

Staff Summary Report

Development Review Commission Date: 09/28/10

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_092810 **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

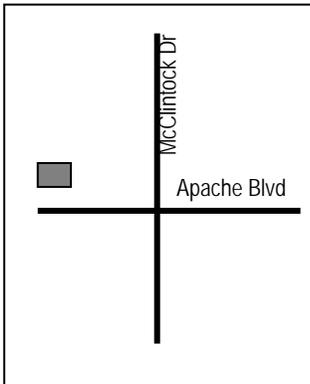
DEPARTMENT REVIEW BY: N/A

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.

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 applicant had 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.

Mr. Kalil Abulaban has been before the Development Review Commission two (2) times and each time the applicant has been granted additional time to show progress on obtaining a building permit. It has been 60 days since the last hearing and the plans have been in and out of plan review four (4) times with corrections.

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

CURRENT STATUS:

The applicant has yet to receive the building permit to start construction. The building safety plan review has been in and out four (4) times with corrections. Applicant picked up last corrections on August 12, 2010 and plans have not been resubmitted.

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
REVOCATION:**

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.

July 27, 2010 Development Review Commission continued the case for 60 days, to the September 28, 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