

Staff Summary Report

Development Review Commission Date: 07/27/10

Agenda Item Number: ___

SUBJECT: Hold a public hearing for an appeal of the revocation of HAREM NIGHTS Use Permit located at 1630 East Apache Boulevard.

DOCUMENT NAME: DRCr_HaremNightsAppeal_072710 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **HAREM NIGHTS (PL090148/RVK10002)** (Kalil Abulaban/Harem Nights, applicant; 1630 Apache LLC, property owner) to appeal the Hearing Officer's Decision of May 19, 2010 to revoke the Use Permit. Harem Nights is located at 1630 East Apache Boulevard, Suite 103, in the CSS, Commercial Shopping and Services District for:

RVA10002 – To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

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

REVIEWED BY: Lisa Collins, Deputy Community Development Director-Planning (480-350-8989) 

LEGAL REVIEW BY: N/A

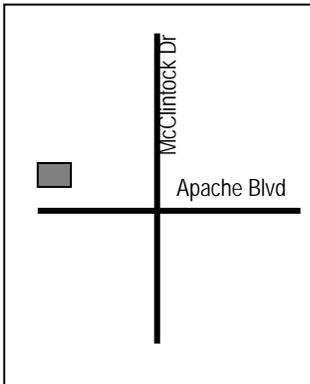
DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: N/A

ADDITIONAL INFO:

Gross/Net site area	1.01 acres
Total Building area	12,000 s.f
Tenant Area	2,000 s.f.
Vehicle Parking	67 spaces (7 spaces required for this tenant)



A neighborhood meeting was not required with this application.

The applicant is requesting an appeal of the Hearing Officer's decision of May 19, 2010 to revoke the Use Permit for Harem Nights. The applicant submitted Tenant Improvement (T.I.) plans on July 9, 2010 and is working towards obtaining building permits, which would provide support for the appeal.

PAGES:

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

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent for Use Permit, dated April 21, 2009
- 4-5. Use Permit Approval Letter, dated May 21, 2009
6. Code Enforcement Violation Letter, dated January 13, 2010
7. Administrative Hearing Letter, dated January 29, 2010
8. Use Permit Revocation Letter, dated May 25, 2010
- 9-11. Hearing Officer Minutes from May 19, 2009 agenda.
- 12-13. Hearing Officer Minutes from May 19, 2010 agenda.
14. Site plan
- 15-16. Staff Photograph(s)

APPEAL COMMENTS:

The applicant, Harem Nights is requesting an appeal of the Hearing Officer's decision of May 19, 2010 to revoke the Use Permit for Harem Nights. The business owner was not present for the hearing. Mr. Morena was attending in Mr. Abulaban absence. The applicant explained there had been a history of construction without permits by the property owner. Mr. Abulaban requested the property owner cover a portion of the permits since some of the illegal work was completed prior to Harem Nights signing a lease. Harem Nights takes full responsibility for not submitting the required Tenant Improvement plans for the required building permits. The Hearing Officer stated the hookah lounge has been operating for (1) one year and this tenant is responsible for the required building permits and has shown little or no progress to fulfill this requirement, therefore made the decision to revoke the Use Permit.

To date, the Tenant Improvement (T.I.) plans have been submitted on July 9, 2010 with first review due date of July 21, 2010.

REVOCATION COMMENTS MAY 19, 2010:

See minutes from the May 19, 2010 Hearing Officer.

COMMENTS FROM USE PERMIT (ZUP09063) MAY 19, 2009

See minutes from the May 19, 2009 Hearing Officer.

Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a Use Permit in the CSS, Commercial Shopping and Services District. When the Use Permit was approved it met 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 use is confined to the second floor suite with sole purpose of providing hookah smoking inside which should not create a nuisance to the surrounding area.

**ORIGINAL
CONDITION(S)
OF APPROVAL (ZUP09063) MAY 19, 2009:**

1. The Use Permit is valid for Harem Nights 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. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
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 beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact the Planning Division at (480) 350-8331.
11. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Please contact Crime Prevention at (480) 858-6027 before June 19, 2009.
12. Live entertainment is restricted to live belly dancing only.
13. Live entertainment shall cease at 11:30 PM nightly.

Conclusion

In that the applicant failed to meet the conditions of approval, staff recommends denial of the appeal, thus upholding the Hearing Officer's decision to revoke the Use Permit.

**REASON(S) FOR
REVOCAATION:**

1. Non-compliance with the conditions of approval. Zoning and Development Code, Section 6-603 allows for a review and possible revocation of Use Permits, if conditions of approval are not met.

HISTORY & FACTS:

May 19, 2009 ZUP09063: Hearing Officer approved Use Permit for a hookah lounge/tobacco retailer.

January 8, 2010 CM100037: Violation of Use Permit condition of approval # 4 - All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective."

February 19, 2010 Administrative Hearing with business owner to gain compliance.

April 7, 2010 Business owner Kalil Abulaban requested a continuance due to a death in the family. Case continued until May 19, 2010.

May 19, 2010 RVK10002: Hearing Officer revoked the Use Permit to allow a hookah lounge/tobacco retailer.

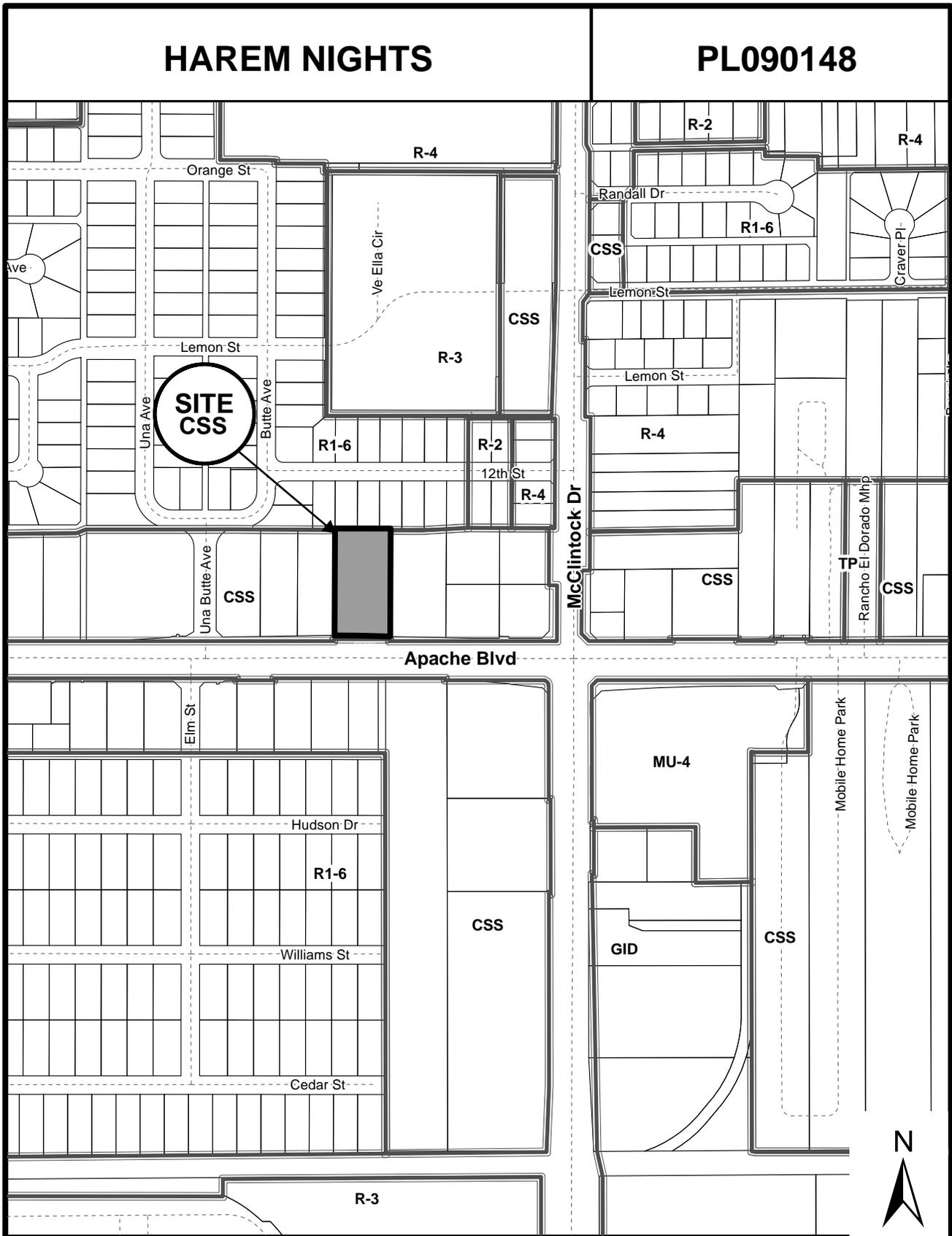
June 1, 2010 Harem Nights filed an appeal of the Hearing Officer's decision to revoke the Use Permit. Appeal to be heard before Development Review Commission on July 13, 2010.

July 9, 2010 BP100982: Tenant Improvement Plans submitted to Building Safety.

July 13, 2010 Development Review Commission continued the case for 2 weeks, to the July 27, 2010 agenda.

**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
Part 6, Chapter 9, Section 6-902 – Revocation of Use Permit



Location Map



HAREM NIGHTS (PL090148)

Harem Nights
1630 E. Apache Blvd Ste 3
Tempe, Arizona 85281

April 21, 2009

LETTER OF INTENT

To Whom It May Concern:

This letter is to serve as my letter of intent and apprise the City of Tempe of my intended function and operation.

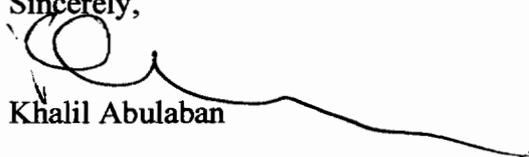
I previously owned and operated a family restaurant from 2001-2007 in the City of Tempe. The establishment provided food, beverage, entertainment, and was also one of the City of Tempe's first hookah lounge.

My intention is to establish a hookah lounge; Harem Nights located at 1630 E. Apache Blvd. Tempe, Arizona and comply with all City codes and zoning regulations

Harem Nights hours of operation will be from 5pm-4am 7 days a week where hookah's with flavored tobacco will be served along with non-alcoholic beverages. There will be no food served staying in compliance with the City of Tempe's no smoking ban. Harem Nights will also provide the sale of flavored hookah tobacco, hookahs and hookah accessories.

Thank you for your timely consideration to my application.

Sincerely,


Khalil Abulaban

(480) 350-8331 (Phone)

May 21, 2009

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, Arizona 85282

**RE: HAREM NIGHTS
PL090148 / ZUP09063 / ZUP09067**

Dear Mr. Abulaban:

You are hereby advised that at the hearing held May 19, 2009, 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 **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.

ZUP09067 Use permit to allow live entertainment.

Approved subject to the following conditions:

1. The use permit is valid for Harem Nights 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 or 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. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
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. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
11. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6027 before June 19, 2009.

12. **Live entertainment is restricted to live belly dancing only. ADDED BY STAFF**
13. **Live entertainment shall cease at 11:30 PM nightly. ADDED BY STAFF**

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,



Shawn Daffara
Planner II

SD:dm

cc: Mr. Milivoje Djordjevich/1630 Apache LLC
File

January 13, 2010

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, AZ 85282

RE: Zoning Violation – 1630 East Apache Blvd. Tempe

Dear Mr. Abulaban:

Your business, located at 1630 East Apache Blvd. continues to be in violation of the City of Tempe Zoning and Development Code section 6-308(I). The use permit approval for your Hookah Lounge/Tobacco Retailer was based on several specific conditions. Condition number four (4) of the approval letter, dated May 21, 2009, states that “All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective”. Our records indicate that your business has not complied with this condition of approval.

The purpose of this letter is to inform you that if corrective actions are not taken, then the original decision making body may revoke the use permit, per City of Tempe Zoning and Development Code, Part 6, Chapter 9, Section 6-902.

Please contact me if you have any questions or concerns. Your cooperation in this matter is greatly appreciated.

Sincerely,



Dean Miller
Sr. Code Inspector
Development Services Department
480-350-8435

Copy: File

January 29, 2010

Mr. Khalil Abulaban
4704 South Kenwood Lane
Tempe, AZ 85282

**RE: HAREM NIGHTS - Use Permit
1630 East Apache Blvd.
PL090148/DS090389/ZUP09063**

Dear Mr. Abulaban:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for Harem Nights at 1630 East Apache Blvd (ZUP09063). Condition number four (4) of the approval letter dated May 21, 2009 stated that "All permits and clearances required by the Building Safety Division be obtained prior to the use permit becoming effective". Our records indicate that this condition has not been complied with.

Please be advised that the City of Tempe Zoning and Development Code Part 6, Chapter 9, Section 6-902 states that if the applicant has not taken corrective actions to resolve the issues related to the approval, then the original decision making body may revoke the use permit. We have scheduled the hearing for Friday, February 19, 2010 at 9:00 AM in the City of Tempe Development Services Department Conference Room located at 31 E. 5th Street, Tempe. Staff recommends that you be in attendance for the hearing to provide any relevant information and/or plans for possible corrective actions that may be taken to avoid the revocation of your use permit.

Should you have questions concerning this notice, please contact me directly at (480) 350-8435.

Sincerely,



Dean Miller
Senior Code Inspector
Development Services Department
480-350-8435

Copy: File
1630 E. Apache Blvd.

City of Tempe
P. O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
www.tempe.gov



Development Services
Planning

(480) 350-8331

May 25, 2010

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, Arizona 85282

RE: **HAREM NIGHTS**
Revocation of use permit ZUP09063
PL090148 / ZUP09063

Dear Mr. Abulaban:

You are hereby advised that at the hearing held May 19, 2010, 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 revoked ZUP09063 – use permit to allow a hookah lounge – due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code."

This use permit had been formerly approved for **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District on May 19, 2009.

If you have any questions, please contact me at (480) 350-8989.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Collins'.

Lisa Collins
Planning Director

LC/dm

cc: Mr. Jeff Tamulevich/COT
Mr. Dean Miller/COT
Mr. Steve Abrahamson/COT
Mr. Shawn Daffara/COT
File

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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5. Request by the **KEEGAN RESIDENCE (PL090145)** (Pat Keegan, applicant/property owner) located at 1325 East Secretariat Drive in the AG, Agricultural District for:

ZUP09061 Use permit to allow an accessory building (ramada).

Mr. Pat Keegan was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL090145/ZUP09061 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as submitted to the Hearing Officer.

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6. Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.

ZUP09067 Use permit to allow live entertainment.

Ms. Tara Eivers was present to represent this case. TV's are available to watch sports events, entertainment is belly dancing only. The belly dancer provides her own music on a CD and there are two (2) shows of 20 minutes duration – one at 10 PM and one at 11 PM.

Shawn Daffara, staff planner, gave an overview of this case and stated calls of inquiry had been received since the staff report had been issued. He identified the location of the nearest Single Family Residential District to the north and that the live entertainment would only consist of belly dancing. The calls of inquiry had concerned the nature of the live entertainment and no letters of complaint had been received. Mr. Daffara confirmed in response to a question from Mr. Williams that this applicant is required to comply with the Smoke Free Arizona stipulations. No liquor is allowed to be served, just coffee, tea, soft drinks, water – there is no liquor license. Customers can bring in their own food from other sources but the applicant is not allowed to serve food on site.

Mr. Chuck Buss, Tempe resident of the University Heights neighborhood, stated that the biggest concern is that the building is ten (10) feet from a residential area. Residents had experienced noise problems from a bar that was in this location previously. This business has a very small parking lot and there are concerns about parking issues as overflow parking may occur on 12th Street. He presented thirteen (13) statements of opposition to this request to the Hearing Officer, noting that the lack of a neighborhood meeting generated the calls of inquiry to staff.

Mr. Williams asked staff whether a neighborhood meeting was required. Mr. Daffara responded that the Zoning and Development Code only requires that a neighborhood meeting be held in when issues of variances or PADs exist. Staff does recommend that neighborhood meetings be held when there are residential areas nearby use permit requests however they cannot require that the applicant(s) do so. Applicants who receive letters/inquires of concern from residents often decide to hold a neighborhood meeting in order to alleviate those issues of

concern. Mr. Daffara explained that there had been no calls or inquiry until after the staff report had been issued to the applicant.

Mr. Williams asked how long Harem Nights had been in operation. Mr. Daffara responded that they are not yet in operation so no track record as to the number of patrons, or issues of operation exist at this time. Mr. Daffara stated that based on staff's experience with other hookah lounges, the majority of patrons usually number 15 to 20 people. Mr. Daffara read the conditions of approval into the record for those present.

Mr. Christopher McKee, Tempe resident of the University Heights neighborhood, stated that the conditions of approval address the residents' concerns. He would recommend that the applicant seek an agreement for overflow parking on another lot. He asked that the applicant assure that the entertainment/patrons do not overflow into the parking lot or patio area.

Ms. Eivers explained that Harem Nights is an upscale place catering mainly to the 25 to 85 year age group. She is very conscious of the homeowners in the nearby area and would be happy to hold a neighborhood meeting even after the use permit is approved if the residents so desired. Everything will be indoors and there is no room for an outdoor patio. She assured Mr. Williams that she had no problem being accountable to the residents concerns. There are no other tenants of this center who have night time activities so parking should not be an issue. She expects that most people will like to come on the weekends when the belly dancer is present and estimated that there may be 10 to 40 patrons at that time.

In response to a question from Mr. Williams as to the seating availability, Ms. Eivers stated that on the floor itself there is seating for about 23 people. An upper area seats about 20 people comfortably and there are additional stools available.

Mr. Williams noted that in essence that the residents in the audience were in fact now having a neighborhood meeting. He asked if anyone had additional questions for this applicant. Mr. Buss returned to the podium to question Ms. Eivers about the current status of this business/security plan/parking. She responded that they were currently doing renovations. She explained that several of the parking lot lights were inactive and that the property owner would be rectifying that situation which relate to the security issue(s). A security plan is required to be implemented within thirty (30) days. The property owner has agreed to have the parking lights in operation by May 19th.

Mr. Buss noted that there had been a homeless contingent in this parking lot area. Ms. Eivers explained that she had been working with the Tempe Police Department on this issue and that there were a lot of more police officers driving thru this area to resolve this situation of homeless tenancy.

Mr. Buss asked what would be required should this business decided to expand in the future and the subsequent parking affect. Mr. Williams confirmed that they would be required to return to Development Services staff to obtain approval for anything of that nature. Ms. Eivers noted that their objective is to be a good neighbor.

DECISION:

Mr. Williams approved PL090148/ZUP09063/ZUP09067 subject to the following conditions of approval:

1. The use permit is valid for Harem Nights 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 or 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. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.

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. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
11. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6027 before June 19, 2009.
12. Live entertainment is restricted to live belly dancing only. ADDED BY STAFF
13. Live entertainment shall cease at 11:30 PM nightly. ADDED BY STAFF

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7. Request by TEMPE TOWNE CENTER – URBAN CAMPFIRE (PL090150) (Steve Wolff, applicant; Tempe Towne Holding Company, property owner) located at 921 East University Drive in the CSS, Commercial Shopping and Services District for:

ZUP09064 Use permit to allow live entertainment.

Mr. Steve Wolff was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. This business owner had spoken with the adjacent business owner and obtained a petition of support from them for this request. The patio is located on the north side of the building.

At Mr. Wolff's request, Mr. Williams read the conditions of approval. Mr. Wolff stated that they are working with the Crime Prevention Department and the landlord will be removing the weeds. He acknowledged the need for a sign permit for the painted sign on the building.

DECISION:

Mr. Williams approved PL090150/ZUP09064 subject to the following conditions of approval:

1. The use permit is valid for Urban Campfire and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
3. Noise generated from the use shall conform to the City of Tempe Noise Ordinance requirements for noise control.
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 band and/or karaoke area to maintain a minimum 3' clearance from patio entrance to comply with ADA accessibility requirements.
6. The use permit is valid for the plans as submitted within the application.
7. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Contact the Crime Prevention Department at 480-858-6027.
8. Remove weeds from landscape areas on site by 06/19/09.
9. Obtain approval of painted sign on rear of building or remove by 06/19/09.

6. Request by the **DUPLEX AT THIRD STREET (PL100119)** (Glenn Odegard/Nordic Builders Inc., applicant /property owner) located at 839 West 3rd Street in the R-3, Multi-Family Residential Limited District for:

ZUP10040 Use permit standard to reduce the north and south side yard setbacks by twenty percent (20%) from 10 ft to 8 ft.

Mr. Glenn Odegard was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no public input has been received since the staff report was issued. She noted that the current address of 324 South Carney Avenue will be changed to 839 West 3rd Street in the near future. This request is to support a second story addition, she explained.

Mr. Williams questioned whether a use permit was required for this second story addition. Ms. Lesser responded that it was not.

DECISION:

Mr. Williams approved PL100119/ZUP10040 subject to the following conditions:

1. Obtain a separate Development Plan Review approval for the design of the addition.
2. Obtain all necessary clearances and permits from the Building Safety and Engineering Divisions.

7. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code."**

Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.
(Use permit was approved by the Hearing Officer at the May 19, 2009 HO hearing.)

Mr. Kahlil Abulaban was not present at this hearing.

Shawn Daffara, staff planner, gave a brief overview of the history of this business and the chronology of events to date. He noted that there was an attempt to submit plans in March 2010 however they were incomplete and were rejected. Mr. Abulaban requested a continuance due to a death in the family and this continuance was granted. Currently, no plans have been submitted or building permits issued.

In response to a question from Mr. Williams, Mr. Daffara confirmed that this business has been opened since the May 19, 2009 hearing.

Mr. Morena was present to represent this case and requested that the proceedings be continued. Mr. Williams asked when plans would be submitted in accordance with the submittal requirements. Mr. Morena was indicated an undetermined time.

Mr. Williams stated that this use permit with the accompanying conditions of approval was approved a year ago and since that date Mr. Abulaban has been enjoying the benefits without complying with the conditions. This is unfair to other applicants who go to the time and expense to comply with assigned conditions.

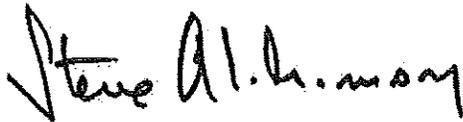
DECISION:

Mr. Williams approved revocation proceedings for PL090148 and revoked ZUP09063.

The next Hearing Officer public hearing will be held on Tuesday, June 1, 2010.

There being no further business the public hearing adjourned at 2:07 PM.

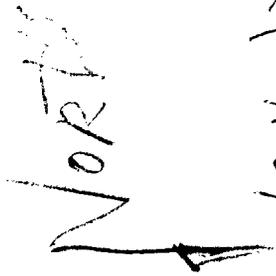
Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

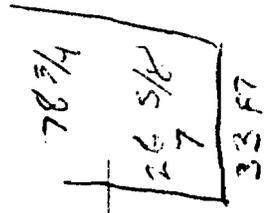
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APACHE

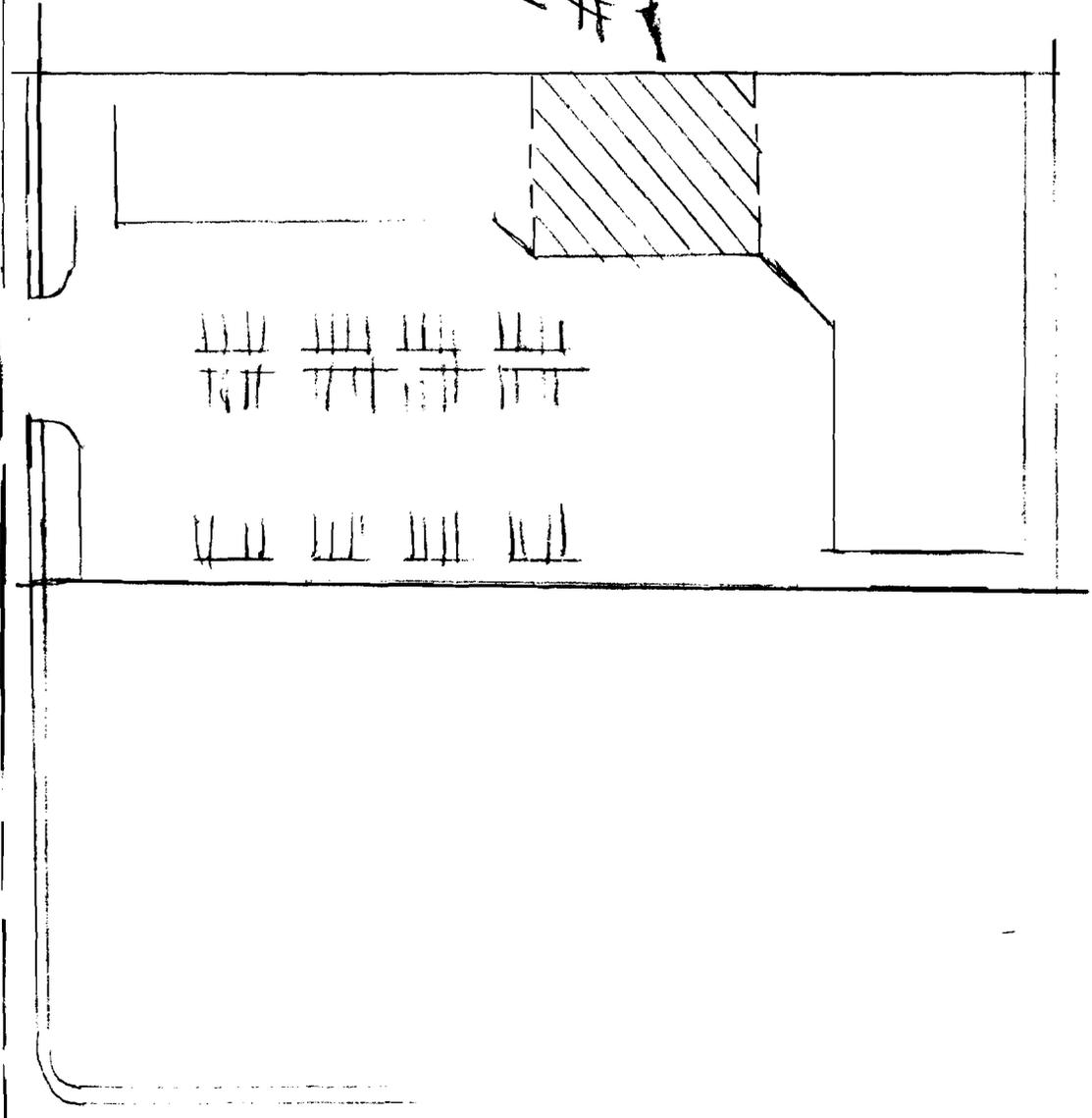


LANDLORD
602-274-0100
?

33 x 36



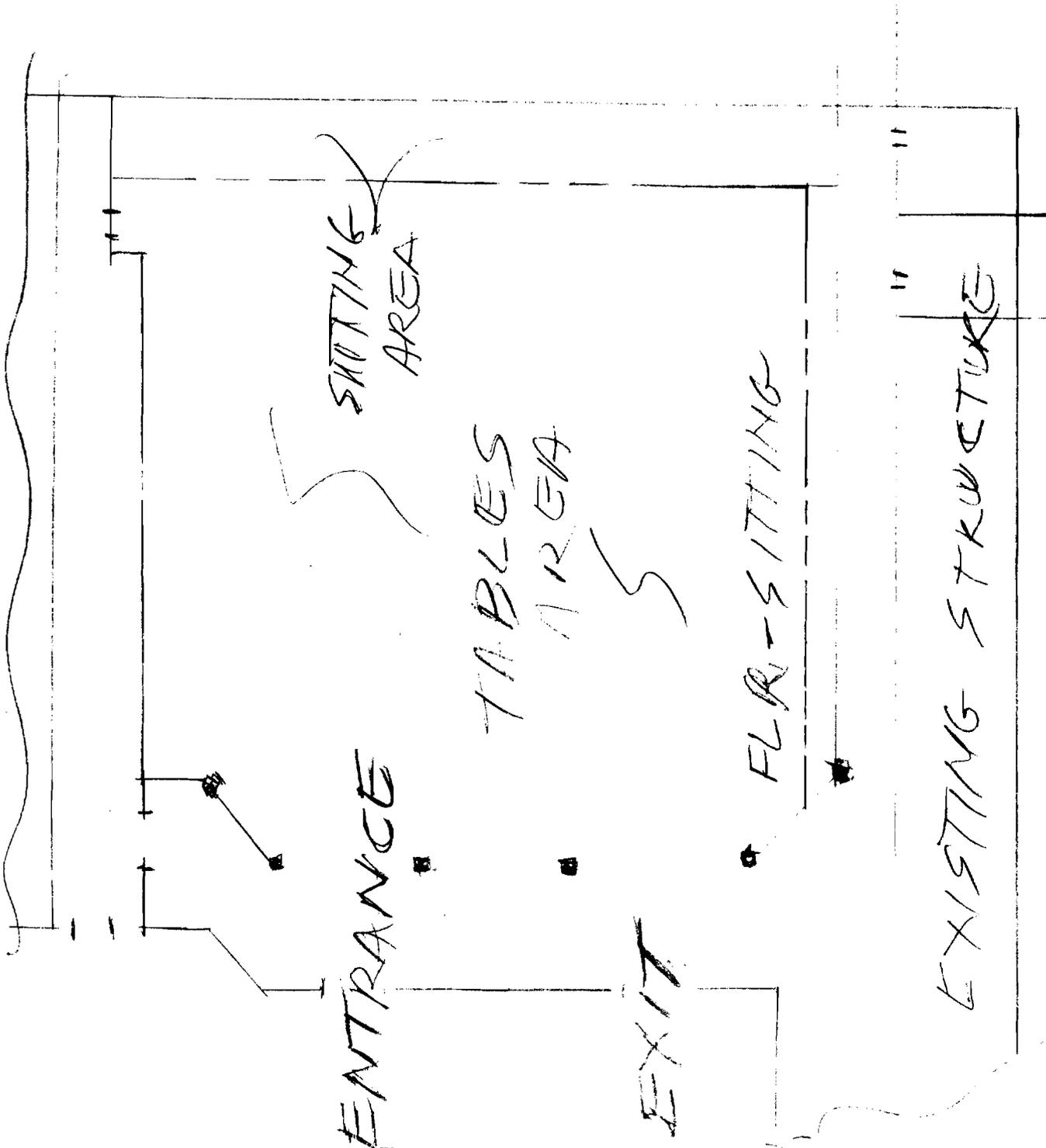
1630
#2



McCLINTOCK

SITE PLAN

EXISTING STRUCTURE



~~TABLES~~
 KHARIL ABULHABIB
 1630 East Beach #102
 - Tampa, FL 33282

FLOOR PLAN (NOT TO SCALE)



HAREM NIGHTS

1630 EAST APACHE BOULEVARD,
SUITE NO. 103

PL090148

FRONT OF BUSINESS

