

Staff Summary Report



Hearing Officer Hearing Date: May 19, 2010

Agenda Item Number: 10

SUBJECT: This is a public hearing for a request for revocation of the use permit issued to **HAREM NIGHTS** to allow a hookah lounge.

DOCUMENT NAME: 20100519dssd03 **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. 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.)

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

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

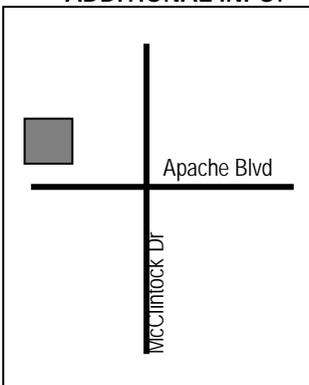
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO:



The City of Tempe is requesting a review of Harem Nights (ZUP09063) for possible revocation of the use permit. Harem Nights has been in violation of the use permit for non-compliance with Condition of Approval No. 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."

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 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. Site plan
9. Floor Plan
10. Staff Photograph(s)

REVOCAION COMMENTS:

The applicant, City of Tempe is requesting the use permit (ZUP09063) be revoked due to failure to meet the conditions of approval. Harem Nights received a use permit approval on May 19, 2009 subject to thirteen (13) conditions of approval. Harem Nights has not complied with condition number four (4): "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 19, 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. To date, building permits have not been applied for and work has not been completed.

COMMENTS FROM USE PERMIT (ZUP09063) MAY 19, 2009

The applicant is requesting two (2) use permits, one to allow a Hookah lounge/tobacco retailer and the second, for live entertainment (belly dancer) located at 1630 East Apache Boulevard in the CSS, Commercial Shopping & Services District. The scope of the business is to include a smoking lounge, sale of coffee, hot and cold beverages, and other tobacco-related products. The primary use will be as a hookah lounge with live entertainment (belly dancer) a few nights a week. Hours of operation will be from 5pm to 4am, seven (7) days a week; they will have between 2-3 full time employees. Peak hours for hookah tend to be after dinner into the late evening.

The City of Tempe Zoning and Development Code tobacco retailer separation requirements, which took effect in June of 2007, prohibit a tobacco retailer (hookah lounge) from locating within 1,320 feet of a school. This proposal is not within 1,320 feet of a school, thus a tobacco retailer/hookah lounge can be allowed subject to an approved use permit.

The applicant will also be required to meet the 2003 International Mechanical Code that requires a "smoking lounge" to meet outside air and ventilation requirements. Mr. Abulaban was made aware of this regulation and will be working with a mechanical engineer, and property owner in verifying HVAC requirements for Building Safety permits and clearances.

No public input has been received on this request. Staff supports the request for a use permit to allow a hookah lounge with live entertainment.

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 approval of the revocation of the use permit.

**REASON(S) FOR
REVOCAION:**

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, 2009 ZUP09063: Hearing Officer approved use permit for a hookah lounge/tobacco retailer.

February 27, 2009 BP081108: Tenant Improvement (TI) plans approved and building permit issued.

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.

March 11, 2010 BP081108: Building Permit Inspection requested for Framing, Mechanical, and Electrical.

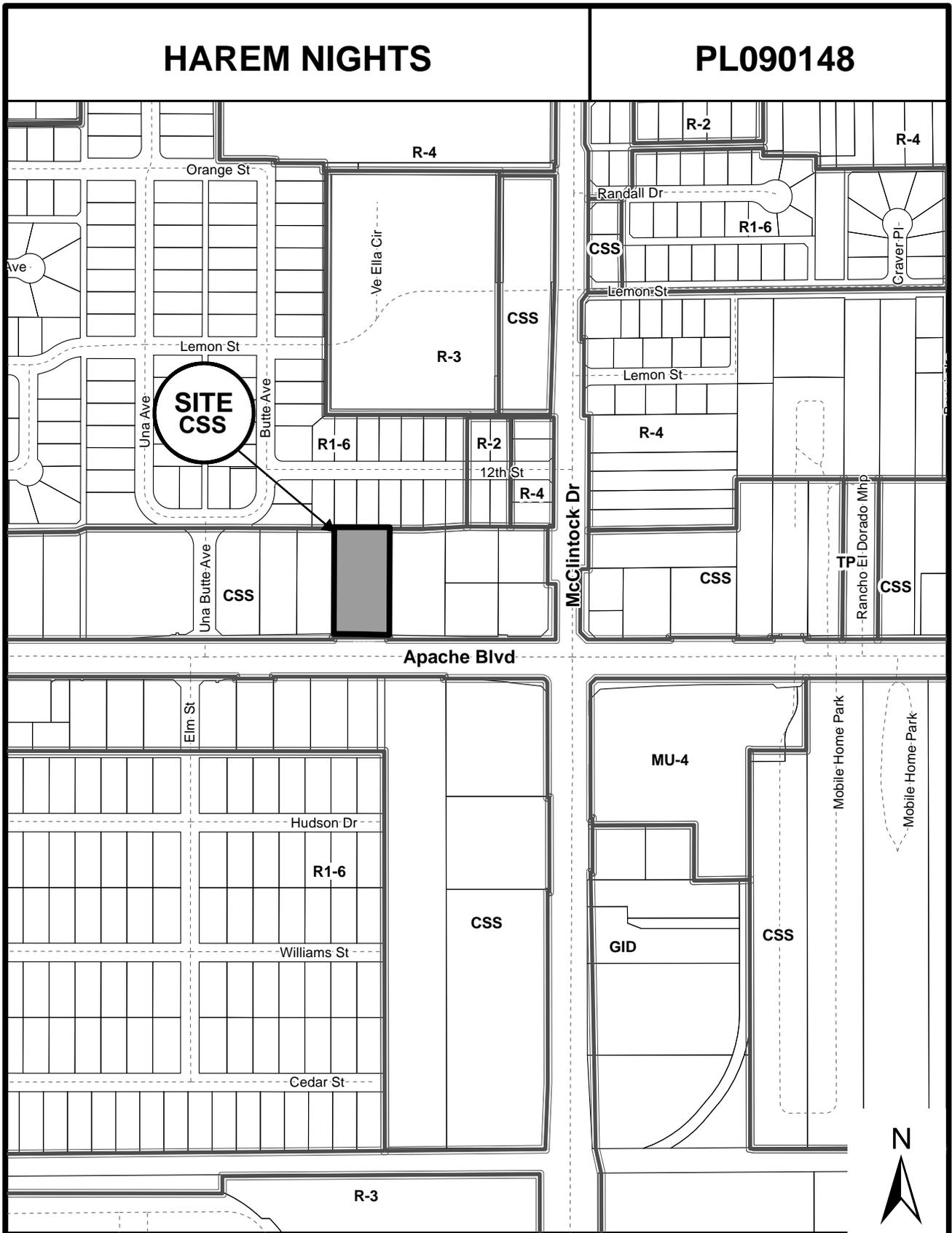
April 7, 2010 Business owner Kalil Abulaban requested a continuance due to a death in the family. Case continued until May 19, 2010.

DESCRIPTION:

Property Owner – 1630 Apache LLC
Business Owner – Kahlil Abulaban
Applicant – Jeff Tamulevich/City of Tempe – Code Compliance Administrator
Existing Zoning – CSS, Commercial Shopping & Services District
Parcel Size – 44,277 s.f. / 1.01 acres
Total Building Area – 12,000 s.f.
Tenant Area – 2,000 s.f.
Parking Required – 40 spaces
Parking Provided – 67 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



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.

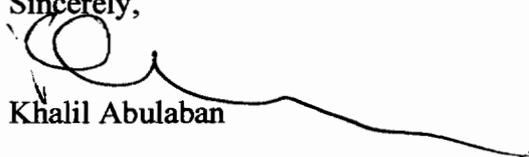
I previously owned and operated a family restaurant from 2001-2007 in the City of Tempe. The establishment provided food, beverage, entertainment, and was also one of the City of Tempe's first hookah lounge.

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,

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: 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.

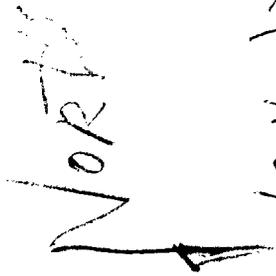
Sincerely,



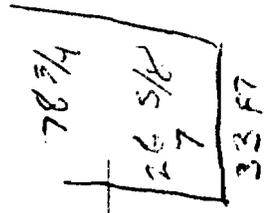
Dean Miller
Senior Code Inspector
Development Services Department
480-350-8435

Copy: File
1630 E. Apache Blvd.

APACHE

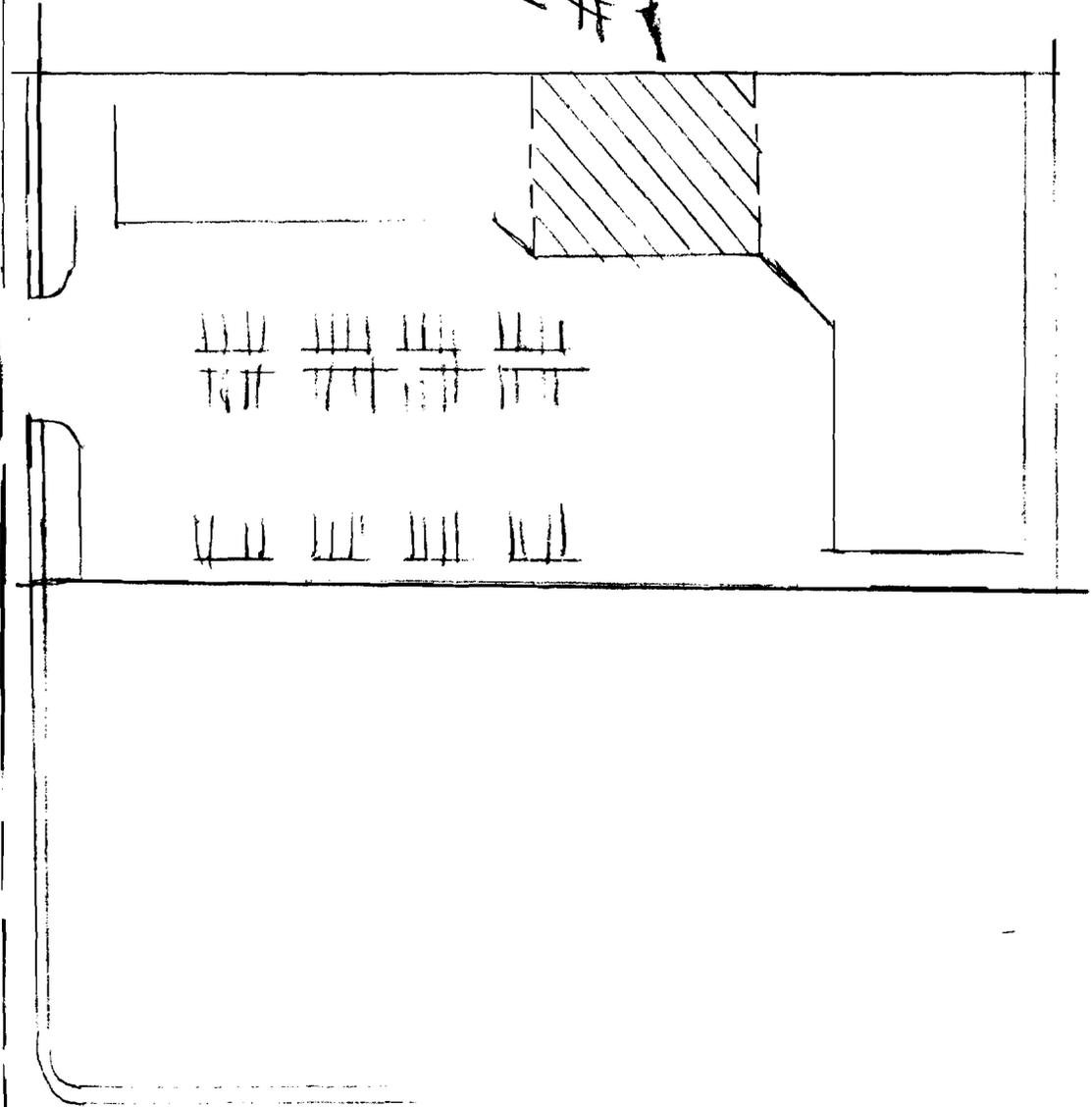


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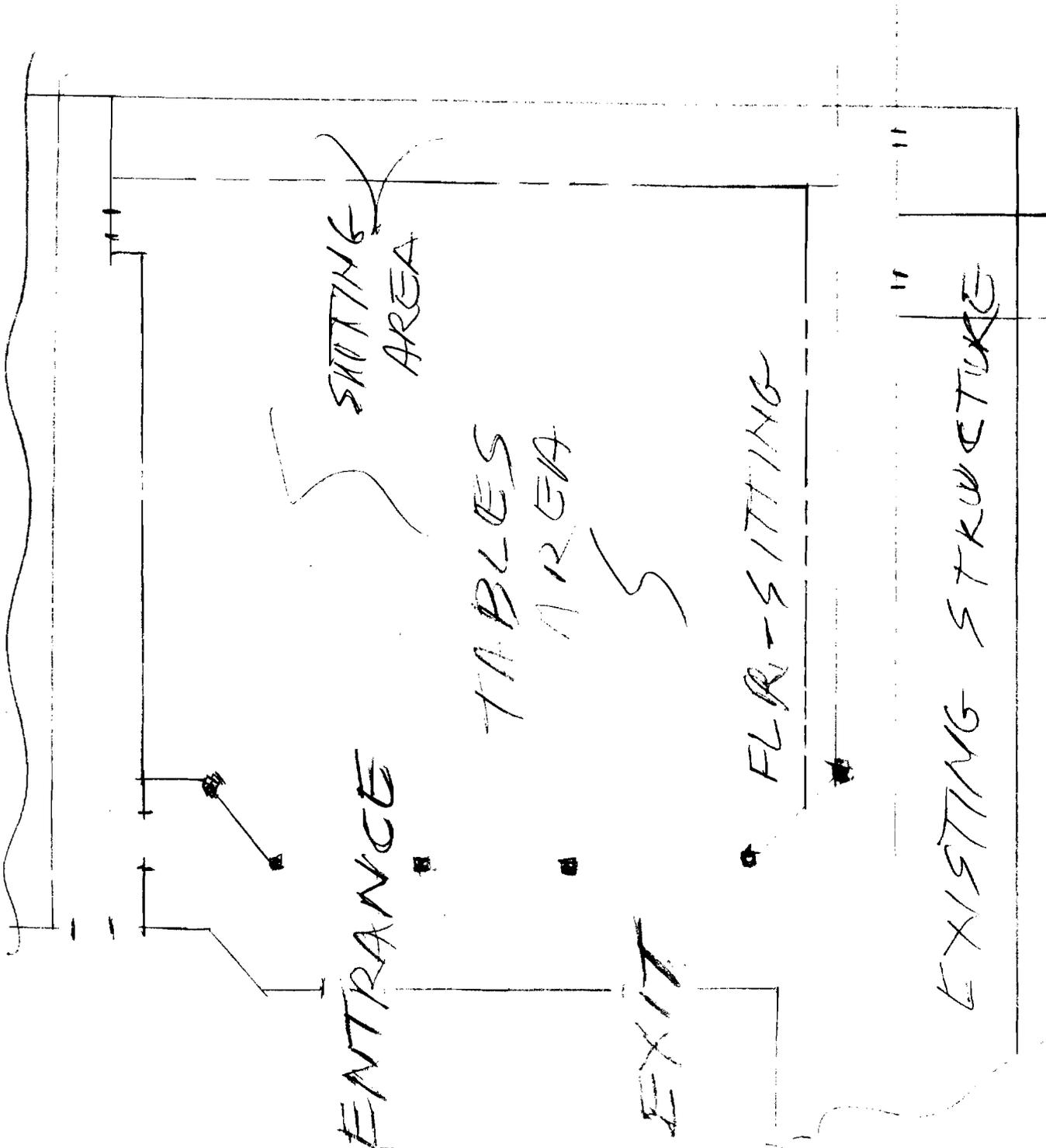
1630
#2



MCCLINTOCK

SITE PLAN

EXISTING STRUCTURE



~~THAT~~
 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

