

Date: March 13, 2024

Dear: (Property Owner or Neighborhood Organization or Interested Party):

This is a revision to the Notification Letter sent on February 28, 2024. The PHO meeting date will now be on April 17, instead of March 20.

The purpose of this letter is to inform you that we have recently filed a Planning Hearing Officer Hearing Application PHO-1-24—Z-44-86-1(3) for a site located at 1528 W Peoria Ave.

The Planning Hearing Officer (PHO) hearing only acts to modify or delete stipulations from approved rezoning cases. The action is limited to the modification of stipulations that were conditioned as part of the rezoning case. This hearing does not review the original change of zoning request. Our request is for the deletion of Stipulations 1 and 4 regarding the development of a turnaround at the end of 15th Lane.

The **(Village Planning Committee and/or Planning Hearing Officer hearing)** will take place at the following date and location:

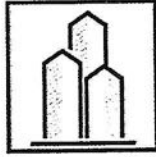
(Village name) Village Planning Committee	Planning Hearing Officer
Location: N/A	Meeting will be held virtually.
Date and Time: N/A	April 17 at 10:00 a.m.
<p>To participate in virtual meetings, see the instructions on the agenda available on the public meeting notices website at https://www.phoenix.gov/cityclerk/publicmeetings/notices.</p> <p>For the City Council Hearing location and participation instructions, see: https://www.phoenix.gov/cityclerk/publicmeetings/city-council-meetings.</p> <p>For questions regarding the format of these meetings, contact the City of Phoenix Planning and Development Department at 602-262-7131, Option 6.</p>	

You may attend the hearing to learn about the case and make your opinions known. Please confirm the meeting details with the City of Phoenix Planning and Development Department before attending as they are subject to change. You may also express your opinions on this case by writing to the Planning and Development Department at 200 West Washington Street, 2nd Floor, Phoenix, Arizona, 85003, and referencing the case number. Your letter will be made part of the case file. A copy of this application, site plan and all relevant material pertaining to this request are available at <https://www.phoenix.gov/pdd/planning-zoning/pzservices/pho-cases> and on file and available for examination prior to the public hearing. Please contact the City of Phoenix Planning and Development Department at 602-262-7131, Option 6 or by email at zoning@phoenix.gov for questions regarding accessing any case documents.

I would be happy to answer questions or hear any concerns that you may have regarding this proposal. You may reach me at **602.875.6221, han.choi@kontexture.com, daniel.istrate@kontexture.com**, or you may reach the City of Phoenix Planning and Development Department at 602-262-7131, Option 6.

Sincerely,
Han Choi





REILawFirm[®]

THE REAL ESTATE INVESTOR'S LAW FIRM, LLC

March 14, 2024

Dear Property Owner or Neighborhood Association President:

The purpose of this letter is to inform you that we have recently filed a Zoning Adjustment application ZA-120-24 for a site located at 11835 N. 18th Avenue, Phoenix, AZ 85029.

Our request is for a variance to allow the use of the above referenced property to operate a tobacco-oriented retail establishment on the Property. The proposed use consists only of sales of tobacco and related products and paraphernalia and does not contemplate on-site consumption or use of its products. The variance is requested because the site is located within restricted distances of a church, school, and child care facility.

The hearing is as follows: Zoning Adjustment Hearing Meeting will be held virtually.

To participate, see the instructions on the agenda available on the Public Meeting Notices website: <https://www.phoenix.gov/cityclerk/publicmeetings/notices> Meeting Date/Time: March 28, 2024 at 1:30 p.m.

You may attend the hearing to learn about the case and make your opinions known. Hearing information may also be found on signs posted on the site. You may also make your opinions known on this case by writing to the Planning and Development Department at 200 West Washington, 2nd Floor, Phoenix, Arizona, 85003 and referencing the case number. You can also send an email to zoning.adjustment@phoenix.gov.

Please reference the above case number and hearing date in your email. Your letter/email will be made part of the case file and shared with the Hearing Officer.

I would be happy to answer any questions or hear any concerns that you may have regarding this proposal. You may reach me at 480-505-7044 or joe@winsorlaw.com, or you may reach the City of Phoenix's Planning and Development Department at 602-262-7131, Option 6 or zoning.adjustment@phoenix.gov.

Please reference the above case number and hearing date in your email to expedite a response.

Sincerely,



Joseph G. Urtuzuastegui III, Esq.

ATT: Application No. ZA-120-24

4535 E. MCKELLIPS RD., SUITE 1093
MESA, ARIZONA 85215
480-660-6250
REILAWFIRM.COM



City of Phoenix
PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION NO: ZA-120-24

CASE TYPE:
Non Sign
DATE FILED:

COUNCIL DISTRICT:
3

EXISTING ZONING:
C-2

PROPERTY LOCATION 11835 North 19th Avenue
PROPERTY ADDRESS 11835 19TH

HEARING INFORMATION

<i>Hearing Type</i>	<i>Hearing Time</i>	<i>Hearing Location</i>
Zoning Adjustment Hearing 3/28/24	9:00 AM 1:30 pm	Meeting will be held virtually.

GEOGRAPHIC INFORMATION

<i>APN</i>	<i>Quarter Section</i>
159-04-001D	Q30-25

CONTACT INFORMATION

<i>Name</i>	<i>Relationship Type</i>	<i>Address</i>	<i>Phone</i>	<i>Fax</i>	<i>Email</i>
Oanh Truong for ZV Capital LLC	Owner	5167 N 74th Dr, Glendale AZ 85303	480-443-8831		avcapital19.vn@gmail.com
Phoenix Labz Mini Mart LLC	Applicant	11835 N 18th Ave, Phoenix AZ 85029			mustafa.ahmed.biz@gmail.com
Mustafa Ahmed Aljubury for Phoenix Labz Mini Mart	Representative	4535 E McKellips Road, Suite 1093, Mesa AZ 85215	480-326-9832		joe@reilawfirm.com

REI LAW FIRM

REQUEST

- Variance to allow a tobacco-oriented retailer (Phoenix Labz Mini Mart) to be located within 1,320 feet of a place of worship. Minimum 1,320 feet of separation required.
- Variance to allow a tobacco-oriented retailer (Phoenix Labs Mini Mart) to be located within 1,320 feet of a park. Minimum 1,320 feet of separation required.

ZONING ORD. SECTIONS

- 623.D.194.b
- 623.D.194.b

PHOENIX LABZ MINI MART

NARRATIVE IN SUPPORT OF APPLICATION FOR AREA VARIANCE

Use Allowed Under Section 623.D.194

I. Overview of Project

Phoenix Labz Mini Mart and Mustafa Ahmed Al-Jubary (jointly, "Applicant"), is the current tenant of real property located at 11835 N. 19th Avenue, Phoenix, Arizona 85029 ("Property"). The Property is located within shopping center in a C-2 Intermediate Commercial zone. Applicant is a tobacco-oriented retailer, and that use of the Property is allowed in the C-2 zone under Phoenix Zoning Ordinance Section 623.D.194. However, an area variance is required under Section 623.D.194(b) because the property is located within 1,320 feet of a place of worship and a park. Applicant submits that the proposed use is permitted under the Phoenix City Zoning Ordinance within the C-2 zone, and that the project will benefit the surrounding community. Applicant submits the information contained in the Application, this narrative, and attached reference materials in support of its variance and use permit application.

II. General Project Information

A. Location

The subject property is located just North of West Sunnyside Drive on the east side of 19th Avenue. The Property is a convenience store located within a commercial strip mall along with several other commercial/retail businesses. The address of the strip mall is 11801 N 19th Avenue, Phoenix, Arizona 85029. The Property is situated within an Intermediate Commercial (C-2) zone and is adjacent to single family and multi-family residential zone. The overhead map attached as Exhibit 1 provides a visual representation of the Property's physical location.

B. Existing Use

The Property is presently occupied by Applicant and Applicant has invested considerable time and money improving the Property as a retail storefront. The interior of the Property is configured as a retail space and currently operating as a convenience store. As convenience store, the Property can (and does) sell tobacco-related products. However, the sale of tobacco-related products and vaping products does not exceed five percent (5%) of the retail floor space of the Property.

C. Proposed Use

Applicant will continue to operate a convenience store in this location but requests an area variance to ensure code compliance because the convenience store intends to devote more than five percent (5%) of its floor space to the sale/display of tobacco related

products. The proposed use consists of sales of tobacco and related products and paraphernalia, and does not contemplate on-site consumption or use of its products. Although Applicant does not anticipate exceeding the five percent floor space limitation by a substantial amount, Applicant wishes to remain in compliance with the Zoning Ordinance.

D. Conditions Requiring a Variance

While the proposed use is allowed within the C-2 zone, the Property is located within 1,320 feet of three (3) places of worship and one (1) park. The distances to each of those establishments appears in the following table:

<u>TABLE 1: PROTECTED USES WITHIN SETBACK</u>	
<u>Use – Places of Worship</u>	<u>Distance and Point of Measurement</u>
Kingdom in the Valley Christian Church 11640 N. 19th Avenue Phoenix, Arizona 85029 602-441-0540	408.9 Feet (southeast corner of parcel to northwest corner of church parcel)
Arizona Conference Corp of Seventh-day Adventist Church 11601 N. 19th Avenue Phoenix, Arizona 85029 201-580-0910	790.3 Feet (southeast corner of parcel to northeast corner of church parcel)
Elim Romanian Pentecostal Church 1748 W. Cortez Street Phoenix, Arizona 85029 773-419-7163	702.1 feet (southwest corner of parcel to northeast corner of church parcel)
<u>Use - Parks</u>	<u>Distance and Point of Measurement</u>
North Mountain Shaw Butte Mountain Preserve Owner: City of Phoenix Mailing: 251 W. Washington St. 8 th Phoenix, Arizona 85003	367.5 feet (northwest corner of parcel to closest point of Park)

III. Standards Applicable to the Request

The Applicant seeks an area variance to relieve it of strict compliance with the setback requirements applicable to tobacco-oriented retailer set forth in 623.D.194(b).1 The Zoning Ordinance expressly permits that use within the Intermediate Commercial zone in which the Property is located.

The zoning department should grant an area variance where strictly applying a zoning ordinance will cause “peculiar and exceptional practical difficulties” that deprive a property of privileges enjoyed by other similarly zoned properties.²

A variance is authorized if the applicant can establish that (a) special circumstances apply to the land, building, or use referenced in the application which do not apply to other district properties; (b) the owner did not create the special circumstances; (c) the variance is necessary for the preservation and enjoyment of substantial property rights; and (d) the variance is not materially detrimental to the area. Phoenix Zoning Ordinance §307(9)(a-d). Zoning hearing officers have discretion within those constraints to approve area variances even if the result does not confirm to setback distances set by the Zoning Ordinance.³

A. Special Circumstances Are Present on the Property

In the zoning context, the term “special circumstances” is functionally equivalent to “hardship.”⁴ An applicant seeking an area variance faces a “less stringent” showing of hardship because an area variance does not affect the character of the property.⁵ The location of the Property within setbacks that would prevent a specific allowed use is a “special circumstance” where the allowed use is a privilege enjoyed by other similarly zoned parcels within the relevant City Council District; a variance is permissible where the owner seeks only the same privileges granted by the Zoning Ordinance to other similarly zoned properties.⁶

The Property’s physical location places it too close to several protected uses, namely three (3) churches and a park. See Table 1, Above. This condition is a hardship because it is not present at other locations within the zone. Properties to the South of the Property fall outside the church. While the proposed use is allowed in the C-2 zone, the property’s location and size deprives the owner of many allowed uses.

¹ An area variance relieves the duty to comply with a zoning ordinance’s technical requirements such as setback, frontage requirements, height limitations, lot size restrictions, density regulations, and yard requirements. *Ivanovich v. City of Tucson Bd. of Adjustment*, 22 Ariz.App. 530, 536 (1974).

² *Pawn 1st, LLC v. City of Phoenix*, 242 Ariz. 547 (2017).

³ *Warner v. City of Phoenix Board of Adjustment*, 2017 WL 1365984 (Ariz.App. 2017)

⁴ *Burns v. SPA Automotive, Ltd.*, 156 Ariz. 503, 505 (App. 1988)

⁵ *Ivanovich v. City of Tucson Bd. of Adjustment*, 22 Ariz.App. 530, 536 (1974)

⁶ *Dreem Green, Inc. v. City of Phoenix*, 2019 WL 1959618 (Ariz.App. 2019)

Applicant has identified at least one other non-conforming permitted use in the vicinity of the Property. "Hookah Cash N Carry Tobacco and Beer", located at 1926 W. Cactus Rd, Phoenix, AZ 85029 (only 0.3 miles from Applicants Property), falls within 1,320 feet of a school and the same park identified above as the North Mountain Shaw Butte Mountain Preserve. "Hookah Cash N Carry Tobacco and Beer" was granted its area variance pursuant to its application in Case No. ZA-331-22-3. Applicant wishes to enjoy the same use as this existing business enjoys within the same zone.

Further, Applicant has identified multiple similarly zoned parcel in the vicinity of the Property within the relevant City Council District which is operating as a tobacco-oriented retailer. "Pay Less Market 2 Smoke Shop", located at 11021 N 19th Ave, Phoenix, AZ 85029 (0.6 miles from Applicant's Property), is similarly zoned C-2 and operates as a tobacco-oriented retailer. "SRT Smoke Shop", located at 1826 W. Peoria Avenue, Phoenix, AZ 85029 (0.9 miles from Applicant's Property), is similarly zoned C-2 and operates as a tobacco-oriented retailer. Applicant wishes to enjoy the same use as these other existing businesses enjoy within the same zone.

The Property has already been improved for use as a small retail store, and the Property's small size makes it impractical to use for other retail purposes such as the sale of general merchandise. The property's size, available exterior space, and interior space all make other permitted uses either impossible or not economically feasible (see subsection III(C), *infra*). Many of the allowed uses in the A-1 zone are undesirable given the Property's close proximity to residential zones. The existence of exceptional practical difficulties in applying the property to another use is grounds to grant a variance.

B. The Applicant did not Create the Hardship

A hardship is not self-imposed where the owner wants to use the property in a way permitted to similarly situated properties but cannot do so because of externally imposed circumstances.⁷ This is true even if the owner was aware of the need to obtain an area variance prior to purchasing the property.⁸ The Property is located within a church, dependent care facility, park, and school setbacks. The Applicant obviously did not cause the property to fall within a particular area and therefore the Applicant did not cause the hardship in this case.

C. Variance will Preserve Enjoyment of Property Rights

One of the fundamental privileges enjoyed by property owners is that of using the property in a productive manner. While the Property is zoned Intermediate Commercial, the C-2 classification includes a majority of allowed uses that are simply not economically feasible given

⁷ *Pawn 1st, LLC v. City of Phoenix*, 242 Ariz. 547, 555 (2017)

⁸ *Id.*

the size of the Property. Applicant will provide further evidence during the forthcoming hearing on the suitability to other uses.

Conversely, the Property is well-adapted to a tobacco-oriented retail storefront. It has a relatively small interior space that is ideal for the limited number of merchandise offerings a tobacco retailer typically stocks and sells. Foot traffic from other businesses in the shopping plaza provides customers for the shop. Significant traffic increases are not anticipated, as the Property is already located on a semi-major traffic artery and customers already are visit the shopping plaza for other purposes.

D. Variance is not a Material Detriment to the Area

The proposed use will not cause any detriment to the area. Examples of detriments may include substantially increased vehicular and pedestrian traffic near the Property or in adjacent zones; emissions of odors, fumes, gasses, dust, or smoke; deterioration of the condition of the neighborhood; or lowering of property values in the area.

i. No Significant Change in Traffic

a. Daily Traffic Volume

The cultivation operation will employ approximately two or three people to cover two shifts seven days per week.

19th Avenue is a two-way north and southbound street where it passes the Property. The most recent traffic maps obtained by Applicant indicate that approximately 12,252 northbound vehicles per day and 10,278 southbound vehicles per day.⁹ Assuming 20 customer drove personal vehicles to the Property, an additional 20 vehicles would operate in the area each day. This represents an increase of only 0.016% in northbound traffic, and an increase of 0.019% in southbound traffic. Such traffic increases are negligible.

ii. Emissions

The proposed use will not produce fumes or emissions. Smoking is not allowed on the Property and Applicant will diligently enforce that restriction.

iii. Condition of Neighborhood

The Property is located in a commercial strip bordered by residential uses. Businesses in this area include restaurants, churches, offices, salons, and retail establishments. Residential development in the subject neighborhood is found on the east and west sides of the Property. The school and park identified in Table 1 Mountain Reserve owned by the City and used primarily for recreational activities such as hiking and it is located to the East of the Property.

⁹ www.phoenix.gov/streetssite/Documents/Traffic_Volumes.pdf, last visited February 13, 2024.

The park does not have a direct line-of-sight to the Property, as houses and landscape obscure the east side of the shopping center where the Property is located.

To the East, the residential properties comprised of Age-Restricted (55+) Community Multi-Family Residential District – Restricted Commercial use (R-5) development and is a Mobile Home Park named “Highland Terrace Mobile Home Park”. To the West, the residential properties are also comprised of R-5 Development currently operating as an assisted living facility named “The Oasis at Fellowship Square – Phoenix”. Residential development in the area is primarily multi-family residential developments supporting a demographic of persons aged 55 and over. Commercial development supporting the residential population can be found nearby.

The residential areas are comprised of assisted living facility residences and mobile home properties. Although maintained with varying degrees of care, the area does not command premium prices. While the median rental price for residential properties in the 85029 ZIP code is \$1,640.00, residential properties within walking distance of the Property listed an average monthly rent of \$350.00 for use of the facilities.¹⁰

iv. Property Values

Applicant believes the project will have an overall positive effect on property values in the vicinity.

Unoccupied income-producing properties tend to lower values of comparable properties because among other factors: (a) they do not contribute to higher average rents in the market, (b) vacant properties are at a greater risk of damage from vandals and invasion by transients, (c) vacant properties are generally not maintained, (d) potential customer traffic flow is reduced when fewer businesses are open; (e) perceived and actual crime rates tend to increase, and (f) they negatively affect the appearance of the neighborhood.

The proposed project will contribute to the reduction of vacancies in the area and will bring disposable income to the neighborhood. The project will involve beautification of the property.

v. Positive Effects of Project

While the above information demonstrates that the project will have no significant negative effect on the area, the proposed project will produce many positive results for the surrounding community.

a. Additional Jobs Created

¹⁰ Data according to <https://www.zillow.com/rental-manager/market-trends/85029/>.

Various econometric studies have quantified the secondary effects of “tradable”¹¹ jobs on the local economy. An analysis of a leading study¹² refined the “job multiplier” derived by Moretti in his review of job creation in U.S. cities in non-tradable sectors. J.J. van Dijk, writing for the University of Oxford Department of Economics, derived a revised “job multiplier” of 1.02 non-tradable jobs for every one tradable job added to a locality.¹³

Arizona is set for continued gains in employment.¹⁴ The forecast calls for Arizona jobs to rise by 2.2% in 2023, 1.9% in 2024, and 1.8% in 2024 which outpaces the National rates.¹⁵ However, Retail plus remote sales growth is expected to slow from 8.1% to 3.3% in 2023 and 2.0% in 2024 which reflects the post-pandemic normalization of consumer spending across goods and services as well as slowing income and job gains.¹⁶ Consequently, it is critical that Arizona cities attract higher wage jobs to foster additional economic growth and citizen welfare. Applicant will pay relatively unskilled workers nearly one and a half of the state’s minimum wage and will increase their financial well-being.

The addition of jobs in the neighborhood will benefit the immediate surroundings. Employees will take advantage of nearby service businesses such as salons and other shops. They will dine in the area’s restaurants for lunch and other meals. Some may choose to seek housing closer to their workplace. Purchasing services and retail goods from vendors in the area potentially shifts revenue from other municipalities and increases the taxable base for the City.

b. Community Outreach and Relationships

Applicant has maintained friendly relationships with its neighbors in the shopping center and the communities surrounding the shopping center.

III. Conclusion

The Property’s size and configuration make it unsuitable for many of the uses allowed in the C-2 Intermediate Commercial zone. The Property’s location within multiple setbacks deprives the Applicant of its proposed use, and that use is expressly permitted under the Zoning

¹¹ A “tradable” job is a job in an industry where the products created are transported out of the local area, while “non-tradable” jobs are typically service-oriented jobs such as professional services, restaurant and hospitality, and retail services.

¹² Moretti, E., 2010. Local multipliers. *The American Economic Review* 100 (2), 373, 377.

¹³ Van Dijk, J.J., 2014, Local Employment Multipliers in U.S. Cities, University of Oxford Department of Economics Discussion Papers, 1, 22.

¹⁴ Arizona Fourth Quarter 2023 Forecast Update (www.azeconomy.org)

¹⁵ Id.

¹⁶ Id.

Ordinance. Other identical non-conforming uses are allowed in the vicinity of the Property, and Applicant should not be denied the same use that is allowed to other businesses. Applicant did not create the special conditions on the Property, and wishes only to enjoy the same uses allowed to other properties in the zone. Granting the requested area variance will preserve substantial property rights and will allow a non-productive property to be occupied and produce desirable benefits to the community. No detriment to the surrounding neighborhood will be caused by the Applicant's proposed use. Therefore, the variance should be granted.