

Staff Summary Report

Development Review Commission Date: 09/28/10

Agenda Item Number: ___

SUBJECT: Hold a public hearing for an appeal of the revocation of MEMO'S CAFÉ Use Permit located at 1845 East Broadway Road.

DOCUMENT NAME: DRCr_MemosAppeal **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **MEMO'S CAFE (PL080109/RVK10001)** (Ramez Rabata/Memos Cafe, applicant; Red Mountain Retail Group, property owner) to appeal the Hearing Officer's Decision of April 6, 2010 to revoke the Use Permit. Memo's Café is located at 1845 East Broadway Road, Suite No. 9, in the CSS, Commercial Shopping and Services District for

RVA10001 – To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

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

REVIEWED BY: Lisa Collins, Deputy Director Community Development Dept./Planning (480-350-8989) *LC*

LEGAL REVIEW BY: N/A

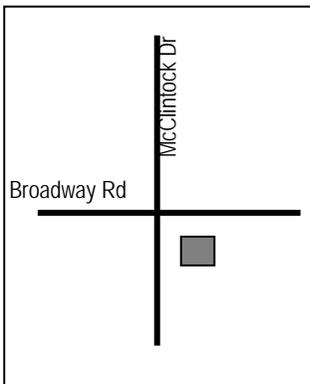
DEPARTMENT REVIEW BY:

FISCAL NOTE: N/A

RECOMMENDATION: N/A

ADDITIONAL INFO:

Gross/Net site area	3.44 acres
Total Building area	34,614 s.f
Tenant Area	1,136 s.f.
Vehicle Parking	211 spaces (4 spaces required for this tenant)



A neighborhood meeting was not required with this application.

The applicant is requesting an appeal of the Hearing Officer's decision of April 6, 2010 to revoke the Use Permit for Memo's Café. The applicant has received their building permit, started modifications and is approximately 50% complete.

APPEAL COMMENTS:

The applicant, Memo's Café is requesting an appeal of the Hearing Officer's decision of April 6, 2010 to revoke the Use Permit for Memo's Café. The property manager explained there had been communication problems between the landlord and the tenant (Memo's) and landlord takes full responsibility for not submitting the required Tenant Improvement plans for the required building permits. The Hearing Officer stated the hookah lounge has been operating for (1) one year without the required building permits and has shown little or no progress to full fill this requirement, therefore made the decision to revoke the use permit.

CURRENT STATUS:

The applicant has received the building permit to start construction on August 6, 2010. The business has started construction and has received its first building inspection on September 8, 2010.

COMMENTS FROM DEVELOPMENT REVIEW COMMISSION JUNE 22, 2010

The mechanical engineers gave a brief update on the building safety plan review. The first plan review was completed and is with the architect for corrections; hoping plans are back into the city by June 25. The commission asked the business owner and engineer how much time they will need to complete plan review and finish construction. Engineer thought 45 days would get them close to closing out the project. The commission voted 6-1 to continue this case until August 24, 2010.

COMMENTS FROM DEVELOPMENT REVIEW COMMISSION JUNE 8, 2010:

The Development Review Commission heard from the new mechanical engineer about T.I. plans being submitted by June 10. The engineer spoke about history of this business and break down in communications between the landlord, property owner, and prior architect that caused a 2 year delay on the required building permits. The commission voted 4-3 to continue this case for two (2) weeks to see if the business has made progress on obtaining the required building permits.

The applicant submitted the required Tenant Improvement (T.I.) plans on June 10, 2010.

REVOCATION COMMENTS APRIL 6, 2010:

See minutes from the April 6, 2010 Hearing Officer.

COMMENTS FROM USE PERMIT (ZUP08045) APRIL 15, 2008

See minutes from the April 15, 2008 Hearing Officer.

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 denial of the appeal, thus upholding the Hearing Officer's decision to revoke the use permit.

**REASON(S) FOR
REVOCATION:**

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.

HISTORY & FACTS:

April 15, 2008	<u>ZUP08064</u> : Hearing Officer approved use permit for a hookah lounge/tobacco retailer.
March 17, 2009	<u>ZUP09038</u> : Hearing Officer approved a use permit for live entertainment.
May 14, 2009	<u>BP090592</u> : Tenant Improvement (TI) plans submitted for Hookah Lounge.
January 8, 2010	<u>CM100035</u> : 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.
April 6, 2010	<u>RVK10001</u> : Hearing Officer revoked the use permit to allow a hookah lounge/tobacco retailer.
April 15, 2010	Memo's Café filed an appeal of the Hearing Officer's decision to revoke the use permit.
May 25, 2010	Memo's received a continuance, case continued until June 8, 2010.
June 8, 2010	Development Review Commission granted a two (2) week extension to the applicant. Case continued to June 22, 2010.
June 10, 2010	<u>BP100856</u> : Tenant Improvement (TI) plans submitted for Hookah Lounge.
June 22, 2010	Development Review Commission granted a 45 day extension to the applicant. Case continued to August 24, 2010
August 6, 2010	<u>BP100856</u> : Building Permit Issued.
August 24, 2010	Development Review Commission granted a 30 day extension to the applicant. Case continued to September 28, 2010.
September 8, 2010	Building Safety completed first building inspection. Inspection included Framing and Gypsum Wallboards.

**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