

TOLEDO - LUCAS COUNTY PLAN COMMISSIONS

One Government Center, Suite 1620, Toledo, OH 43604 P: 419 245-1200 F: 419 936-3730

DATE: October 14, 2021

REF: SUP-8004-21

TO: President Matt Cherry and Members of Council, City of Toledo
FROM: Toledo City Plan Commission, Thomas C. Gibbons, Secretary
SUBJECT: Special Use Permit for a tobacco shop

The Toledo City Plan Commission considered the above-referenced request at its meeting on Thursday, October 14, 2021 at 2:00 P.M.

GENERAL INFORMATION

Subject

Request	-	Special Use Permit for a tobacco shop
Location	-	5801 Telegraph Road
Applicant	-	A&A Distribution, LLC 5801 Telegraph Road Toledo, OH 43612
Architect	-	Rossi Associates, LLC 1821 Spencer Street Toledo, OH 43609
Attorney	-	Omar Shaaban, Esq. 1709 Spielbusch Suite 106 Toledo, OH 43604

Site Description

Zoning	-	CR / Regional Commercial
Area	-	± 3.79 acres for parcel #22-01210
Frontage	-	± 622.8' along Telegraph Road ± 214.6' along Alexis Road
Existing Use	-	Freestanding Vacant Commercial
Proposed Use	-	Tobacco Shop

GENERAL INFORMATION (cont'd)

Area Description

North	-	Bethesda Christian Center / CR
South	-	Commercial businesses & mobile home park / CR
East	-	Bars, Restaurant & Playzone / CR
West	-	U-Haul Moving & Storage / CR

Parcel History

M-29-60	-	Interim zoning Washington Township. Approved 08-04-1960.
S-29-72	-	Chrysler Addition plat. Approved 10-30-1972.
Z-216-72	-	Rezone M-1 to C-3. PC approved 09-01-72, CC approved 10-10-1972 with Ord. 899-72.

Applicable Regulations

- Toledo Municipal Code, Part Eleven: Planning and Zoning
- Toledo 20/20 Comprehensive Plan

STAFF ANALYSIS

The applicant is requesting a Special Use Permit for a cigar lounge and bar at 5801 Telegraph Road. The use is classified as a "Tobacco Shop" per Toledo Municipal Code (TMC) 1116.0249 due to the sale of tobacco even though liquor will also be served. The ± 3.79-acre parcel with one multi-tenant building and one freestanding corner structure is zoned CR. This freestanding ± 1,782 sq. ft. commercial building on the southeast corner of the site previously operated as an insurance business and hair salon. Adjacent land uses include a religious center to the north, a preschool, restaurant, bar, and Playzone to the east, commercial use and a mobile home park to the south, and a U-Haul Moving & Storage to the west.

An overview of project details is included in this analysis. A detailed list of all project related items is included in the agency conditions at the end of this report.

Use Specific Regulations

- a. Spacing Requirements: Per TMC 1104.0701 Location: A tobacco shop shall not be located within 500 feet of any of the following uses: school, public park, public library, child day care center, or other use established specifically for the activities of minors. The Playzone, a use which is established for the activities of minors, is located within 500 feet to the east of the site when measured property line to property line, triggering a spacing violation. However, the eastern property line of the subject site is within the centerline of Telegraph Road; if the property line were to be located between the sidewalk and the maneuvering area of the site, it would be approximately 500 feet or further from the Playzone. For this reason, staff recommends a waiver of 1104.0701.

- b. Hours of Operation: Per TMC 1104.1702 The hours of operation of a tobacco shop may be limited to 5:30 a.m. to 1 a.m. or other hours consistent with a liquor permit issued by the State of Ohio, as a condition of development approval. The applicant's letter of intent does not indicate hours of operation. Hours of operation are limited to 5:30 a.m. to 1 a.m. as a condition of approval.

Parking

- a. The site is owned by the same property owner of the multi-tenant retail center to the west and is part of the same parcel. There is adequate parking for the use. The Division of Transportation is requiring the addition of bicycle parking.

Landscaping

- a. The reuse of an existing site is not required to comply fully with current landscape standards, but must bring the site closer to compliance. The site plan indicates that landscaping will be added along the northern side of the proposed patio. As a condition of approval, Plan Commission staff requires that trees be added in the frontage greenbelt along Alexis Road.

Elevations

- a. The building is existing, therefore there is no review of the building elevation. The project includes updated ornamental fencing around a new patio and landscaping with arborvitae, updated building materials, soffit repairs, and paint work. This is acceptable as proposed.
- b. In keeping with current Plan Commission policy and the requirements of the updated Sign Code (soon to be adopted); new ground signage will be limited to low-profile monument signage.

20/20 Plan

The Toledo 20/20 Comprehensive Plan recommends this site for Regional Commercial uses. This category accommodates large scale commercial uses that includes auto-oriented development (such as malls, big box retail stores and mixed-use developments). The proposed use is compatible with this designation.

PLAN COMMISSION RECOMMENDATION

The Toledo City Plan Commission recommends approval of SUP-8004-21, the request for a Special Use Permit for a Tobacco Shop located at 5801 Telegraph Road, to the Toledo City Council, for the following **two (2) reasons:**

1. The use complies with all applicable provisions of the Zoning Code **TMC 1104.0701.B; and**

PLAN COMMISSION RECOMMENDATION (cont'd)

2. The use is compatible with adjacent uses in terms of operating characteristics (such as noise, traffic generation, and other impacts associated with the use's operation)
TMC 1111.0706.C.

The Plan Commission recommends that the Toledo City Council approve of the following waiver to the Toledo City Council:

Chapter 1104 Use Regulations

1104.1701 Location

A tobacco shop shall not be located within 500 feet of any of the following uses: school, public park, public library, child day care center, or other use established specifically for the activities of minors.

Approve a waiver to allow a tobacco shop less than 500 feet from a use established specifically for the activities of minors.

The Plan Commission recommends approval subject to the following **twenty-five (25)** conditions:

The following conditions are listed by agency of origin. Applicants are encouraged to contact each of the agencies to address compliance with their conditions.

Engineering Services

1. A pre-submittal meeting is not required; however, one may be requested. Contact information is as follows:

Division of Engineering Services: ph. 419-245-1315, fax 419-936-2850

Right-of-Way and Inspection: Joe Warnka 419-245-1341

Roadway: Tim Grosjean 419-245-1344

Water: Andrea Kroma 419-936-2163

Stormwater Drainage: Lorie Haslinger 419-245-3221; Andy Stepnick 419-245-1338

Sanitary Sewers: Mike Elling 419-936-2276

2. All **proposed** sidewalk, drive approaches, curb, and pedestrian curb ramps within the public right-of-way shall be constructed in accordance with the City of Toledo Construction Standards, Specifications, Toledo Municipal Code, and Americans with Disabilities Act guidelines.
3. All commercial drive approaches, (along with the sidewalk through the drive) shall be constructed with 8" thick concrete per City of Toledo Construction Standards and Specifications. No curb shall be permitted in the right-of-way along either side of a drive approach. **No horizontal curb cutting will be permitted to create a curb drop/opening.** Existing drive approaches, including the curb drop, that will no longer be utilized shall be removed and restored with curb to match the adjacent curb.

Engineering Services (cont'd)

4. Required permits for all approved work in the public right-of-way shall be obtained, before work begins, from One Stop Shop, (419) 245-1220.

Contact Joe Warnka at (419) 245-1341 for inspection of above-mentioned items.

5. Water service is available subject to the Rules and Regulations of the Department of Public Utilities.
6. All commercial properties are required to have approved backflow protection devices installed on the domestic water service and fire protection lines. Installation of the devices must be verified by the Division of Water Distribution and all devices must be registered with BSIonlinetracking.com @ 800-414-4990. In the case of renovation, expansion or modification projects, all existing backflow devices must be verified and registered. Where devices are missing, they shall be added. Contact the Division of Water Distribution (419-392-2032) to verify the backflow prevention requirements for this site.
7. The design professional or property owner shall submit written documentation to the Division of Water Distribution that no changes are being made to the existing water service line, meter setting or backflow protection device and that these devices are properly installed, tested and in good working order. The City, at its discretion, has the authority to mandate the entire service, including meter and backflow prevention device, be brought into compliance with current City of Toledo standards.
8. Contact the City of Toledo Fire Prevention Bureau (419-245-1263) to verify the fire protection requirements for this site.
9. During construction, stormwater pollution shall be prevented with basic erosion and sediment control practices.

Sewer and Drainage Services

10. S&DS requires that all private sewer lines that are not being removed or properly abandoned (both storm & sanitary) be cleaned and inspected.
11. S&DS requires that the private sanitary lines (after they have been cleaned) that are not being removed or properly abandoned be televised from the building (or private cleanout) to where they connect to the public sewer system if this has not been done in the past (2) two years. An electronic (DVD/memory stick) shall be provided to S&DS demonstrating the lines cleaning and integrity.

Environmental Services

12. Applicant shall maintain compliance with the City of Toledo's Storm Water regulations as specified in the Toledo Municipal Code. Special attention must be paid to all potential storm water impacts from the modification of the site, including but not limited to long-term operation and maintenance of existing structural and non-structural Best Management Practices.
13. Applicant shall maintain compliance with Ohio EPA's General Storm Water NPDES permit programs.
14. Applicant is strongly encouraged to include multiple green infra-structure measures to minimize runoff and increase infiltration, and to minimize the amount of new and/or additional impervious surface on the site.
15. Applicant is strongly encouraged to plant native, low maintenance and non-invasive trees, shrubs and perennials.
http://ohiodnr.gov/portals/0/pdfs/invasives/Alternatives_to_Ohio_Invasive_Plant_Species.pdf
16. Applicant shall maintain compliance with the City of Toledo and the State of Ohio's Air Quality Regulations applicable in the Toledo Municipal Code and the Ohio Administrative Code including, but not limited to the Asbestos and the Anti-Noise Laws.

Fire Department

17. Approved premise identification is required.

Transportation

18. Bicycle parking must be shown per TMC 1107.

Plan Commission

19. The hours of operation of a tobacco shop shall be limited to 5:30 a.m. to 1 a.m. per TMC. 1104.1702.
20. The elevations propose a new patio and no changes to the exterior façade of the building. The patio is approved with landscaping as presented.
21. Dumpsters shall be screened from view and may not be located in any required setback or landscape buffers and as far from residential areas as possible. **TMC 1108.0203.G. Shall be indicated on a revised site plan, if applicable.**

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STAFF RECOMMENDATION (cont'd)

Plan Commission (cont'd)

22. In addition to the proposed landscape bed to the north of the patio and the four (4) arborvitae proposed between the drive aisle and the curb to the west of the patio, new canopy trees shall be added within the frontage greenbelt to bring the site closer to compliance with the requirements of TMC§1108.0202. **As a condition of approval, the site shall offer at least one (1) new canopy tree along Alexis Road and at least two (2) new canopy trees along Telegraph Road. Shall be shown on a revised site plan.**
23. The Special Use Permit may be reviewed for compliance with the conditions of approval, negative secondary effects, and adherence to all requirements of the Toledo Municipal Zoning Code. If outstanding issues are found and not addressed the Special Use Permit may be considered for revocation.
24. Minor adjustments to the site plan that do not violate the above conditions, or the Toledo Municipal Code, may be reviewed and approved by the Director of the Toledo City Plan Commission. Major adjustments will require an amendment to the Special Use Permit.
25. No permits shall be issued until arrangements satisfactory to the Director of the Toledo City Plan Commission have been made for compliance with the conditions as set forth above.

Respectfully Submitted,



Thomas C. Gibbons
Secretary

NH

Three (3) sketches follow

Cc: A&A Distribution, LLC, 5801 Telegraph Rd, Toledo, OH 43612

Rossi Associates, LLC, 1821 Spencer St, Toledo, OH 43609

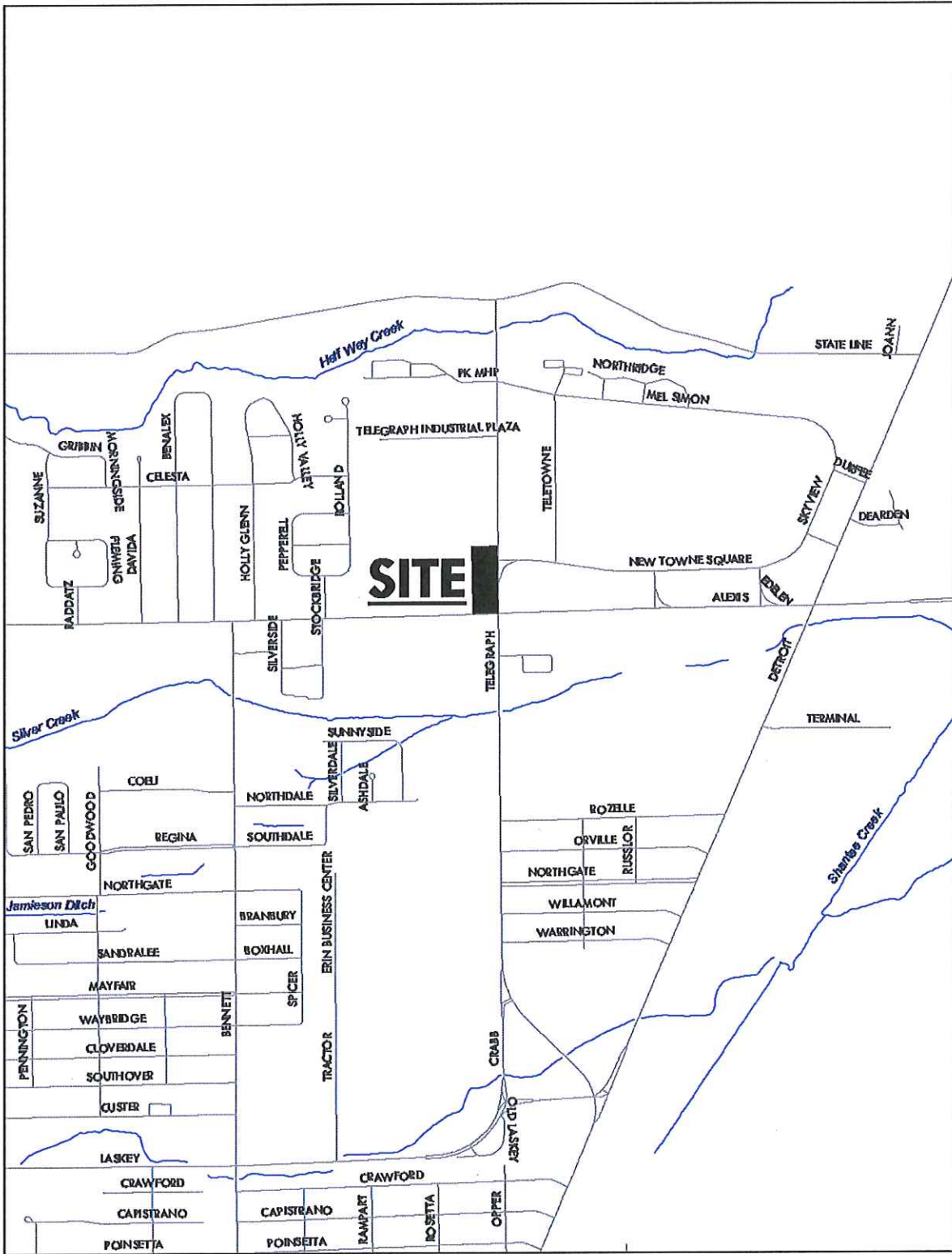
Omar Shaaban, Esq., 1709 Spielbusch Ste 106, Toledo, OH 43604

Lisa Cottrell, Administrator

Nancy Hirsch, Planner

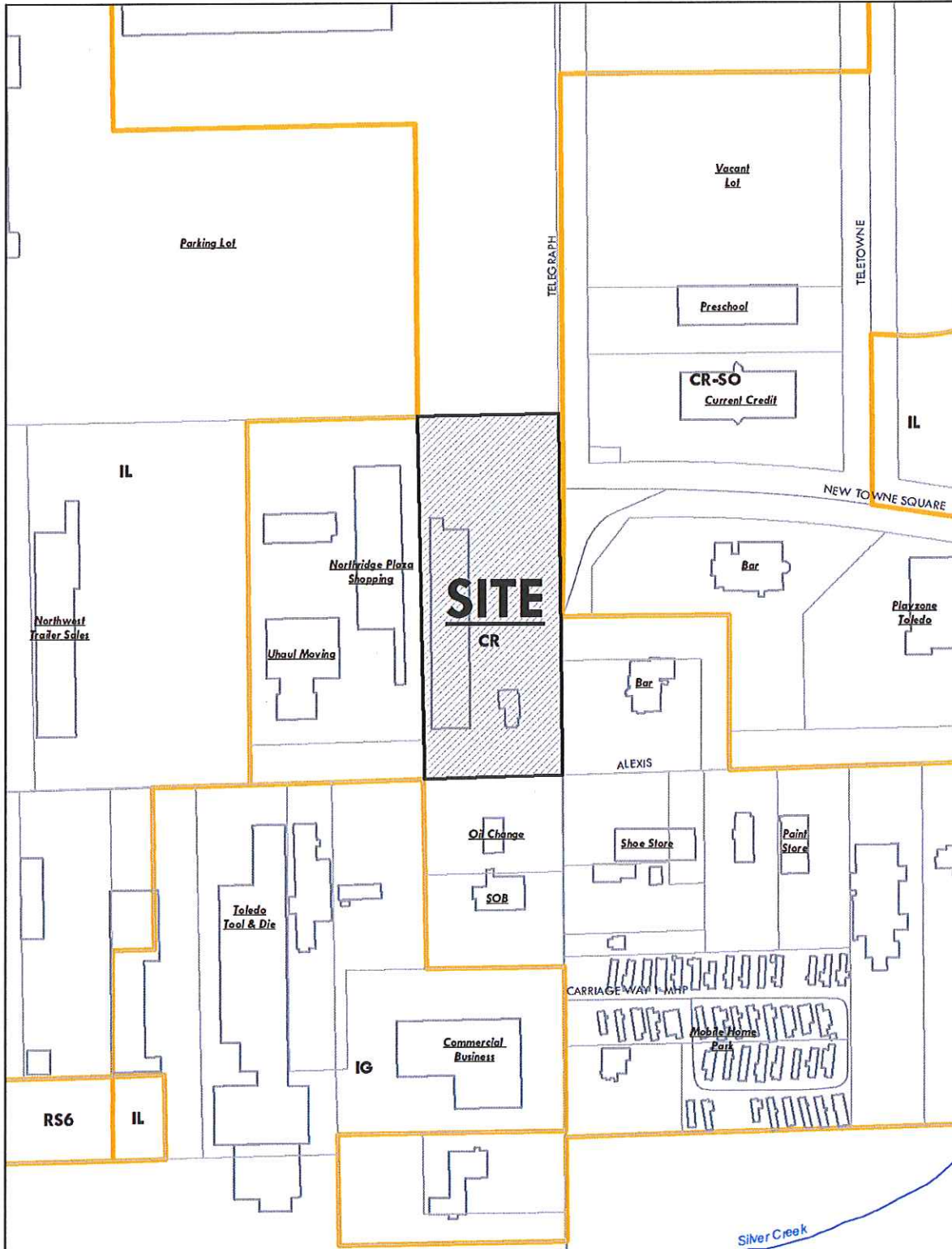
GENERAL LOCATION

SUP-8004-21
ID 105



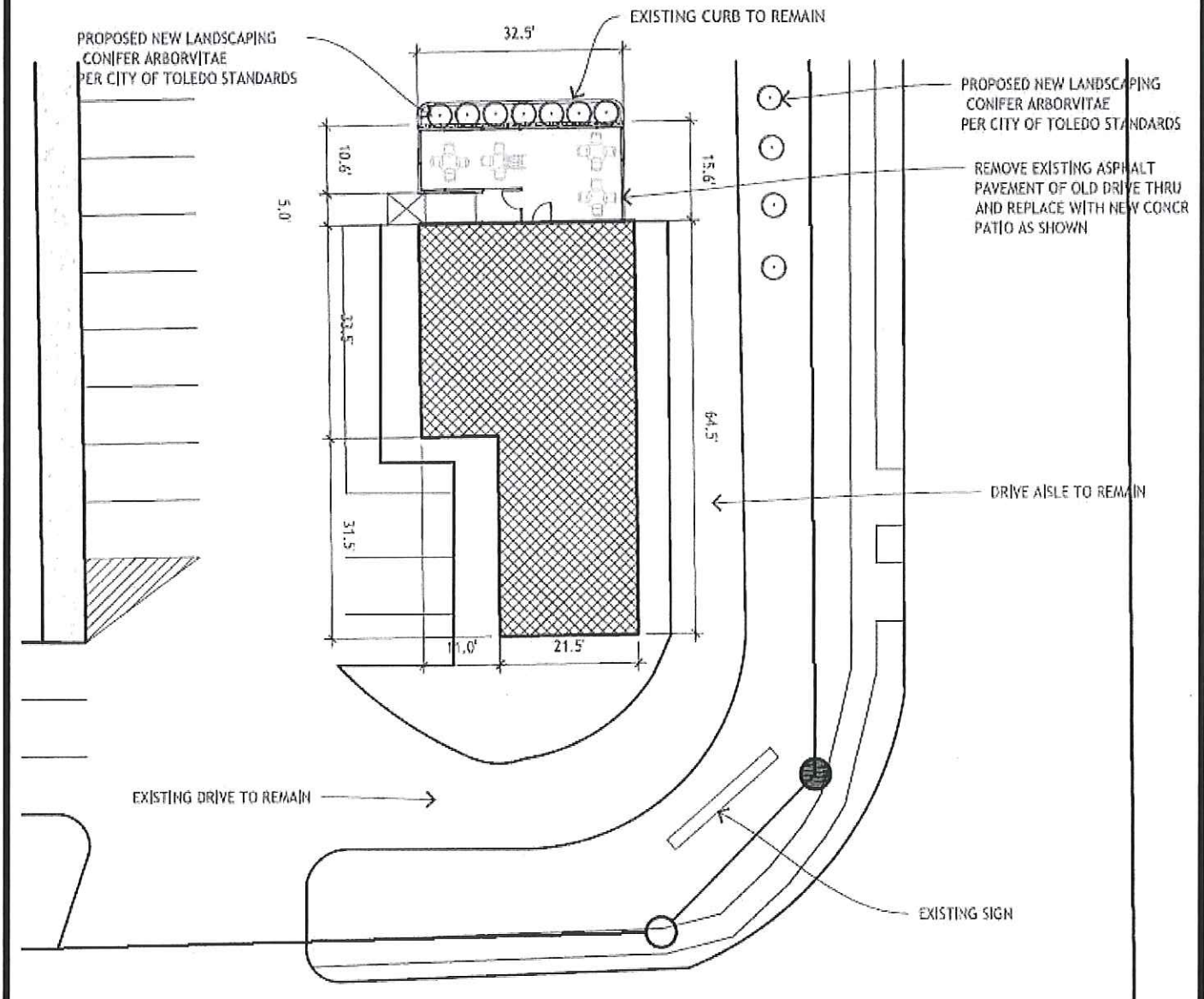
ZONING AND LAND USE

SUP-8004-21
ID 105



SITE PLAN

SUP-8004-21
ID 105





3037 Tremainsville Rd.
Toledo, OH 43613
(419)450-2767
glasscitysigns@gmail.com

20 W. Alexis Rd
Toledo, OH 43612



All signs and/or concepts here are confidential and the property of Glass City Signs. All signs are the property of Glass City Signs until paid in full. No use or disclosure thereof may be made without our written permission. Price does not include sales tax or permits unless otherwise noted. Customer responsible for own electric. were only allowed to hook up to existing electrical. Down payment of 50% (half) regular signs and 65% for LED signs required to begin the job. Balance is due upon completion of job. No refunds after project is started or 3 days upon deposit.



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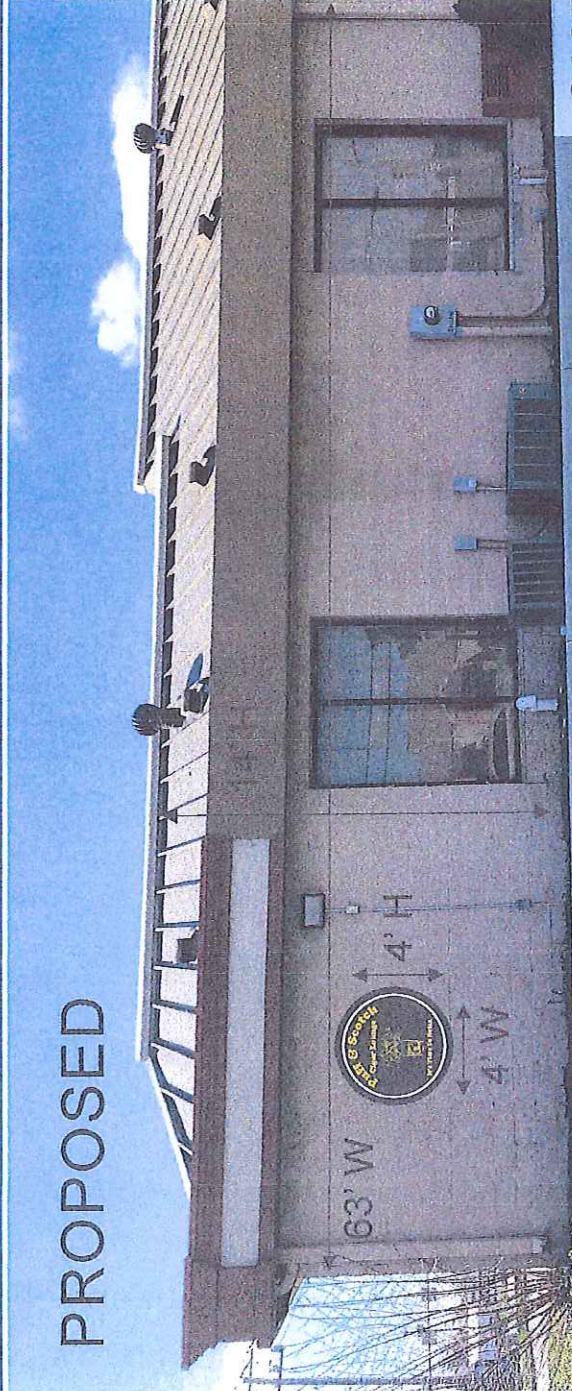
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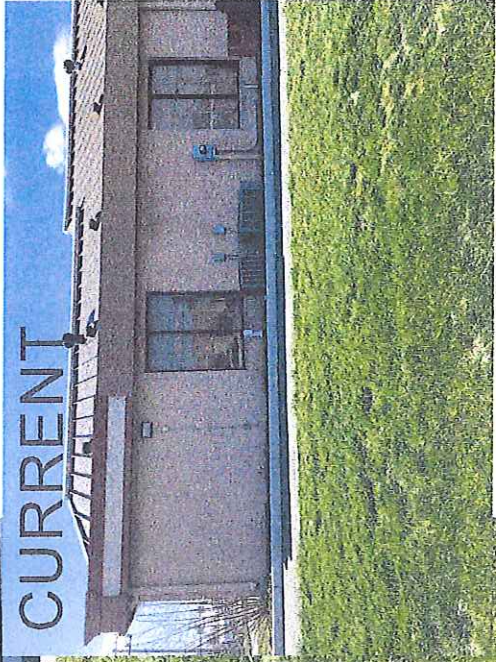
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PROPOSED



CURRENT



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LAW OFFICES OF OMAR SHAABAN

1709 Spielbusch Ste 106, Toledo OH 43604
Phone: (419) 318-2197
Fax: (419) 246-3733

October 13, 2021

City of Toledo Plan Commission
One Government Center, Suite #1620
Toledo, Ohio 43604
(419) 245-1200
Fax: (419) 936-3730

**Re: Special Use Permit for Tobacco Shop at 5801 Telegraph Road
File No: SUP-8004-21
Request for a Waiver to the Application of TMC 1104.1701**

Dear Commissioners.

I represent A&A Distribution, LLC. and I respectfully request that your commission grants my client a waiver to the application of TMC 1104.1701, as the location in question is alleged to be within 500 ft. from a use established specifically for the activities of minors, namely Playzone Toledo, located at 130 New Towne Square Dr. Toledo OH 43612, which will be referred hereinafter as “Playzone” beyond 500 ft.. I make my request for the following reason:

- 1) The location does not in fact violate TMC 1104.1701, as the use in question (Playzone) is not established specifically for the activities of minors, it is rather frequented by both adults and minors. An affidavit to that effect is executed by the owner of said establishment and is attached to this request.
- 2) The violation, if any, is merely technical:
 - a. Although the use is technically a tobacco shop and thus violate the letter of the ordinance in question, it does not violate its spirit as it does not necessitate the restrictions intended by said section. The real use of the petitioner’s business is a premium cigar lounge, which is of no interest for minors. There will be no sale of cigarettes, rolling tobacco, vapes or any relevant paraphernalia.
 - b. The distance between the 2 property lines is just under 500 ft. to wit: 485 ft. And the distance between the entrances of each business is well beyond 500 ft.
- 3) Between the petitioner’s location and Playzone, there are established a bar and a “Gentlemen’s Club”, both of which are more harmful to minors than a premium cigar lounge.

- 4) A permit was issued for the same location to Wild Bill Tobacco, which is a business that sells various types of tobacco products, including cigarettes, rolling tobacco, vapes, pipes and several types of smoking paraphernalia. A copy of said permit is attached hereto.

For the reasons stated I respectfully ask that the commission forego the application of TMC 1104.1701, and grant the requested Special Use Permit.

Respectfully



Omar Shaaban, Esq.

County of Lucas :
: **AFFIDAVIT**
State of Ohio :

I, **Mohamad Tawil**, being duly sworn, depose and state the following:

1. I own and operate the business commonly known as Playzone Toledo, located at 130 New Towne Sq Dr. Toledo OH 43612
2. Playzone Toledo is neither established specifically nor solely for the use of minors
3. Playzone Toledo is frequented by adults as well as children.
4. Children that come to Playzone Toledo are always accompanied by adults

FURTHER SAYETH NAUGHT

~~MOHAMAD TAWIL~~

Mohamad Tawil

Signed and sworn to before me on this 7th day of October 2021.

Omar Shaaban
Notary Public



OMAR SHAABAN
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.