

# Staff Summary Report



Hearing Officer Hearing Date: 3/20/12

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** This is a public hearing for a review compliance with the assigned Conditions of Approval by **MIDNIGHT HOOKAH** located at 1630 East Apache Boulevard, Suite Nos. 103-104, for one (1) Use Permit for retail tobacco shop with live entertainment.

**DOCUMENT NAME:** HOr\_MidnightHookah\_032012 **PLANNED DEVELOPMENT (0406)**

**COMMENTS:** Review of compliance with Conditions of Approval by the Hearing Officer at the March 1, 2011 hearing.

Request by **MIDNIGHT HOOKAH (PL110015)** (Nader Yousif, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite Nos. 103-104, in the CSS, Commercial Shopping and Services District within the Transportation Overlay District Corridor for:

**ZUP11007** Use Permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj, live music and dancing).

**PREPARED BY:** Diana Kaminski, Senior Planner (480-858-2391)

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

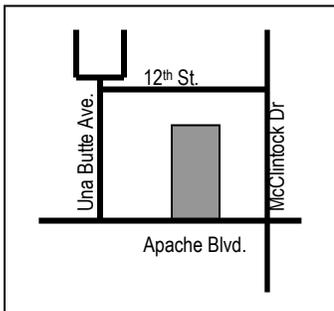
**LEGAL REVIEW BY:** N/A

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

**FISCAL NOTE:** There is no fiscal impact to City funds.

**RECOMMENDATION:** **Staff – Approval, subject to conditions**

**ADDITIONAL INFO:**



The site is located on the north side of Apache Boulevard in an existing commercial building built in 1986, with commercial to the east and west and residential to the north. This is the former location of a previously approved Hookah Lounge with live entertainment, which was revoked due to failure to comply with conditions of approval. Last year, a new applicant proposed a new business, using the former suite and an additional suite, for a larger Hookah facility, and requested a Use Permit for tobacco retail sales with live entertainment. This request was approved on March 1, 2011 as a single Use Permit. The property was upgraded with signage, replacement of missing landscape and the addition of bicycle racks as part of the conditions of approval for the request. A condition to return to the Hearing Officer six months after receipt of Certificate of Occupancy was delayed due to construction delays and challenges caused by adjacent tenants, who has now vacated the property. The business opened in September 2011, and is back for review of the Use Permit in compliance with the Conditions of Approval.

**PAGES:**

1. List of Attachments
- 2-3. Comments
4. Reasons for Approval
- 4-5. Conditions of Approval; History & Facts/Description
5. Zoning & Development Code Reference

**ATTACHMENTS:**

1. Location Map
2. Aerial Photo
- 3-6. Plans

## COMMENTS:

The property is located on the north side of Apache Boulevard, west of McClintock Drive, east of Una Butte Avenue, with commercial uses on both sides, light rail to the south and single family residential properties to the north. The L-shaped building has multi-tenant suites, all suites except MIDNIGHT HOOKAH are currently vacant. The property has an existing variance for parking, which reduces any required parking up to 77 spaces down to 67 required and provided on site. The site was formerly approved for a hookah lounge with conditions, however, the previous applicant was unable to comply with the conditions in the required time and the Use Permit and building permits expired. The current application is a different business owner/operator using the former suite and expanding into another suite for a larger business.

The applicant planned to serve teas, coffees, sodas and water and not serve alcohol. Food service was limited to snack foods and appetizers, not full meals. Entertainment would include disc jockeys and live music as background to belly dancing as well as dancing on a dance floor. During a meeting last year with staff the business owner indicated plans for parking security for patrons as well as indoor security. The Police Department has indicated that there have been two calls for fights, and three calls complaining about loud music. There have been twelve calls for service for burglar alarms; half were prior to the facility being open for business, related to installation of a new alarm system. Police staff indicated there have not been significant calls for service related specifically to the operations of the business; however the parking lot is regularly littered with trash and containers from alcoholic beverages.

### Public Input:

Staff has received comments regarding alcohol containers and litter in the parking lot, and about loud music as early as three and four o'clock in the morning. The one resident who called did not wish to file a formal complaint, only to make staff aware that the business was not complying with conditions about noise and time of operation. Staff sent the business owner a reminder letter regarding the conditions of approval. The resident has since indicated that during the week noise levels are lower and it is only on weekends that it is loud. The resident indicated that when this was advertised last year, he thought it was a tobacco shop with background music or belly dancing for those who came to smoke, not a nightclub. He has requested that noise mitigation insulation be required similar to a nightclub venue, since this is how it is being used.

### Use Permit

The proposed use requires a Use Permit, to sell tobacco and to have live entertainment within the Commercial Shopping and Service CSS zoning district. Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code. The building design has no windows or doors on the western side near the residences to the south. The interior floor plan places the DJ and musician platform closer to the Apache Boulevard end of the suite, away from the residential area. Conditions have been added to limit live entertainment to indoors only, with doors closed, and to end at 1:55am. **One resident has indicated music from the business could be heard inside their home as late as 4am in the morning. The property has had a few incidents in the parking lot, indicating non-compliance with the security plan or described operations of the business (indoor and outdoor security personnel on site).**
2. Any significant increase in vehicular or pedestrian traffic. The proposed use is anticipated to rely on a combination of pedestrian, light rail and vehicular access to the site. The building capacity is 155 people, and the applicant indicated that carpooling of couples and groups is common for this use. Due to the hours the hookah lounge is open, it is anticipated that there will be sufficient parking on site. All traffic would enter and exit on Apache Boulevard. **There have been no reported issues with traffic. A business owner on Apache indicated there was loitering in the parking lot late at night. An adjacent business had vehicles filling their parking lot late at night, presumably from only tenant in this building.**

3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. The applicant is aware of the requirements for special indoor air handling equipment to mitigate smoke indoors. There will be no outdoor patios or entertainment. There are no known nuisances arising from tobacco retail uses and conditions have been included to mitigate potential live entertainment issues. **The one resident who called indicated the music had a heavy bass beat with a vibration that was very prominent late at night.**
4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not 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 center has had vacant suites and a history of various businesses. The applicant has indicated security both indoors and outdoors in the parking lot for customers. The hours of operation will provide increased activity to the area, with employees and customers on site from 8am to 3am, which may reduce crimes related to vacant buildings. The property was upgraded with site lighting, landscaping and bicycle parking, to enhance the aesthetic appeal of the center.

**There have been complaints about alcohol consumption on property, trash and bottles and cans of alcohol left in the lot. Below is a report from the Tempe Police Department for Midnight Hookah calls for service:**

*Burglar Alarm calls:* 8/1/11, 9/3/11, 9/15/11, 9/27/11, 10/5/11, 11/11/11, 11/18/11, 11/20/11, 12/14/11, 1/6/12, 1/24/12, 1/28/12. The first four calls for service may have been related to the adjacent tenant Abode Air, a business that had a history of calls for service. Midnight Hookah had someone break in, had a door removed and a hole cut in the wall between the adjacent tenant suite, and had equipment stolen all prior to opening the business. The burglar alarm was set at a high sensitivity level, and some of the calls were employees who were learning the alarm system at the beginning of business operations. These cases were false alarms.

*Fight calls:* 10/2/11(0030 hrs. Bakers Acres was reportedly full of cars and people at 0030 hrs.), 1/29/12 (0210 hrs. Subject with gun being chased by several other persons. Call came from intoxicated witness).

*Stolen Vehicle:* 10/24/11 A customer from Midnight Hookah found a ride home, left his car in the lot, and when he returned the next day, his vehicle was gone. It is unclear if a friend took his car home or if it were towed, but the vehicle was left overnight.

*Loud Music calls:* 11/13/11 (0400 hrs.), 1/7/12 (2345 hrs.), 1/28/12 (0305 hrs.). No written reports were taken by Police for any of the fight or loud music calls.

3. Compatibility with existing surrounding structures and uses. There is no conflict with the commercial uses within the area. Due to the proximity of residential uses, conditions are included to prohibit outdoor entertainment or speakers, and restrict hours of entertainment to those similar other late night uses. **The business was described as a Hookah Lounge with live entertainment (ancillary to main use). The current operation of the business as a nightclub is impacting nearby residences. Additional sound mitigation may be necessary to mitigate noise from neighboring properties.**
4. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. The applicant has met with the police staff to discuss security plan requirements, and is planning to provide indoor and outdoor security staff. The applicant has indicated extensive experience with operating this type of establishment and is aware of the importance of controlling behavior for the safety and security of patrons and public alike. No alcohol will be served on premises and those who are coming from another business and are under the influence of alcohol will not be permitted entrance. **Based on the information in the police summary of calls for service, additional security is needed to control behavior in the parking lot.**

## **Conclusion**

Staff recommends that the Use Permit for Midnight Hookah be conditionally approved to allow the sale of tobacco products and have live entertainment, **subject to a second six month review after a longer period of operation.**

**REASON(S) FOR APPROVAL:**

1. The use is in a commercial zoning district with similar businesses in the area.
2. The business has met most of the criteria and conditions of approval for allowing the Use Permit, and has the capacity to address the criteria that haven't been completely met, a six month review allows a second review of operations for compliance to the approval criteria.
3. The proposed use has met all deadline specific criteria.

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.**

**CONDITION(S) OF APPROVAL:**

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site. **This condition has been met.**
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process. **This condition has been met.**
3. The Use Permit is valid for MIDNIGHT HOOKAH and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
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. **Return to the Hearing Officer by September 18<sup>th</sup>, 2012 for a review of operations in compliance with all conditions of approval.**
5. No outdoor speakers shall be allowed. **This condition has been met.**
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011. **This condition has been met; implementation has not been.**
7. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
8. Live entertainment to stop at 1:55am. **This condition has not been met, based on calls regarding music as late as 4am.**
9. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Site lighting must remain on from dusk to dawn. **This condition has been met.**
10. Replace all dead or missing trees and landscape material within the property.
11. Provide bicycle parking to meet bicycle commute ratio requirements and replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard. Contact Planning Staff by April 1, 2011. **This condition has been met.**
12. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372. **This condition has been met.**
13. Any intensification or expansion of use, including shall require a new Use Permit.
14. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective. **This condition has been met.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has been met.**
17. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.

18. Any modifications to the exterior of the building requires a Development Plan Review.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. **This condition has been met.**
20. **Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce the volume level of the background music within the Hookah lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise.**

**HISTORY & FACTS:**

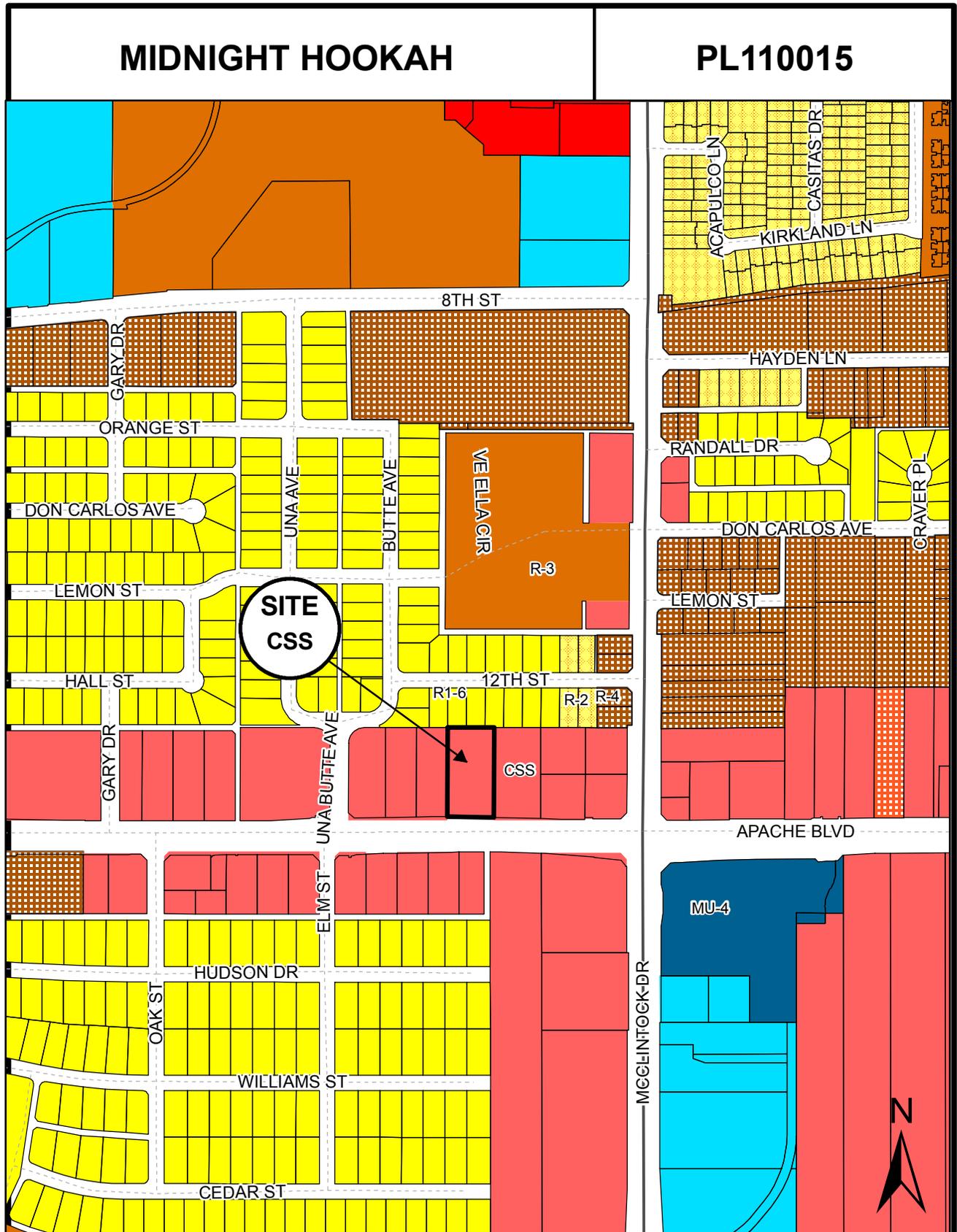
May 4, 1999	BA990101 Hearing Officer approved a Use Permit request for National Bankcard Services, Suite 101, to allow a professional telemarketing office in the C-2 Commercial District (Zoning Ordinance 808)
August 12, 1999	BA990203 Hearing Officer approved a Use Permit request for The Intraverse, Suite 107 to allow a network of computers for entertainment and office purposes in the C-2 Commercial District. (Zoning Ordinance 808)
December 21, 2000	BA000369 Hearing Officer approved a Use Permit request for Phoenix Church of Pentecost Suite 107 to allow a church in the C-2 Commercial District (Zoning Ordinance 808)
May 19, 2009	ZUP09063 Hearing Officer approved a 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 requested a continuance until May 19, 2010.
May 19, 2010	RVK10002 Hearing Officer revoked the Use Permit to allow a hookah lounge/tobacco retailer.
July 13, 2010	Development Review Commission heard and continued an appeal of the revocation of the Use Permit.
July 27, 2010	Development Review Commission continued the appeal until September 28th to allow more time for the building to be brought into compliance with the conditions.
September 28, 2010	Development Review Commission denied the appeal and upheld the May 19, 2010 Hearing Officer's decision to revoke the Use Permit.

**DESCRIPTION:**

Owner – 1630 Apache LLC  
 Applicant – Nader Yousif  
 Existing Zoning – CSS, Commercial Shopping and Services District within the Transportation Overlay District Corridor

**ZONING AND DEVELOPMENT**

**CODE REFERENCE:** Section 6-308 Use Permit



**Location Map**



**MIDNIGHT HOOKAH (PL110015)**

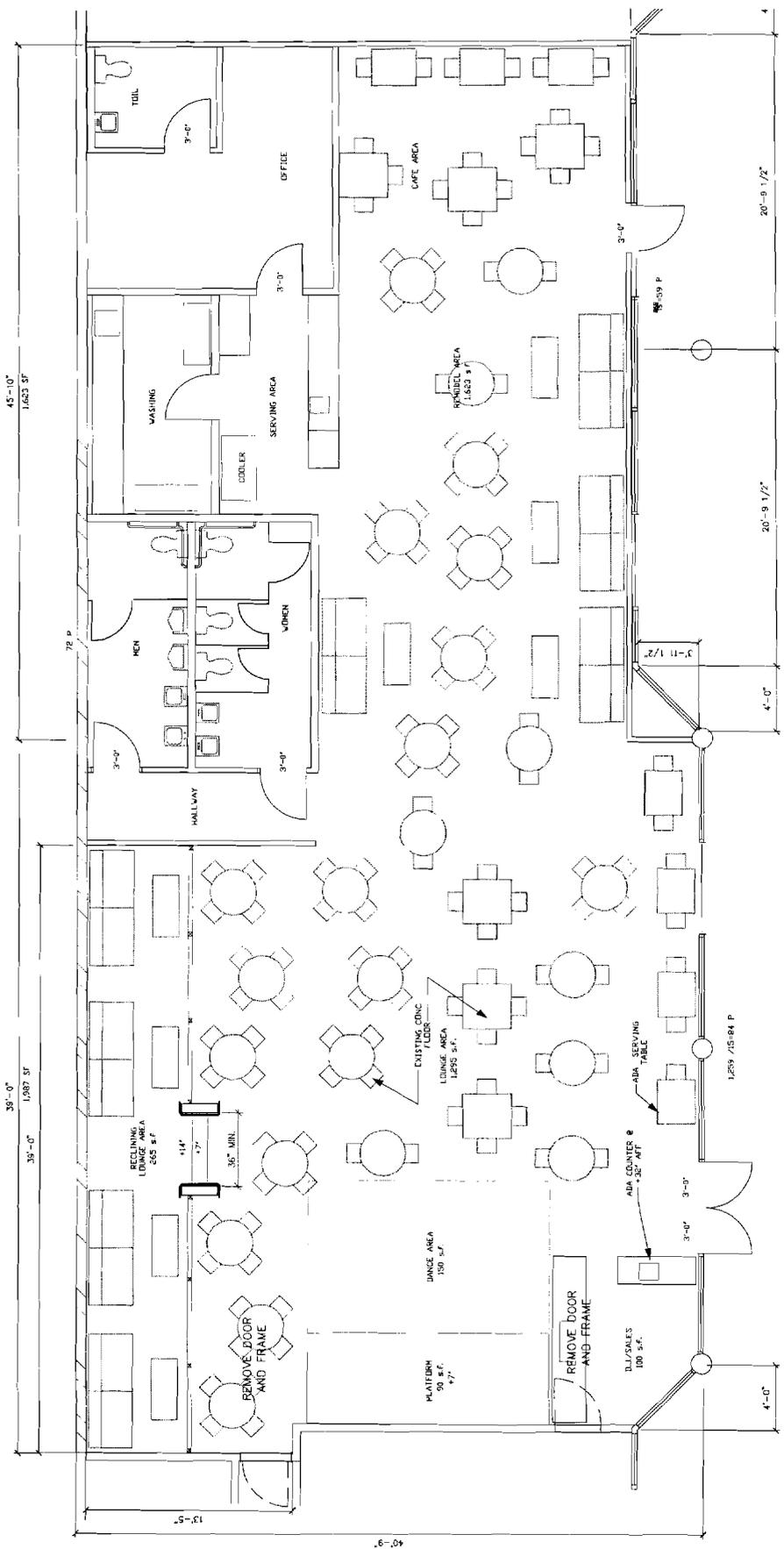


PROJECT SHEET

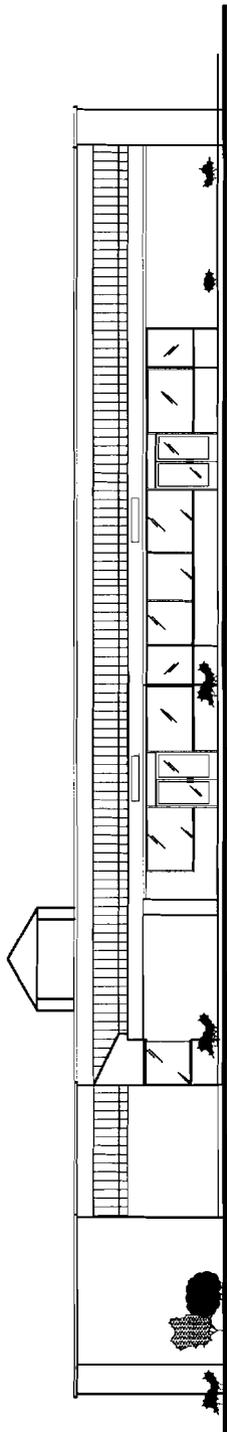
TENANT REMODEL  
FOR  
MIDNIGHT HOOKAH  
1630 EAST APACHE BLVD, SUITE 103  
TEMPE, ARIZONA

Sonoran Design Service  
2375 East Camelback Road, #5127  
Phoenix, AZ 85017  
Chris Doran, Pres. 602-405-8951

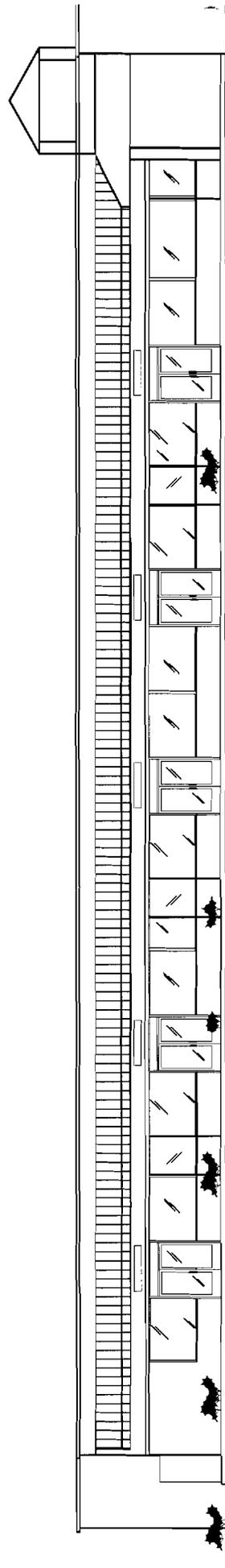
NO. NUMBER	1-10-25	1 CITY COURTS
DATE	07/26/10	2 CITY COURTS
APPROVED	09/20/10	3 CITY COURTS



FLOOR PLAN  
SCALE 1/4" = 1'-0"  
3,610 SF



FRONT -- SOUTH

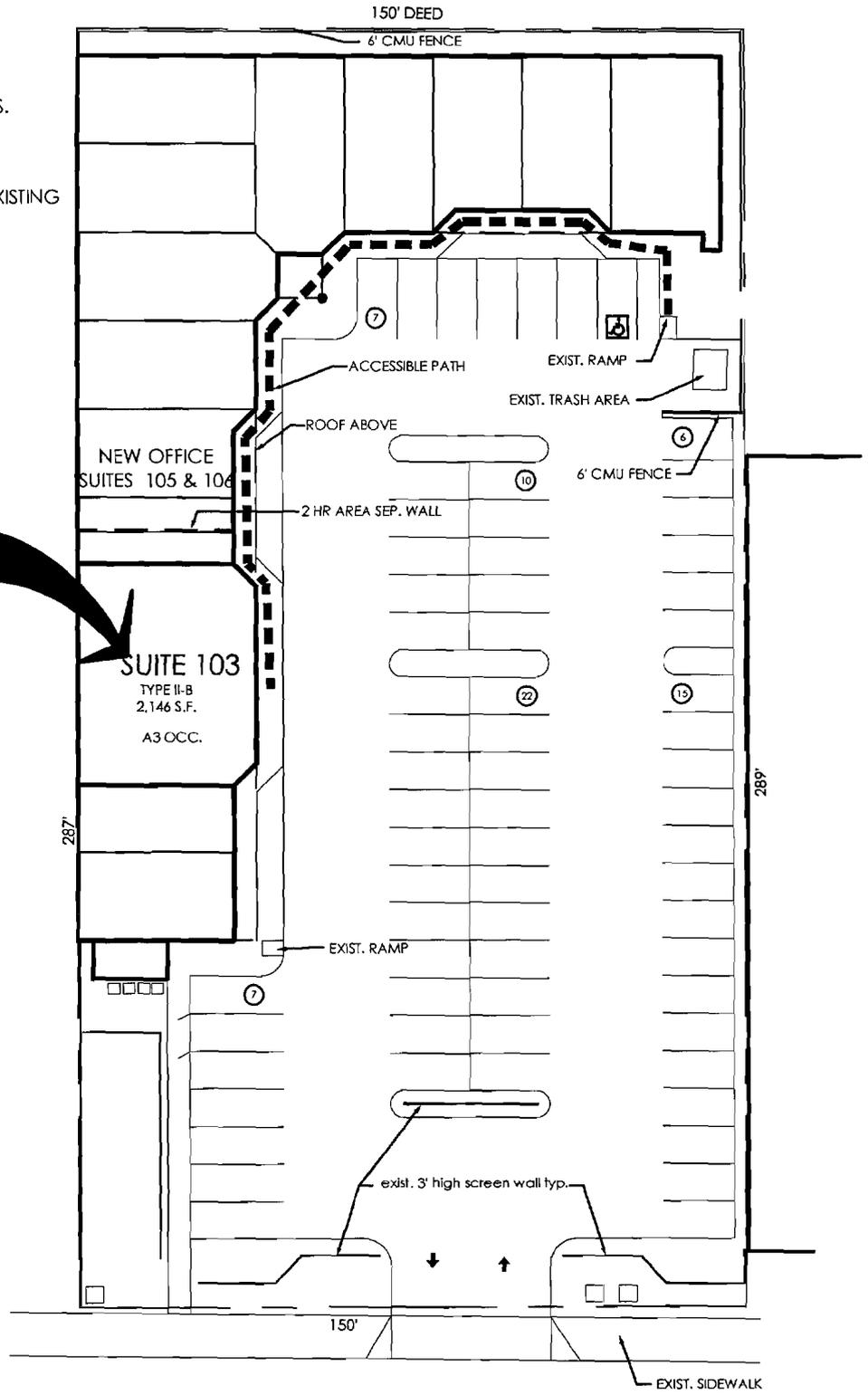


HOOKAH LOUNGE  
EAST

# SITE PLAN NOTES

1. NO NEW DRIVEWAYS OR PARKING AREAS.
2. ALL ADA PARKING SPACES ARE EXISTING.
3. ACCESSABLE ROUTES AND RAMPS ARE EXISTING
4. NO SIGN IS CURRENTLY ON SITE.

PROJECT  
SUITES 103 & 104



APACHE BLVD

SITE PLAN

SCALE: 1"=20'



