

REVISED

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 04/12/2022
Agenda Item: 3**

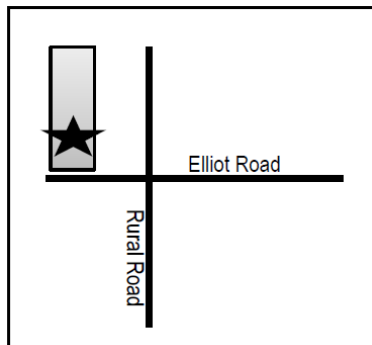
ACTION: Request a Use Permit to allow a tobacco retailer for BIG D SMOKE LLC, located at 7520 South Rural Road, Suite A-13. The applicant is Jinglin Du.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: BIG D SMOKE LLC (PL220050) is requesting a Use Permit to allow a tobacco retailer, including the sales of tobacco, cigars, and tobacco accessories. The proposed use would be located within Suite A-13 of an existing commercial center. The request includes the following:

ZUP220016 Use Permit to allow a tobacco retailer in the PCC-1 zoning district.



Property Owner	Electric Ave LLC
Applicant	Jinglin Du
Zoning District	PCC-1
Suite Area	1,290 s.f.
Vehicle Parking	No increase in demand
Bicycle Parking	No increase in demand
Hours of Operation	10:00 a.m. to 10:00 p.m. daily

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Lily Drosos, Planner I, (480) 350-8245

Department Director: Shelly Seyler, Interim Community Development Director
 Legal review by: N/A
 Prepared by: Lily Drosos, Planner I
 Reviewed by: Steve Abrahamson, Principal Planner

COMMENTS

The site is within Suite A-13 of the Fiesta Plaza commercial center, located at the northwest corner of Rural and Elliot Roads. The proposed location is in conformance with Section 3-423 – Use Separation Requirements, which prohibits tobacco retailers from being located on a lot within 1,320 feet from the lot line of a charter school, private school, or public school, which provides elementary or secondary education.

PUBLIC INPUT

Staff has received four public comments as of the writing of this report. Three comments were of opposition, and one of interest. Three comments were made over the phone, and one via email (see attachments).

USE PERMIT

The proposed use requires a Use Permit for a tobacco retailer within the PCC-1 zoning district.

Section 6-308(E) Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; the proposed use is located within an existing commercial center and a significant increase in vehicular or pedestrian traffic is not expected.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; the proposed use is not expected to cause any nuisances.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; the proposed use conforms with Section 3-423 – Use Separation Requirements, and is a permitted use in the PCC-1 zoning district subject to a Use Permit.
4. *Compatibility with existing surrounding structures and uses*; the proposed use is compatible with the existing businesses in the commercial center.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; the business is expected to monitor customer behavior to have adequate control of disruptive activity inside and outside the premises.

REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received and the above analysis staff supports approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

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

CONDITION(S) OF APPROVAL: (Non-standard conditions are identified in bold)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The Use Permit is valid only after a Building Permit has been obtained, the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. Hours of operation to begin no earlier than 10:00 a.m. end no later than 10:00 p.m. daily.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

USE PERMIT:

- The Use Permit is valid for BIG D SMOKE LLC and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- All business signs shall receive a Sign Permit. Contact Mike Scarpitta at 480-350-8435.
- Any intensification or expansion of use shall require a new Use Permit.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.
- This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.

HISTORY & FACTS:

September 15, 2015 Use permit to allow a tobacco retailer for **OASIS VAPE (PL150928)** located at 7520 South Rural Road, Suite A-4 was denied by the Hearing Officer.

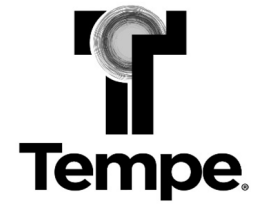
ZONING AND DEVELOPMENT CODE REFERENCE:

[Section 3-202, Permitted Uses in Commercial and Mixed-Use Districts](#)

[Section 3-423, Use Separation Requirements](#)

[Section 4-203, Development Standards for Commercial and Mixed-Use Districts](#)

[Section 6-308, Use Permit](#)



DEVELOPMENT PROJECT FILE

for

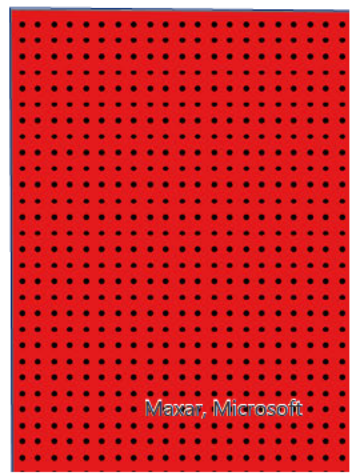
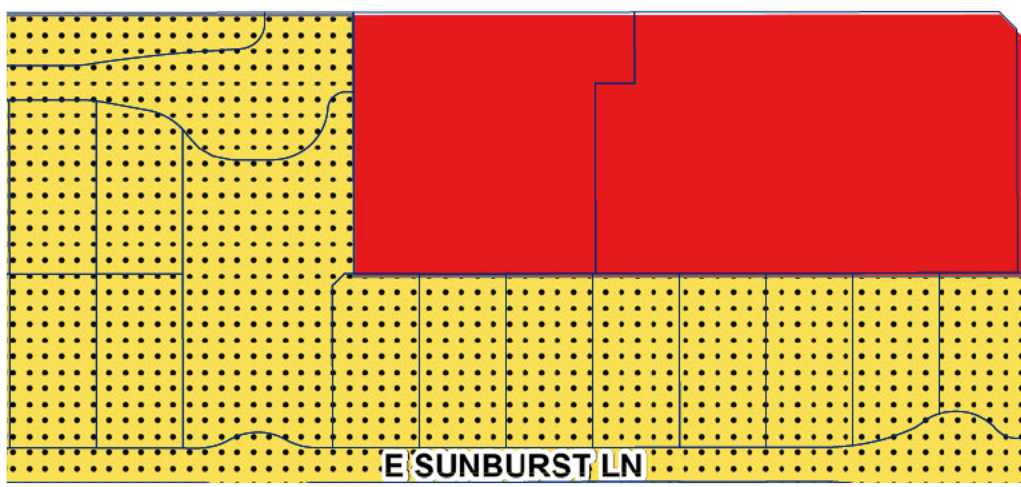
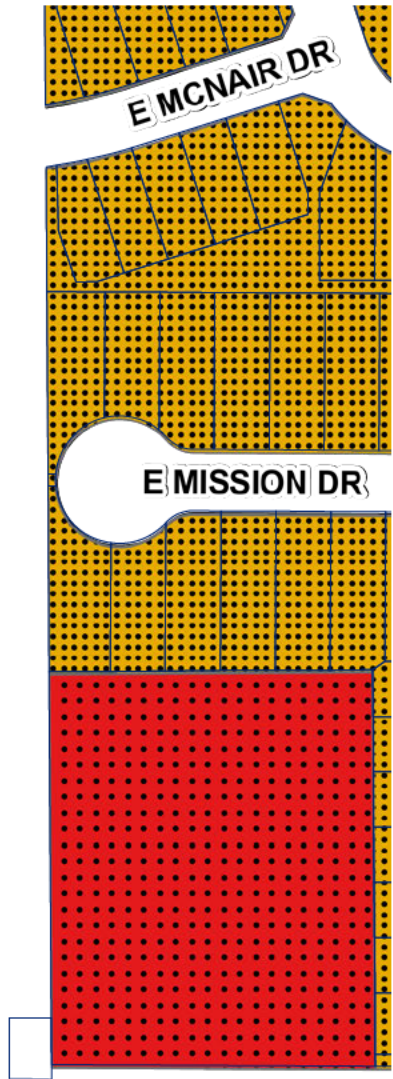
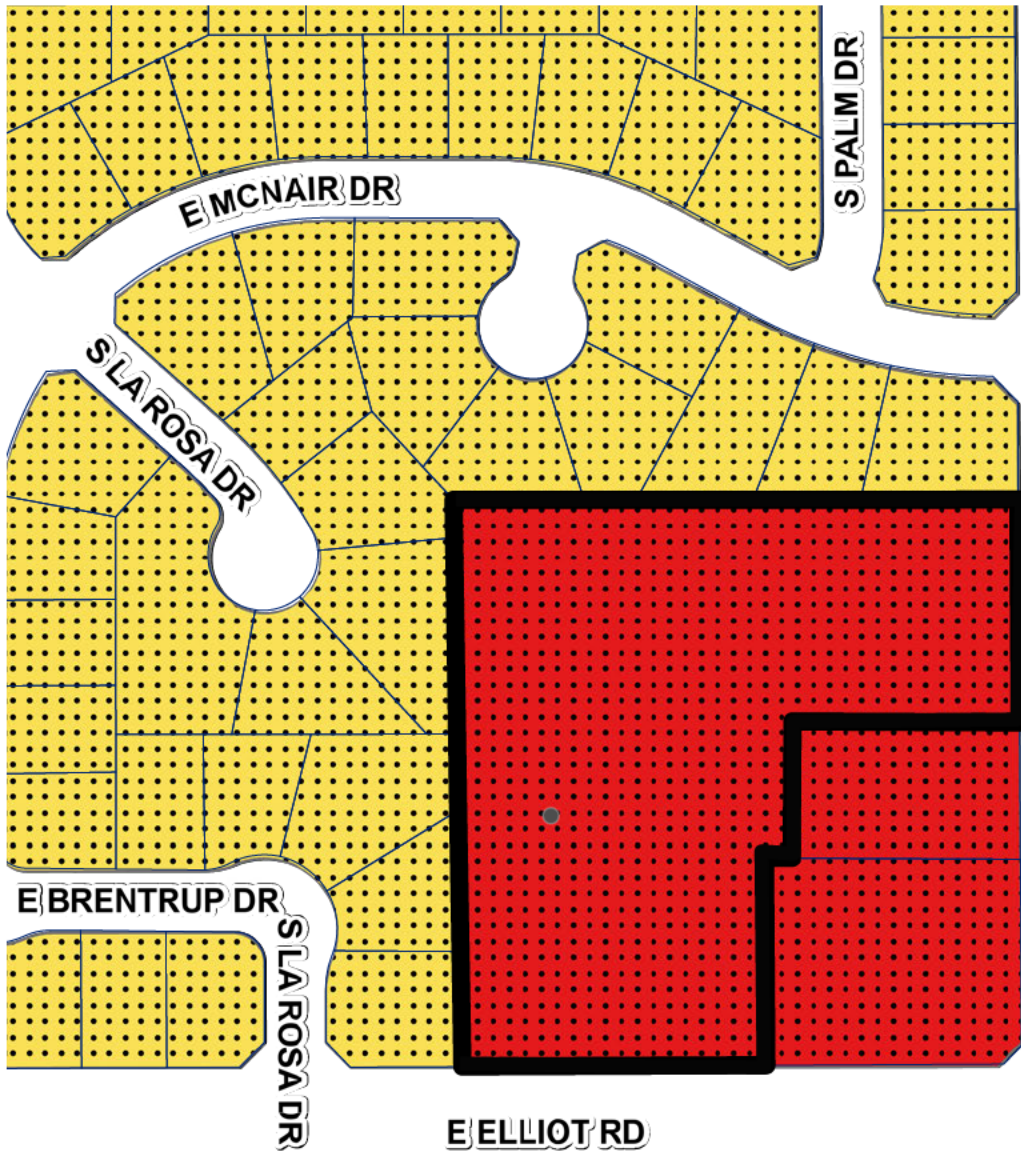
BIG D SMOKE LLC
(PL220050)

ATTACHMENTS:

1. Location Map
2. Aerial Map
- 3-4. Letter of Explanation
5. Site Plan
6. Floor Plan
7. Context Photo
8. Public Input

Big D Smoke LLC

PL220050



- Commercial Shopping and Services (CSS)
- Planned Commercial Center Neighborhood (PCC-1)
- Single-Family Residential (R1-7)
- Single-Family Residential (R1-4)

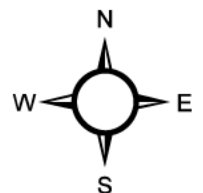


BIG D SMOKE LLC

PL220050



Aerial Map



Application for Use Permit for BID D SMOKE LLC

FEB. 2022

Introduction:

This narrative has been written to serve as a supplemental component of the Use Permit

Application submitted previously for BIG D Smoke LLC.

The applicant is Jinglin Du.

Location: 7520 S RURAL RD STE A13, TEMPE AZ, 85283

Summary:

BIG D SMOKE LLC is a local smoke shop, focusing on relatively high-end tobacco, cigars, and smoking tools. Therefore, the target customers of BIG D Smoke LLC are college students and middle class tobacco users.

1. Business: Smoke Shop
2. Operation:
 - a. Hours: 10AM to 10PM
 - b. Number of Employees: ONE or TWO
 - c. Customers: College students and middle class tobacco users
3. Impact to the surrounding area:

In general, BIG D SMOKE LLC is quite similar as a grocery store. We don't provide any trail. So there will be no odor, noise, smoke or heat at all to the surrounding area. We will not allow customers to smoke inside the store or at the store entrance or exit.

4. Changes to the building:

No changes to the existing structures are proposed with this permit, only some interior decoration and showcases.

5. Potential Impact

- a. Any significant vehicular or pedestrian traffic in adjacent areas;

Since this is a B2C business, there will be normal traffic as usual. It is a normal retail store and will not have any impact on the traffic in the area.

- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;

We do not display products outside the store, and we do not allow customers to smoke inside the store or at the entrance and exit of the store, and we do not use more than normal lighting in the store. So it has no effect.

- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;

Customers can have convenient access to high quality tobacco and cigars without spending more money. For tobacco users, we do believe that would be a benefit. At the same time, we will strictly abide by the law and will not sell tobacco products to anyone under 21. Our business locations are far from schools, and to protect young people in our community, we check the ID of every customer who appears to be under the age of 40.

- d. Compatibility with existing surrounding structures and uses;

I won't change the existing structure of the site, just paint the walls and carpet and put up the shipping containers.

e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public

We do not allow customers to smoke inside the store and at the entrance and exit of the store, and we will place a trash can at the entrance of the store. And put up a no-smoking sign at the entrance of the store.

jinglin du

#	Tenant	Size
A1-2	Rural Animal Clinic	2,400 sf
A3	Available	1,080 sf
A4	Available (Do not disturb)	1,080 sf
A5	American Family Insurance	1,080 sf
A6	Nails	1,080 sf
A7	Water & Ice	1,020 sf
A8	PMT Ambulance	1,020 sf
A9	Clockworks Pizza	1,200 sf
A10	Maple Leaf Chiro	1,800 sf
A11-12	Crepe Bar	2,040 sf

#	Tenant	Size
A13	Available	1,290 sf
A14	Anaya's Fresh Mexican	2,310 sf
B1	I Like Ike's Place	1,500 sf
B2-3	Pro Fitness Training	3,180 sf
B4	Hammer & Stain	1,080 sf
B5	The Tooth Place	1,020 sf
B6	Massage Hall	1,020 sf
B7	Bronzed Humanity	1,200 sf
B8	Alegris Child Care	6,000 sf



Front Door

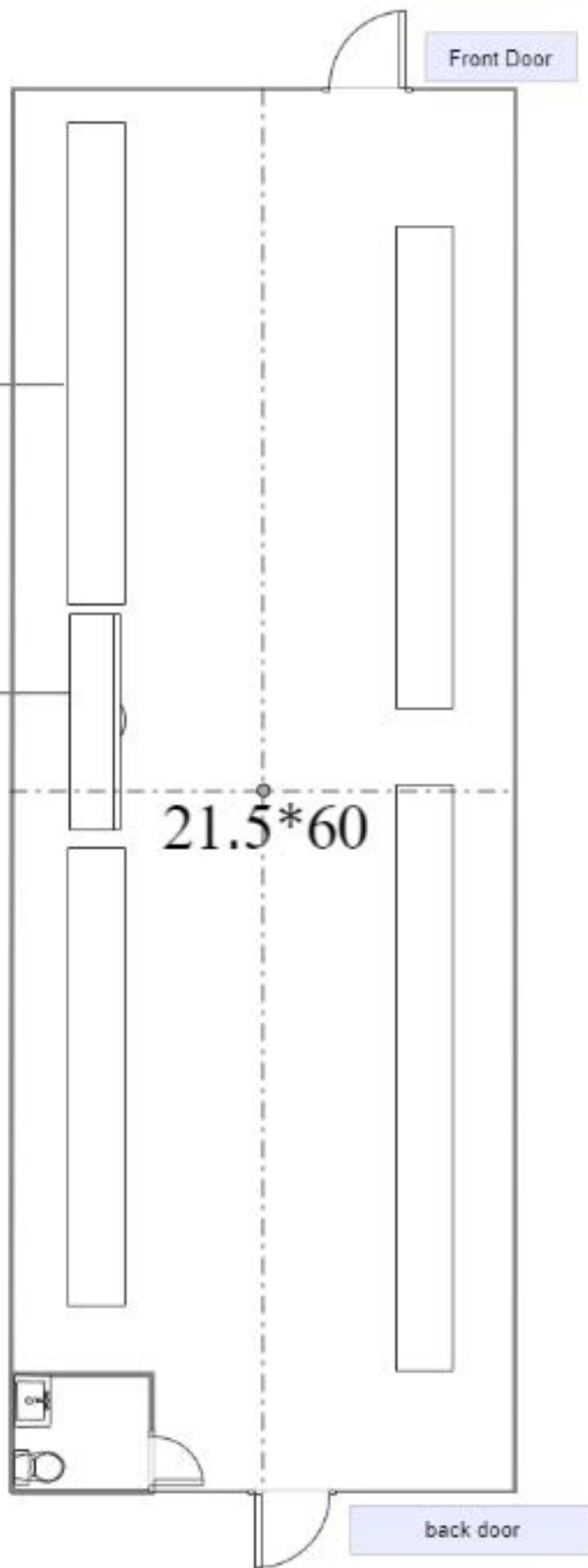
STE A13; 1290 S.F.

display case

cashier

21.5*60

back door





ANAYA'S

CRÊPE BAR

↑
13

From: [REDACTED]
To: [Drosos, Lily](#)
Subject: Big D Smoke Case #PL220050
Date: Wednesday, March 30, 2022 11:15:05 AM

Hi Lily,

To whom do I write to tell them that I do not want Big D smoke to inhabit our little shopping mall on Rural and Elliot? We've noticed an uptick of gang garbed individuals and gang tagging, along with vagrants along that area and these businesses often draw that clientele. There are ample smoke shops in Tempe already. I notice that Tempe has been very good about keeping Dispensories in neighbor neutral areas and we appreciate it.

My neighbor with two small children, whose back yard abuts DIRECTLY to this mall would certainly be adversely affected by increased vagrant/homeless traffic.

We are noticing a big uptick in vandalism and crime. Please keep these businesses out of our neighborhoods. Right now I have stopped walking the canals because of a big increase of these sometimes threatening individuals, it is a very sad thing.

Thanx a million for listening.

We love Tempe and appreciate all the things Corey's administration is doing to help those who are in need.

[REDACTED]