

# Staff Summary Report



Hearing Officer Hearing Date: May 6, 2008

Agenda Item Number: 7

**SUBJECT:** This is a public hearing for a request by **KING TUT CAFE – MISHA’S SHEESHAS (PL080122)** located at 1125 East Apache Boulevard, for one (1) use permit.

**DOCUMENT NAME:** 20080506dssd03

**PLANNED DEVELOPMENT (0406)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** Hold a public hearing for a 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.

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

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

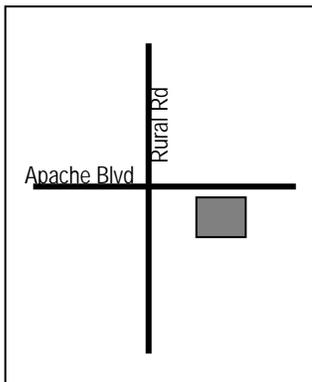
A handwritten signature in black ink, appearing to read 'SEA'.

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff – Approval subject to Conditions 1-10

**ADDITIONAL INFO:** The applicant 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. No public input has been received to date. Staff supports the request for a use permit as it meets the criteria for a use permit in the Zoning and Development Code.



**PAGES:**

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

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site plan
5. Floor Plan
6. Zoning Administrators Letter
7. Staff Photograph(s)

## COMMENTS:

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 use permit for a hookah lounge in the CSS, Commercial Shopping and Services District.

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 hookah lounge and will generate smoke; however all hookah smoking shall be contained within the establishment moreover, the hookah lounge as its own independent ventilation system. Therefore this use should not adversely impact neighboring businesses with the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare.
- 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

## Conclusion

Staff recommends approval of the use permit subject to conditions.

## REASON(S) FOR APPROVAL:

1. The business is a general commercial use, and is compatible with the other businesses on the property and within the area.
2. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
3. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.

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

## CONDITION(S) OF APPROVAL:

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 City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.

## HISTORY & FACTS:

June 16, 1999

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

April 4, 2007

DPR07041: Development Plan Review approved to install a Ramada over the outdoor patio.

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.

**DESCRIPTION:**

Owner – Kassal Corporation  
Applicant – Kareem Kassel  
Existing Zoning – CSS, Commercial Shopping and Services District  
Parcel Size – 18,129 s.f. / .41 acres  
Total Building Area – 1,800 s.f.  
Parking Required for – 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.

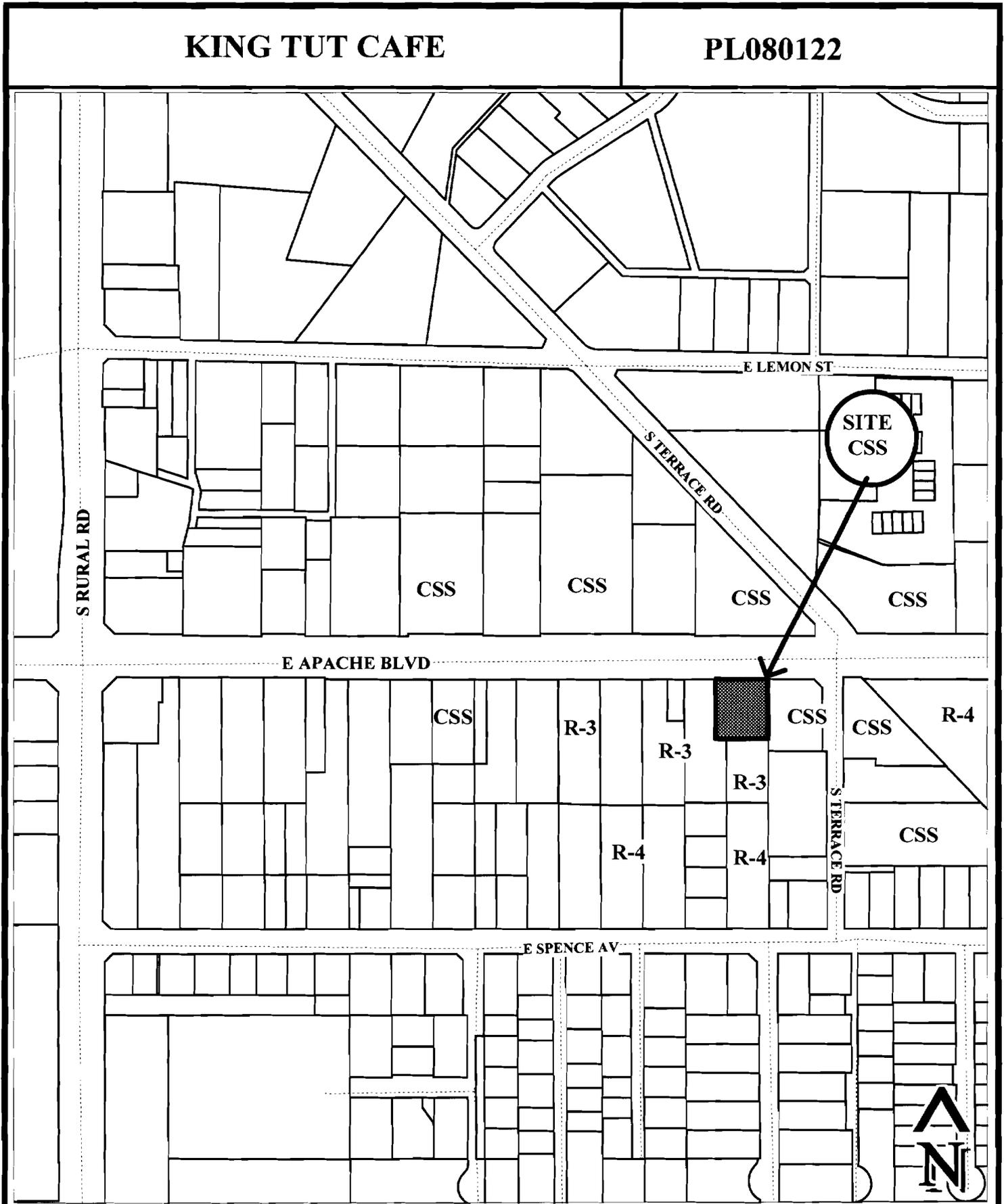
Part 3, Chapter 4, Section 3-423 – Use Separation Requirements

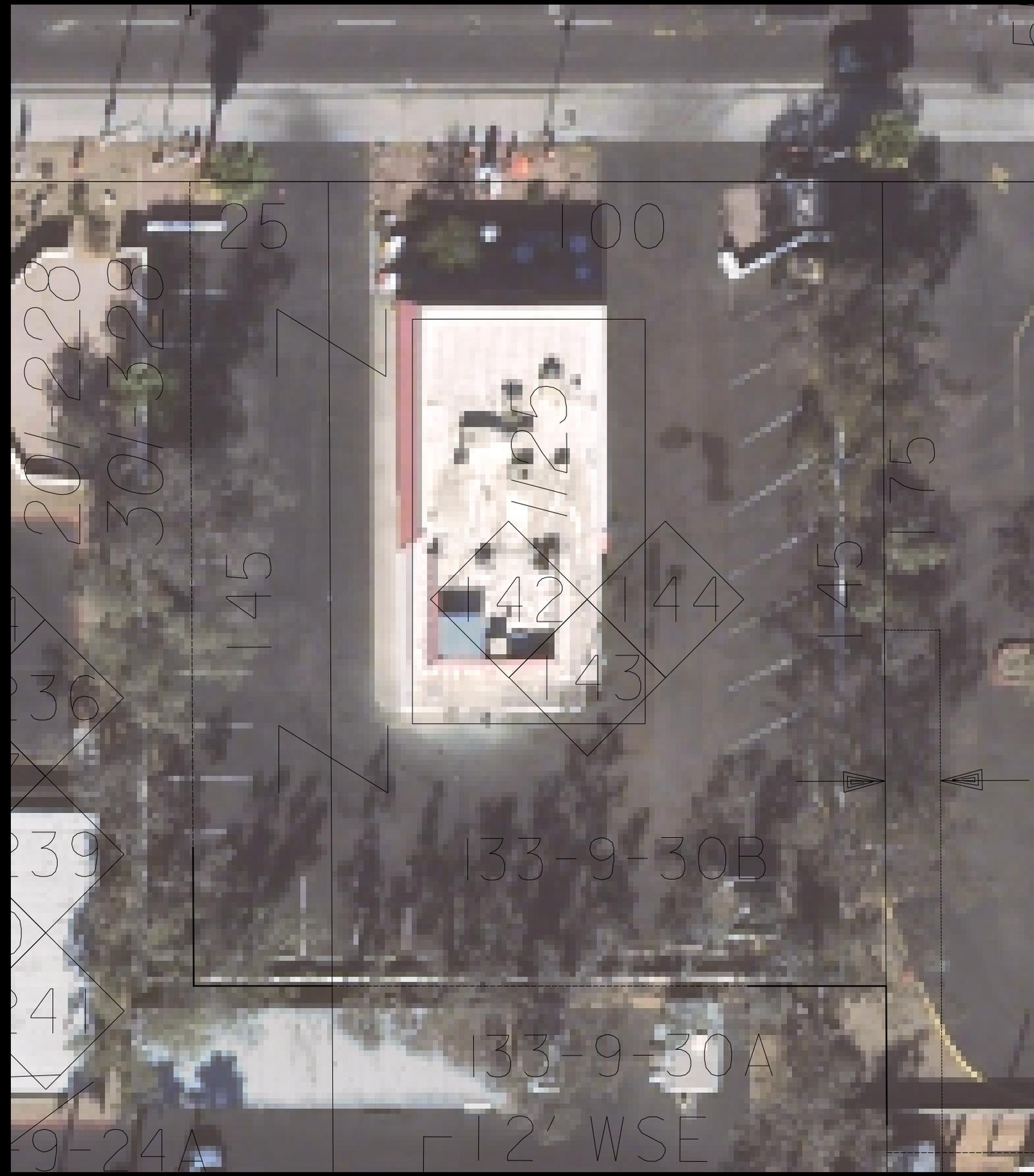
Part 6, Chapter 3, Section 6-308 – Use Permit

Part 6, Chapter 3, Section 6-313 – Security Plan

KING TUT CAFE

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 below the word "Sincerely,".

Magda Kassel



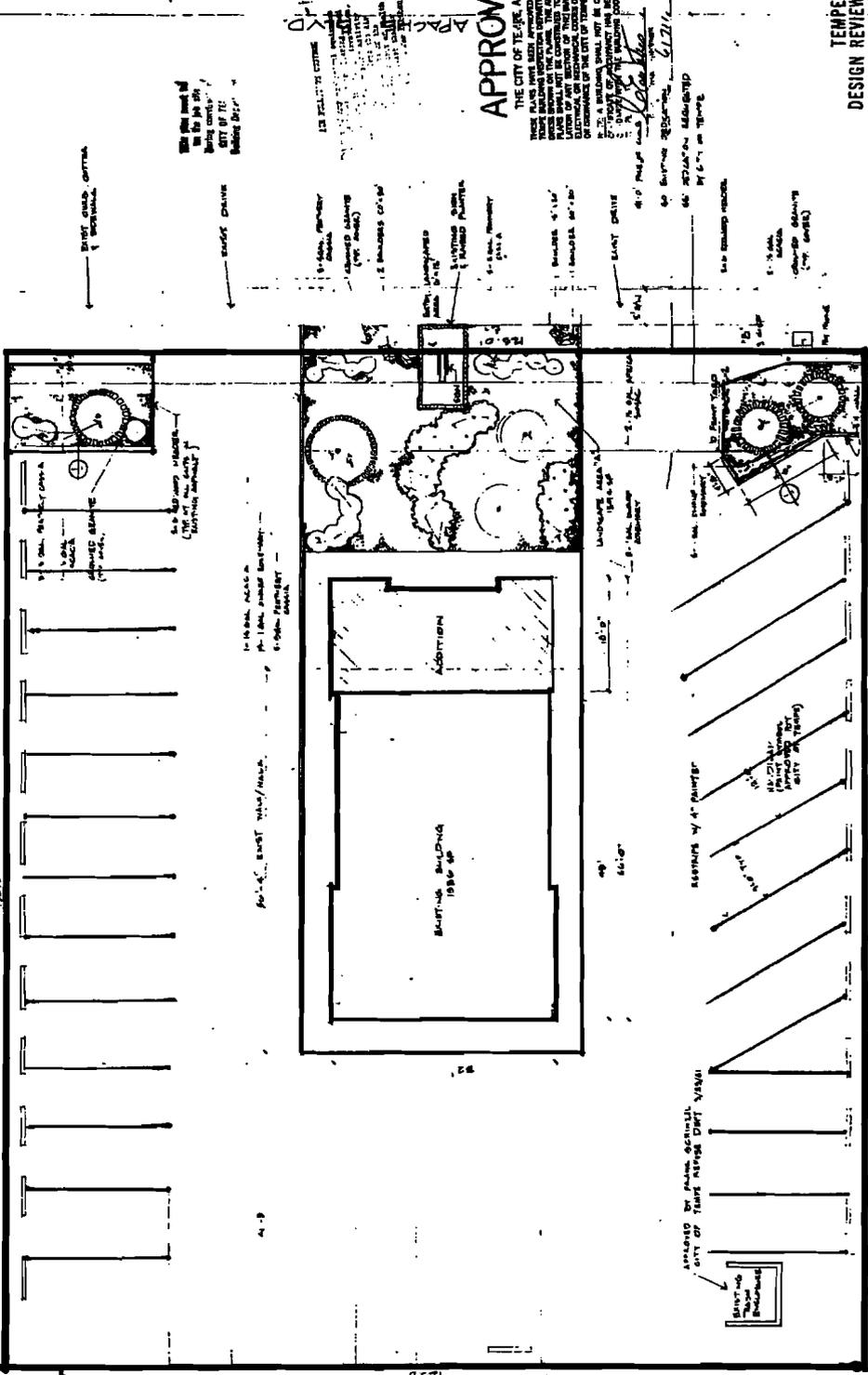
**APPROVED**  
THE CITY OF TEMPE, ARIZONA

THIS PLAN AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION OF THE BUILDING SHOWN ON THE PLAN, THE APPROVAL OF THE CITY ENGINEER IS HEREBY GRANTED ON THE CONDITION THAT THE APPLICANT SHALL COMPLY WITH ALL CITY ORDINANCES AND REGULATIONS IN CONNECTION WITH THE PROPOSED CONSTRUCTION OF THE BUILDING SHOWN ON THE PLAN. THE CITY ENGINEER SHALL NOT BE RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF THE BUILDING OR FOR THE SAFETY OF THE BUILDING OR FOR THE SAFETY OF THE PERSONS OR PROPERTY OF ANY PARTY.

TEMPE  
DESIGN REVIEW BOARD  
APPROVED

THIS APPROVAL IS BASED ON THE INFORMATION PROVIDED TO THE CITY ENGINEER AND IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED. THE CITY ENGINEER SHALL NOT BE RESPONSIBLE FOR THE DESIGN OR CONSTRUCTION OF THE BUILDING OR FOR THE SAFETY OF THE BUILDING OR FOR THE SAFETY OF THE PERSONS OR PROPERTY OF ANY PARTY.

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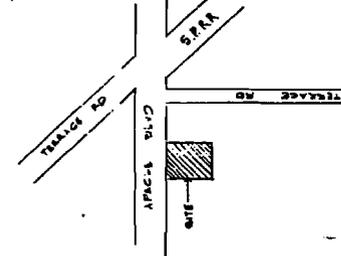
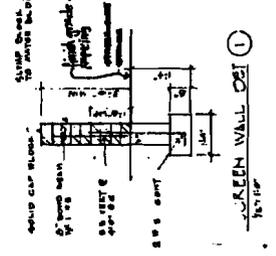


SITE PLAN

NOTE:  
SUBMIT INSULATION PLAN TO CITY OF TEMPE  
PLUMBING DEPT FOR APPROVAL PRIOR TO INSTALLATION

**PLANT SCHEDULE**

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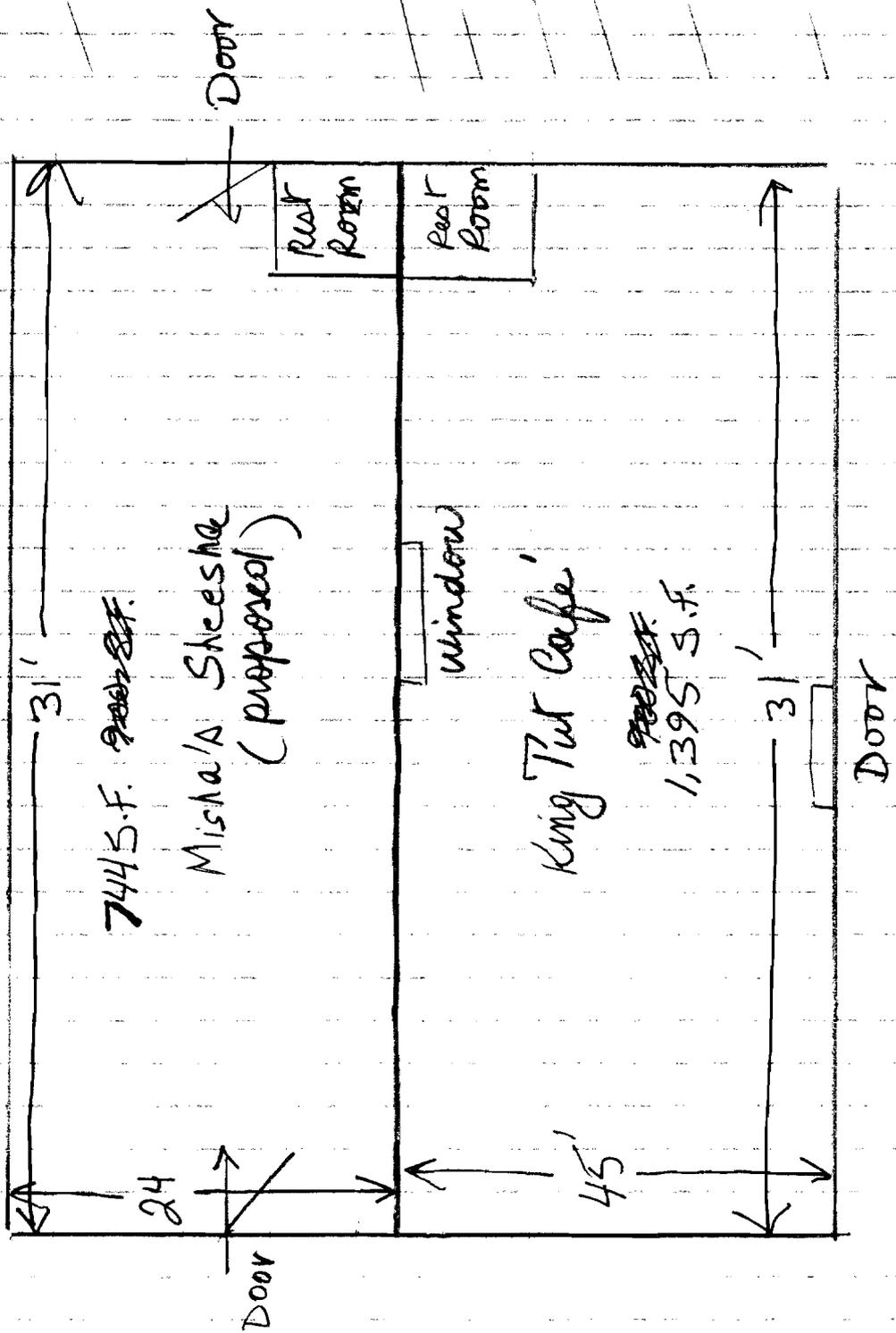
**PROJECT DATA**

OWNER: 1875 S. AMER. BLVD.	PARCEL: 200' x 175' W/200' x 200'
PROJECT: 1936-37	PERMITS: 1936-37
DATE: 1/15/00	SCALE: 1/4" = 1'-0"
DESIGNED BY: [Signature]	CHECKED BY: [Signature]
APPROVED BY: [Signature]	CITY OF TEMPE

↑ N

APACHE BLVD

PATIO



Development Services  
Department

480-350-8331

April 3, 2008

Ms. Magda Kassel  
Kassel Corporation  
8806 South Shannon Drive  
Tempe, Arizona 85284

FILE COPY

RE: **KING TUT CAFE – HOOKAH LOUNGE**  
1125 East Apache Boulevard  
PL080122 / DS080369 / DSM08015

Dear Ms. Kassel:

I have reviewed your request for a Zoning Administrator's opinion as whether an application for a use permit to allow a hookah lounge at the King Tut Cafe located at 1125 East Apache Boulevard in the CSS, Commercial Shopping and Services District can be accepted. Given the supporting evidence that shows the hookah use existed prior to the separation requirement becoming effective, you are able to apply for a use permit to allow a Hookah Lounge/Tobacco Retailer at this location.

The City of Tempe Zoning and Development Code, Part 3, Land Use, Section 3-423 states:

'Tobacco Retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education. Instructional or vocational schools are excluded from the separation agreement.'

Your check number 3622 in the amount of \$372.00 has been applied toward a use permit fee of \$1065.00. Please submit the balance of \$693.00 along with the remaining project submittal items when applying for your use permit (i.e. 300 ft. radius map, typed mail labels, site plan, floor plan, letter of intent and signed letter of approval from the property owner).

If you need additional information or assistance, please contact Shawn Daffara, staff planner, at 480-858-2284.

Sincerely,



Lisa Collins  
Planning Director

LC/dm

cc: Kay Savard/COT Tax & Licensing  
Dean Miller/COT Commercial Code Department  
File



# **KING TUT CAFÉ – MISHA'S SHEESHAS**

**1125 E APACHE BLVD**

**PL080122**

**FRONT OF BUSINESS**