

Staff Summary Report



Hearing Officer Hearing Date: April 6, 2010

Agenda Item Number: 11

SUBJECT: This is a public hearing for a request for revocation of the use permit issued to **KING TUT CAFE – MISHA’S SHEESHAS** to allow a hookah lounge/tobacco retailer

DOCUMENT NAME: 20100406dssd05 **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.”

Request by **KING TUT CAFE – MISHA’S SHEESHAS (PL080122)** (Kareem Kassel, applicant; Kassel Corporation, property owner) located at 1125 East Apache Boulevard, in the CSS, Commercial Shopping and Services District for:

ZUP08064 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by Hearing Officer at the May 6, 2008 HO hearing.)

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

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

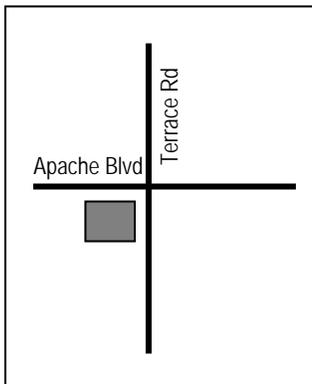
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO:



The City of Tempe is requesting a review of the King Tut Cafe – Misha’s Sheeshas (ZUP08064) for possible revocation of the use permit. King Tut Cafe – Misha’s Sheeshas has been in violation of the use permit, 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.”

PAGES:

1. List of Attachments
7. Comments;
8. Conditions of Approval;
9. Reason 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 15, 2008
- 4-5. Use Permit Approval Letter, dated May 14, 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 (ZUP08064) be revoked due to failure to meet the conditions of approval. King Tut received a use permit approval on May 6, 2008 subject to ten (10) conditions of approval. King Tut 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 5, 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 and received the required tenant improvement (TI) permits on February 27, 2009. To date, the building permit has received several inspections and work has not been completed.

COMMENTS FROM USE PERMIT (ZUP08064) MAY 6, 2008

The applicant, King Tut Cafe is requesting a use permit to allow a hookah lounge/tobacco retailer located at 1125 East Apache Boulevard in the CSS, Commercial Shopping & Services District. King Tut opened in June of 1999 and has since operated as a hookah lounge. Since the passing of Smoke Free Arizona, all hookah lounges/tobacco retailers have to cease all indoor smoking or the establishment may install an independent ventilation system. The existing King Tut restaurant had been separated by an interior wall; the front 744 s.f. will be utilized by Misha's Sheesha's hookah lounge and the rear 1,395 s.f. for King Tut restaurant. Misha's Sheesha's installed its own independently ventilated system and plans to sell snacks and beverages in addition to hookah. The primary use will be as a hookah lounge. Hours of operation will be from 3pm to 2am, 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, disallow a tobacco retailer from locating within 1,320 feet of a school. Thus, King Tut 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 King Tut 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 this suite with sole purpose of providing hookah smoking inside which should not create a nuisance to the surrounding area.

**ORIGINAL
CONDITION(S)
OF APPROVAL (ZUP08064) MAY 6, 2008**

1. The use permit is valid for King Tut 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.
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. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.

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 6-603 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:

June 16, 1999 BA990129: Use Permit(s) approved to allow a restaurant and outdoor dining patio for KING TUT CAFÉ.

April 3, 2008 DSM08015: Zoning Administrators Decision to allow KING TUT hookah lounge to apply for a use permit given they did not meet the 1,320 foot separation from a school.

May 6, 2008 ZUP08064: Hearing Officer approved use permit for a hookah lounge/tobacco retailer.

July 15, 2008 BP081108: Tenant Improvement (TI) plans submitted for Hookah Lounge.

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

September 10, 2009 DPR09164: Development Plan Review approval for a new front patio.

January 8, 2010 CM100036: 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 5, 2010 Administrative Hearing with business owner to gain compliance.

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

DESCRIPTION:

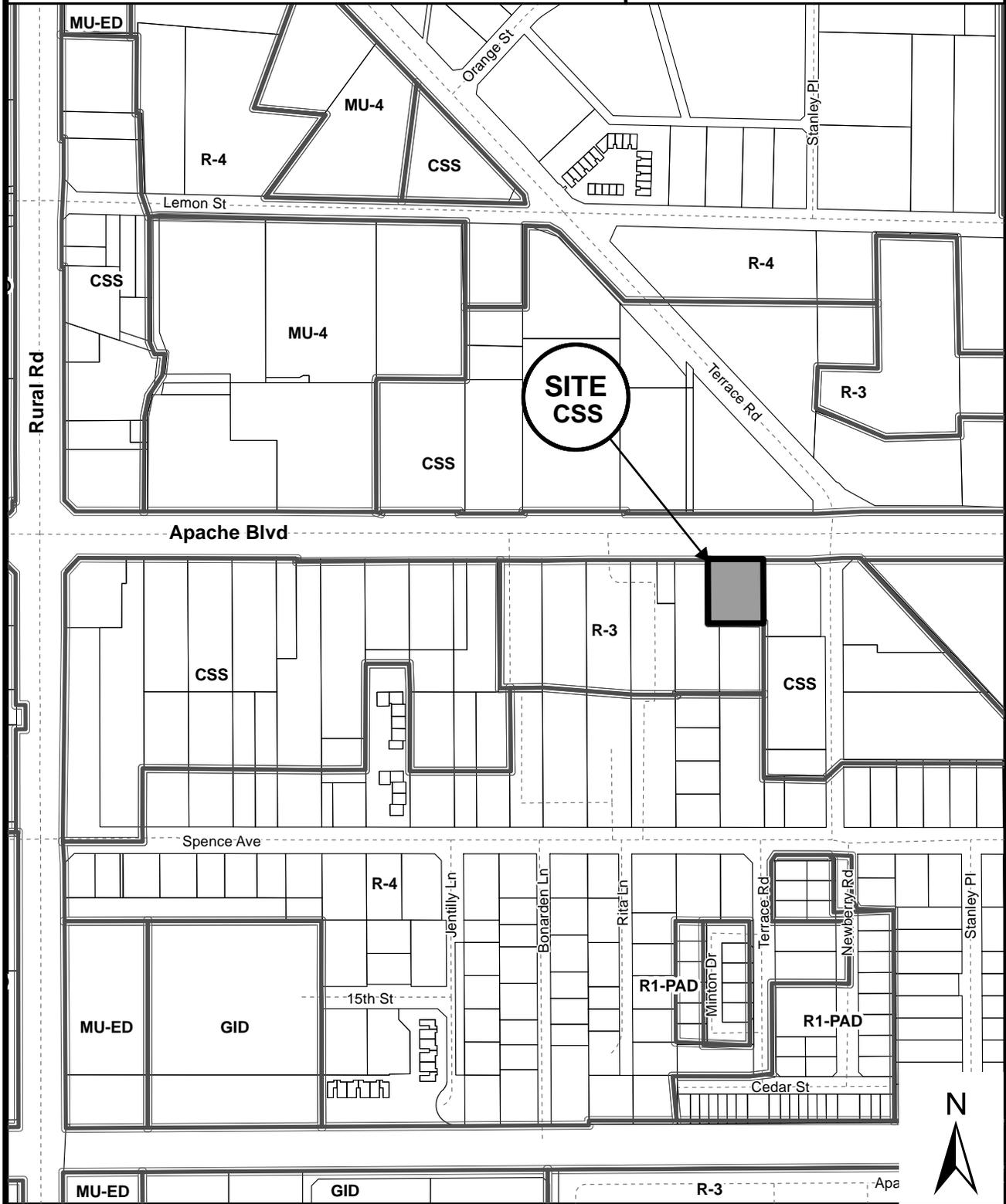
Property Owner – Kassel Corporation
Business Owner – Kareem Kassel
Applicant – Jeff Tamulevich/City of Tempe – Commercial Code Compliance
Existing Zoning – CSS, Commercial Shopping & Services District
Parcel Size – 18,129 s.f. / .41 acres
Total Building Area – 1,800 s.f.
Parking Required – 24 spaces
Parking Provided – 27 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

KING TUT CAFE - MISHA'S SHEESHAS

PL080122



Location Map



KING TUT CAFE - MISHA'S SHEESHAS (PL080122)

April 15, 2008

Dear Sir/Madam,

I am writing this letter to request a use permit for my Hookah Lounge/Café located at 1125 E. Apache Blvd. The new business will be called "Misha's Sheeshas". In case you need an explanation for the name: Misha is the nickname for my son, and sheesha is the Arabic word for glass bottle.

Misha's Sheeshas will be located in the northern half of the structure while King Tut Café will remain in the southern half. A wall now separates the two businesses and they have separate ventilation systems per state requirement. Misha's Sheeshas will not have a food license from Maricopa County and the two businesses will act as separate entities.

Sincerely,

A handwritten signature in cursive script that reads "Magda F. Kassel". The signature is written in black ink and is positioned above the printed name.

Magda Kassel

Development Services
Department

(480) 350-8331 (Phone)

May 14, 2008

FILE COPY

Mr. Kareem Kassel
Kassel Corporation
8806 South Shannon Drive
Tempe, Arizona 85284

**RE: KING TUT CAFE – MISHA’S SHEESHAS
PL080122 / ZUP08064**

Dear Mr. Kassel:

You are hereby advised that at the hearing held May 6, 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 **KING TUT CAFE - MISHA’S SHEESHAS (PL080122)** (Kareem Kassel, applicant; Kassel Corporation, property owner) located at 1125 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

ZUP08064 Use permit to allow a hookah lounge/tobacco retailer.

Approved subject to the following conditions:

1. The use permit is valid for King Tut and may be transferable 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.
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. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.

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 horizontal line extending to the right.

Shawn Daffara
Planner II

SD:dm

cc: Ms. Magda Kassel/Kassel Corporation
File

January 13, 2010

Mr. Kareem Kassel
Kassel Corporation
8806 South Shannon Drive
Tempe, AZ 85284

RE: Zoning Violation – 1125 East Apache Blvd. Tempe

Dear Mr. Kassel:

Your business, located at 1125 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 14, 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. Kareem Kassel
Kassel Corporation
8806 South Shannon Drive
Tempe, AZ 85284

**RE: King Tut Cafe- Use Permit
1125 East Apache Blvd.
PL080122/DS080369/ZUP08064**

Dear Mr. Kassel:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for King Tut Cafe at 1125 East Apache Blvd (ZUP08064). Condition number four (4) of the approval letter dated May 14th, 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 Friday February 5th, 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.

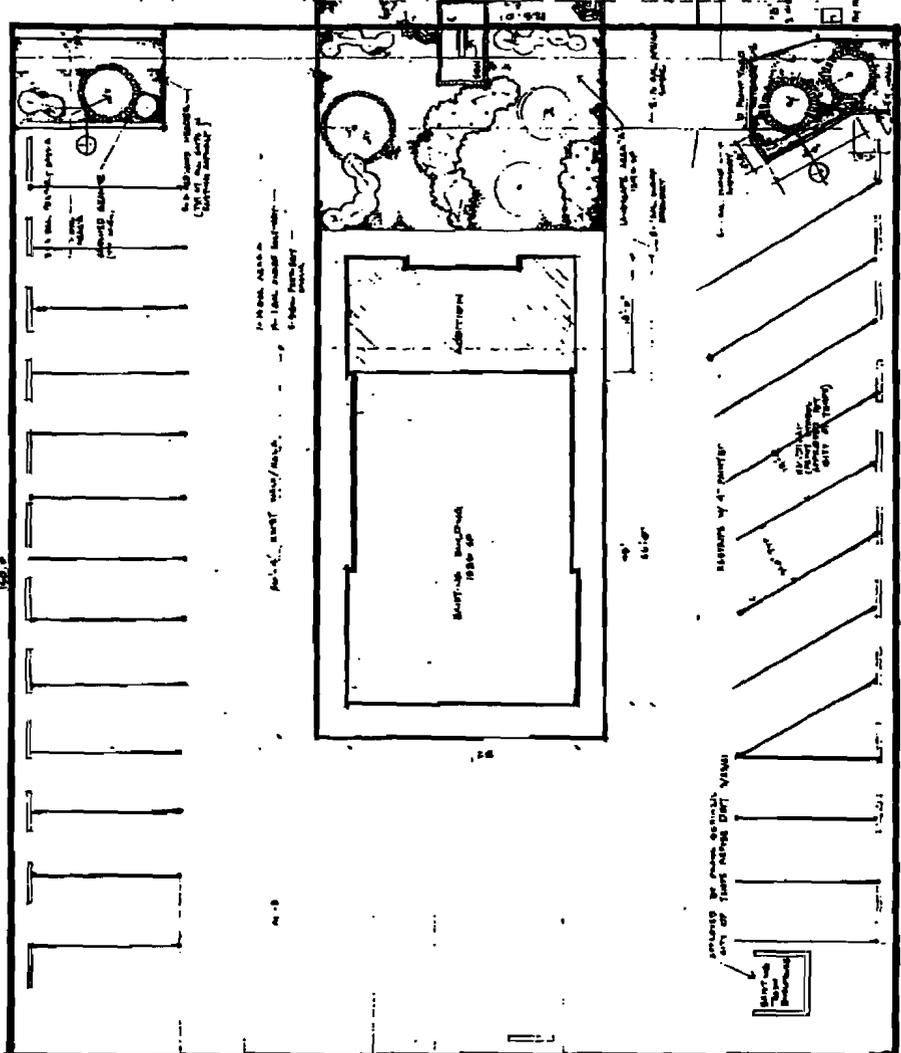
Sincerely,



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

Copy: File

PLANT SCHEDULE	
NO.	DESCRIPTION
1	SCREEN WALL
2	CONCRETE
3	BRICK
4	PAVING
5	LANDSCAPING
6	PLANTING
7	SEWER
8	WATER
9	ELECTRICAL
10	MECHANICAL
11	STRUCTURAL
12	FINISHES
13	FIXTURES
14	EQUIPMENT
15	ACCESSORIES

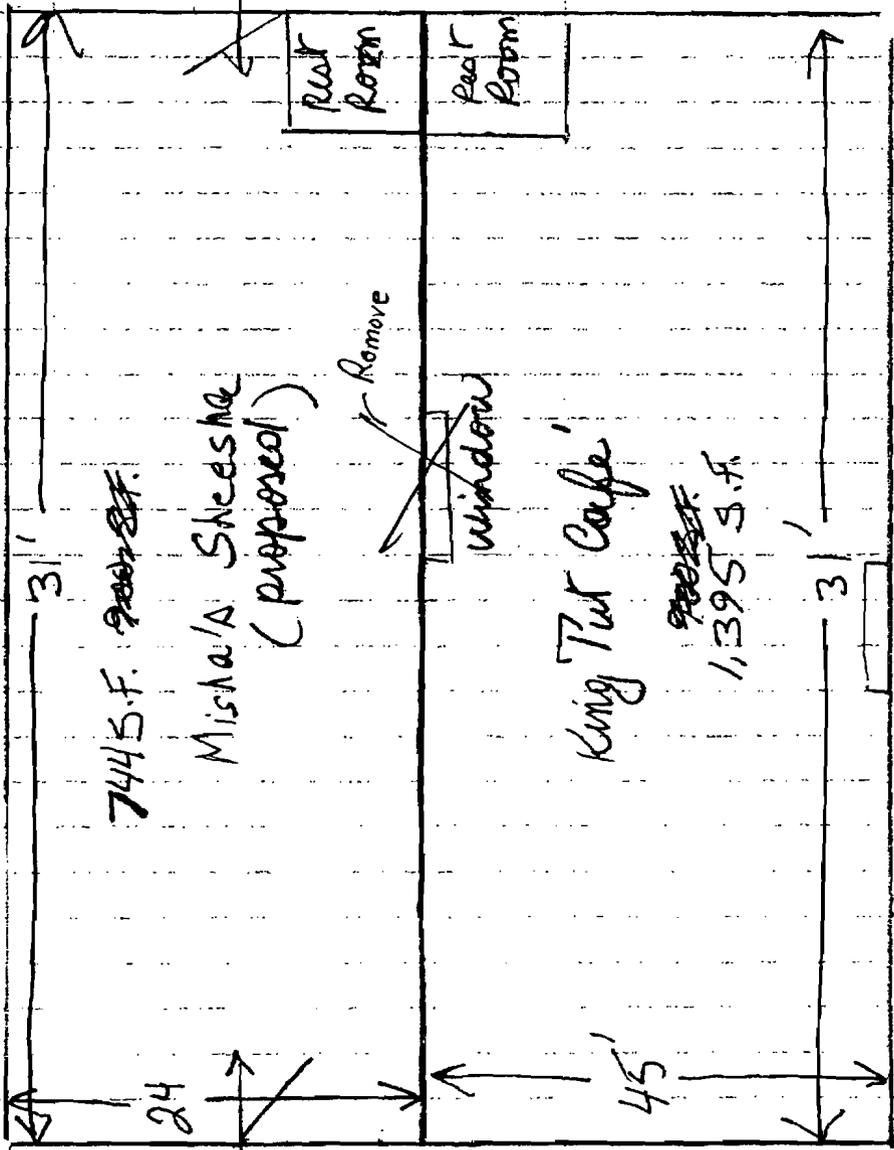


PROJECT DATA	
PROJECT NO.	111711
PROJECT NAME	TEMPLE
CLIENT	...
DESIGNER	...
DATE	...
SCALE	...
PROJECT LOCATION	...
PROJECT STATUS	...

↑ N

APACHE BLVD

PATIO



7445 S.F.

Misha's Sneeshing (proposed)

Rest Room Rest Room

Remove

Window

King Tut Cafe

1,395 S.F.

Door

Door