

Staff Summary Report



Hearing Officer Hearing Date: April 6, 2010

Agenda Item Number: 10

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

DOCUMENT NAME: 20100406dssd04 **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 MEMO'S CAFE (PL080109) (Ramez Rabata/Memos Cafe, applicant; Red Mountain Retail Group, property owner) located at 1845 East Broadway Road, Suite No. 9, in the CSS, Commercial Shopping and Services District for:

ZUP08045 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by Hearing Officer at the April 15, 2008 HO hearing.)

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

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

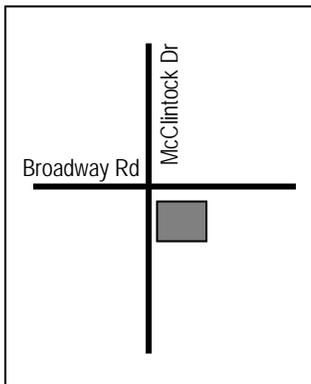
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO:



The City of Tempe is requesting a review of the Memo's Cafe (ZUP08045) for possible revocation of the use permit. Memo's Cafe 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
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 March 19, 2008
- 4-5. Use Permit Approval Letter, dated May 1, 2008
6. Code Enforcement Violation Letter, dated January 11, 2010
7. Administrative Hearing Letter, dated January 20, 2010
8. Site plan
- 9-10. Staff Photograph(s)

REVOCAION COMMENTS:

The applicant, City of Tempe is requesting the use permit (ZUP08045) be revoked due to failure to meet the conditions of approval. Memo's Cafe received a use permit approval on April 15, 2008 subject to ten (10) conditions of approval. Memo's Cafe 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 approvals. 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 for the required tenant improvement (TI) permits on May 14, 2009. To date, the building permit remains in plan review and have not been issued.

COMMENTS FROM USE PERMIT (ZUP08045) APRIL 15, 2008

The applicant, Memo's Café is requesting a use permit to allow a hookah lounge/tobacco retailer located at 1845 East Broadway Road, Suite 9 in the CSS, Commercial Shopping & Services District. Memo's Café will occupy approximately 1,136 square feet of space and plans to sell snacks and beverages in addition to hookah and related products. The primary use will be as a hookah lounge. Hours of operation will be from 5pm 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. 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 (ZUP08045) APRIL 15, 2008:**

1. The use permit is valid for Memo's Café 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. The tables outside of the café may not be used to set up hookah smoking stations. All hookah smoking must be done indoors.
8. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
9. 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.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.

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:

- April 15, 2008 ZUP08064: Hearing Officer approved use permit for a hookah lounge/tobacco retailer.
- March 17, 2009 ZUP09038: Hearing Officer approved a use permit for live entertainment.
- May 14, 2009 BP090592: Tenant Improvement (TI) plans submitted for Hookah Lounge.
- January 8, 2010 CM100035: 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.

DESCRIPTION:

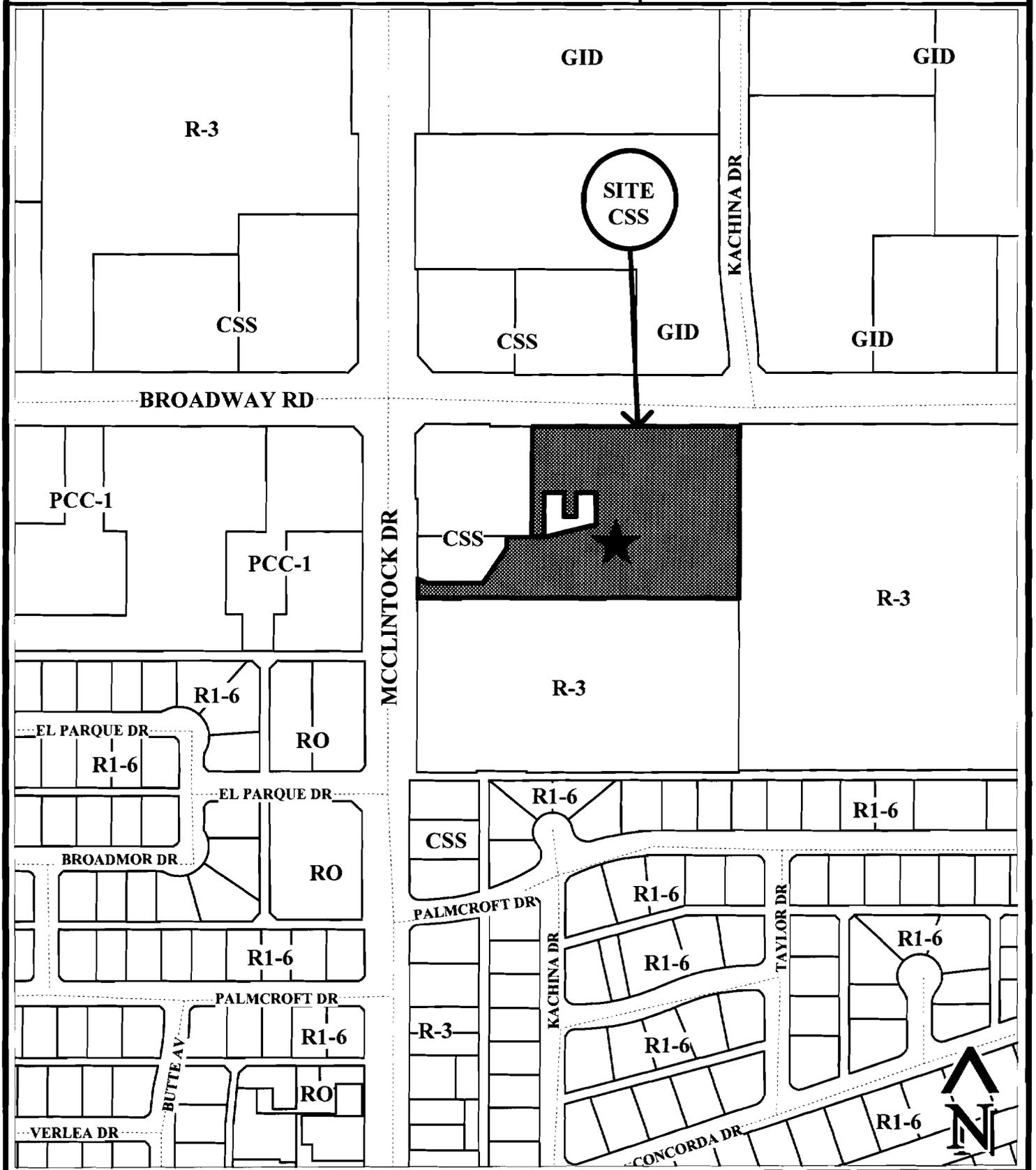
Property Owner – Red Mountain Retail Group
Business Owner – Ramez Rabata
Applicant – Jeff Tamulevich/City of Tempe – Commercial Code Compliance
Existing Zoning – CSS, Commercial Shopping & Services District
Parcel Size – 150,141 s.f. / 3.44 acres
Total Building Area – 34,614 s.f.
Tenant Area – 1,136 s.f.
Parking Required for Tenant – 4 spaces
Parking Provided – 211 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

MEMO'S CAFE

PL080109



Location Map



MEMO'S CAFE (PL080109)

To Whom It May Concern:

3/19/08

I am currently working on opening a new hookah lounge/smoke shop. My business will consist of serving customers hookahs with their choice of a variety of flavors I will have available for them to smoke. In addition to serving hookahs, I would also have them on hand for customers to purchase along with charcoal and tobacco made specifically for the hookahs. I am also planning to serve fresh juice, water, and sodas to my customers. In the future I would like to add cold sandwiches to the menu for customers to snack on while they are smoking hookah in my lounge.

Sincerely,

Ramez Rabata

A handwritten signature in black ink, appearing to read 'Ramez', is written over a horizontal line. The signature is stylized and somewhat cursive.

Development Services
Department
(480) 350-8331 (Phone)

May 1, 2008

FILE COPY

Mr. Ramez Rabta
7511 East Naranja Avenue
Mesa, Arizona 85209

**RE: MEMO'S CAFE
PL080109 / ZUP08045**

Dear Mr. Rabta:

You are hereby advised that at the hearing held April 15, 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 **MEMO'S CAFE (PL080109)** (Ramez Rabata/Memos Café LLC, applicant; Red Mountain Retail Group, property owner) located at 1845 East Broadway Road, Suite 9 in the CSS, Commercial Shopping & Services District for:

ZUP08045 Use permit to allow a Hookah Lounge/ Tobacco Retailer.

Approved subject to the following conditions:

1. The use permit is valid for Memos Cafe 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. The tables outside of the cafe may not be used to set up hookah smoking stations. All hookah smoking must be done indoors.
8. All rear doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
9. 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.
10. All business signs shall receive a sign permit. Please contact planning staff at (480) 350-8331.

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 'Alan Como', with a long horizontal flourish extending to the right.

Alan Como
Planner II

AC:dm

cc: Mr. Eric Nelson/Red Mountain Retail Group
File

January 11, 2010

Mr. Ramez Rabta
7511 East Naranja Avenue
Mesa, AZ 85209

RE: Zoning Violation – Memo's Café 1845 E. Broadway Rd. Tempe Suite 9

Dear Mr. Rabta:

Your business, located at 1845 East Broadway Road, 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 1, 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
Cafe

January 20, 2010

Mr. Ramez Rabta
7511 East Naranja Avenue
Mesa, AZ 85209

**RE: Memo's Cafe- Use Permit
1845 East Broadway Road
PL080109/DS080308/ZUP08045**

Dear Mr. Rabta:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for Memo's Cafe at 1845 East Broadway Road (ZUP08045). Condition number four (4) of the approval letter dated May 1st, 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 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.

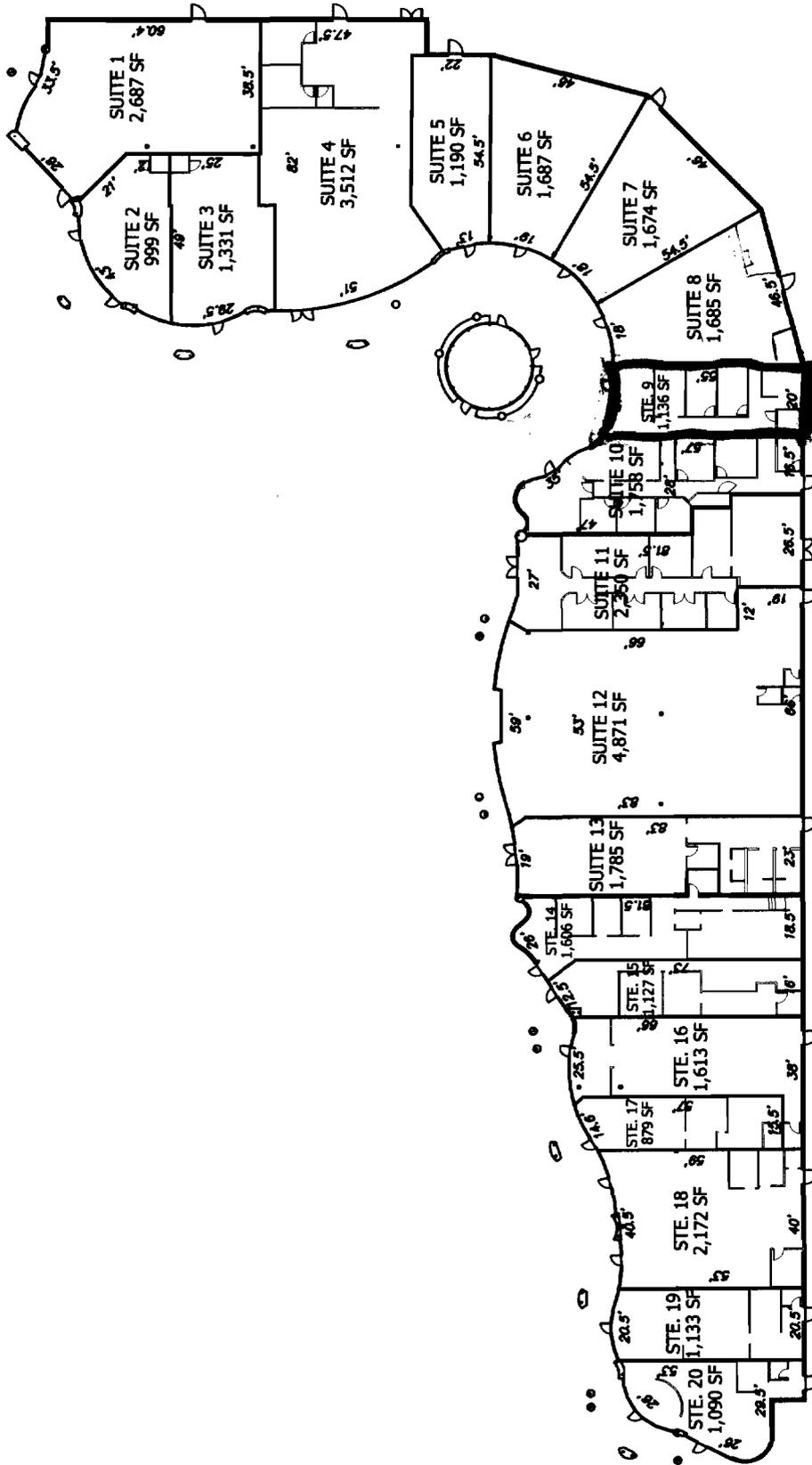
Should you have questions concerning this notice, please contact me directly at (480) 350-8435.

Sincerely,



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

Copy: File



Date: 11-12-2007
 By: PERCY CHENG
 Scale: 1"=30'-0"

LEASE PLAN - A
 D0760LP07-1112



BROADWAY ROAD & McCLINTOCK DRIVE
 TEMPE, ARIZONA

LEASE PLAN



MEMO'S CAFE

1845 E BROADWAY RD, SUITE NO. 9

PL080109

FRONT OF BUSINESS





MEMO'S CAFE

1845 E BROADWAY RD, SUITE NO. 9

PL080109

OUTER COURTYARD OF BUSINESS

