



MORGANTOWN BOARD OF ZONING APPEALS

June 19, 2013
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
George Papandreas
Jim Shaffer
Tom Shamberger

STAFF REPORT

CASE NO: CU13-11 / William L. Smith / 1616 Earl Core Road

REQUEST and LOCATION:

Request by William L. Smith, Jr. for conditional use approval of a "Farmers Market" / "Outdoor Flea Market" use in the B-2 District at 1616 Earl Core Road

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 32, Parcel 36; B-2, Service Business District

SURROUNDING ZONING:

B-2, Service Business District

BACKGROUND and ANALYSIS:

The petitioner seeks to establish a "Farmer's Market" / "Outdoor Flea Market" use in the parking area of the *Smitty's Kountry Kitchen* establishment. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 provides the following related definition:

"FARMER'S MARKET – The offering for sale of fresh agricultural products directly to the consumer at an open-air market designated as a community activity."

"FLEA MARKET – An occasional or periodic market held in an open area or structure where goods are offered for sale to the general public by individual sellers from open or semi-open facilities or temporary structures. Flea markets shall not be construed to be Farmers Markets."

"OUTDOOR FLEA MARKET – The principal use of land as an open-air market for secondhand articles and/or antiques."

According to Table 1331.05.01 "Permitted Land Uses", "Farmer's Market" and "Outdoor Flea Market" uses require conditional use approval in the B-2 Service Business District.

Table 1365.04.01 provides the following minimum parking requirements:

Farmer's Market – 1 space per vendor plus 1 space per 200 sq. ft. of GFA

Outdoor Flea Market – 1 space per vendor plus 10 spaces per acre

No parking standard is provided for a "Flea Market" use.

The area outlined in red in the illustration below is approximately 4,240 square feet or 0.10 acres.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

Heather Dingman, AICP
Principal Planner

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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There are eleven (11) market parking spaces on the site. The petitioner indicates that there are four (4) spaces in addition to the marked spaces.

Based on the minimum parking standards, the “Farmer’s Market” use requires 21 parking spaces while the “Outdoor Flea Market” use requires 1 parking space for the subject area alone without including the number of vendors.

It appears that the significant difference between the two minimum parking standards assumes that a vendor at an “Outdoor Flea Market” will cover substantially more space than a vendor at a “Farmer’s Market” given the different types of products offered for exchange. Specifically, most “Farmer’s Market” vendors display produce and related items from the back of a pickup truck and/or small box trailer while most “Outdoor Flea Market” vendors display merchandise in such a way to allow customers to view, move around, and inspect goods in a more spacious manner.

Staff recommends that the Board address the Planning and Zoning Code’s minimum parking standard dilemma in context of the subject site’s layout and existing marked parking spaces by restricting the number of vendors to a reasonable number.

STAFF RECOMMENDATION:

The Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant.

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Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of CU13-11 with the following conditions:

1. That the hours of operation for the "Farmers' Market" / "Outdoor Flea Market" use approved herein may not coincide or overlap with the hours of operation for the *Smitty's Kountry Kitchen* establishment.
2. That no more than eight (8) vendors may be present at any given time during the hours of operation for the "Farmers' Market" / "Flea Market" conditional use approved herein.
3. That the conditional use granted herein is specific to the petitioner and may not be transferred without prior approval from the Board of Zoning Appeals.

Attachments: Application and accompanying exhibits

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Director

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STAFF REPORT ADDENDUM A
CU13-11 / William L. Smith / 1616 Earl L. Core Road





STAFF REPORT ADDENDUM B
CU 13-11 / William L. Smith / 1616 Earl L. Core Road

Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined)

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

~~Site use will be limited in the volume and time allowed. We have adequate parking and room.~~ The Board's conditions restricting the operational hours of the "Farmer's Market" / "Outdoor Flea Market" and restricting the number of vendors is intended to mitigate congestion that may be associated with the conditional use.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

~~There should be no hazardous products and the primary use will be farmers market and yard sale type use.~~ All related building and fire code provisions will be addressed as required by the Code Enforcement Division and the City Fire Marshal.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

~~Outside venue.~~ No permanent structure is proposed or necessary for the conditional "Farmer's Market" / "Outdoor Flea Market" use that would alter existing light distribution and air flow patterns within the general vicinity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

Site use will be limited and there is adequate space for parking and vendors, provided the Board's conditions are observed restricting the "Farmer's Market" / "Outdoor Flea Market" operational hours and the number of vendors. Additionally, no permanent structure is proposed or necessary for the occasional "Farmer's Market" / "Outdoor Flea Market" use that would result in increasing the mass, density, or intensity of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

People will generally be quick in and out and can move about easily, provided the Board's conditions are observed restricting the "Farmer's Market" / "Outdoor Flea Market" operational hours and the number of vendors. Additionally, a residential use is not proposed as a part of the conditional "Farmer's Market" / "Outdoor Flea Market" use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The nature of the conditional "Farmer's Market" / "Outdoor Flea Market" use does not appear to require public services and/or facilities that are not already available to and serving the site and general vicinity.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

Nothing will be changed or disturbed. No permanent structure is proposed or necessary for the conditional “Farmer’s Market” / “Outdoor Flea Market” use that would alter market values or commercial activity of adjacent buildings and uses. Additionally, the Board’s conditions restricting the operational hours of the “Farmer’s Market” / “Outdoor Flea Market” and restricting the number of vendors is intended to conserve existing normal, access, utilization, and enjoyment of adjoining properties.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

It is already a public venue and a very busy establishment. This is a very visible at one of Morgantown’s busiest intersections. The Board’s condition restricting the operational hours of the “Farmer’s Market” / “Outdoor Flea Market” is intended to safeguard the principal use of the subject site from overlay or encroachment from the occasional use. The subject site is located within a heavily traveled and vibrant commercial corridor with adjoining residential neighborhoods, all of which should serve to benefit from the occasional “Farmer’s Market” / “Outdoor Flea Market” use.



City of Morgantown, West Virginia

APPLICATION FOR TYPE IV SITE PLAN - CONDITIONAL USE

OFFICE USE	
CASE NO.	0413-11
RECEIVED:	5/13/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

I. APPLICANT						
Name:	William L Smith Jr	Phone:	304 241 5778			
Mailing Address:	1616 Earl L Core Rd	Mobile:	304 216 9315			
	Street					
	Morgantown, WV 26505	City	State	Zip	Email:	w.smith2663@gmail.com
II. AGENT / CONTACT INFORMATION						
Name:		Phone:				
Mailing Address:		Mobile:				
	Street					
	City	State	Zip	Email:		
Mailings -	Send all correspondence to (check one): <input checked="" type="checkbox"/> Applicant OR <input type="checkbox"/> Agent/Contact					
III. PROPERTY						
Owner:	Lessee - Smithy's Kountry Kreme ^{c/o William L Smith Jr}	Phone:	304 241 5778			
Mailing Address:	1616 Earl L Core Rd	Mobile:	304 216 9315			
	Street					
	Morgantown WV 26505	City	State	Zip	Email:	w.smith2663@gmail.com
IV. SITE						
Street Address (if assigned):		Tax Map #:	32	Parcel #:	31e (SA)	
Zoning:	B-2 Farmers Market					
Lot Dimensions:	Width:	Ft.	Depth:	Ft.	Square Footage:	ft. ²
Shape of Lot:	<input type="checkbox"/> Corner <input type="checkbox"/> Interior <input type="checkbox"/> Through <input type="checkbox"/> Flag <input type="checkbox"/> Irregular <input type="checkbox"/> Non-conforming					
Existing Use of Structure or Land:	Parking for ice cream/sandwich shop					
Proposed Use of Structure of Land:	Vendors selling produce, yard sale, Flea market items. Tables, Canopies, or set ups in the parking spaces and under canopy					

Finance Office
Morgantown, WV 26505
(304) 284-7488



APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE

OFFICE USE	
CASE NO.	CW13-11
RECEIVED:	_____
COMPLETE:	_____

V. STRUCTURE

Proposed Setbacks: Front: _____ ft. Rear: _____ ft. Side A: _____ ft. Side B: _____ ft.

Proposed Height of Structure: NA No. of Proposed Off-Street Parking Spaces: _____

No. of Dwelling Units (if applicable): NA No. of Bedrooms: NA No. of Employees: _____

Square Footage of all Proposed Structures (please explain):

VI. SITE PLAN

A Site Plan (8 copies), drawn to scale, that includes the following elements must accompany the application if not provided above in Sections IV and V:

- (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia.
- (b) The exact sizes and locations on the lot of existing structures, if any;
- (c) The location, square footage, and dimensions of the proposed structure or alteration;
- (d) The location of the lot with respect to adjacent rights-of-way;
- (e) The existing and proposed uses of the structure and land;
- (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
- (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
- (h) Height of structure;
- (i) Setbacks;
- (j) Buffer yard and screening, if applicable;
- (k) Location of garbage collection area and screening;
- (l) Location of existing and/or proposed signs, if applicable;
- (m) Roadway typical detail for internal roadways, if applicable;
- (n) Location and size of stormwater management facilities; and,
- (o) Utility lines and easements, if applicable.



**APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE**

OFFICE USE	
CASE NO.	CW3-11
RECEIVED:	_____
COMPLETE:	_____

VII. SUPPLEMENTAL PLANS AND EXHIBITS

Applicants **MUST** also submit the following plans and exhibits, unless waived by the Planning Director:

- (a) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer licensed by the State of West Virginia, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets.
- (b) If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered professional engineer licensed by the State of West Virginia that meet the requirements of the City Zoning Ordinance, the City Stormwater Management Ordinance, and all other applicable local, state and federal regulations.
- (c) Parking and Landscaping Plan
- (d) Sign Plan
- (e) Approved WV Division of Highways Access Permit, if applicable
- (f) Sediment and erosion control plan as approved by the West Virginia Department of Environment Protection and the City of Morgantown
- (g) Approved State of West Virginia NPDES General Permit for Storm Water Associated with Industrial (Construction) Activity, if applicable
- (h) A traffic impact study, if required by the City Engineer
- (i) The Planning Director may require the applicant to submit additional information concerning the lot or neighboring lots to determine conformance with, and provide for the enforcement of, the City Zoning Ordinance.
- (j) The Planning Director may require the applicant to submit, in the case of accessory structures or minor additions, dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey prepared a registered design professional licensed by the State of West Virginia.

Applicants submitting a conditional use application in accordance with Article 313.05 "Building Height and Use" within the B-4 General Business District **MUST** also submit the following analyses:

- (a) An air flow analysis conducted by a licensed architect or profession engineer, describing the estimated impact of the proposed building on existing patterns of air flow in the general vicinity; and how those impacts may affect existing properties with a 300 foot radius of the site.
- (b) An analysis of the impacts of the proposed building on sunlight distribution in the general vicinity, with special emphasis on predicting light blockage and shadow casting onto all properties with a 300 foot radius of the site. Such analysis shall be conducted by a licensed architect or professional engineer.
- (c) An analysis of the potential of "stepping back" upper floors as a technique to avoid negative impacts with respect to light and airflow, and to minimize the canyon effect of non-recess tall buildings. Such analysis shall be conducted by a licensed architect or professional engineer.
- (d) An infrastructure and traffic analysis predicting the impacts of the building on water, sewer, drainage, electrical and gas infrastructure, on transportation levels of service (including transit) for impacted streets, and on fire suppression capabilities of the city. Such analysis shall be conducted by a licensed architect or professional engineer.



OFFICE USE	
CASE NO.	CW3-11
RECEIVED:	_____
COMPLETE:	_____

APPLICATION FOR
TYPE IV SITE PLAN – CONDITIONAL USE

VIII. FINDINGS OF FACT

The Board of Zoning Appeals may grant the request only if each of the Conditional Use Findings of Fact Criteria is determined to be in the positive. Applicants must give their own responses to the criteria statements provided below.

This Conditional Use is within the fitting character of the surrounding area and is consistent with the spirit, purpose, and intent of the Zoning Ordinance, because,

1. **Congestion in the streets is not increased, in that:** Site use will be limited in volume and time allowed. We have adequate parking and room.

2. **Safety from fire, panic, and other danger is not jeopardized, in that:** There should be no hazardous products and the primary use will be farmers market & yard sale type use

3. **Provision of adequate light and air is not disturbed, in that:**
Outside venue

4. **Overcrowding of land does not result, in that:** Site use will be limited and there is adequate space for parking & vendors

5. **Undue congestion of population is not created, in that:**
People will generally be quick in and out and can move about easily.



OFFICE USE	
CASE NO.	CU3-11
RECEIVED:	_____
COMPLETE:	_____

APPLICATION FOR TYPE IV SITE PLAN – CONDITIONAL USE

VIII. FINDINGS OF FACT (cont.)

6. Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

[Handwritten line]

7. Value of buildings will be conserved, in that:

Nothing will be changed or disturbed.

8. The most appropriate use of land is encouraged, in that:

It is already a public venue and a very busy establishment. This is a very visible site at one of Morgantown's busiest intersections.

IX. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

William L Smith Jr
Type/Print Name of Applicant/Agent

William Smith
Signature of Applicant/Agent

4-25-13
Date

- Conditional Use Petition Fee of \$75 must accompany application

W3-11

WORK ORDER - MATERIAL SLIP

TRI-STATE ROOFING & SHEET METAL

DAVISVILLE, WEST VIRGINIA

Job No. _____

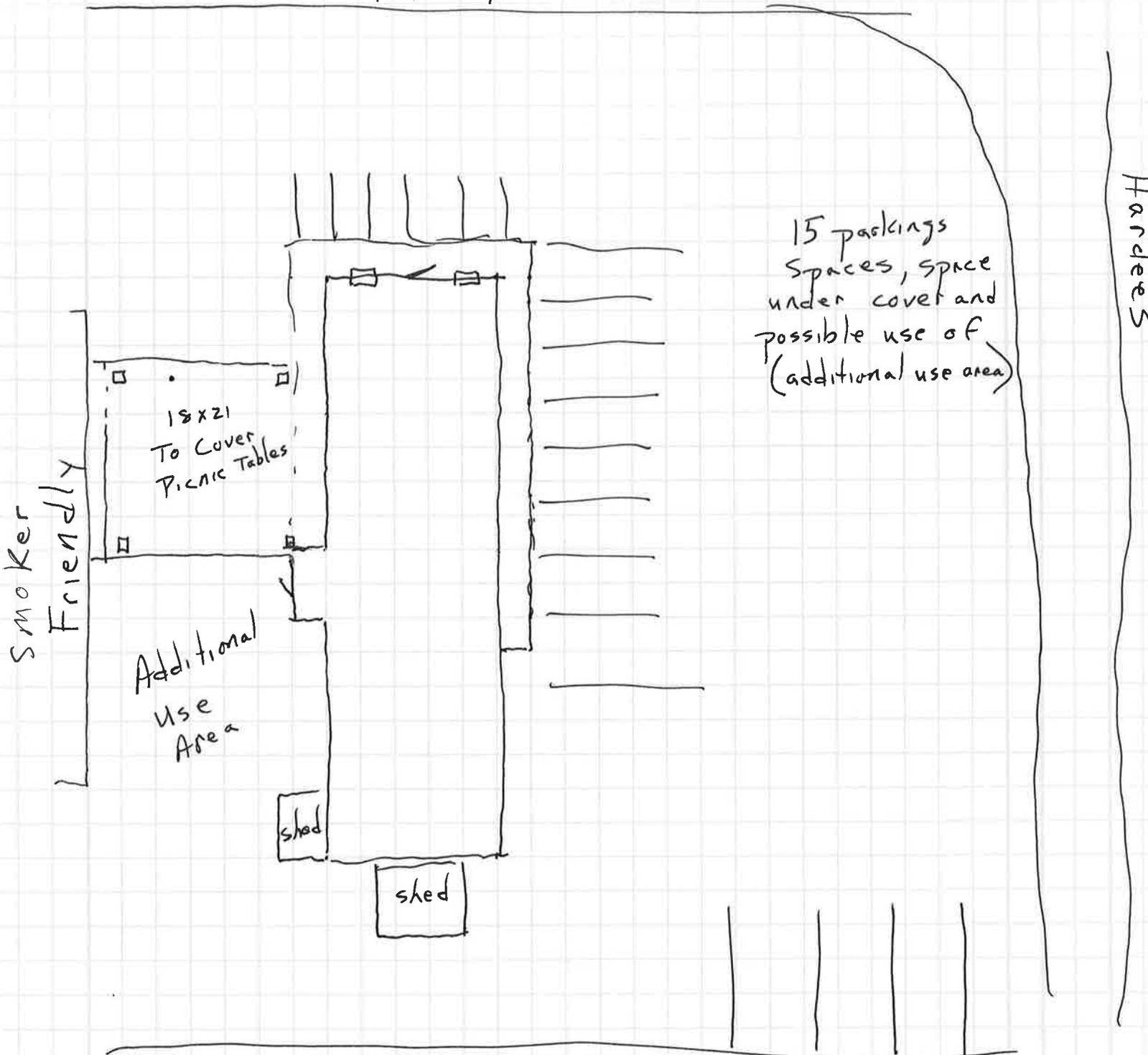
Date _____

Name of Job _____ Date Needed: _____

Specifications _____

SHOW ALL DIMENSIONS CLEARLY - LIST ALL MATERIALS USED

Rt 7



CW3-11

COMMERCIAL/INDUSTRIAL REVIEW DOCUMENT
MONONGALIA COUNTY, WV

3 1422 / 341 CARD NO. 1 OF 1 TAX YEAR 2013 ALT ID TIEBACK 0000 MAP/RO REVIEW

(CA31)----- BUILDING DESCRIPTION / CALCULATIONS -----
BLDG NO 1 STRUCTURE RETAIL SINGLE OCCUP
#UNITS 0 #IDENTICAL BLDGS 1 YEAR BUILT 1960

(CA13)--- SALES INFORMATION ---
DATE TYP PRICE SR VAL
3/01/03 2 144,000 4 4

(CA34)----- INTERIOR / EXTERIOR INFORMATION -----
COND
SEC FROM TO SIZE AREA USETYPE PHY FUN RCN

(CA16)---ENTRANCE INFO.---
DATE CODE INFO.C ID
12/04/12 1 3 DAD
10/25/10 1 3 DAD

1 01 01 X 1010 RETAIL STORE 2 3 38180

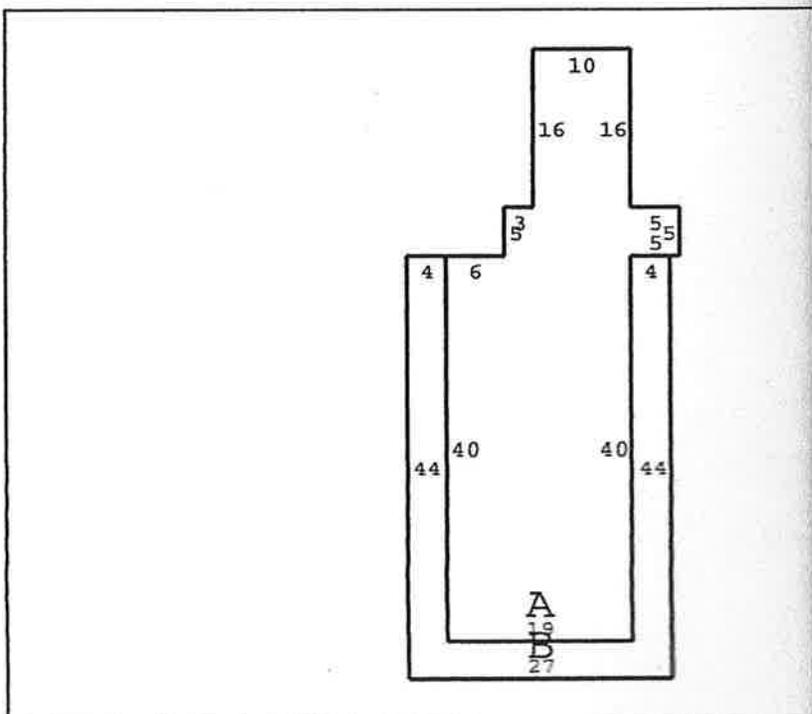
)----- NOTES -----

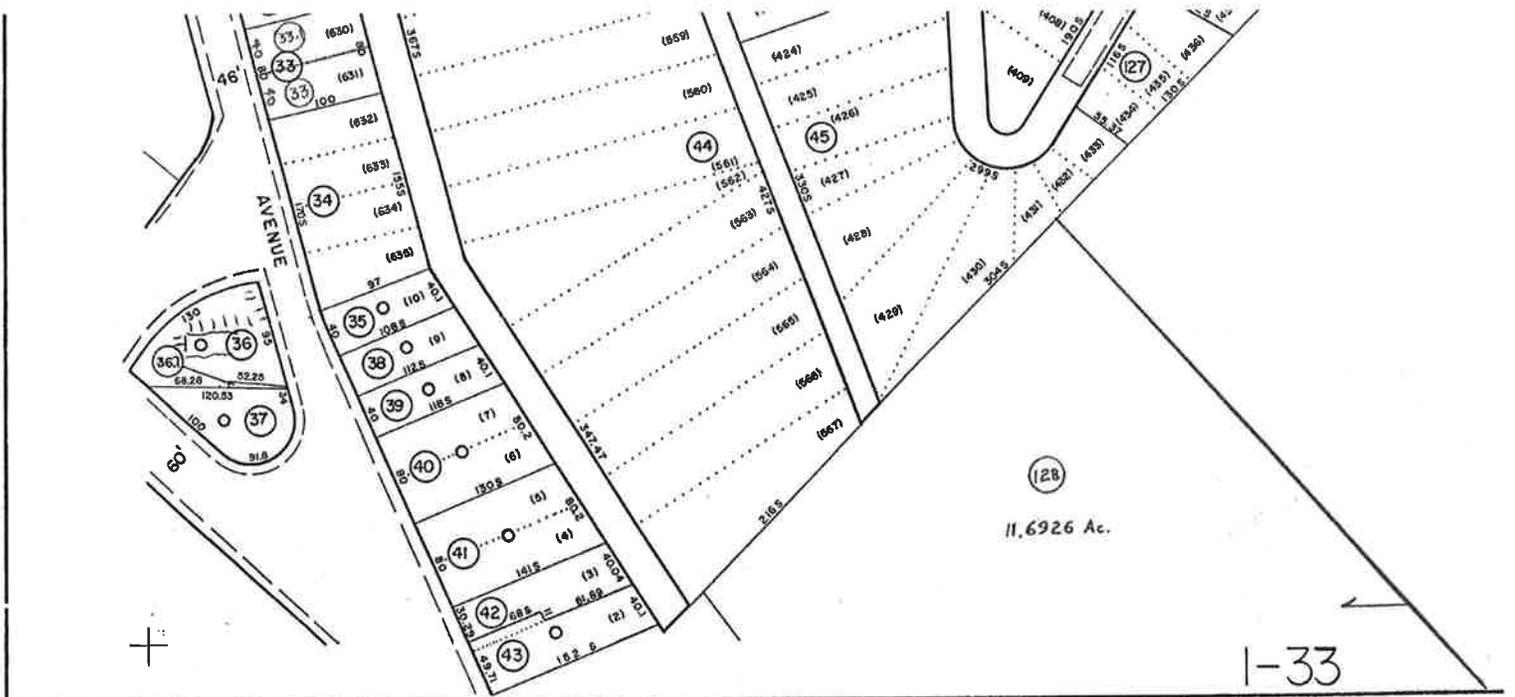
:SMITTY'S ICE CREAM

CALP	TABLE	-----	SUBTOTAL	38180	OBJ
E	BASE	INCR	PERCENT GOOD	39.99	BUILDING
	RATE	/DECR	PERCENT COMPLETE		TOT CARD VALUE
	5.15	5.15	TOTAL OTHER IMP.VALUE		----- PARCEL S
	.52	.52	COUNTY MODIFIER	1.8400	COST LAND VAL
			X IDENT UNITS (1)	28100	COST BLDG VAL
					TOTAL COST VAL

(CA11)----- CURRENT APPRAISED VAL
CURRENT LAND 140,000 BUILDING 23,000
RVW CD 1 COST APPROAC RSN 02 Final Value DATE19-00
STATUS 7
ESTIMATE LAND BUILDING TOTAL
REVIEW CODE RSN DATE
PREV ASMT LAND: 84,000 BUILDING 13,800

L LAND-VALUE 140,000
MISC. IMPROV 0
TOT OBJ 6180
GROSS BUILDING SUMMARY
DESC VALUE 0
(CA32)---OTHER FEATURES/ATTACHED IMPROV---
LN CODE MEAS1 MEAS2 STOPS IU VALUE
1 CP6 428 1 1 2,550





For Tax Purposes Only

Legend	
Property line	—————
Original lot line
	1 6-9-61
	2 2-15-62 CORRECTED