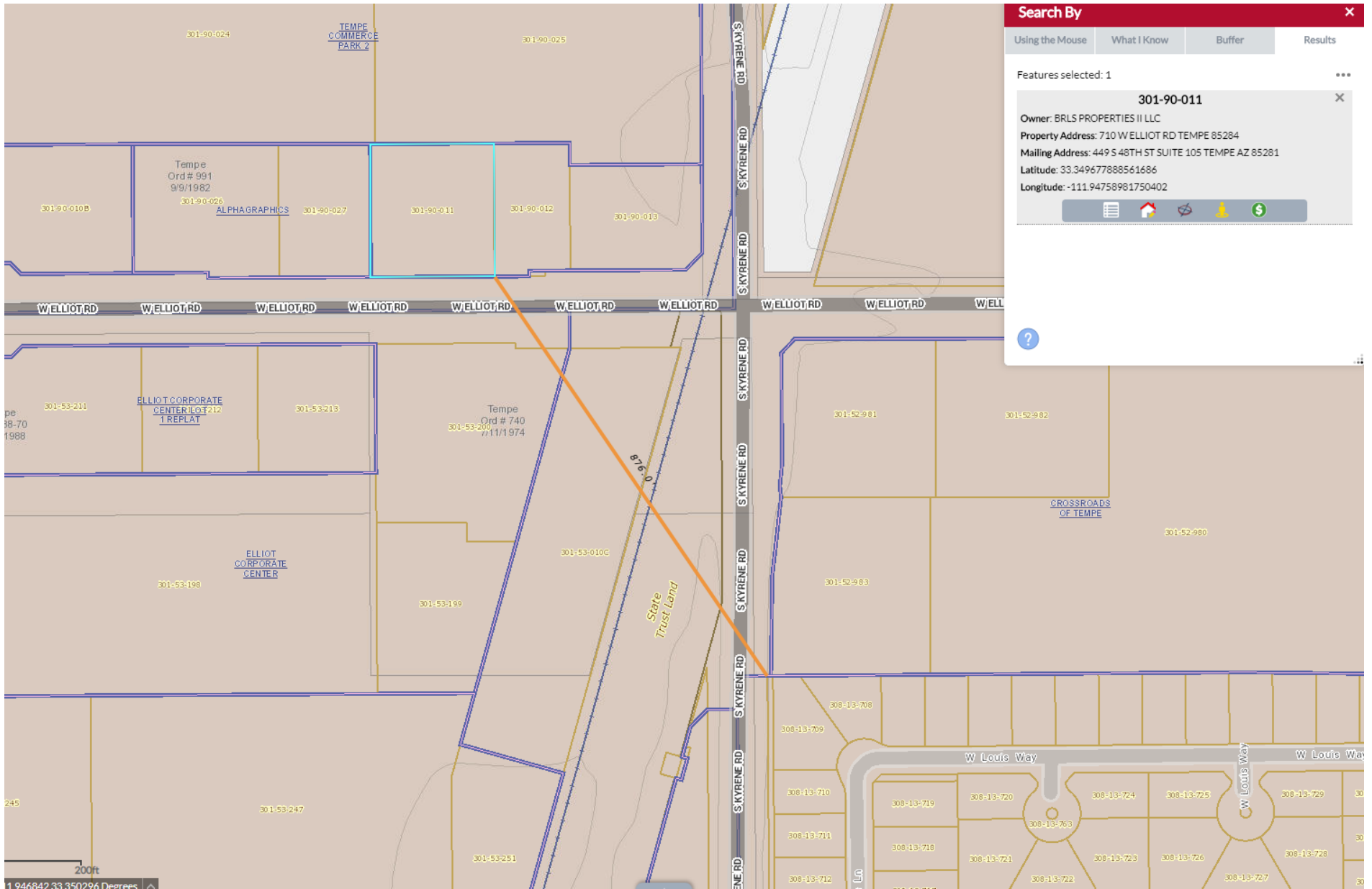
**Cross reference**— See also the following definitions in Part 7 of this Code: *medical marijuana*, *medical marijuana cultivation facility*, and *medical marijuana dispensary*.

- 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)

876-foot separation between 710 West Elliot Road (highlighted in teal) and a residential zoning district (462 W. Verde Lane).





**710 W. Elliot Road, Tempe**

**Project Narrative**

**I. Introduction**

This application requests the following:

1. Variance to allow an existing medical marijuana dispensary facility to expand within 1,011 feet of a residential zoning district, whereas the dispensary is currently at 1,024 from a residential zoning district; 1,320 feet required per **Section 3-426.B.2.e**

**II. Site Location**

The subject site is located at 710 W. Elliot Road, Suite 102, Tempe (the "Property"), and identified on the Aerial Map attached at **Tab 1**. The Property is zoned PCC-1 (Planned Commercial Center) and is part of a larger commercial area. The Property is improved with an existing inline shop building. Harvest of Tempe Dispensary ("Harvest") currently occupies suite 102 within the building.

**III. Background History**

On April 26, 2012, the City of Tempe approved an administrative application to allow the medical marijuana dispensary at this location. See attached approval letter at **Tab 2**. Since 2012, Harvest has operated at this location without any incident and in full compliance with all municipal and state regulations. The dispensary has not had any instance of criminal activity nor any police calls since it opened.

At the time of its approval, the Tempe Zoning Ordinance required a number of spacing standards, including a minimum 500' spacing from a residential zoning district. This site met all the required spacing distances and the nearest residential zoning district was about 930' away from the Harvest building.

In 2017, the City adopted new ordinance standards which increased the residential separation to 1,320 feet. This change rendered the site a legal non-conforming use because the existing residential neighborhood is about 1,024 feet to the southeast. See spacing map at **Tab 3**.

**IV. Proposal**

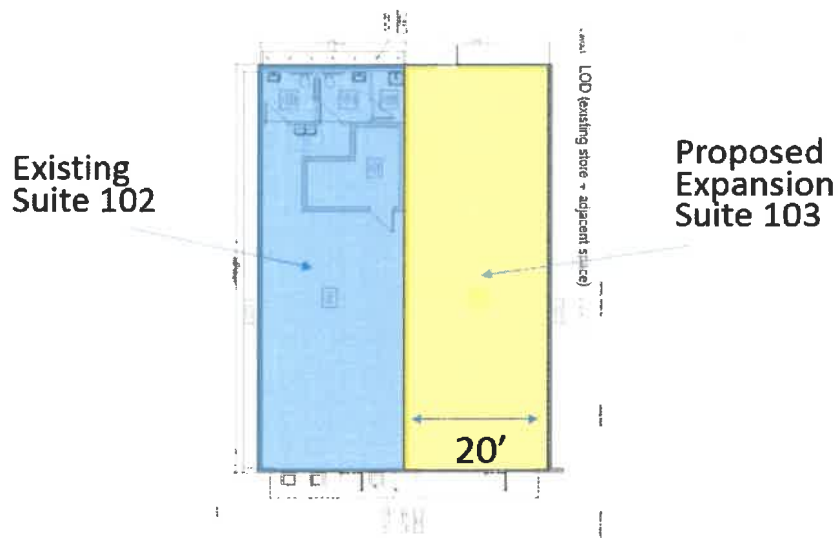
The current dispensary suite is being reconfigured within the same building but is not relocating beyond the exterior building walls as shown on the exhibit below and at **Tab 4**. The

dispensary will occupy both suites 102 and 103. The internal suite wall is moving only 20 feet to the east which is barely just a 1,290-sf expansion. From the public's perspective, no new changes will be visible from the outside of the building and the status quo will remain the same. All operations will continue indoors.

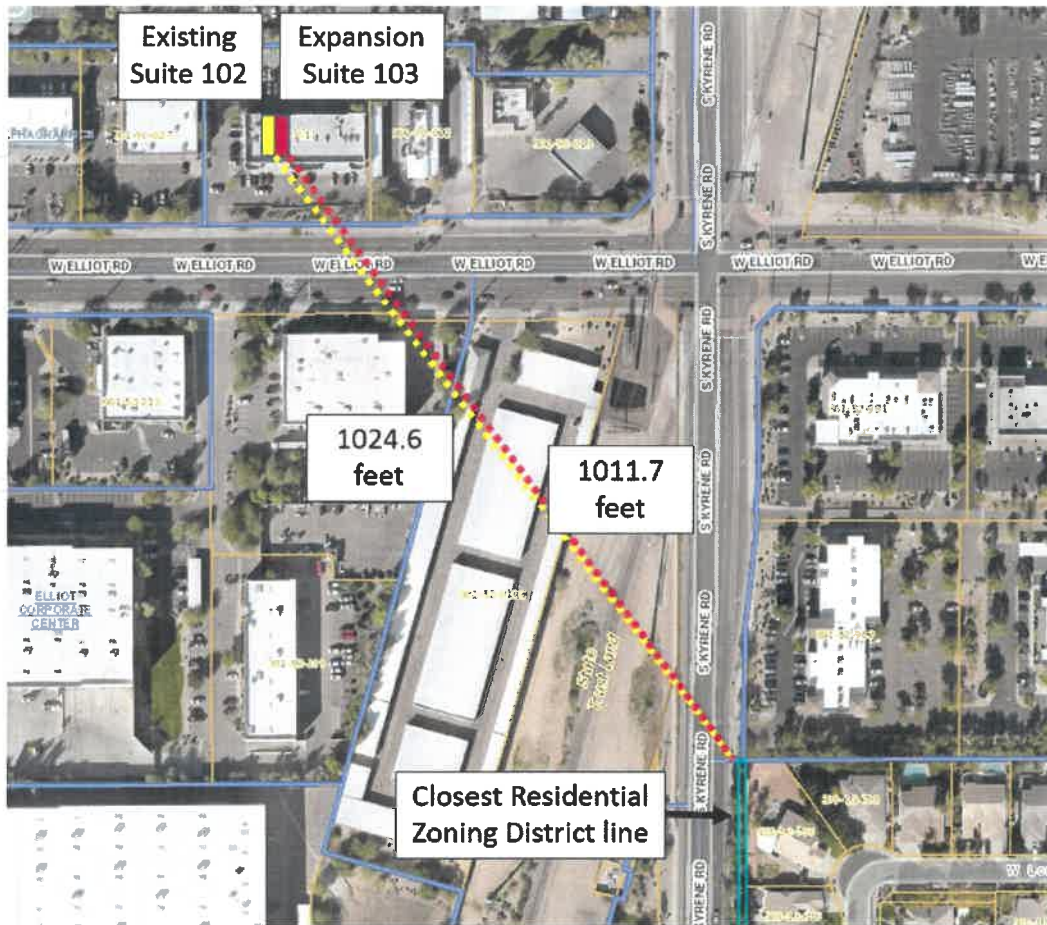
### Aerial Map



### Building Suite Plan



## Spacing Map



The current dispensary is approximately 1,024 feet away from a residential zoning district. After reconfiguration of the internal suite, a part of the dispensary will be within 1,011 feet of the required separation distance of a residential zoning district. See separation survey at **Tab 5**.

This represents a change of only 13 feet closer to an existing residential zoning district line. However, from the exterior of the building, no changes are being made that shift the actual building any closer than its current location. The internal dispensary walls are simply being adjusted by only 20' inside of the building.

City staff determined the internal wall realignment necessitates a variance from a residential zoning district even though the applicant was staying inside of its existing building. Because of this minor technicality, the applicant was instructed to apply for the variance.

### **V. Variance Request**

As previously stated, the site complied with all the spacing requirements when it was initially approved in 2012. The current dispensary suite is being reconfigured within the same

building but is not relocating beyond the primary building walls, and from the public's exterior perspective, it will appear unchanged.

Thus, even though the other separated uses are pre-existing and legal non-conforming in context to this dispensary, city staff determined the reconfigured suite needs to obtain variances from the new code standard. To be clear, this is not a new use or a new building; it is the new code standard that causes the variances.

## **VI. Variance Test**

For background purposes, it is worth noting this Community Health Analysis Area (CHAA - a defined geographical dispensary area) has experienced tremendous patient volume. However, site and code constraints limit the location of the dispensary use and suite size from relocating elsewhere within the CHAA without triggering other potential variances. These two factors directly contribute towards the necessity of reconfiguring the existing dispensary suite.

**1. Special Circumstances** - There are special circumstances applying to the site *location and surroundings* that justify the requested variance.

i. The CHAA map severely limits where the dispensary can locate.

A key special circumstance is the impact of the CHAA map which severely restricts where this particular dispensary may locate. The applicant is solely limited to this small Tempe South CHAA and locating to another site that otherwise meets all the minimum city spacing requirements is nearly impossible.

When the city adopted the relevant code provisions in 2011, the CHAA map was not yet known; the idea of a geographically confined dispensary area was not contemplated by the City of Tempe at that time. Thus, the special circumstance of the code being adopted before the implementation of the actual CHAA map places a hardship on the Property that cannot be overcome without the variance approval.

ii. The size of the existing suite is too small to serve the tremendous patient demand.

The facility is woefully undersized (only 1,290 sf), even though city code permits 5,000 sf. The small size creates significant patient delays with lines out the door because of its tiny space. It places a burden on patients during the summer or if the weather is inclement (not to mention patients are unable to sit and must stand while waiting). It also impacts the ability to adequately monitor and patrol the area. It is not in the best interest of the community to have people waiting outside a dispensary, or the imagery of loitering. It seems more prudent that patient-customers should have sufficient waiting room inside the building.

As mentioned previously, the city code permits up to 5,000 sf. The suite reconfiguration simply allows the applicant to avail itself of that opportunity to expand within the same existing building. The new dispensary area will be a total 2580 sf.



- iii. The new code adoption after the dispensary was already in place is a factor presenting a hardship on the applicant.

As stated above, this is an existing location and approved dispensary site. When the City approved the dispensary, it met all the residential spacing requirements. However, the adoption of new code standards, more than five years after the applicant was already operating at this address, present a special circumstance that warrants variance relief. The site today is already an existing legal non-conforming use because of the city code change, and the small adjustment of only 20' would otherwise comply with the original spacing requirement but for the city's recent code change. But for all intents and purposes, the building is the same and the appearance from the outside remains unchanged.

- iv. The area containing the Tempe South CHAA has some of the highest number of dispensary patient cardholders in the State of Arizona.

A fourth special circumstance is the population density within the Tempe South CHAA. This CHAA is in the top 12% of patient cardholders in Arizona. It has an unusually higher number of patient cardholders compared to other CHAAs. These are special circumstances that trigger the need for more patient space to adequately serve its patients, further justifying the variances.

**2. Enjoyment of Property Rights** – The strict application of the zoning code deprives the site of privileges enjoyed by other properties in the PCC-1 zoning district.

This applicant was allocated this specific CHAA by DHS and they are required to locate their dispensary in this specific geographic region. The limiting region in which they can identify and select potential sites is a severe challenge. This is particularly challenging because other conforming sites exist elsewhere in Tempe but the applicant is unable to pursue them beyond its defined CHAA boundary.

The unique hardship is best illustrated by the following example. If the applicant were able to identify another PCC-1 zoned site that was fully conforming, but was located in North Tempe, they cannot consider that site since it is just outside of its CHAA boundary. Thus, the imposition of the CHAA map deprives the applicant of privileges enjoyed by other properties in the same zoning district in other parts of the city. This is a special condition applying to the land and use in this CHAA which may not exist on other similarly zoned properties city-wide.

The granting of the variance is necessary for the preservation and enjoyment of property rights and allows the applicant to continue to enjoy its investment and improvements in the existing facility while expanding inside of the same building. The variance approval is critical to the substantial enjoyment of property rights. Without the variance, the applicant's existing space is too small to meet the patient demand and prevent patrons from congregating outside.

**3. No Special Privilege** - The requested variance does not constitute a grant of special privileges.

The approval of this variance does not grant a new dispensary, and does not constitute a special privilege. It simply allows the existing dispensary to expand within its own building.

But in no way does it introduce a new element that is not already present, and which has operated without incident for more than five years.

Since opening, there is no evidence that the dispensary has had any detrimental impact on the area. The use will continue to be a benefit to the community and the patients it serves.

**4. Not Self-Imposed** - The special circumstances impacting this site are not self-imposed.

None of the special circumstances cited above were created by the applicant. They are unique to this site, this geographic area, this CHAA, and the city's adoption of new spacing provisions after this dispensary building was already in place.

The undersized suite is a condition inherent with the property. Because of the CHAA format, the applicant is limited to a narrow, specific area where it may locate, and finding a site that is compliant with all the code provisions while maintaining a 5,000-sf dispensary space is nearly impossible. When you consider a limited supply of properties which are zoned CSS, CC, PCC-1, PCC-2, RCC, and LID districts and then begin to add the different protected use layers (residential zoned property, schools, churches, daycares, parks, libraries, preschools, community buildings, other medical marijuana facilities, etc.) the list of possible sites is limited.

The difficulty of the CHAA format is not theoretical. This applicant has experienced firsthand the tremendous difficulty in locating sites in this very narrow geographic region with the intent of locating a site that meets all the spacing requirements. After exhausting every effort, the applicant was unable to locate a site that is 5,000 sf, complies with the code, is vacant and available, and willing to lease. Consequently, the applicant shifted its focus back to its current location knowing that ultimately a variance would be needed on virtually any other possible site in the Tempe South CHAA.

As previously stated, the site met the underlying zoning requirements and required setbacks from parks, community centers, libraries, daycares, preschools, and all other required separation uses for its current dispensary suite. The adoption of the new code triggers a new variance for an otherwise legal nonconforming site. As we've learned from examining other sites, any other site in this CHAA would likely require additional variances from more protected uses and possibly greater variance reduction requests.

**5. Additional Considerations**

- The City is well aware of the many challenges applicants face in locating new dispensary sites. There are very few commercial/industrial zoned properties available to potential operators. Once the various separation distances are applied, the list of potential sites drastically decreases. There are virtually no available sites that would otherwise comply with the zoning ordinance without the need of some type of variance relief.
- Alternatively, if the applicant were to obtain a variance for another site located elsewhere in the City it would likely cause clustering in a new location. Further, any relocation to another site does not automatically terminate the existing approvals for this location. Arguably, it is

not in the City's best interest to have an open dispensary site approved without a known operator.

## **VII. Conclusion**

The use will continue to operate inside the same building where it already exists, albeit, a larger interior layout. From the exterior of the building, and from the public point of view, the variance request maintains the status quo and the dispensary will appear to be unchanged. If anything, it serves a public benefit by providing indoor space for patients, and to avoid congregating or lining up outside.

Variance relief is appropriate for this Property and merits approval. The Property suffers from special circumstances, beyond the applicant's control, which affect the Property's use. The special circumstances are unique to this application and are not caused by the applicant. Granting of the variance is necessary for the preservation and enjoyment of property rights and allows the applicant to continue to enjoy its investment and improvements in the existing facility while expanding within the same building. The use will not be a detriment to the area as already proven since its original approval in 2012.

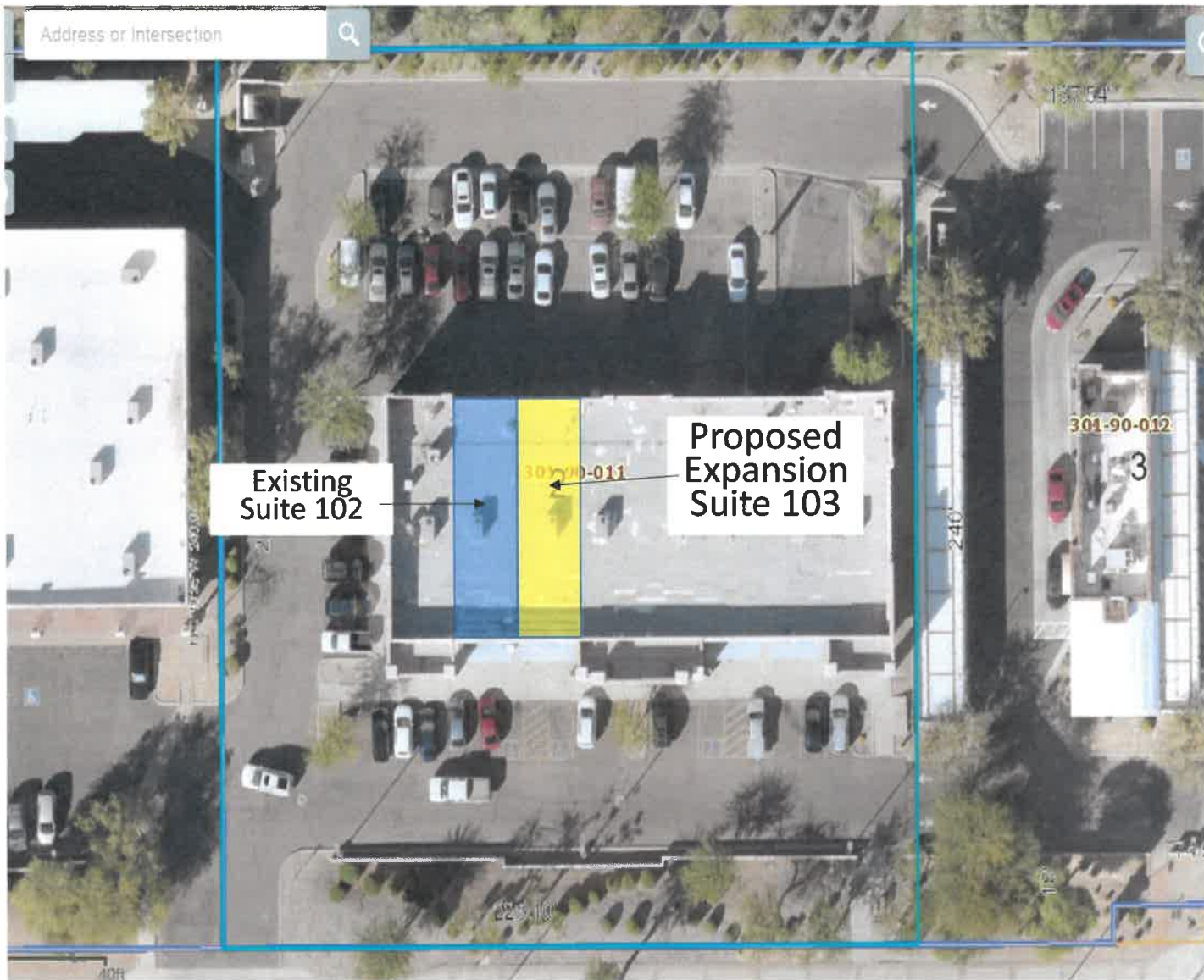
This request is compatible with the surrounding commercial and retail properties and located in an area suitable for a medical marijuana dispensary facility. By granting this request, the intent and purpose of the ordinance is preserved and the relief requested does not substantially impair the purpose of the setback ordinance. We respectfully request your approval of this application.

# Tab 1



710 W.  
Elliot Road







# Tab 2



City of Tempe  
P. O. Box 5002  
31 East Fifth Street  
Tempe, AZ 85280  
[www.tempe.gov](http://www.tempe.gov)



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Community Development Dept.  
Planning Division

April 26, 2012

Steve White  
Verde Dispensary, Inc.  
1075 West Todd Drive  
Tempe, AZ. 85283  
[swhite@wbazlaw.com](mailto:swhite@wbazlaw.com)

**RE: VERDE DISPENSARY, INC.**  
*Use Acceptance for Medical Marijuana*  
710 West Elliot Road, Suite 102  
**PL110080 / DS110205 / DSM11023**

Dear Mr. White:

For the purpose of zoning clearance, the City of Tempe, Community Development, Planning Division has determined the site located at 710 West Elliot Road, Suite 102, is in compliance with the Zoning and Development Code, Section 3-426(B), Location Requirements, for a medical marijuana dispensary.

This determination is contingent upon compliance with the following conditions:

1. The determination for VERDE DISPENSARY INC., and its applicant Steve White, will expire after sixty (60) calendar days from the date of this letter (June 26, 2012) unless an application is submitted to the Arizona Department of Health Services in order to receive an approved dispensary certificate. 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 PCC-1 (Planned Commercial Neighborhood District) zoning, which restricts the dispensary from cultivating, manufacturing or incorporating medical marijuana into consumable goods on site.
3. All permits and clearances required by the Building Safety Division shall be obtained prior to the use becoming operational.

4. All regulations outlined in Section 3-426, Medical Marijuana, within the Zoning and Development Code, must be complied with. This includes, but is not limited to, the following:
  - a. A final security plan must be approved by City of Tempe, Police Department, before issuance of building permits. Prior to receiving certificate of occupancy the owner must receive approval of a final inspection by the Crime Prevention Unit of the Police Department (480-858-6330).
  - b. The site must conform to current lighting standards identified in the Zoning and Development Code, Part 4, Chapter 8, Lighting.
  - c. A refuse disposal plan for medical marijuana remnants or bi-products must be reviewed and approved by Community Development.
5. A separate sign permit is required for all signage.
6. Any future intensification or expansion of this use shall require the applicant to resubmit a new application for further review.

If you have any questions, please contact me at (480) 858-2393.

Sincerely,

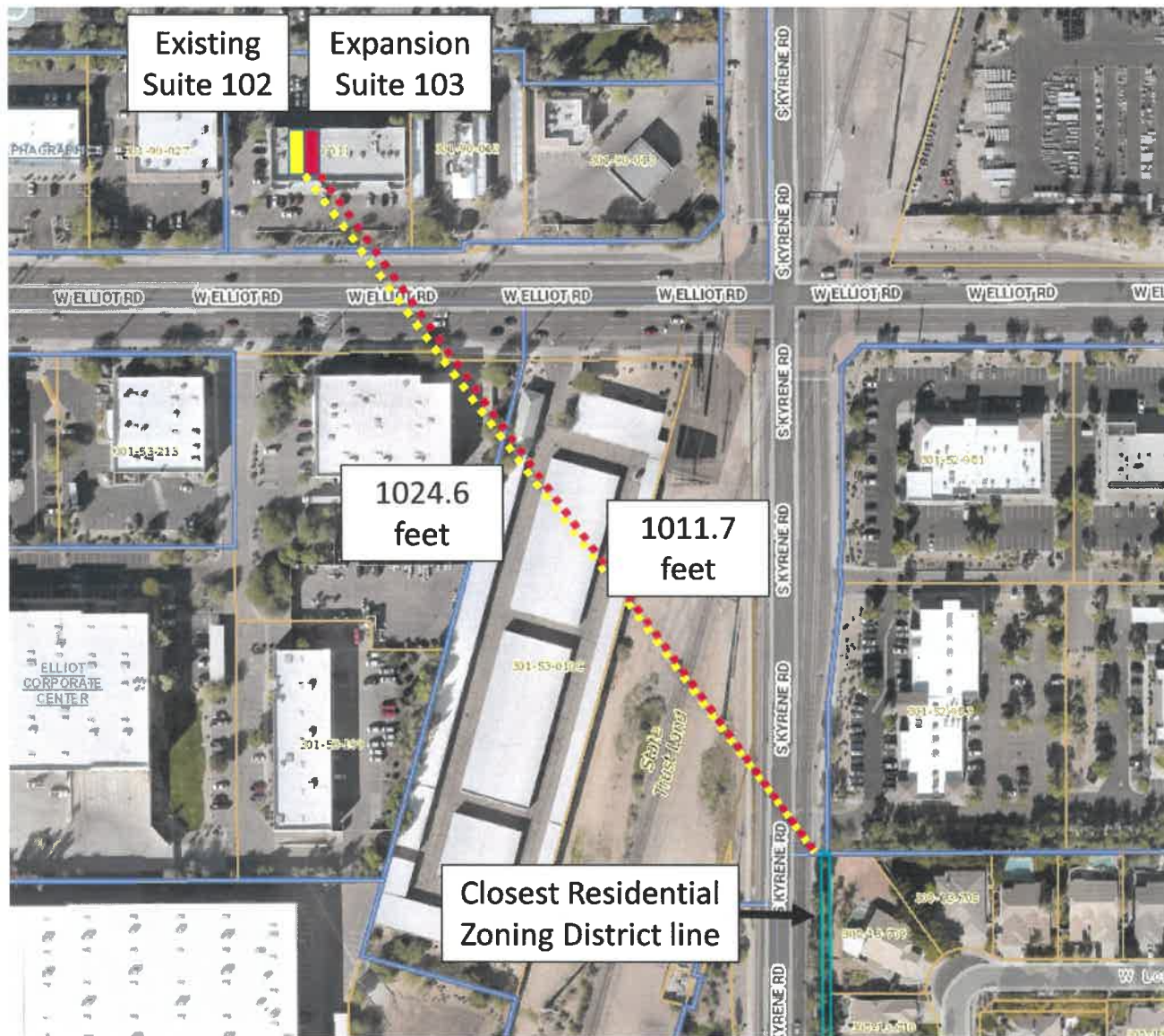


Ryan Levesque  
Senior Planner

RL/In

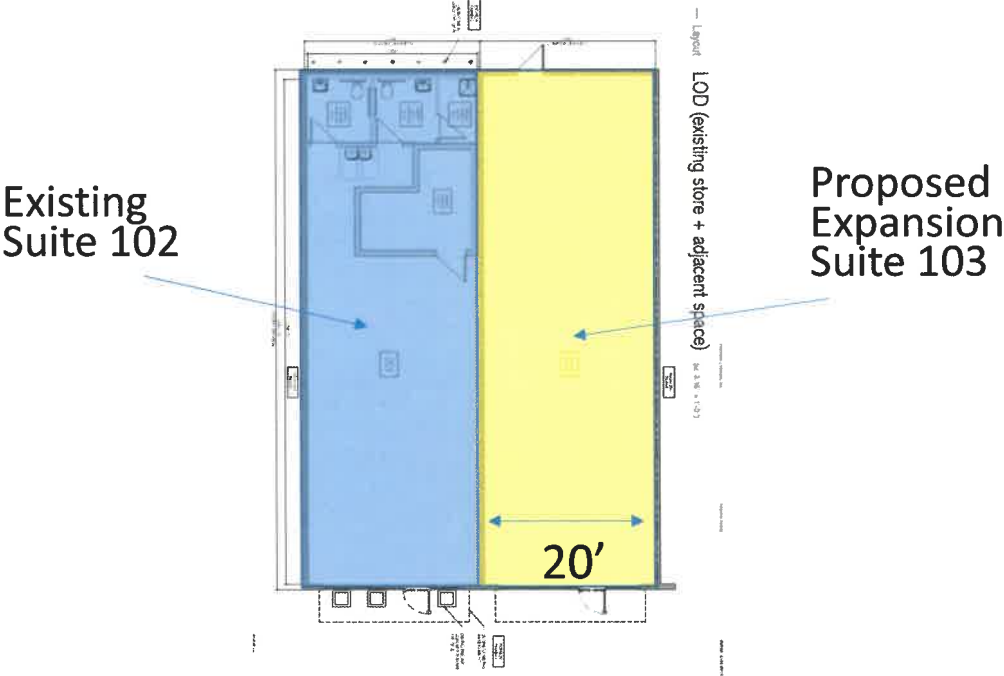
\*\*\*\*\*  
**You are required to obey all federal and state laws that regulate or control your business and affairs and that only lawful business will be conducted at Medical Marijuana Dispensaries and Medical Marijuana Cultivation Facilities.**  
\*\*\*\*\*

# Tab 3



# Tab 4

**Building Suite Plan**



# Tab 5

VARIANCE APPLICATION EXHIBIT

EXHIBIT TO DISCUSS DISTANCE TO NORTHWEST CORNER OF TRACT "J" IN THE ALISANOS SUBDIVISION BK 449 PG 39 M.C.R. FROM THE EXISTING AND PROPOSED EXPANDED DISPENSARY IN SUITES 102 AND 103 LOCATED AT 710 WEST ELLIOT RD.

FROM THE SOUTHEAST CORNER OF SUITE 103 TO TRACT "J" IT IS APPROXIMATELY 1,011.7 FEET

FROM THE SOUTHEAST CORNER OF SUITE 102 TO TRACT "J" IT IS APPROXIMATELY 1,024.6 FEET

I declare that the information contained in this INFORMATION CERTIFICATE is true and correct to the best of my knowledge and belief.

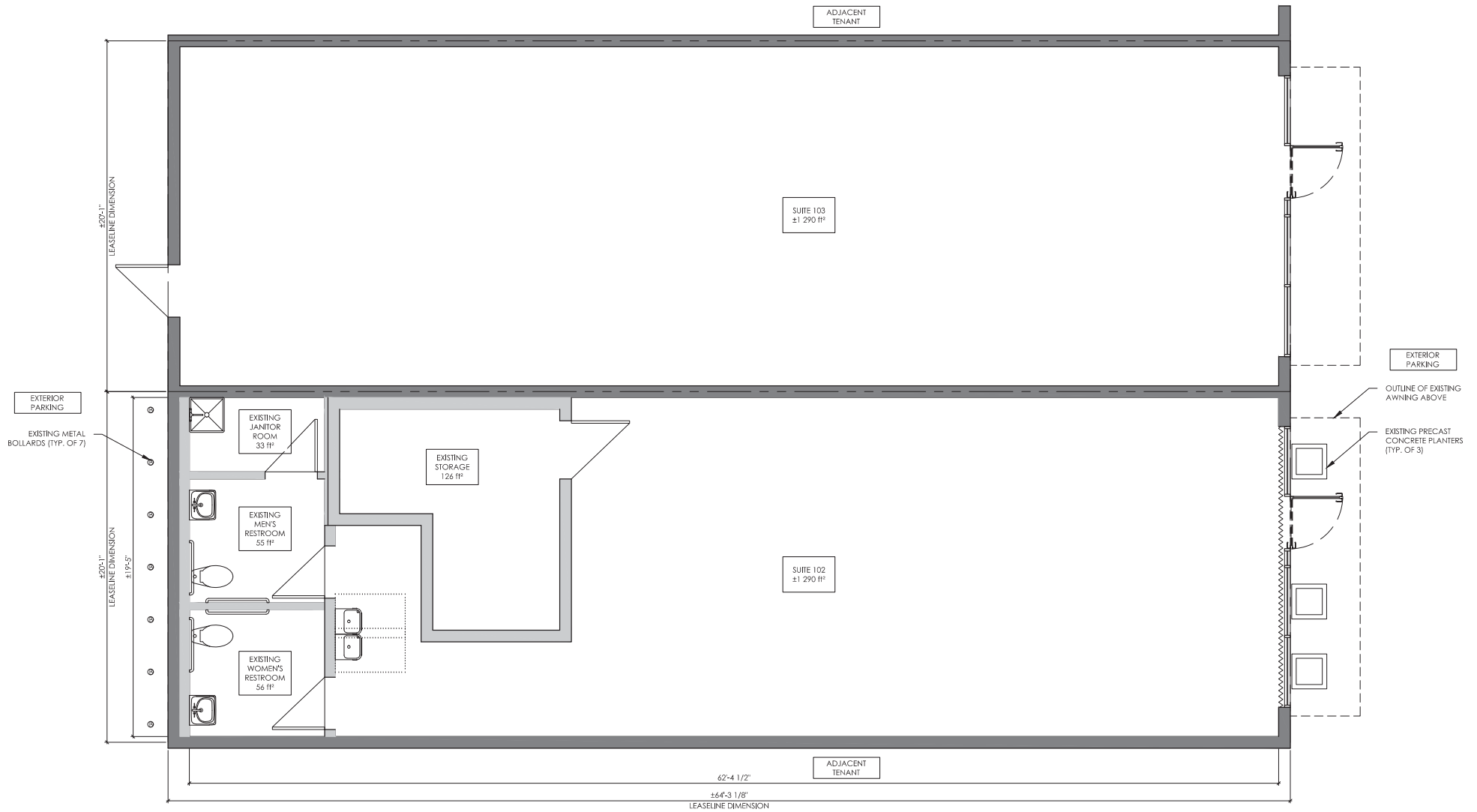
PAUL E. BRAUNSTEIN PLS  
#16500 STATE OF ARIZONA







— Layout LOD (existing store + adjacent space) (sc. 3/16" = 1'-0")







Rear (north)



East side



West side

