

# Staff Summary Report



Development Review Commission Date: 07/08/08

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** Hold a public meeting for an Appeal of the Hearing Officer Approval for **WALGREENS PLAZA – HB PLACE TOBACCO (PL060676)** located at 53 East Broadway Road.

**DOCUMENT NAME:** DRCr\_HBPlaceAppeal\_070808

**SUPPORTING DOCS:** Yes

**COMMENTS:** Request an Appeal of the Hearing Officer Approval for **(PL060676)** by (Steve Stewart / Date Palm Manor Neighborhood Association, Applicant) for an appeal of the approval of HB Place, located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District. The request includes the following:

**UPA08003 – Appeal of the Approval of Use Permit (ZUP08068) for a Hookah Lounge/Tobacco Retailer**

**PREPARED BY:** Shawn Daffara, Planner II (480-858-2284)

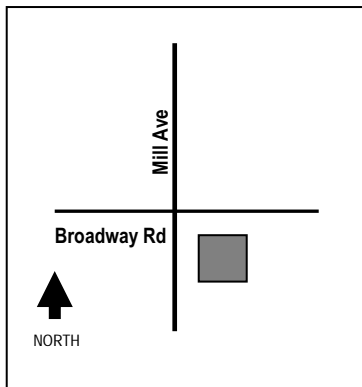
**REVIEWED BY:** Steve Abrahamson, Planning and Zoning Coordinator (480-350-8359)  
Lisa Collins, Development Services Planning Director (350-8989)

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff – Denial of the appeal

## ADDITIONAL INFO:



Gross/Net site area	2.62 acres
Total Building area	40,202 s.f.
Tenant area	2,117 s.f.
Vehicle Parking Required	8 spaces
Vehicle Parking Provided	152 spaces

A neighborhood meeting is not required with this application (appeal).

The applicant, Steve Stewart with the Date Palm Manor Neighborhood Association is requesting an appeal of the May 20, 2008 Hearing Officer's decision to approve the request for a use permit to allow a hookah lounge/tobacco retailer at 53 West Broadway Road in the CSS, Commercial Shopping and Services District. The Hearing Officer reviewed the request and determined it did comply with the criteria for approval of the use permit. To date, staff has received the applicant's letter of appeal and a copy of the petition submitted at the May 20 Hearing Officer meeting with twenty five (25) signatures opposing the use permit. Staff recommends denial of the appeal, thus upholding the Hearing Officer's approval of the use permit.

**ATTACHMENTS:**

1. List of Attachments
  2. Comments;
  3. Reason for Denial, Hearing Officers Conditions of Approval;
  4. History & Facts, Zoning & Development Code Reference
- 
1. Location Map(s)
  2. Aerial Photo(s)
  3. Letter of Intent from May 20, 2008 Hearing Officer Report
  4. Site Plan
  5. Floor Plan
  - 6-7. ZUP06088 Approval Letter (December 27, 2006)
  8. Zoning Administrators Opinion (April 10, 2008)
  - 9-10. Minutes of May 20, 2008 Hearing Officer meeting
  - 11-12. ZUP08068 Approval Letter ( May 28, 2008)
  13. Appeal Letter from Steve Stewart ( May 29, 2008)
  - 14-21. Letters of Opposition and Signed Petitions
  22. Staff Photograph

## COMMENTS ON APPEAL:

The applicant, Steve Stewart, President of the Date Palm Manor Neighborhood Association is requesting an appeal of the May 20, 2008 Hearing Officer's decision to approve the request for a use permit to allow a hookah lounge/tobacco retailer at 53 West Broadway Road in the CSS, Commercial Shopping and Services District. Mr. Stewart has been in opposition to HB Place from the first use permit in December of 2006 for a Tobacco Retailer and again for the use permit request for a hookah lounge on May 20, 2008. Mr. Stewart is in opposition to any business that allows any form of smoking. He feels a smoking establishment should not be allowed near Tempe High School and is counter productive with the state-wide smoking ban (Smokefree Arizona).

The Hearing Officer shared some of the same concerns with the neighborhood but since the Zoning Administrator had determined the hookah use existed prior to the separation requirement, and that the business hours were outside of school hours, so youth would not be concentrated at this location at 7:00 PM. The Hearing Officer approved the request with an added condition limiting the hours of operation from 7:00 PM to 2:00 AM.

Staff had recommended approval of the use permit when it went before the Hearing Officer on May 20 and is recommending denial of the appeal, thus upholding the Hearing Officer's approval of the use permit.

## Use Permit

The Zoning and Development Code requires a use permit for a hookah lounge in the CSS, Commercial Shopping and Services District.

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a) Any significant increase in vehicular or pedestrian traffic in adjacent areas;
  - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
  - This is a hookah lounge and will generate smoke; however all hookah smoking shall be contained within the establishment moreover, the hookah lounge as its own independent ventilation system. Therefore this use should not adversely impact neighboring businesses with the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare.
- 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;
  - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d) Compatibility with existing surrounding structures and uses;
  - The proposed use appears to be compatible with surrounding uses

## COMMENTS FROM HEARING OFFICER REPORT 5/20/08:

The applicant, HB Place is requesting a use permit to allow a hookah lounge/tobacco retailer. The existing Tobacco retail store is located within the Walgreen's Shopping Center at 53 East Broadway Road, in the CSS, Commercial Shopping & Services District. HB Place opened in December of 2006 prior to the separation requirements that took effect in June of 2007. The Hearing Officer added a condition of approval (# 8) to the Use Permit - "Smoking will not be permitted within the establishment." The scope of the business is to include the sale of coffee, hot and cold beverages, cigars, cigarettes, chewing tobacco, cigarette tobacco, pipe tobacco, pipes, hookahs, water pipes for tobacco use only, lighters and other tobacco-related products.

The applicant indicated he felt that condition of approval (# 8) didn't include Hookah; therefore the business was noticed and found to be in violation of the conditions of approval. To rectify the violation, Mr. Harzallah submitted this application to request a use permit to include a hookah lounge. The primary use will be as a hookah lounge. Hours of operation will be from 3pm to 2am, seven (7) days a week; they will employ 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibits a tobacco retailer (hookah lounge) from locating within 1,320 feet of a school. Thus, HB Place requested a Zoning Administrator's opinion to determine if they would be permitted to apply for a use permit request to operate a hookah lounge/tobacco retail establishment. The applicant provided a copy of their "Tobacco Distributors License" dated 2004, from the State of Arizona, as evidence that they had been operating as a hookah lounge prior to the separation requirement. In the Zoning Administrator's letter, Planning Director Lisa Collins opined that HB Place had been operating as a hookah lounge prior to the separation requirement taking effect; therefore allowing them to apply for a use permit request to operate a hookah lounge/tobacco retail establishment.

No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge. Staff suggests one (1) additional condition be added to the 11 imposed by the Hearing Officer's decision of May 20, 2008. That condition is as follows:

12. Only Hookah is to be smoked and no other form of tobacco or smoking device; which includes, but is not limited to, cigarettes or cigars.

#### **REASONS FOR DENIAL OF THE APPEAL:**

1. Traffic generated by this use should not be excessive.
2. There will be no apparent damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination. The hookah smoking will be inside the business and should not cause any nuisances.
3. The use (service) appears to be compatible with the building, site and adjacent property.
4. The Zoning Administrator has determined the use is grandfathered from the separation requirements.

#### **THE HEARING OFFICER'S CONDITIONS OF APPROVAL 5/20/08:**

1. The use permit is valid for HB Place and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.

8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan at (480) 858-6330.
11. The hours of operation for on premises smoking are limited too **8:00 PM TO 3:00 AM (MODIFIED BY THE COMMISSION)**

#### **HISTORY & FACTS:**

December 19, 2006	<u>ZUP06088</u> : Hearing Officer approved a use permit to allow a Tobacco Retailer for HB PLACE.
April 10, 2008	<u>DSM08019</u> : Zoning Administrators Decision to allow HB PLACE hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.
May 20, 2008	<u>ZUP08068</u> : Hearing Officer approved a use permit to allow a Hookah Lounge/Tobacco Retailer for HB PLACE.
May 30, 2008	<u>UPA08003</u> : The Date Palm Manor Neighborhood Association filed and appeal of the Hearing Officers Approval for HB PLACE.

#### **ZONING AND DEVELOPMENT CODE REFERENCE:**

Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.

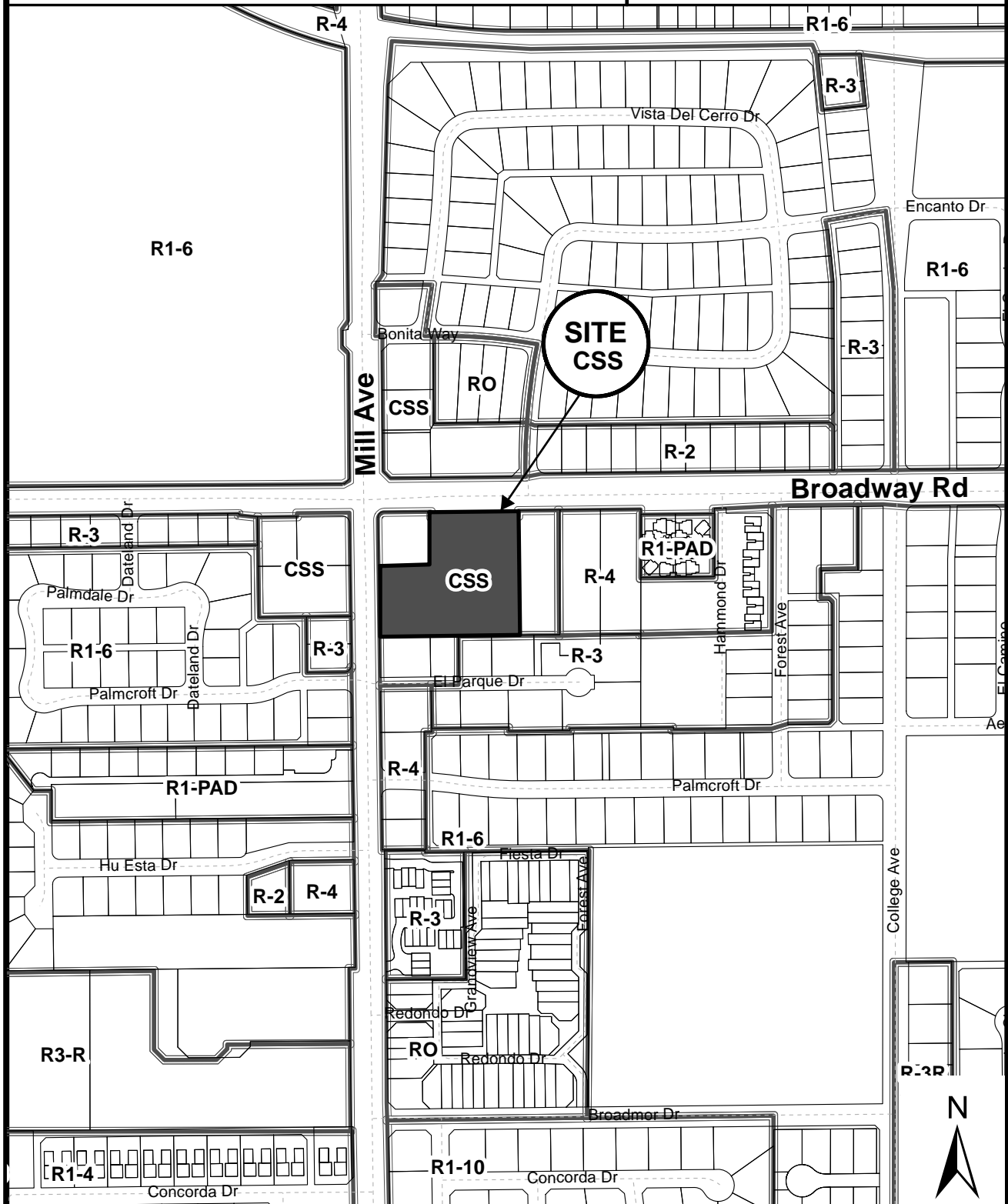
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements

Part 6, Chapter 3, Section 6-308 – Use Permit

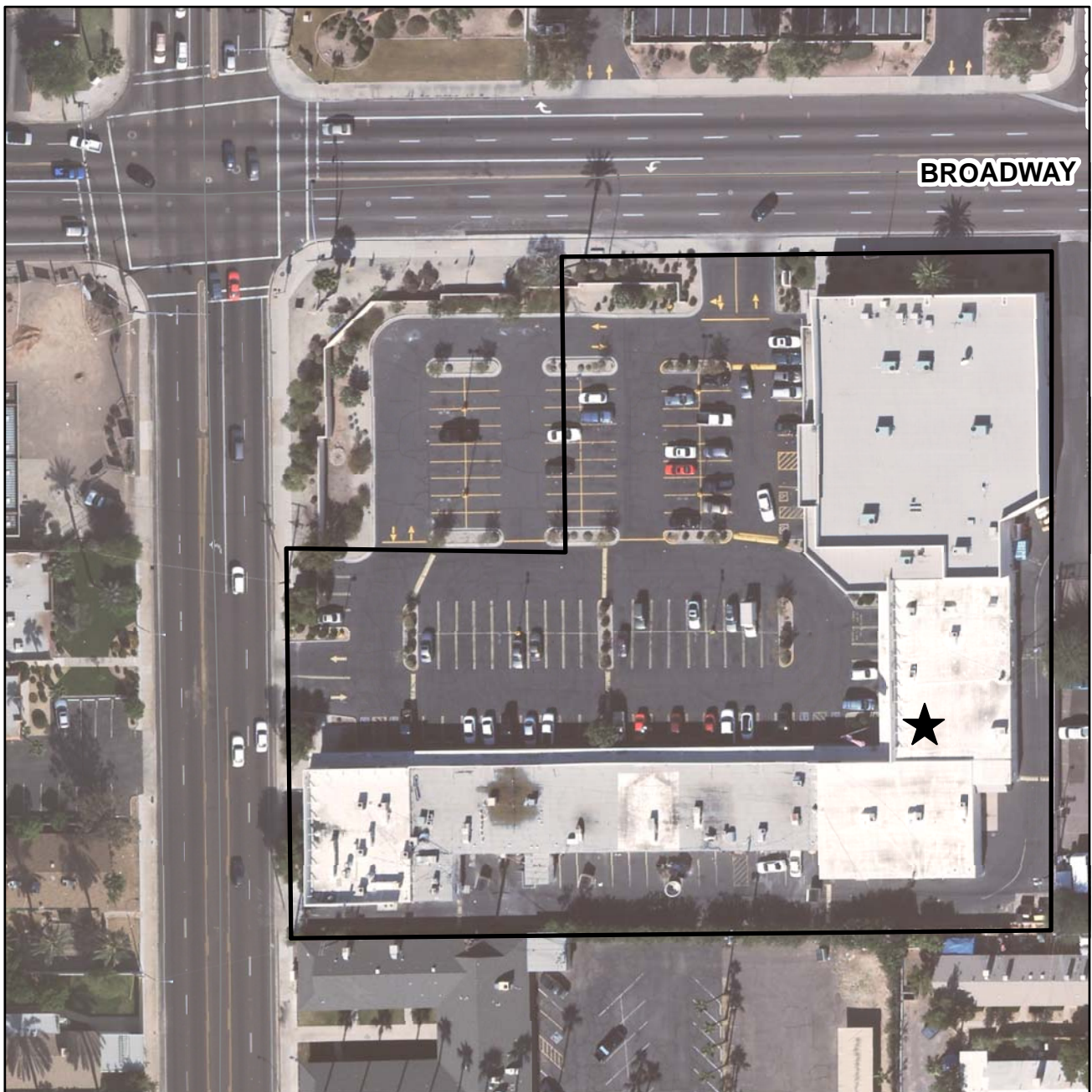
Part 6, Chapter 3, Section 6-313 – Security Plan

**WALGREENS PLAZA-  
HB TOBACCO**

**PL060676**



**Location Map**



**WALGREEN'S PLAZA - HB TOBACCO (PL060676)**

**APRIL17,2008**

**City of tempe**

**Development**

**Services**

**31 east fifth st.**

**Tempeaz85280**

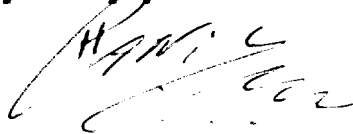
**RE;use permit request**

**Gentlemen,I anis harzallah dba of hb tobacco ihave a space of 2117 s.f. located at 53 east broadway,I did open this business in december ,2006.my business is involve to sale hot and cold beverages,tobacco,seling hookahs ans serving them to smoke**

**I'am operating this premises as a hookah lounge,I have two employees,and I operate from 7:00pm to 2:00am.**

**I have a 10 to 20 average customer a night;however,my businesswill not cause any significant change to the vehicular or pedestrian traffic in and around the wallgreens plaza and surrounding streets.and my business never cause any nuisance and will never do,exceeding the ambient conditions.**

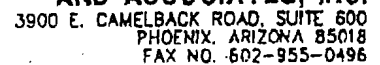
**Very truly yours**

A handwritten signature in black ink, appearing to read 'Anis ben harzallah', written over a horizontal line.

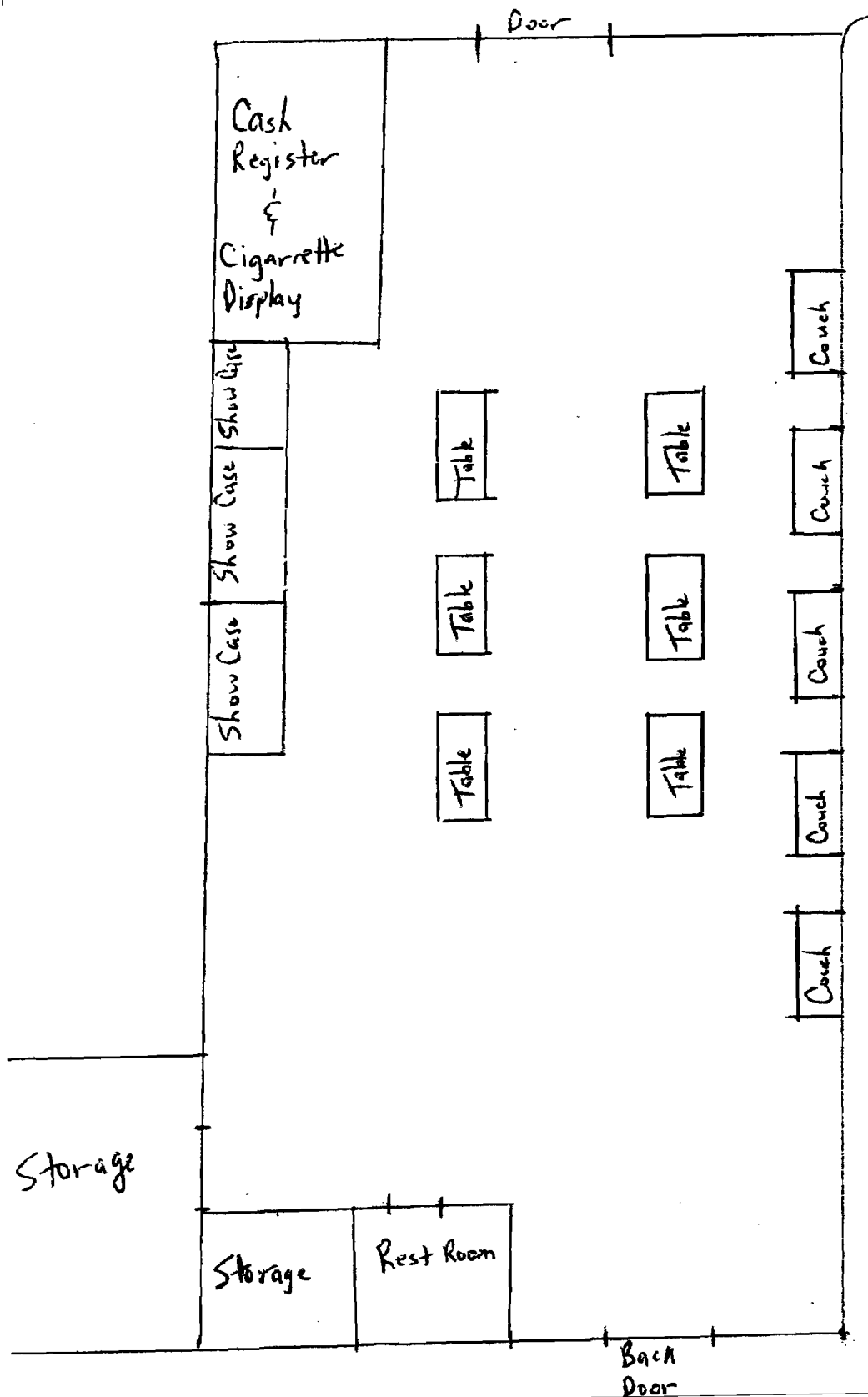
**Anis ben harzallah**



BROADWAY ROAD



HB. Place Tobacco  
53 E. Broadway



(480) 350-8331 (Phone)

December 27, 2006

Mr. Anis Ben Harzallah  
851 West University Drive  
Tempe, Arizona 85281

**RE: HB PLACE TOBACCO  
PL060676 / ZUP06088**

Dear Mr. Harzallah:

You are hereby advised that at the hearing held December 19, 2006, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by **WALGREENS PLAZA – HB PLACE TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Commercial Properties LLC, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

**ZUP06088** Use permit to allow a tobacco retailer.

Subject to the following conditions of approval:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The applicant shall devise a security plan in conjunction with the Police Department officials (contact Officer William Vanek (480) 858-6342) prior to the use permit becoming effective.
6. All business signs shall be Development Review staff approved and permits obtained.
7. The applicant shall contact and work with Development Services Development Review staff to upgrade non-compliant lighting at the proposed suite. Further, a 6" x 6" lexan or laminated glass vision panel shall be centered and installed at 63" above finished grade in the east elevation man door. These upgrades shall provide for the safety, security and code compliancy of the proposed business.
8. **Smoking will not be permitted within this establishment. ADDED BY HEARING OFFICER**

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with.

If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer.

You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

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

Steve Abrahamson  
Senior Planner

SA:dm

cc: Mr. Craig Lessler/Lessler Commercial Properties LLC  
Mr. Stanford Stoneman/Stoneman Properties  
File

Development Services  
Department

480-350-8331

April 10, 2008

Mr. Ben Harzallah  
HB Place Tobacco  
53 East Broadway Road  
Tempe, Arizona 85282

**FILE COPY**

RE: **HB PLACE TOBACCO – HOOKAH LOUNGE**  
53 East Broadway Road  
PL060676 / DS0061478 / DSM08019

Dear Mr. Harzallah:

I have reviewed your request for a Zoning Administrator's opinion as whether an application for a use permit to allow a hookah lounge at the HB Place Tobacco located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District can be accepted. Given the supporting evidence that shows the hookah use existed prior to the separation requirement becoming effective, you are able to apply for a use permit to allow a Hookah Lounge/Tobacco Retailer at this location.

The City of Tempe Zoning and Development Code, Part 3, Land Use, Section 3-423 states:

'Tobacco Retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education. Instructional or vocational schools are excluded from the separation agreement.'

Please submit the use permit fee of \$1065.00 along with the remaining project submittal items when applying for your use permit (i.e. 300 ft. radius map, typed mail labels, site plan, floor plan, letter of intent and signed letter of approval from the property owner).

If you need additional information or assistance, please contact Shawn Daffara, staff planner, at 480-858-2284.

Sincerely,



Lisa Collins  
Planning Director

LC/dm

cc: Kay Savard/COT Tax & Licensing  
Dean Miller/COT Commercial Code Department  
File

- Hold a public hearing for a request by **PHOENIX 1 PLAZA – NEXTLINK WIRELESS INC. (PL080147)** (Sonya Okamoto/PlanCom Inc., applicant; Fountainhead Corporation LLC, property owner) located at 2625 South Plaza Drive in the GID, General Industrial District for:

**ZUP08076** Use permit to allow roof top wireless antennas.  
**CONTINUED AT THE REQUEST OF THE APPLICANT**

- 
3. Hold a public hearing for a request by the **NANNAPANENI RESIDENCE (PL060629)** (Ravi Nannapaneni, applicant/property owner) located at 1026 East Knox Road in the AG, Agricultural District for:

**VAR08009** Variance to increase wall height in the front yard setback from four (4) feet to six (6) feet.

Mr. Ravi Nannapaneni was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted the neighbor to the west is no longer in opposition and that his concerns have been resolved.

Mr. Williams noted that the purpose of a variance is to provide relief when the Zoning and Development Code is not applied fairly to a property owner. Mr. Nannapaneni's residence is across the street from the parking lot of a high school where there is a lot of activity and the wall will allow privacy.

**DECISION:**

Mr. Williams approved PL060629/VAR08009 subject to the following conditions:

1. The variance is granted based on the plans submitted and approved by the Hearing Officer.
2. Obtain all necessary clearances from the Building Safety Division.
3. The wall shall be designed to match the existing residence in color, form and material.

- 
4. Hold a public hearing for a request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

**ZUP08068** Use permit to allow a hookah lounge/tobacco retailer.

Mr. Anis Ben Harzallah was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This request is based on the Zoning Administrator's opinion that they were allowed to apply for this use permit.

Mr. Williams questioned Mr. Abrahamson as to whether there had been any applicants that were restricted as to hours designated for smoking vs the business hours they are allowed to sell tobacco products. Mr. Williams noted that there was a Walgreens located next door to this business who also sold tobacco products. Mr. Abrahamson explained that the sale of tobacco products was not the primary source of income for Walgreens and they were not required to have a use permit, whereas Mr. Harzallah would derive over fifty percent (50%) of his income from the sale of tobacco. Mr. Williams cited his concern over high school students in the nearby area and asked if perhaps it would be more beneficial to limit the hours when smoking is allowed to a later time period such as 5 PM. He asked if limiting the hours is an option in this case.

Mr. Harzallah spoke and explained that the normal hours of his business were from 7 PM to 2 AM. Staff confirmed that this applicant's letter of explanation specified these hours of business.

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Mr. Steve Stewart, Chairman of Date Palm Manor Homeowners Association, presented Mr. Williams with a specific petition of opposition to this request by his association. He pointed out the location of Tempe High School (northwest corner) and that the association strongly protests this use permit based on health concerns.

Mr. Angel Mendez, of Penasco Place, spoke in support of this request and stated that as a business owner and neighbor, Mr. Harzallah keeps the premises and parking area clean and causes no problems.

Ms. Margaret Christiansen, resident of Tempe, spoke in opposition and stated that as adults in our community we need to protect our youth during a period when they are very vulnerable and experimental against things, such as tobacco, that are harmful at all costs.

Mr. Williams noted that the sale of tobacco products is not what is under advisement today as that use permit had been approved over a year ago. The use permit to allowing smoking on the premises is what is being considered today, and because of the concern over high school students having a place to go and smoke, a use permit was denied a year and a half ago. He went on to state that we are back today to look at that very same question. Further, he indicated that he shared a very strong concern with the community over the close proximity of high school students, and the relation of this business to the location of the high school. Due to the Zoning Administrator's opinion that stated that this use was 'grandfathered', and the fact that the hours of operation were beyond the high school hours, since high school kids are not concentrated at 7 PM at this location, Mr. Williams noted that he was approving this request with an added condition limiting the hours of operation.

**DECISION:**

Mr. Williams approved PL060676/ZUP08068 subject to the following conditions:

1. The use permit is valid for HB Place and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480-858-6330).
11. **The hours of operation for on premises smoking are limited to 7:00 PM to 2:00 AM. ADDED BY HEARING OFFICER**

Development Services  
Department

(480) 350-8331 (Phone)

May 28, 2008

**FILE COPY**

Mr. Anis Ben Harzallah  
HB Place Tobacco  
53 East Broadway Road  
Tempe, Arizona 85282

**RE: H B TOBACCO  
PL060676 / ZUP08068**

Dear Mr. Harzallah:

You are hereby advised that at the hearing held May 20, 2008, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by **WALGREENS PLAZA - H B TOBACCO (PL060676)** (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

**ZUP08068** Use permit to allow a hookah lounge/tobacco retailer.

Approved subject to the following conditions:

1. The use permit is valid for HB Place and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
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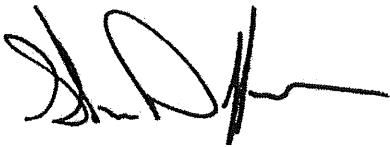
Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with.

If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer. You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Daffara', with a stylized flourish at the end.

Shawn Daffara  
Planner II

SD:dm

cc: Mark Stoneman/Stoneman Properties  
File

# **DATE PALM MANOR – NEIGHBORHOOD ASSOC.**

**C/O Steve Stewart, Chairman – 10 W. Palmcroft Dr. – Tempe, AZ 85282  
480 – 966-5865**

**CITY OF TEMPE**

**May 29, 2008**

**c/o Development Services Department  
P.O.Box 5002  
Tempe, AZ 85280-5002**

## **DEVELOPMENT SERVICES DEPARTMENT:**

**Date Palm Manor Neighborhood Association hereby requests appeal consideration on application PL060676 decision issued May 20, 2008. This appeal is based on the following, that we believe the Hearing Officer may have overlooked.**

- 1. Our initial complaint is on the reverse side of this request and definitely deserves additional consideration.**
- 2. The modification of hours of operation to start at 7:00 pm, does not in any way detour the juvenile traffic because of the tobacco legal age of (18) eighteen. Two years ago, here in Date Palm Manor, we had about ten of our Police Officer's break-up a group of 4-500, drinking and gun-firing teenager's celebrating someone's 18<sup>th</sup> birthday. This "hookah lounge" is like a giant teenage magnate to allow our youth to openly travel in a negative direction. This is the opposite direction of the YMCA.**
- 3. We have worked very hard to make Tempe a beautiful city. With less than 19% of the American public smoking, and kids comprising a large percentage of that 19% , the problem is compound; littering and contributing.**
- 4. Why add to our already overloaded Police Department? Tempe Leadership tries to develop responsible and active citizen's. Without a doubt, if the "hookah lounge" is allowed to operate, the entire surrounding neighborhoods will be watching and calling the police as required.**

**Respectfully,**



**Steve Stewart, Chairman - Date Palm Manor Neighborhood Assoc.**

## WALGREENS PLAZA-HB TOBACCO

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

First point of consideration is TEMPE HIGH SCHOOL located directly across the street on the northwest corner of Broadway Road and Mill Avenue. Secondly, both the City of Tempe and the State of Arizona are attempting to better protect our children and citizens from the abusive effects of tobacco; this application is definitely counterproductive and as such, should not be granted.

The below signed residents pray for the denial of this application:

NAME	ADDRESS	SIGNATURE	DATE
1. Steve Stewart	10 W. Palmcroft Dr.		5-18-08
2. Joy Stewart	10 W. Palmcroft Dr.		5-18-08
3. Margaret Christiansen	18 W. Palmcroft Dr.		5-18-08
4. Carolyn Jenkins	116 W. Palmcroft Dr.		5-18-08
5. Adrienne Decker	103 W. Palmdale Dr.		
6. Pat Lauderdale	111 W. Palmdale Dr.		
7. Patti Morrell	115 W. Palmcroft Dr.		
8. Biddy Hayden	121 W. Palmcroft Dr.		

NOTE: 5-29-08: When this petition was originally given to the Development Services Department, May 20, 2008 @ the public hearing, there were (23) twenty-three valid resident signatures on three separate sheets. This sheet is being attached to our request for appeal to the Hearing Officer's decision on this case at that hearing.

## Anaradian, Christopher

**From:** Ellis, Shana  
**Sent:** Thursday, May 22, 2008 3:14 PM  
**To:** Anaradian, Christopher  
**Subject:** FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

Here is the other one I told you about....

Shana

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**From:** Scott Turley [mailto:scott.turley@gmail.com]  
**Sent:** Sunday, May 18, 2008 5:19 PM  
**To:** Hallman, Hugh; Hutson, Hut; Arredondo, Ben; Carter, Barbara; Ellis, Shana; Mitchell, Mark; Shekerjian, Onnie  
**Cc:** huthutson@cox.net; julie@julieforcouncil.com; navarrorforcitycouncil@hotmail.com; corey@coreywoods2008.com  
**Subject:** Hearing for a permit for a Hookah Lounge across from Tempe High School

Dear esteemed Mayor, Tempe City Council, and those running for City Council:

I am a concerned resident in the city of Tempe in the neighborhood between Mill Avenue and the railroad tracks south of Alameda Dr. Our family has two young children, ages three and five and attend church with families who also live in the surrounding neighborhoods some of whom have children attending Tempe High.

It has come to my attention that the business HB is applying for a permit to operate a Hookah Lounge in the Walgreen's shopping center across the street from Tempe High school. The business also intends to extend operations from 3pm to 2am, opening its business just as the Tempe High School will be releasing its students from classes.

I am concerned because I frequent this shopping center often. The corner restaurant, El Penasco, is a local favorite for our family, and we sometimes walk their to frequent it and other businesses in the plaza.

About four years ago, we were looking to buy a house in the area. We did not want to follow the trend of many of my friends who were buying brand new houses on the outskirts of town. We chose Tempe because we love Tempe. We bought an old house in an old neighborhood because we liked the amenities of the city. However, one of the distinct disadvantages of being in this part of the city for us is the number of tobacco type shops close by. There are three, including this one that we could literally walk to from our house.

Much more important, having such a shop right across the street from a high school is a direct violation of city law. And for them to operate such a shop at 3pm so close to the hours of operation of a high school just violates common sense. I do understand the shop was operating before the city law to ban such establishments was in place, but the law was passed for a reason, and common sense needs to dictate in this case.

I strongly urge all on this list who have the power to limit operations of such establishments to locations not near our schools, and they especially should not be allowed to open as students are walking nearby.

One final note, I am a concerned and informed Tempe resident. I have researched those running for city council this Tuesday and I am planning to vote. I am generally excited at the direction Tempe is currently going, but I definitely want to see neighborhoods like mine looked after to ensure a safe, family friendly environment for all who reside here.

I appreciate your time on this matter.

Scott Turley  
16 W. Del Rio Dr.  
Tempe, 85282  
480-517-1438

**Anaradian, Christopher**

**To:** Abrahamson, Steve

**Subject:** FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

**From:** Ellis, Shana

**Sent:** Thursday, May 22, 2008 3:01 PM

**To:** Hearn, Shelley; Anaradian, Christopher

**Subject:** FW: Hearing for a permit for a Hookah Lounge across from Tempe High School

Do either of you have any information on this? Thanks!

Shana

**From:** TESmith [mailto:etsmith2@cox.net]

**Sent:** Monday, May 19, 2008 10:33 PM

**To:** Hallman, Hugh; Hutson, Hut; Arredondo, Ben; Carter, Barbara; Ellis, Shana; Mitchell, Mark; Shekerjian, Onnie

**Subject:** Hearing for a permit for a Hookah Lounge across from Tempe High School

Dear Mayor and Tempe City Council,

It has come to my attention that the business HB is applying for a permit to continue to operate and expand a Hookah Lounge in the Walgreen's shopping center across the street from Tempe High school.

While I visit this strip mall frequently, I never realized the type of business that HB was conducting behind it's highly silvered windows, being tucked back in the corner, opening only after dark and with almost no signs to speak of. This was not an operation to take pride in, it was being run with stealth, keeping under the radar screen.

With this proposal, they will become the premier store in this shopping facility. The application by the owner states that he plans to extend his operation hours from 3pm to 2am, opening its business just as Tempe High School is releasing its students for the day.

I understand that there is some need to allow the grandfathering of existing business locations even when they operate in violation of the new laws regarding their proximity to schools. If the business plan were to continue as it has since 2006, I would not object. But, in my opinion, this new business plan is a blatant attempt to ensnare our city's youth in an activity that has come under condemnation by so many in the community.

I feel that it was irresponsible for the city staff to recommend approval of this application to the hearing officer. I also feel that it would be a betrayal of the public trust for this application to be approved by city officials as it stands now.

My wife and I have raised our five children with pride here in Tempe over the past 30 years. I have felt that the city has tried to make itself a safe place for youth and children and in the whole, it has done a good job.

We have one son who is a junior at Tempe High School and a daughter who will most likely attend there in two years. We take their public safety very personally. We object to letting this loophole throw open the gate to actions so inconsistent with our current laws.

Although the time is short, I trust that you and your staffs will be able to communicate our displeasure and concerns to the hearing officer responsible. Be assured that we do not stand alone in our feelings. There are many others who would want to stand and be counted were the time to respond not so short.

We appeal to you, our elected officials, to examine this matter more closely.

Sincerely,

Tim and Evelyn Smith  
21 W Geneva Dr.  
Tempe, AZ 85282

480 968-5603

# WALGREENS PLAZA-HB TOBACCO(1 of 3)

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

First point of consideration is TEMPE HIGH SCHOOL located directly across the street on the northwest corner of Broadway Road and Mill Avenue. Secondly, both the City of Tempe and the State of Arizona are attempting to better protect our children and citizens from the abusive effects of tobacco; this application is definitely counterproductive and as such, should not be granted.

The below signed residents pray for the denial of this application:

	NAME	ADDRESS	SIGNATURE	DATE
1.	1. Steve Stewart	10 W. Palmcroft Dr.	<i>Steve Stewart</i>	5-18-08
2.	2. Joy Stewart	10 W. Palmcroft Dr.	<i>Joy Stewart</i>	5-18-08
3.	3. Margaret Christiansen	18 W. Palmcroft Dr.	<i>Margaret B. Christiansen</i>	5-18-08
4.	4. Carolyn Jenkins	116 W. Palmcroft Dr.	<i>Carolyn V. Jenkins</i>	5-18-08
5.	5. Adrienne Decker (VACATION)	103 W. Palmdale Dr.		
6.	6. Pat Lauderdale	111 W. Palmdale Dr.	<i>Pat Lee</i>	5-18-08
7.	7. Patti Morrell	115 W. Palmcroft Dr.	<i>Patti Morrell</i>	5-18-08
8.	8. Biddy Hayden	121 W. Palmcroft Dr.	<i>Biddy Hayden</i>	5-18-08
9.	9. HAL L. JENKINS	116 W. PALMCROFT	<i>Hal L. Jenkins</i>	5-18-08
10.	10. KRS ROBERTS	25 W. Palmcroft	<i>KRS</i>	5-18-08
11.	11. MARTON MUNIK	19 W. PALMCROFT	<i>Marton Munik</i>	5-18-08
12.	12. Robert Eagar	26 W. Palmcroft	<i>Robert Eagar</i>	5-18-08
13.	13. Karli Eagar	26 W. Palmcroft	<i>Karli Eagar</i>	5-18-08
14.	14. Beverly ALISKY	44 W. Palmdale	<i>Beverly Alisky</i>	5-18-08
15.	15. Lander ALISKY	44 W. Palmdale	<i>Lander Alisky</i>	5-18-08
16.	16. Annemare Oliveira	111 W. Palmdale Dr.	<i>Annemare Oliveira</i>	5-18-08



# WALGREENS PLAZA-HB TOBACCO

(2 of 3)

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

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6. Pat Lauderdale	111 W. Palmdale Dr.		
7. Patti Morrell	115 W. Palmcroft Dr.		
8. Biddy Hayden	121 W. Palmcroft Dr.		
16. 9. Roseana Spier	2018 S. Dromedary Dr	Roseana Spier	5-19-08
17. 10. Dale Spier	2018 S. Dromedary Dr	Dale Spier	5-19-08
11.			
12.			
18. 13. Elsie M. Miller	15 W. Palmcroft Dr.	Elsie M. Miller	5-20-08
19. 14. Debbie Bonets	25 W. Palmcroft Dr.	Debbie Bonets	5-20-08
20. 15. CATHY ORTIZ	2025 S. Palmdale	Cathy J. Ortiz	5/20/08
21. 16. Peggy Maddox	102 W. Palmcroft	Peggy Maddox	5/20/08

# WALGREENS PLAZA-HB TOBACCO

(3 of 3)

We, the residents of DATE PALM MANOR; located in the southwest quadrant of Mill Avenue and Broadway Road in Tempe, Arizona; do hereby STRONGLY PROTEST the application (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for: ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

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6. Pat Lauderdale	111 W. Palmdale Dr.		
7. Patti Morrell	115 W. Palmcroft Dr.		
8. Biddy Hayden	121 W. Palmcroft Dr.		
9. Rosanna Spier	2018 S. Pomeroy Dr.	Rosanna Spier	5-19-08
10. Dale Spier	2018 S. Pomeroy Dr.	Dale Spier	5-19-08
22. 11. Mark Petiford	14 W. Palmcroft Dr.	Mark Petiford	5/19/08.
23. 12. Chenli Petiford	14 W. Palmcroft Dr.	Chenli Petiford	5/19/08.
13. Elsie M. Miller	15 W. Palmcroft Dr.	Elsie M. Miller	5-20-08
14. Delia Bowles	25 W. Palmcroft Dr.	Delia Bowles	5-20-08
15. Cathy Ortiz	2025 S. Pomeroy Dr.	Cathy J. Ortiz	5/20/08
16. Peggy Maddox	102 W. Palmcroft Dr.	Peggy Maddox	5/20/08



**WALGREENS PLAZA- HB TOBACCO**

**53 EAST BROADWAY ROAD**

**PL060676**

**FRONT OF BUSINESS**