

# Staff Summary Report



Hearing Officer Hearing Date: 9/06/11

Agenda Item Number: 9

**SUBJECT:** This is a public hearing for a request by **CAMPUS CELLULAR/42 DEGREES SMOKE SHOP** located at 946 South Mill Avenue for one (1) use permit.

**DOCUMENT NAME:** 20110906cdsl09 **PLANNED DEVELOPMENT (0406)**

**COMMENTS:** Hold a public hearing for a request by **CAMPUS CELLULAR/42 DEGREES SMOKE SHOP (PL110283)** (Geoffrey Turner/Communicom LLC, applicant; Winter Wren LLC, property owner) located at 946 South Mill Avenue in the CC, City Center District for:

**ZUP11075** Use permit to allow a tobacco retailer.

**PREPARED BY:** Sherri Lesser, Senior Planner (480-350-8486)

**REVIEWED BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

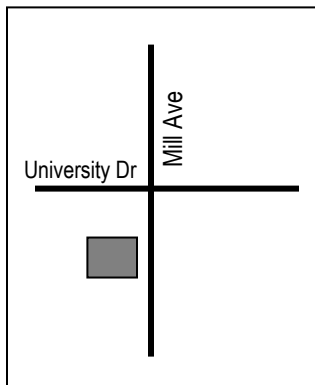
**LEGAL REVIEW BY:** N/A

**DEPARTMENT REVIEW BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

**FISCAL NOTE:** There is no fiscal impact to City funds.

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

**ADDITIONAL INFO:**



The applicant is before the Hearing Officer to request approval of a use permit to allow a tobacco retail store. The business will involve the sale of tobacco-related products, tobacco, cigarettes and smoking related items. There has been no public input to date regarding this request. Staff recommends approval of the request as submitted.

**PAGES:**

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Floor Plan

## COMMENTS:

The proposed store will be located across from Arizona State University at 946 South Mill Avenue. The store combines two separate retail uses; a cellular phone store and a smoke shop. The store is located adjacent to other retail uses to the north and south; and is next to single family residences to the west. To date, staff has received no public input concerning this request.

## Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a use permit in the CC City Center District. Additionally, tobacco retailers must meet ZDC separation requirements and may not be located within 1,320 feet of a school.

This use permit request meets all applicable tests in the following manner:

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 retail use, similar to others within the shopping center; there should be no nuisances.*
- 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.*
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public:
  - *The proposed use is a retail establishment will not create a nuisance.*

## Conclusion

Staff recommends the use permit, subject to conditions.

## REASON(S) FOR APPROVAL:

1. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
2. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.
3. Traffic generated by this use should not be excessive.
4. The use appears to be compatible with the building, site and adjacent property.

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.**

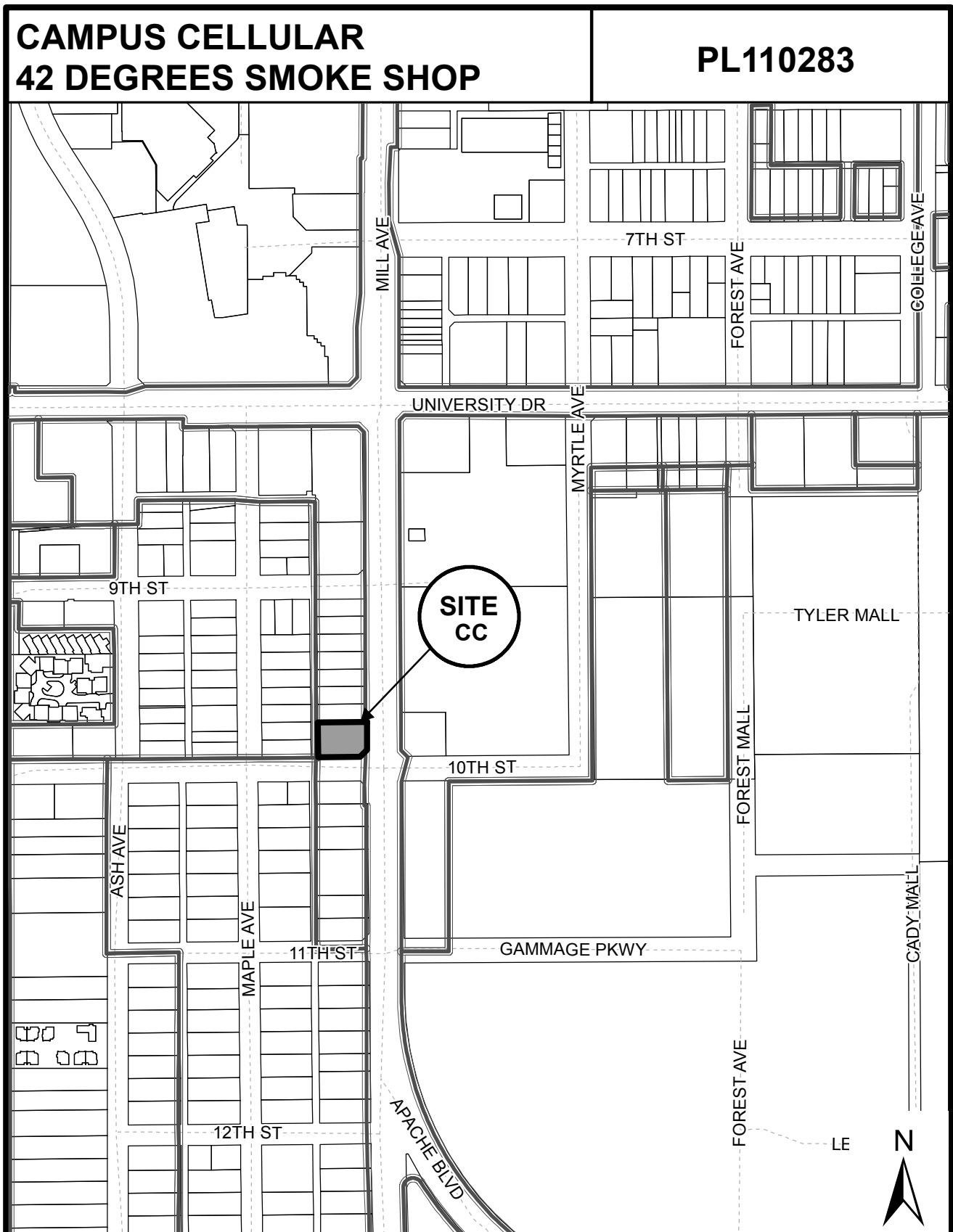
**CONDITION(S)  
OF APPROVAL:**

1. The use permit is valid for 42 Degrees Smoke Shop and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee. Should the business be sold, the new owners must contact the Community Development 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. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
5. All business signs shall receive a Sign Permit. Please contact Dean Miller at (480) 350-8435.
6. The applicant shall submit a security plan to the City of Tempe Crime Prevention Unit. Please contact William Gallauer at 480-350-8749 within 30 days of this approval (October 6, 2011).

**HISTORY & FACTS:**                    **None pertinent to this case.**

**DESCRIPTION:**                    Owner – Winter Wren LLC  
Applicant – Geoffrey Turner/Communicom LLC  
Existing Zoning – CC, City Center District

**ZONING AND  
DEVELOPMENT  
CODE REFERENCE:**                    Part 3, Chapter 2, Section 3-202 – Permitted Uses in Commercial and Mixed-Use Districts  
Part 6, Chapter 3, Section 6-308 – Use Permit



**Location Map**



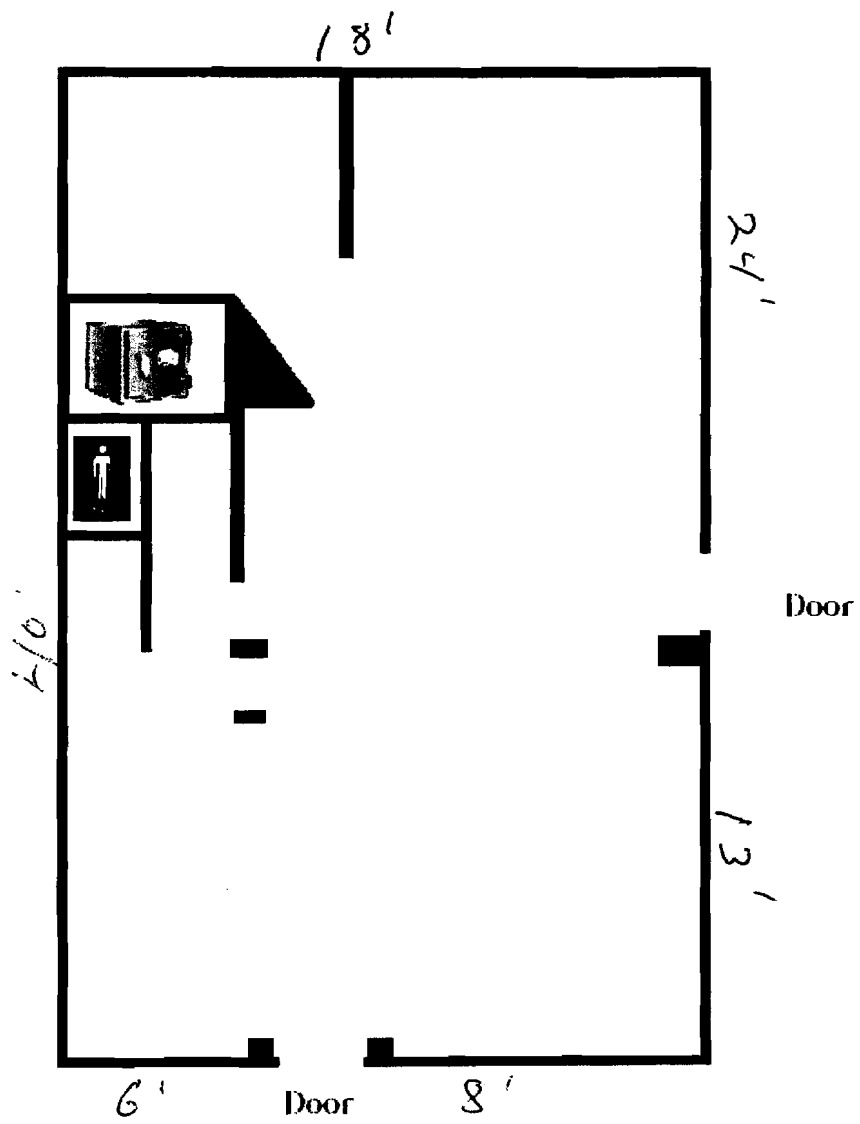
**CAMPUS CELLULAR/42 DEGREES SMOKE SHOP (PL110283)**

**Operational description:**

42 Degrees Smoke Shop is located on the South West corner of Mill Avenue and 10th street in Tempe, Arizona. It consists of two employees working full time during the hours of 11 am to 8 pm, Monday through Saturday. We offer Tobacco smoking devices and accessories at discounted prices to individuals 18 year of age and older. We provide healthy substitutes for those who wish to quit smoking, as well as herbal supplements and stimulants. Our staff is friendly, professional, and knowledgeable; and our store is kept clean and well-lit to ensure a comfortable experience for all its customers. No matter what your smoking needs are, you are sure to leave the store very well informed and satisfied with your purchase!!

**Letter of explanation:**

- a. 42 Degrees smoke shop will not contribute to any excessive traffic to the surrounding areas that has not already been factored into its zoning as well as those businesses surrounding it. the parking lot on the west side of the building provides adequate parking space for the amount of business we expect.
- b. We will not contribute to any bothersome noise, vibrations, gas, dust, or offensive odor. 42 Degrees provides a relaxed atmosphere for its customers and wishes to provide a peaceful shopping experience.
- c. 42 Degrees will not contribute to the deterioration of the surrounding neighborhoods, city goals, objectives, or policies. we will provide rather a more tightly bound community and support of local businesses seeing as most of our clients come on foot from these surrounding neighborhoods.
- d-e. 42 Degrees smoke shop is highly compatible with surrounding structures and businesses. We support our adjacent businesses and, in fact, share some of the same clientele. Our employees will not engage in any disruptive behavior in or out of store in a way that might be a nuisance to the surrounding area or general public.



**Front**