

**CITY OF TEMPE
HEARING OFFICER**

**Meeting Date: 07/01/2014
Agenda Item: 2**

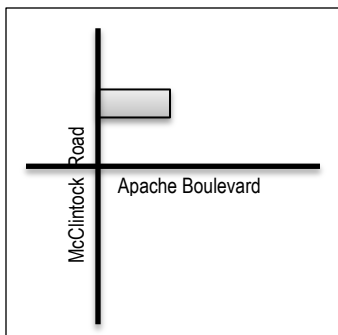
ACTION: Request approval for a Use Permit for a Tobacco Retailer (Hookah Lounge) for DEVIL’S APPLE, located at 1219 S McClintock Drive. The applicant is Mohannad Maleh.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approval, subject to conditions

BACKGROUND INFORMATION: DEVIL’S APPLE (PL140177) is proposed to be located in a vacant building in the Commercial Shopping and Service district, within the Transportation Overlay District Station Area. The business would be one suite within the building, with two other suites to be utilized by other tenants in the future. There are no existing uses on site. The property is located on the east side of McClintock Drive, just north of Apache Boulevard. The request includes the following:

ZUP14058 Use Permit to allow a Tobacco Retailer (Hookah Lounge).



Property Owner	Thomas Gorman
Applicant	Mohannad Maleh, Hi-Life Smoke 'N Lounge LLC
Zoning District	CSS Commercial Shopping and Service
Lot Size	.95 acres
Building Size/ Suite Size	4,379 s.f. / 1,447 s.f.
Parking Required/Provided	6 spaces for this use, other uses not yet determined
Bike Parking Required/Provided	2 spaces
Hours of Operation	6pm to 2am Sunday through Saturday
Occupancy	No more than 49 people (staff & patrons)

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Diana Kaminski, Senior Planner (480) 858-2391

Department Director: Dave Nakagawara, Community Development Director
 Legal review by: N/A
 Prepared by: Diana Kaminski, Senior Planner
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

The site is located on the east side of McClintock Drive, south of a multi-family community, north of a check cashing center, a bar, an adult book store and a motel, and west of a vacant lot and trailer park. The site complies with the separation requirements from Tobacco Retail uses; there are no schools identified within the immediate area. The proposed Devil's Apple Hookah Lounge would be located in a new suite accessed by doors on the south side of the building. The two suites facing west towards the parking area and street front are vacant. The hookah lounge would have a patio located to the north of the suite, facing the north side of the site. An existing building addition and walled storage yard were covered with roofing material in 2002, and were not permitted. These spaces will be corrected to comply with building code, and the site will be secured per requirements of a security plan. The property owner is working to upgrade landscaping on the property to enhance the street front appearance of the site. The applicant is planning to start tenant improvements over the summer, in order to open early this fall.

PUBLIC INPUT

No public input was received at the completion of this report.

POLICE INPUT

The property has been vacant for some time, activating the site with uses will help deter loitering, camping, trespassing and graffiti from occurring on the lot. The south property must be secured with a fence or a wall to separate this property from the lots to the south to control access for the security of employees and patrons of the business. A security plan will be required for the Hookah Lounge, which may require additional site improvements for crime prevention.

USE PERMIT

The proposed use requires a Use Permit, to allow a Tobacco Retailer (Hookah Lounge) within the CSS Commercial Shopping and Service zoning district. The applicant has provided a letter of intent describing the business and how the criteria for a use permit would be met. Below is staff analysis of this request.

Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic.* The site has a relatively small building and the suite is one of three suites within the 4,479 square foot building. The site formerly functioned for a plumbing business, and later as a scooter retail store. The proposed hookah use is parked as a retail use, similar to the other retail uses, only requiring 6 parking spaces and 2 bike parking spaces. The site is within the Transportation Overlay District and may benefit from ridership from both light rail and Orbit bus users. The maximum occupancy of the suite is 49 people, which, combined with other uses on the site, could generate more traffic than prior uses on site. The property fronts a major arterial with no on-street parking. If parking becomes an issue, the vacant portion of the lot to the east would be required to be developed when the other uses were determined. The lot is required to install a fence or wall along the south property, to restrict vehicular and pedestrian traffic from the businesses to the south. All traffic to and from this site will enter and exit onto McClintock Drive.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.* The hookah lounge is primarily an indoor use, with a small patio on the north side of the suite, which has walls on four sides. Smoke from the patio would not impact other tenants on site, and is buffered from adjacent uses. The nearest residential building is approximately 115 feet to the north, an existing apartment community. Noise may echo from the walls surrounding the patio, and will be required to be controlled to comply with the noise ordinance. There is no live entertainment proposed with the use.
3. *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 existing building is vacant, and has had a steady decline in maintenance over the years. The proposed use would require significant investment in the property to meet building code

requirements, facilitating a rehabilitation of the site and activating the property with legitimate uses. The proposed hookah lounge will be open in the evening hours, providing more activity in the area and reducing activities associated with vacant properties.

4. *Compatibility with existing surrounding structures and uses.* The property has multi-family residences to the north and west (across McClintock), a check cashing store, Tempe Tavern, Modern World adult store and Paradise Motel to the south. The proposed hookah lounge is a similar and compatible use to the existing uses within the immediate area. There are many hookah lounges along Apache Boulevard. There are no schools within the immediate vicinity. The building is compatible with surrounding structures.
5. *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 not demonstrated prior business experience with this use, but will be implementing a security plan with the police department. The applicant requested hours of operation until 4am on weekends, however, all prior use permits for tobacco retailers have followed the standard hours of operation ending at 2am, like other lounges, bars or restaurants. Staff is recommending conformance with the 2am closing requirement for consistent application of existing regulations.

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.

Conclusion

Based on the information provided by the applicant and the above analysis, staff recommends approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

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.
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.
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, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. No outdoor live entertainment or outdoor speakers shall be allowed.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before August 1, 2014.
7. Live entertainment requires a separate Use Permit.
8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
9. Hours of operation to end no later than 2 am on a daily basis.

10. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
11. The property owner shall replace all dead or missing trees and landscape material and restore irrigation for ongoing maintenance of the landscape.
12. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
13. Provide bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
14. Provide a 6' masonry wall or steel picket fence on the south side of property, chain link is not allowed.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for DEVIL'S APPLE and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/planning/documents.htm or purchase from Development Services.
- **SITE PLAN REVIEW:** Verify all comments by the Public Works Department, Development Services Department, and Fire Department given on the Preliminary Site Plan Reviews dated (**insert dates**). If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Department will be reviewed by planning staff to ensure consistency with this Design Review approval prior to issuance of building permits.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- Any intensification or expansion of use, including shall require a new Use Permit.
- 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 use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
- The owner/management shall adhere to the City Adopted International Mechanical Code.
- The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
- The use shall not violate the City of Tempe Noise Ordinance.

HISTORY & FACTS:

- 1940s-1970s According to Historic Aerial Maps of the Flood Control District of Maricopa County, this site was agricultural, and included structures for several decades until the existing building was built in the 1970s.

- June 16, 1980 A Building Permit was issued for a 1,800 s.f. warehouse, B-2 construction. Subsequent additions and modifications were made to the structure, some with permits others without permits.

- June 2014 The property owner was notified that the site is not in compliance with landscape and maintenance requirements. Code enforcement and Planning staff are working with the property owner's representative to address site deficiencies in a timely manner.

**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

- Section 6-308 Use Permit
- Table 3-202 A. Permitted Land Uses – Commercial
- Section 3-423 C. Use Separation Requirements for Tobacco Retailer



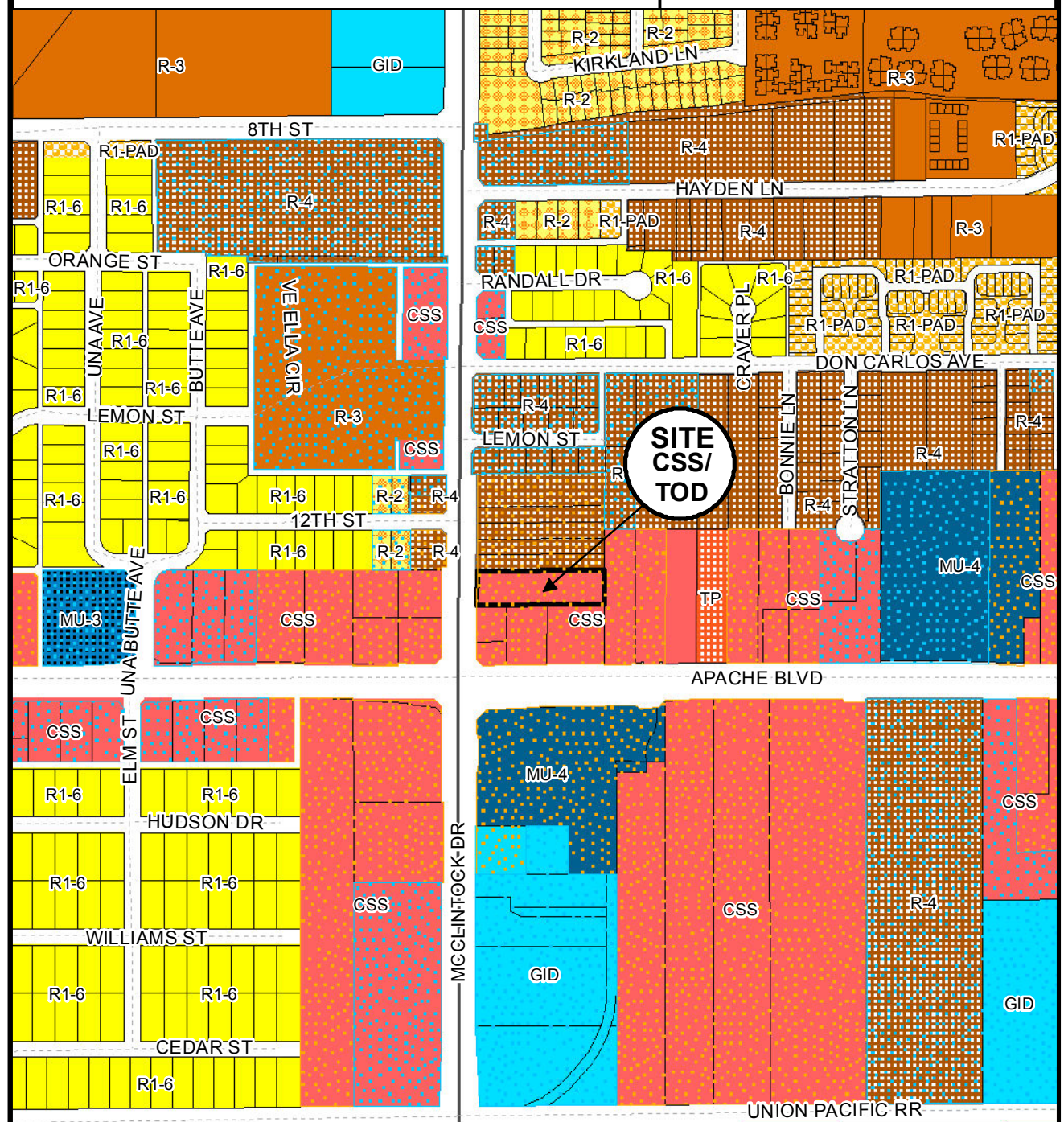
DEVELOPMENT PROJECT FILE
for
DEVIL'S APPLE HOOKAH LOUNGE

ATTACHMENTS:

1. Location Map
2. Aerial
3. Letter of Explanation
4. Site Plan
5. Floor Plan
6. Elevations
- 7-10. Site Context Photographs

DEVIL'S APPLE

PL140177



Location Map

DEVIL'S APPLE

PL140177



Aerial Map

DEVIL APPLE HOOKAH LOUNGE
1219 SOUTH MCCLINTOCK DR.
TEMPE, ARIZONA 85281

TO:
CITY OF TEMPE
COMMUNITY DEVELOPMENT PLANNING
31 EAST 5TH STREET
TEMPE, ARIZONA

RE:
LETTER OF EXPLANATION

This submittal is for the consideration of a USE PERMIT for a DEVIL APPLE HOOKAH LOUNGE. The lounge will be for the express purpose of hookah smoking. No alcohol is to be served with only a beverage service of soft drinks, coffee and tea. All codes, requirements and restrictions will be adhered to in the lounge and on the patio as regards smoking.

Hours of operation: M-Sun: 6PM - 2AM

The intended use gives the community a new place for smoking hookah and relaxation. There will be TV's for entertainment and music will be solely by sound system. No live music will be presented. Being a small lounge adds to the limits for customer satisfaction as well as not creating a traffic problem because of limited capacity. Required parking is provided.

Because of the nature of hookah being primarily vapor, hookah smoking whether indoors or out on the patio presents very little in the way of pollutants or odors, thus making it a very low impact recreation.

This building has been sitting un-leased for some time and has fallen in disrepair. I, along with the landlord, will be improving the property considerably for the benefit of the surrounding community as well as for the enjoyment of future customers. The long range plan for the property will bring quite the upscale business to the area and promote exposure to surrounding businesses. In this respect, it will be meeting and exceeding the long term goals of the city and its population.

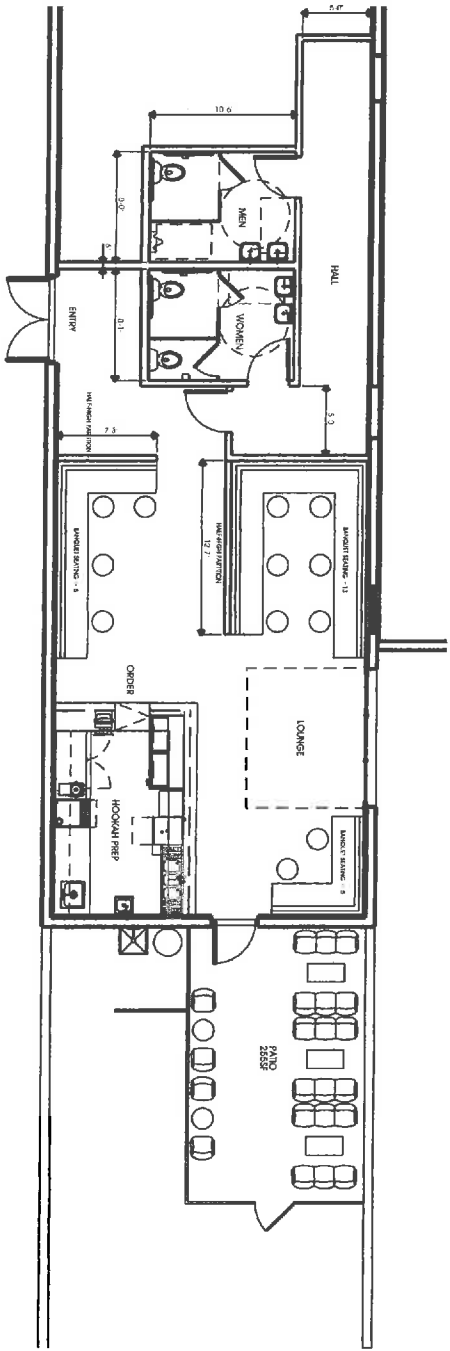
Along with improving the property and the surrounding businesses I intends to bring other business to bear on the building thus providing multiple sources of enjoyment for the local community. Far exceeding the original intent for office, it will contain other forms of service such as a coffee shop and pizza restaurant long term. This is the first phase of improvement for the benefit of the community as well as creating jobs for the area. I live in the area and look forward to building a successful and developing business.

Sincerely,



Ned Maleh
Devil Apple Hookah Lounge
Owner

ARCHITECTURAL FLOOR PLAN



SCALE: 1/8" = 1'-0"

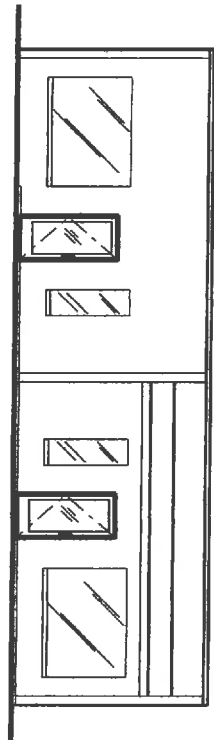
KEYNOTES



	<p>STUDIO TRAZO</p> <p>TRAZO ARCHITECTURAL STUDIO 1117 EAST RICHMOND STREET PHOENIX, AZ 85014 PH: 602.253.5500</p>	<p>DEVIL APPLE HOOCAH LOUNGE 1219 SOUTH MCCLINTOCK DR TEMPE, ARIZONA</p>	<p>PROJECT NO. 17-001 DATE: 08-17-14 SCALE: AS SHOWN SHEET: A1.0</p>
	<p>ARCHITECTURAL FLOOR PLAN</p>	<p>DATE: 08-17-14 SCALE: AS SHOWN SHEET: A1.0</p>	<p>PROJECT NO. 17-001 DATE: 08-17-14 SCALE: AS SHOWN SHEET: A1.0</p>

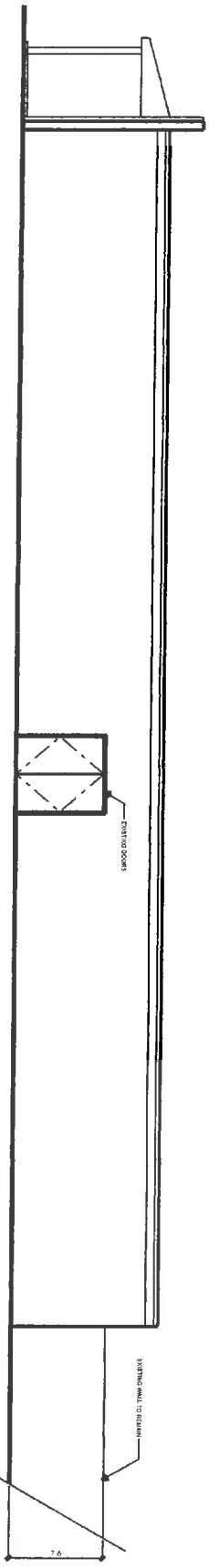
WEST ELEVATION - EXISTING

1/4" = 1'-0"



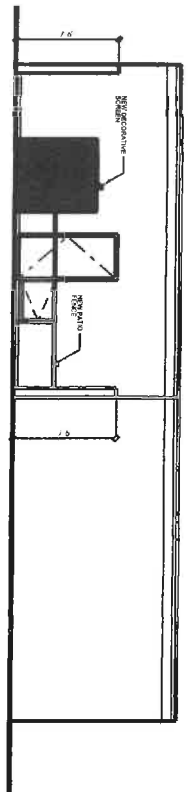
SOUTH ELEVATION - EXISTING

1/4" = 1'-0"



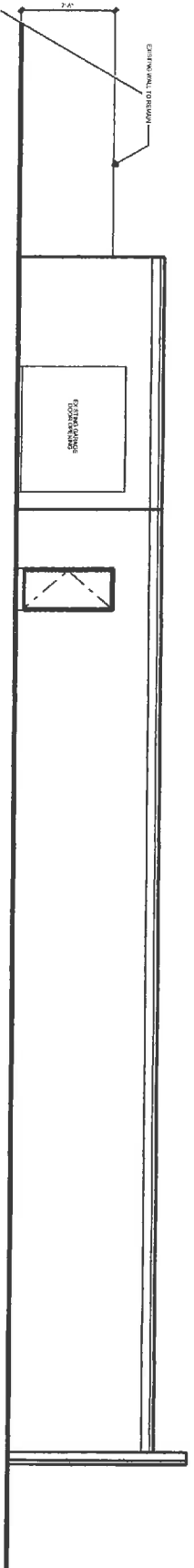
EAST ELEVATION

1/4" = 1'-0"



NORTH ELEVATION - EXISTING

1/4" = 1'-0"



STEVEN R. IRAZO
 REGISTERED PROFESSIONAL ENGINEER
 STATE OF ARIZONA
 LICENSE NO. 12345
 EXPIRES 12/31/2024

DEVIL APPLE
 HOOKAH LOUNGE
 1219 SOUTH MCCLINTOCK DR
 TEMPE, ARIZONA

DATE	1/15/2024
BY	SR
PROJECT	DEVIL APPLE HOOKAH LOUNGE
NO.	001
SCALE	AS SHOWN
PROJECT NO.	24-001
DATE	01/15/24
BY	SR
PROJECT	DEVIL APPLE HOOKAH LOUNGE
NO.	001
SCALE	AS SHOWN
PROJECT NO.	24-001
DATE	01/15/24
BY	SR

A2.0

Devil Apple—1219 S McClintock Dr, Tempe, AZ



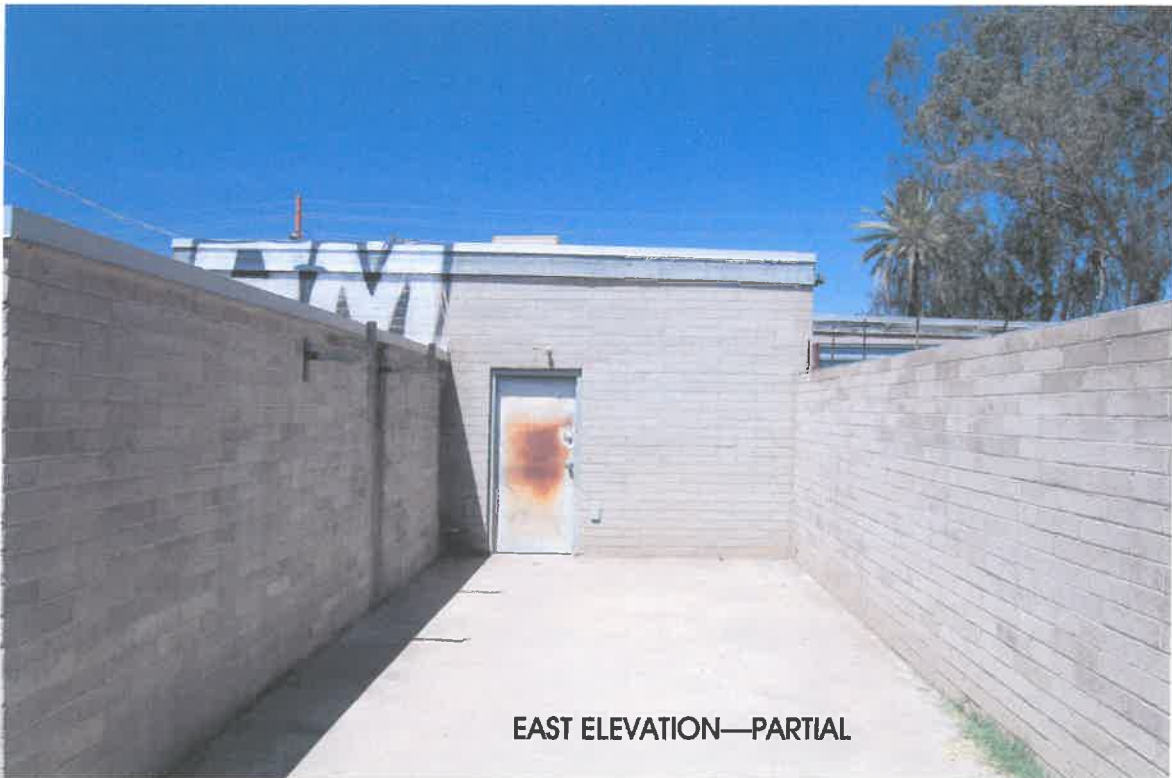
EAST ELEVATION—PARTIAL



EAST ELEVATION

Devil Apple—1219 S McClintock Dr, Tempe, AZ

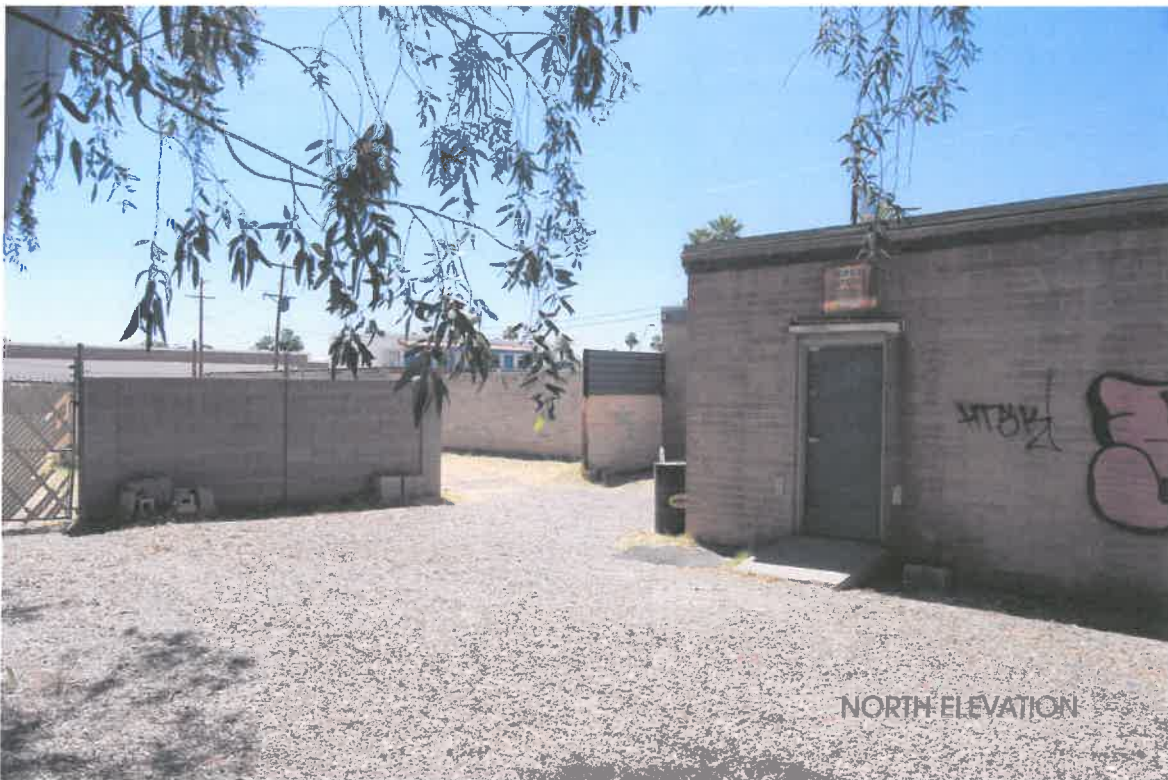
NORTH ELEVATION



EAST ELEVATION—PARTIAL

Devil Apple—1219 S McClintock Dr, Tempe, AZ

NORTH ELEVATION



NORTH ELEVATION

Devil Apple—1219 S McClintock Dr, Tempe, AZ

WEST ELEVATION



SOUTH ELEVATION

