

**CITY OF TEMPE  
HEARING OFFICER**

**Meeting Date: 09/16/2014  
Agenda Item: 10**

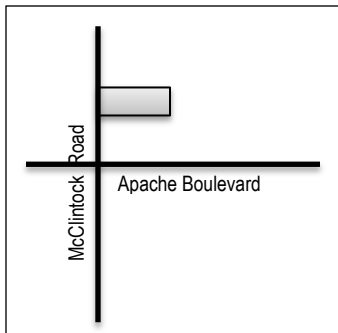
**ACTION:** Request approval for a Use Permit for a Tobacco Retailer (Hookah Lounge) for DEVIL APPLE, located at 1219 S McClintock Drive. The applicant is Mohannad Maleh.

**FISCAL IMPACT:** N/A

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

**BACKGROUND INFORMATION:** DEVIL 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):** Bill Kersbergen, Senior Transportation Planner (480) 350-8839

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

## COMMENTS

This is a new Use permit application. Since the first Use permit was approved on July 1, 2014, the applicant has been able to secure a suite at the front of the building. This is not an intensification, or expansion of the original approval, but the new location is significantly different from the prior application. This new location does not present the same concerns as the earlier location. There were specific conditions of the previous approval which do not apply to this new application. A new approval process will allow for the revised floor plan to be used, along with new conditions of approval.

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 1320 feet. The proposed Devil's Apple Hookah Lounge would be located in an existing suite accessed by doors on the west side of the building, where storefront glazing allows visibility into the suite and visibility on the parking lot from the inside. The adjacent suite facing west towards the parking area and street front will remain vacant. The hookah lounge would have access to an enclosed service yard located to the east, surrounded by 8'-0" high walls. The charcoal grill, used for hookahpreparation, will be located in this service yard. 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 has submitted construction documents to the Building Safety Division for building permits based on this new layout. 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 previous comment regarding access control along the southern property line is less of a concern, because the entrance is directly from the parking lot at the west. 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 was previously required to install a butterfly gate to restrict vehicular and 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. The charcoal grill will be located in a service yard to the east. Smoke from the rear service area 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 service yard, 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 October 16, 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.

#### **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](http://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. 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.
  
- July 1, 2014             A Use permit was granted for Hookah lounge, with 16 conditions of approval.

**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



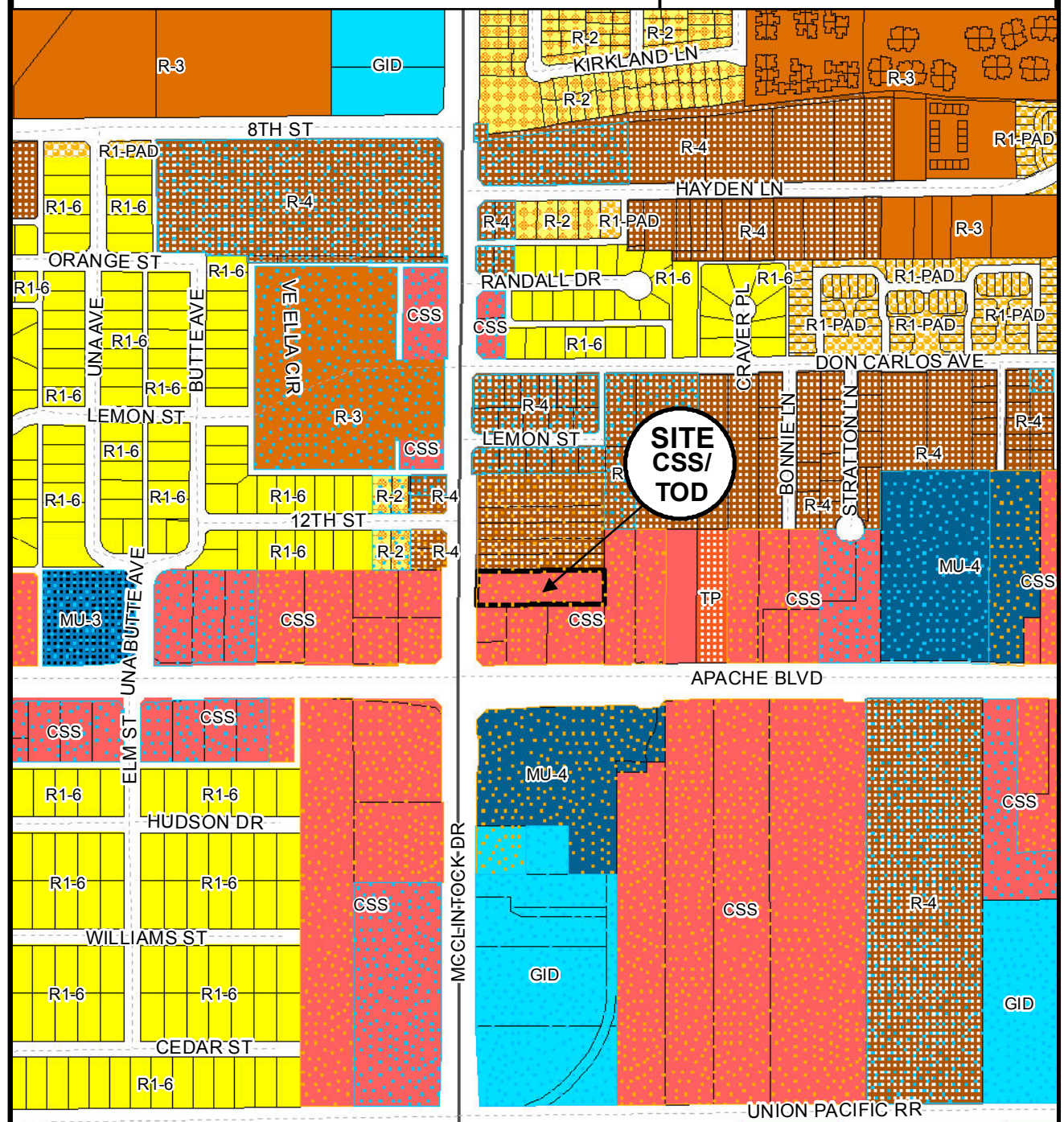
**DEVELOPMENT PROJECT FILE**  
for  
**DEVIL'S APPLE HOOKAH LOUNGE**

**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

We are resubmitting Devil Apple Hookah Lounge for Use consideration as the interior space configuration has been change from the original approved plans.

The floor plan of this project was changed per the recommendations and feedback received from the City of Tempe's staff. The new plan will establish the front of the building (facing McClintock DR) as the location for the Smoking Lounge area and Exterior Entry to the space instead as in the original plan which located the Smoking Lounge and Exterior Entry in the central portion of the tenant space along the south side of the building and southern property line. The new plan provides clear visibility through the glass entry door as well as two front windows (facing McClintock DR). The new plan will increase activity support and natural surveillance.

Ned Maleh  
Devil Apple Hookah Lounge  
Owner

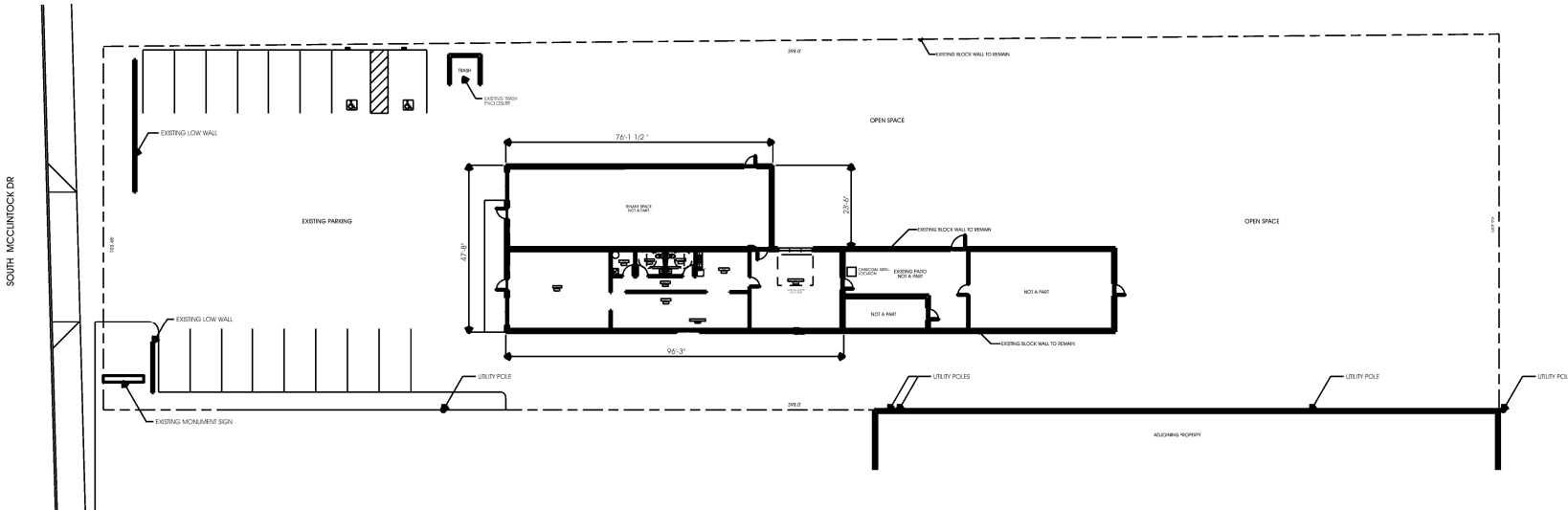
SITE PLAN

SCALE: 1" = 20'-0"

PROJECT DATA

PROJECT NAME: DEVIL APPLE HOOKAH LOUNGE  
 PROJECT ADDRESS: 1219 SOUTH MCCLENNOCK DR TEMPE, ARIZONA  
 OWNER: THOMAS DAVID GORMAN  
 ZONING: C2S  
 OCCUPANCY: B  
 USE: LOUNGE  
 SECTION/TOWNSHIP: 24 1N 4E  
 NET SITE AREA: 41,948SF  
 FLOOR AREA RATIO: 10.4%  
 PARCEL I.D.: 132-6A-021  
 GROSS FLOOR AREA: 1,240SF  
 PATIO AREA: 255SF  
 CONSTRUCTION TYPE: B.A.  
 SPRINKLERED: NON-SPRINKLERED

PARKING BUILDING: TOTAL BLDG AREA = 4,379SF  
 BLDG PARKING REQ'D (1,240/300) = 4 SPACES  
 TOTAL PARKING REQUIRED = 5 SPACES  
 TOTAL PARKING PROVIDED = 16 SPACES  
 ACCESSIBLE PARKING REQ'D = 1 SPACE  
 ACCESSIBLE PARKING PROVIDED = 2 SPACE



NOTES

1. ALL SIGNS REQUIRE SEPARATE PERMITS AND APPROVALS.
2. NO EXTERIOR VENDING OR DISPLAY SHALL BE ALLOWED
3. ALL EXTERIOR MECHANICAL, UTILITY AND COMMUNICATION EQUIPMENT SHALL BE SCREENED TO THE HEIGHT OF THE TALLEST UNIT BY A PARAPET OR SCREEN WALL THAT MATCHES THE ARCHITECTURAL COLOR AND FINISH OF THE BUILDING. GROUND MOUNTED MECHANICAL, UTILITY AND COMMUNICATION EQUIPMENT SHALL BE SCREENED BY A SCREEN WALL THAT MATCHES THE ARCHITECTURAL COLOR AND FINISH OF THE BUILDING AND WHICH IS 1'-0" HIGHER THAN THE HIGHEST POINT OF THE TALLEST UNIT. DETAIL REQUIRED. NO ABOVE DESCRIBED UNITS SHALL BE INSTALLED OR PERMITTED WITH THIS APPROVAL.
4. ALL EQUIPMENT, UTILITIES OR APPURTENANCES ATTACHED TO THIS BUILDING SHALL BE AN INTEGRAL PART OF THE BUILDING DESIGN IN TERMS OF FORM, COLOR AND TEXTURE.
5. OUTDOOR SEATING SHALL REQUIRE SEPARATE SUBMITTAL AND APPROVAL BY CITY
6. ALL EXTERIOR LIGHTING SHALL MATCH EXISTING CENTER FIXTURE TYPES.



1115 W MCCLENNOCK DR, SUITE 4  
 PHOENIX, AZ 85027  
 PHOENIX (602) 968-5008



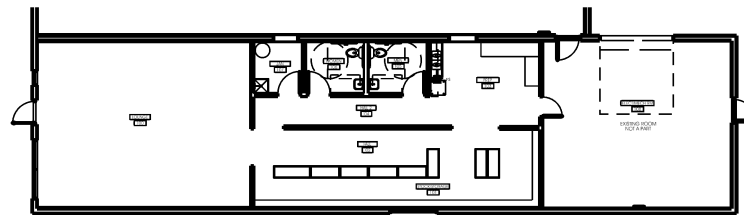
EXPIRES: 09-31-15

DEVIL APPLE  
 HOOKAH LOUNGE  
 1219 SOUTH MCCLENNOCK DR, SUITE A  
 TEMPE, ARIZONA

Design	Red
Progress	Blue
Construction	Green
Submitted	Yellow
Record	Purple

Project No.	SITE PLAN
Date	08-14-14
Project Number	14-51-200
Drawn By	JGE
Checked By	GRM
Sheet Number	

SP1.0



STUDIO  
**ITRAZO**

Interior Architecture - Design  
1115 W. McDowell Dr., Suite 4  
Phoenix, AZ 80033  
Phone: 602.258.5000

In Seal: ITRAZO, completed the design services for the project described herein and is not responsible for any errors or omissions in the construction documents. The seal is not to be used for any other project without the written consent of the Board of Architects for the State of Arizona.



EXPIRES: 09-31-15

**DEVIL APPLE**  
**HOOKAH LOUNGE**  
1219 SOUTH MCCLEINTOCK DR., SUITE A  
TEMPE, ARIZONA

Legend:  
Design: [ ] Design, [ ] Progress, [ ] On Submittal  
Bid Construction: [ ] Bid, [ ] Construction  
Record: [ ] Record

Revisions table with columns for Description, Date, and Author.

Architect: ITRAZO

Project Name: ARCHITECTURAL FLOOR PLAN

Date: 07-27-14

Project Number: 14-51-200

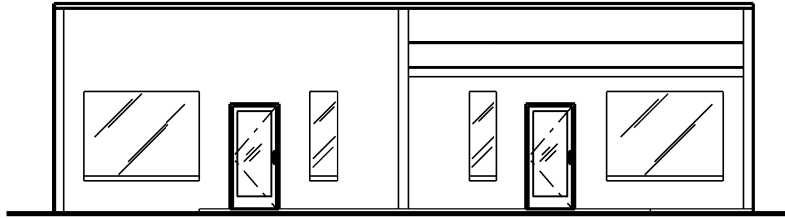
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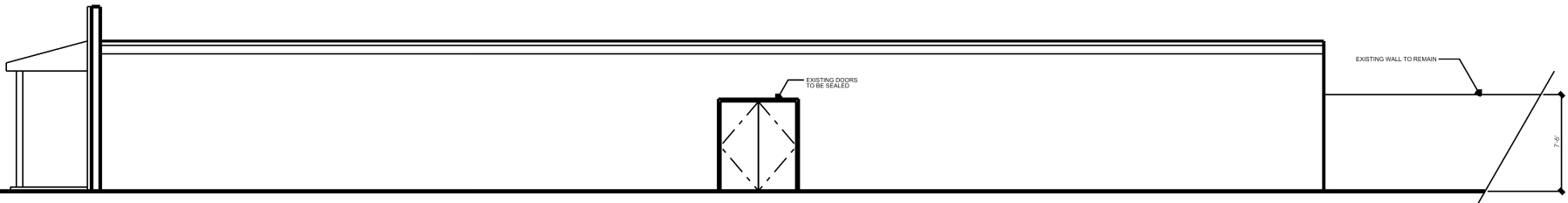
WEST ELEVATION - EXISTING

1/4" = 1'-0"



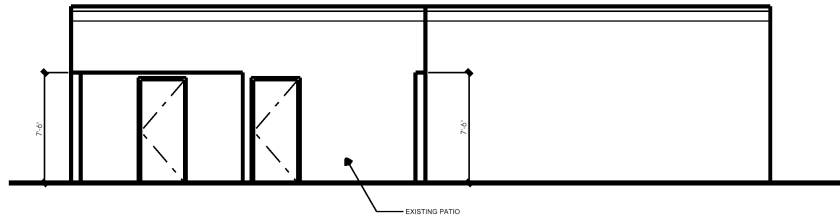
SOUTH ELEVATION - EXISTING

1/4" = 1'-0"



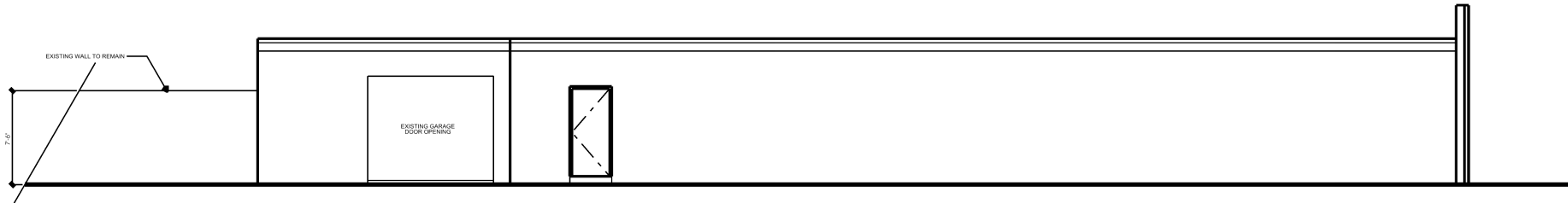
EAST ELEVATION

1/4" = 1'-0"



NORTH ELEVATION - EXISTING

1/4" = 1'-0"



studio  
**TRAZO**  
Interior Architecture - Design  
1115 W. McDowell Dr., Suite 4  
Phoenix, AZ 85027  
Phone: 602.998.5008

13588  
G. RICHARD  
MCGEE  
EXPIRES: 09-31-15

**DEVIL APPLE**  
HOOKAH LOUNGE  
1219 SOUTH MCCLEINTOCK DR., SUITE A  
TEMPE, ARIZONA

Design	Rev
Progress	Construction
On Submittal	Record

Project Name	ELEVATIONS
Date	08-14-14
Project Number	14-51-200
Drawn By	JGE
Checked By	GRM
Sheet Number	A2.0

Devil Apple—1219 S McClintock Dr, Tempe, AZ



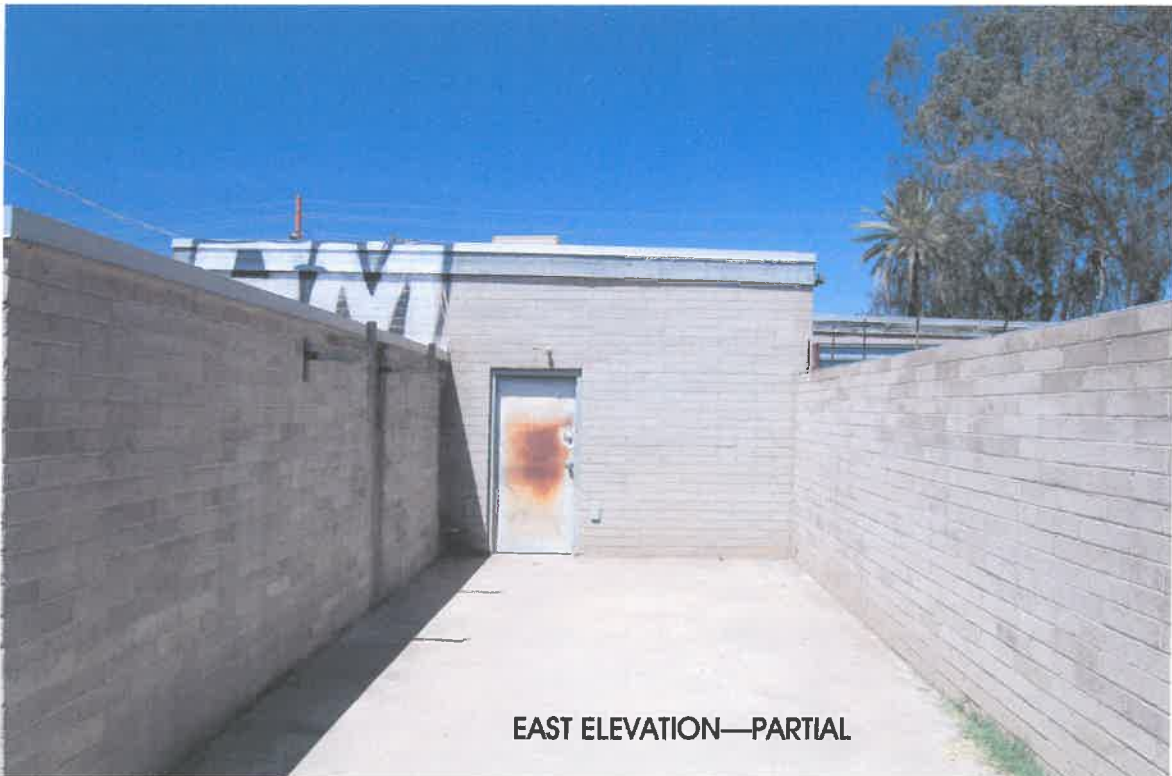
EAST ELEVATION—PARTIAL



EAST ELEVATION

Devil Apple—1219 S McClintock Dr, Tempe, AZ

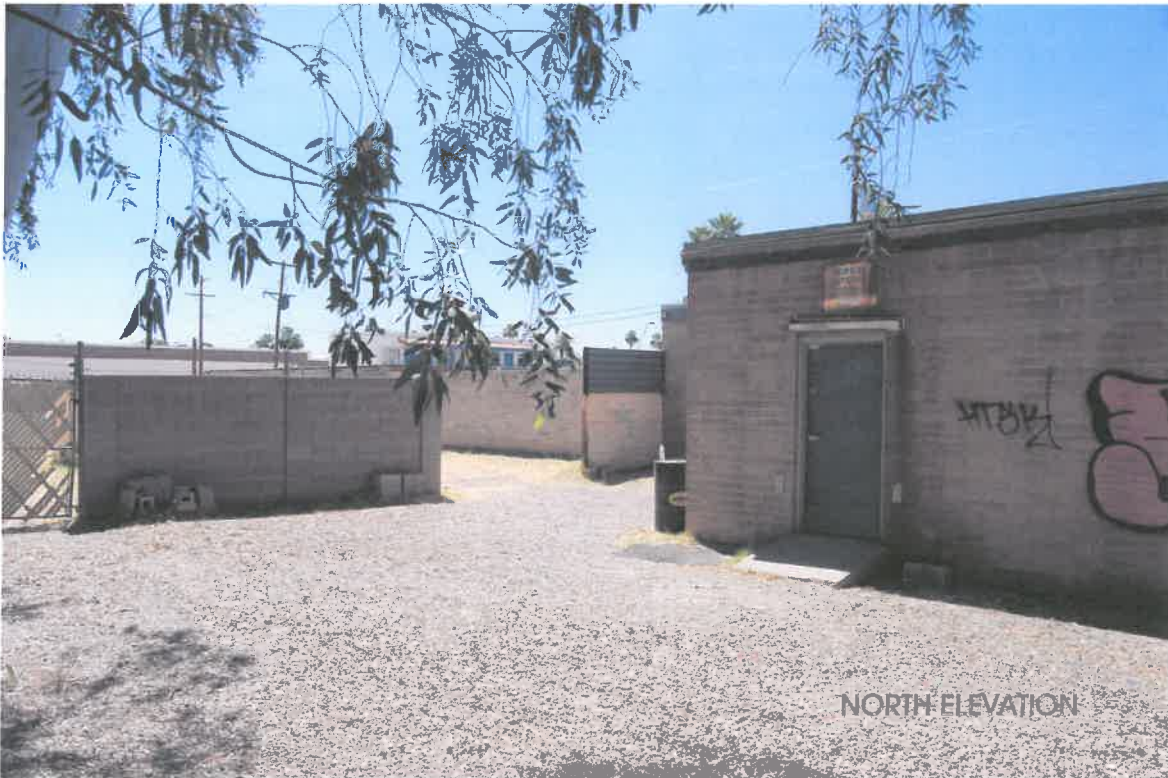
NORTH ELEVATION



EAST ELEVATION—PARTIAL

Devil Apple—1219 S McClintock Dr, Tempe, AZ

NORTH ELEVATION



Devil Apple—1219 S McClintock Dr, Tempe, AZ

WEST ELEVATION



SOUTH ELEVATION

