

Staff Summary Report



Hearing Officer Hearing Date: April 6, 2010

Agenda Item Number: 8

SUBJECT: This is a public hearing for a request for revocation of the use permit issued to CAFE ISTANBUL to allow a hookah lounge/tobacco retailer.

DOCUMENT NAME: 20100406dssd02 **PLANNED DEVELOPMENT (0406)**

COMMENTS: 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. 5, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

Request by CAFE ISTANBUL (PL080075) (Mahmoud Ayashe, applicant; City of Tempe, property owner) located at 1310 East Apache Boulevard, Suite No. 204, in the CSS, Commercial Shopping and Services District for:

ZUP08085 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the June 3, 2008 HO hearing.)

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

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

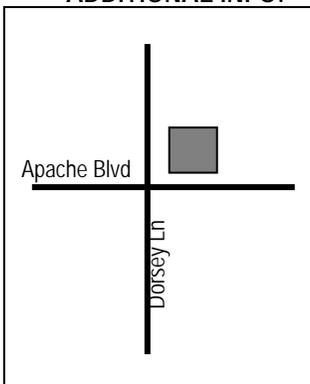
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO:



The City of Tempe is requesting a review of Cafe Istanbul (ZUP08085) for possible revocation of the use permit. Cafe Istanbul has been in violation of the use permit for non-compliance with Condition of approval No. 5: "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

PAGES:

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

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent for Use Permit, dated May 5, 2008
- 4-5. Use Permit Approval Letter, dated June 4, 2008
6. Code Enforcement Violation Letter, dated January 13, 2010
7. Administrative Hearing Letter, dated January 20, 2010
8. Site plan
9. Floor Plan

REVOCAION COMMENTS:

The applicant, City of Tempe is requesting the use permit (ZUP08085) be revoked due to failure to meet the conditions of approval. Café Istanbul received a use permit approval on June 3, 2008 subject to ten (10) conditions of approval. Café Istanbul has not complied with condition number five (5): "All permits and clearances required by the Building Safety Sections shall be obtained prior to the use permit becoming effective." The business has not completed the necessary HVAC and occupancy upgrades to meet condition of approval. Both the City of Tempe Code Compliance and Building Safety Inspections Divisions have been working with the business and property owner to gain compliance. On February 4, 2010; City staff held an administrative hearing with the business owner to discuss the status of the use permit. The intent of the meeting was to provide 30 days for the business to come into compliance with the use permit. If after 30 days, a building permit is not issued and final inspection received, then the use permit will be brought back to the Hearing Officer for revocation. The business did not gain compliance within 30 days; however the business did apply for the required tenant improvement (TI) permits on March 4, 2010. To date, the building permit remains in plan review and have not been issued.

COMMENTS FROM USE PERMIT (ZUP08085) JUNE 3, 2008

Café Istanbul is requesting a use permit to allow a hookah lounge/tobacco retailer located at 1310 East Apache Boulevard in the CSS, Commercial Shopping & Services District. Café Istanbul first opened in 1994 at another location. In 2004 they moved the business (restaurant & market) with the addition of a hookah lounge to 1310 East Apache Boulevard. Since the passing of Smoke Free Arizona Legislation all hookah lounges/tobacco retailers must cease all indoor smoking or the establishment may install an independent ventilation system. The existing Café Istanbul restaurant and market will remain downstairs and a hookah lounge will be located on the second floor in a separate suite with its own independently ventilated system. Hours of operation for the hookah lounge will be from 4pm to 1am, seven (7) days a week; they will employ 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, require a separation of tobacco retailers or hookah lounges from locating within 1,320 feet of a school. Thus, Café Istanbul requested a Zoning Administrator's opinion to determine if they would be permitted to submit a use permit request to operate a hookah lounge/tobacco retail establishment. The applicant provided a copy of their "Tobacco Distributors License" dated 2004, from the State of Arizona, as evidence that they had been operating as a hookah lounge prior to the separation requirement. In the Zoning Administrator's letter, Planning Director Lisa Collins opined that Café Istanbul had been operating as a hookah lounge prior to the separation requirement taking effect; therefore permitting them to submit a use permit request to operate a hookah lounge/tobacco retail establishment. No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge.

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 (ZUP08085) JUNE 3, 2008:**

1. The use permit is valid for Cafe Istanbul 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. The use permit is valid for the plans reviewed and approved by the Hearing Officer.
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. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
6. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
7. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
8. All business signs shall receive a Sign Permit. Please contact the Planning Division at (480) 350-8331.
9. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.
10. The Restaurant and Hookah Lounge shall have separate sales tax licenses. The applicant shall contact Sales Tax and License for a hookah lounge/tobacco retailer tax license.

Conclusion

In that the applicant failed to meet the conditions of approval, staff recommends approval of the revocation of the use permit.

**REASON(S) FOR
REVOCATION:**

1. Non-compliance with the conditions of approval. Zoning and Development Code, Section 6-902 allows for a review and possible revocation of use permits, if conditions of approval are not met.

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE
USE PERMIT WOULD BE REVOKED.**

HISTORY & FACTS:

May 19, 2004 BA040085: Use Permit approved to allow an outdoor dining patio for CAFÉ INSTANBUL.

April 3, 2008 DSM09009: Zoning Administrator Opinion to allow CAFÉ INSTANBUL hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.

June 3, 2008 ZUP08085: Hearing Officer approved use permit for a hookah lounge/tobacco retailer.

January 8, 2010 CM100034: Violation of use permit condition of approval # 5 - All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

February 4, 2010 Administrative Hearing with business owner to gain compliance.

March 4, 2010 BP100340: Tenant Improvement plans submitted for Hookah Lounge.

DESCRIPTION:

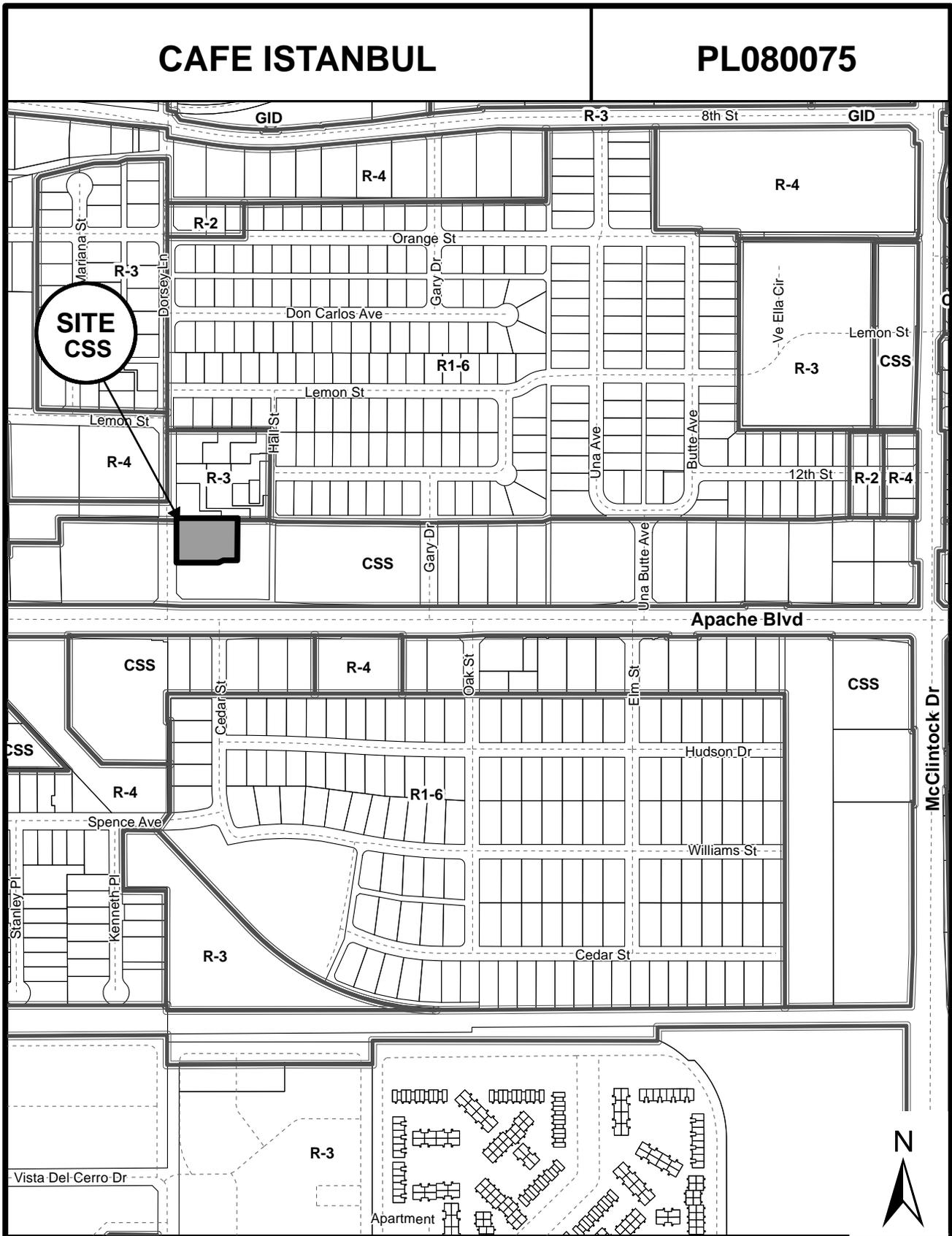
Property Owner – City of Tempe
Business Owner – Mahmoud Ayashe
Applicant – Jeff Tamulevich/City of Tempe – Code Compliance Administrator
Existing Zoning – CSS, Commercial Shopping & Services District
Parcel Size – 33,511 s.f. / .75 acres
Total Building Area – 8,860 s.f.
Tenant Area – 1,380 s.f.
Parking Required – 54 spaces
Parking Provided – 54 spaces

**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

CAFE ISTANBUL

PL080075



Location Map

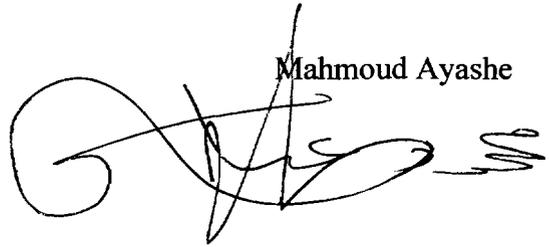


CAFE ISTANBUL (PL080075)

May 5, 2008

The purpose of this letter of intent is to inform the city how our establishment will be operating. Café Istanbul has been in Tempe for over fourteen years. Through these difficult times we have had to keep up with the changing trends. To continue operating we must open a hookah lounge above our current establishment. This new rented space will have its own ventilation system in keeping with current state law. The hours of operation will be from 4:00 pm till 1:00 am. Food and beverages of any kind will not be served inside the hookah lounge. The hookah lounge will only serve flavored tobacco hookahs as well as sell hookahs and hookah accessories. We thank you for your consideration and time.

Sincerely,


Mahmoud Ayashe

Development Services
Department

(480) 350-8331 (Phone)

June 4, 2008

FILE COPY

Mr. Mahmoud Ayashe
Cafe Istanbul Inc.
1310 East Apache Boulevard Suite 204
Tempe, Arizona 85281
(faxed 6/4/08; 1 PM to 480-731-3002)
(e-mailed to Ken Olmstead 6/4/08; 1 PM)

**RE: CAFE ISTANBUL
PL080075 / ZUP08085**

Dear Mr. Ayashe:

You are hereby advised that at the hearing held June 3, 2008, 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 **CAFE ISTANBUL (PL080075)** (Mahmoud Ayashe, applicant; City of Tempe, property owner) located at 1310 East Apache Boulevard, Suite No. 204 in the CSS, Commercial Shopping and Services District for:

ZUP08085 Use permit to allow a hookah lounge/tobacco retailer.

Approved subject to the following conditions:

1. The use permit is valid for Cafe Istanbul and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Office 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. The use permit is valid for the plans reviewed and approved by the Hearing Officer.
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. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
6. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
7. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
8. All business signs shall receive a Sign Permit. Please contact the Planning Division at (480) 350-8331.
9. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.
10. The Restaurant and Hookah Lounge shall have separate sales tax licenses. The applicant shall contact Sales Tax and License for a hookah lounge/tobacco retailer tax license.

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,

A handwritten signature in black ink, appearing to read 'Shawn Daffara', with a long horizontal flourish extending to the right.

Shawn Daffara, Planner II

SD:dm

cc: Ken Olmstead/COT- Transportation Department
File

January 13, 2010

Mr. Mohmoud Ayashe
Café Istanbul Inc.
1310 East Apache Blvd. Suite 204
Tempe, AZ 85281

RE: Zoning Violation – 1310 East Apache Blvd. Tempe

Dear Mr. Ayashe:

Your business, located at 1310 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 five (5) of the approval letter, dated June 4, 2008, 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 20, 2010

Mr. Mahmoud Ayashe
Café Istanbul Inc.
1310 East Apache Boulevard Suite 204
Tempe, AZ 85281

**RE: CAFÉ ISTANBUL- Use Permit
1310 East Apache Blvd.
PL080075/DS080218/ZUP08085**

Dear Mr. Ayashe:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for Café Istanbul at 1310 East Apache Blvd (ZUP08085). Condition number five (5) of the approval letter dated June 4th, 2008 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 Thursday February 4th, 2010 at 10:00 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

Hookah Lounge / Cafe Istanbul
1380 Sq. feet
2nd Floor

