



# MORGANTOWN BOARD OF ZONING APPEALS

June 15, 2016  
6:30 PM  
City Council Chambers

## **Board Members:**

Bill Burton,  
Chair  
George Papandreas,  
Vice-Chair  
Linda Herbst  
Jim Shaffer  
Colin Wattleworth

## **STAFF REPORT**

**CASE NO:** CU16-04 / James Kozak / 633 Astor Avenue

### **REQUEST and LOCATION:**

Request by James Kozak, for conditional "Class 2 Home Occupation" use approval at 633 Astor Avenue.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 40, Parcel 542; R-1A, Single-Family Residential District

### **SURROUNDING ZONING:**

R-1A, Single-Family Residential District

### **BACKGROUND and ANALYSIS:**

The petitioner seeks to establish a "Class 2 Home Occupation" in his residence at 633 Astor Avenue. Addendum A of this report illustrates the location of the site.

Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code provides that "Class 2 Home Occupation" uses in the R-1A District require conditional use approval by the Board.

The petitioner states in his application that he wishes to establish a production kitchen within his one-car integral basement garage for the purpose of bottling food sauces. The petitioner has stated a production kitchen at his home will allow him to overcome overhead costs currently experienced in renting kitchens and allow him to instead invest in the growth of his products and business.

The following points highlight the information provided in the petitioner's application and statements to Staff:

- The applicant is currently licensed by the United States Food and Drug Administration and is doing business as *Saucy Jo, LLC* as a Class 1 Home Occupation.
- There will be no customers visiting the home to purchase goods. All product sales will be off-site at stores, restaurants, and through the internet.
- The only increase in trips to / from the home will result from the delivery / pickup of materials and finished product.

A meeting was held with the petitioner, the City Fire Marshal, and a representative from the Code Enforcement Department. It was determined that the use could be conducted to the satisfaction of those authorities having jurisdiction for the Fire Code and the Building Code. It was also determined that, because deliveries will be more than customarily

## **Development Services**

Christopher Fletcher, AICP  
Director

John Whitmore, AICP  
Planner III

## **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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associated with a "Single-Family Dwelling" use, the proposed home occupation should be considered Class 2 requiring conditional use approval by the Board of Zoning Appeals.

## **STAFF RECOMMENDATION:**

It is the duty of the Board of Zoning Appeals to determine whether the proposed requests meet the standard criteria for a conditional use, by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a conditional use, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject petition. [See WV State Code 8A-8-11(e)].

Addendum B of this report provides revisions to the petitioner's Findings of Fact responses (deleted matter struck through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses or the subject conditional use petition.

Should the Board grant conditional "Class 2 Home Occupation" use approval, Staff recommends the following conditions be included:

1. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.
2. That if the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.
3. That direct customer sales at the home shall not be permitted without prior permission of the Board of Zoning Appeals thereby mitigating any related increase in congestion in the streets within the immediate area.
4. That operation of the home occupation shall not interfere with nor reduce the number of on-site parking spaces below the two (2) existing on-site parking spaces required for "Single-Family Dwelling" uses.
5. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.

## **Development Services**

Christopher Fletcher, AICP  
Director

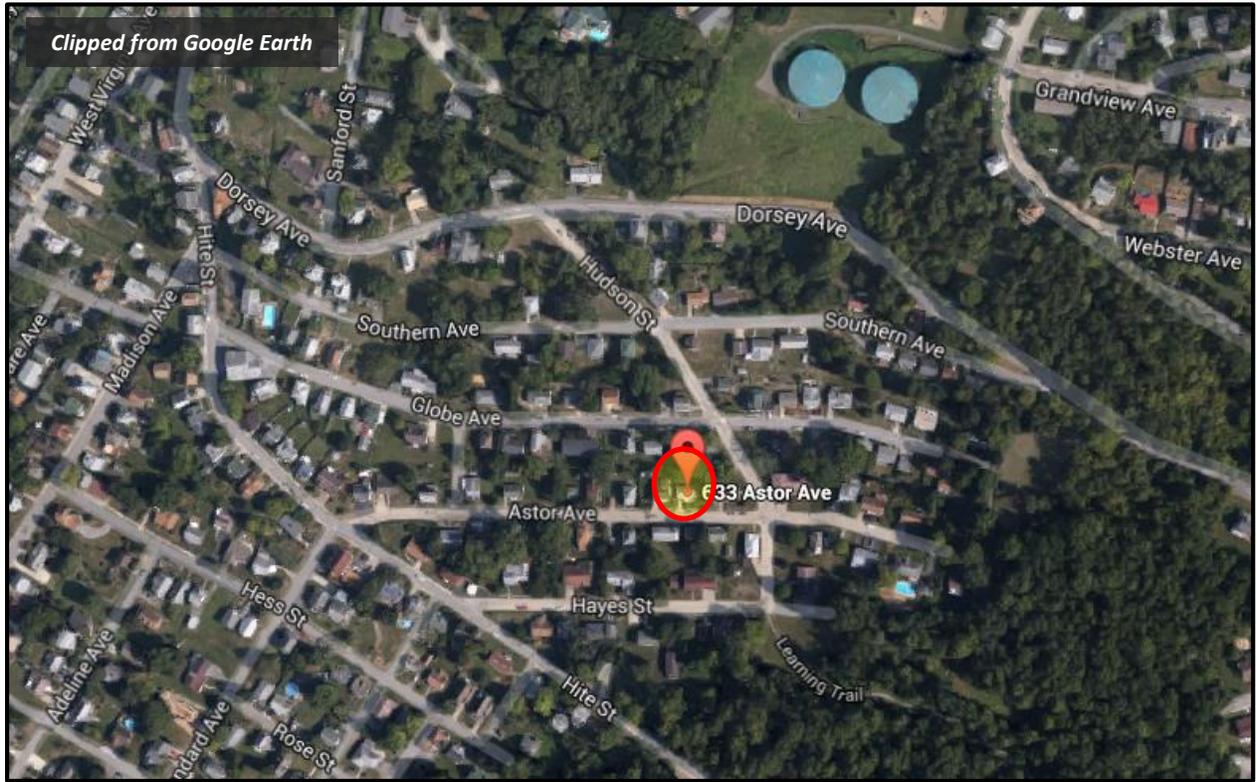
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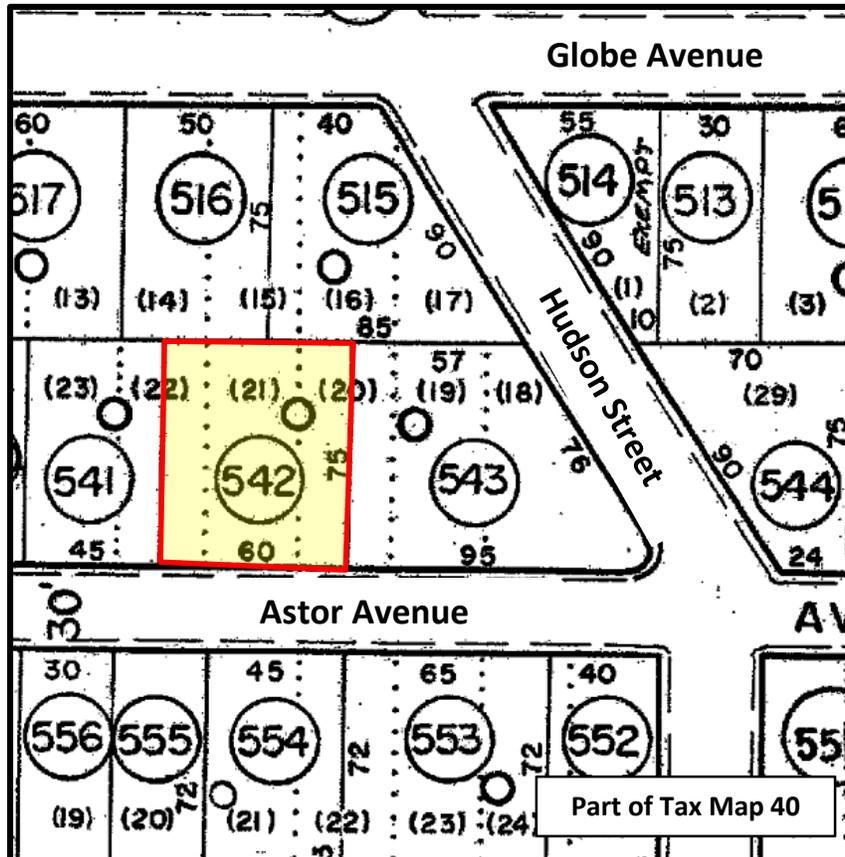
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

Enclosures: Application and accompanying exhibits

**STAFF REPORT ADDENDUM A**  
**CU16-04 / James Kozak / 633 Astor Avenue**



STAFF REPORT ADDENDUM A  
CU16-04 / James Kozak / 633 Astor Avenue



**STAFF REPORT ADDENDUM B**  
**CU16-04 / Kozak / 633 Astor Avenue**

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Staff submits the following revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined). Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses or the subject conditional use petition.

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*,

**Finding of Fact No. 1** – The home occupation will be compatible with residential uses of the dwelling, in that:

The living area of the home will not change only minor changes to the interior of the garage area.

**Finding of Fact No. 2** – The home occupation will not change the residential character of the dwelling, in that:

Nothing will be different or disturbed to the dwelling except minor additions to the interior portion of the garage.

**Finding of Fact No. 3** – The home occupation will not detract from the residential character of the neighborhood, in that:

Changes only to the interior portion of the integral basement garage. No change ~~to~~ will be visible from the exterior of the home and no additional traffic will be generated relating to customers as all sales will be completed off-site at stores, restaurants, and through the internet.

**Finding of Fact No. 4** – Congestion in the streets will not be increased, in that:

No direct customer sales will be permitted at the home as per related conditions imposed by the Board of Zoning Appeals. With the exception of deliveries of materials and pickup of product, no large vehicles will be used for delivery so no added ~~traffic or parked cars~~ congestion to vehicle access, movement, or on-street parking is anticipated.

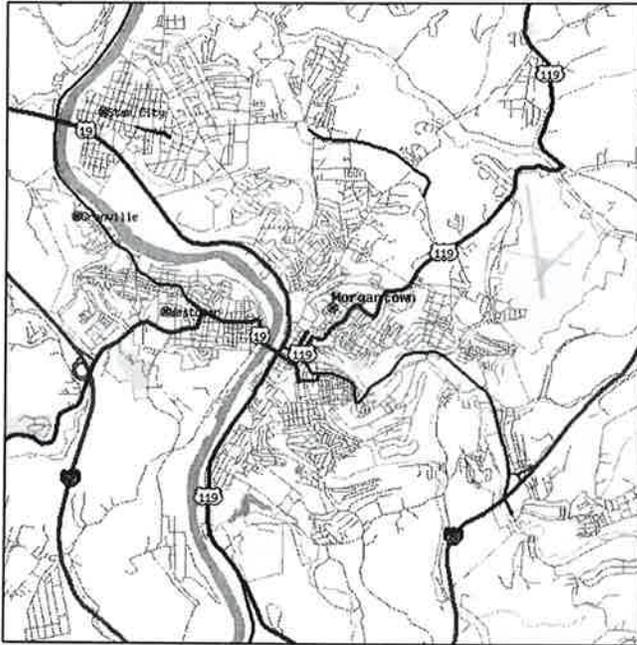
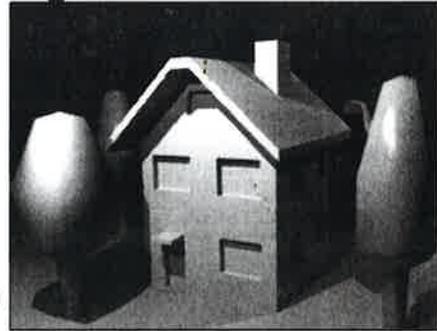
JAMES KOZAK

CUL6-04



City of Morgantown  
West Virginia

# HOME OCCUPATION APPLICATION PACKET



**Success hinges on partnerships from the very beginning.**

Recognized as one of America's "Best Small Towns," Morgantown's success is due largely in part to its ability of forging partnerships between business, civic organizations, academia, and government for the purpose of supporting creativity, innovation, and entrepreneurship. In this spirit, the City strives to encourage and support residents who wish to work from their homes while preserving the residential character of our neighborhoods.

**STEPS TO OBTAIN HOME-BASED BUSINESS LICENSE**

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**Step 1 Home Occupation Approval** – Contact the **Planning Department** (phone 304.284.7431) for a Home Occupation Application (also available at the City's website: [www.morgantown.com](http://www.morgantown.com)). Submit these completed forms to the Planning Department. Home Occupation classification will be determined at this time (see "Zoning Compliance" below).

*Home Occupations, Class 1* approvals may be granted administratively.

*Home Occupations, Class 2* are considered "Conditional Uses" that require a separate application and approval by the Board of Zoning Appeals.

**Step 2 Business License Registration** – Once administrative or BZA approval for the Home Occupation is granted, bring a copy of your Home Occupation Approval to the **Finance Department** (phone 304.284.7408) where you will complete business license and municipal tax registration forms.

**ZONING COMPLIANCE**

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**Home Occupation** – Any business activity conducted entirely within the owner's primary residence, which requires a business license issued by the State of West Virginia and by the City of Morgantown; and is clearly incidental to or secondary to the residential use of the dwelling. Home occupations are divided into two classes, as follows:

- A. Home Occupation, Class I:** Considered an accessory use, and is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. It is also intended to allow businesses that rely solely on electronic or off-premise transactions. Types in this category include, but are not necessarily limited to:
  - a. Business where all work and communication is conducted over the internet, telephone, and/or electronic mail; and that do not engage in any on-premise customer contact.
  - b. Businesses where a service is provided off-premise to a client or customer, with no client or customer visitation to the business location. In these instances, the business location is used solely for bookkeeping and electronic or telephone communication with clients and customers.
  - c. Businesses where the owner produces a product at the business location and offers it for sale over the internet or transports the products(s) to off-premise merchants, trade shows, flea markets, and the like for sale. No products are displayed or offered for sale to customers visiting the business location.
  
- B. Home Occupation, Class II:** A conditional use intended to allow businesses that generate limited quantities of customer visitation and/or merchandise deliveries. The business is personal to the applicant, is not transferable to any other person, and does not apply to any other business of the applicant. Any Home Occupation that is not clearly of type Class I shall be deemed to be Class II.

Initial to confirm that you have read and understand these regulations:	JK
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**C. The following regulations apply to both classes of home occupations:**

- a. A home occupation must be compatible with residential uses of the dwelling, must not change the residential character, and must not detract from the character of the neighborhood.
- b. A home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.
- c. A home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
- d. A home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
- e. A home occupation shall be conducted entirely within the principal building. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
- f. A home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
- g. Except as required by State law, there shall be no exterior indication of the home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
- h. A home occupation shall not involve on-site employment of persons not residing in the dwelling, except as otherwise provided the City of Morgantown Zoning Ordinance.
- i. A home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
- j. If the applicant is not the owner of the property at which the home occupation will be conducted, the applicant must verify that written notice of intention to conduct the home occupation has been given to the owner of the property.
- k. No sexually oriented business, as defined by the Zoning Ordinance, may be permitted as a home occupation.
- l. Merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service, shall not exceed four (4) per day.

**D. The following regulations apply to only Home Occupations, Class 2:**

- a. If any resident living within 300 feet of a Home Occupation, Class 2, believes that it is being conducted in violation of the imposed conditions or believes that the home occupation is distracting from the residential character of the neighborhood, the resident can submit a petition for revocation of the conditional use permit. The Planning Director and/or the Board of Zoning Appeals will review such petitions. Such license may be suspended or revoked on a temporary or permanent basis or other conditions imposed on the business.
- b. If the holder of a conditional use Class II home occupation permit wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.
- c. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable. The Board of Zoning Appeals shall decide if customer visitation for the proposed type and volume of retail activities or services is reasonable when considering the conditional use permit application.
- d. Conditional Use Home Occupation applications must be filled out completely, or the application will be deemed to be incomplete and shall not be considered by the Board of Zoning Appeals.



# HOME OCCUPATION APPLICATION

I. APPLICANT					
Applicant Name:	James Kozak				
Name of Business:	Saucy Jo LLC				
Mailing Address:	Street 633 Astor Ave.	Phone:			
	City State Zip Morgantown WV 26501	Mobile:	970-391-0316 <del>970-213-2134</del>		
			Email:	jimkoz71@aol.com	
II. PROPERTY					
Street Address:	633 Astor Ave.				
Zoning:	First Ward <del>SingleFamOlderArea</del>	Tax Map No:	40	Parcel No:	542
III. DESCRIPTION					
<p>1. Please answer either "YES" or "NO" to each of the following descriptions that best explains your proposed home-based business. A "NO" response to any of these descriptions may lead to a Class 2 Home Occupation classification.</p> <p><input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    All work and communication is conducted over the internet, telephone, and/or electronic mail AND does not engage in any on-premise customer contact.</p> <p><input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    Services are provided off-premise to clients or customers, with no client or customer visitation to the business location. In these instances, the business location is used solely for bookkeeping and electronic or telephone communication with clients and customers.</p> <p><input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    Businesses where the owner produces a product at the business location and offers it for sale over the internet or transports the products(s) to off-premise merchants, trade shows, flea markets, and the like for sale. No products are displayed or offered for sale to customers visiting the business location.</p>					
<p>2. Is the applicant the owner of the dwelling at which the home occupation will be conducted?</p> <p><input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    If not, a copy of the applicant's written notice to the owner of the intention to conduct the business must be attached.</p>					



City of Morgantown  
West Virginia

# HOME OCCUPATION APPLICATION

## IV. NARRATIVE

Please describe, in greater detail, the nature of your proposed enterprise.

Production kitchen for bottling sauces and prep-work. As to not have to rent kitchens so my product and business can grow.

## V. ATTEST

I have read and understand the zoning regulations pertaining to Home Occupations. I understand that my signature indicates that all of the information contained on this application is true and correct, and if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. I understand that approval of this home occupation is dependent upon me abiding by all the regulations found in the City of Morgantown Zoning Ordinance. 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 this application and enforce related approvals and conditions.

<u>James M Kozak</u>	<u>James M. Kozak</u>	<u>6/6/16</u>
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date

### OFFICE USE ONLY

Received: \_\_\_\_\_ Complete: \_\_\_\_\_  Class 1  Class 2 By: CAF

Class 1 Approved  Class 1 Disapproved Date: \_\_\_\_\_

Comments: \_\_\_\_\_



# HOME OCCUPATION APPLICATION

## VI. SUPPLEMENTAL INFORMATION (Class 2 Conditional Use ONLY)

The Board of Zoning Appeals may impose additional conditions or restrictions and additional off-street parking depending on the nature of the proposed home occupancy. The following information is required to demonstrate the scale and scope of the proposed home-based enterprise.

1. The days and hours of operation will be: *Variable*

2. Will any customers, clients, students or other persons visit the dwelling on a regular basis?  
 Yes  No If yes, state the average and maximum number of persons who will visit per week, per day, and at any one time.

Number per week:	average =	<input type="text"/>	maximum =	<input type="text"/>
Number per day:	average =	<input type="text"/>	maximum =	<input type="text"/>
Number at one time:	average =	<input type="text"/>	maximum =	<input type="text"/>

With respect to persons visiting the dwelling, what percentage do you anticipate will come by car, as opposed to on foot or by public transportation?

Please explain:

4. Will any delivery trucks stop at the dwelling on a regular basis, either to deliver or pick-up materials, supplies, finished products or other items?  
 Yes  No If yes, please state the average and maximum number of stops by delivery trucks per week and per day.

Number per week:	average =	<input type="text"/>	maximum =	<input type="text"/>
Number per day:	average =	<input type="text"/>	maximum =	<input type="text"/>

5. Describe the availability of on-street, off-street, and public parking at the site and in the vicinity.

*Limited on street public parking only*

**VII. FINDINGS OF FACT  
(Class 2 Conditional Use ONLY)**

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. The home occupation will be compatible with residential uses of the dwelling, in that:**

The living area of the home will not change only minor changes to the interior of the garage area.

**2. The home occupation will not change the residential character of the dwelling, in that:**

Nothing will be different or disturbed to the dwelling except minor additions to the interior portion of the garage.

**3. The home occupation will not detract from the residential character of the neighborhood, in that:**

Changes only to the interior portion of the garage. No change to visible exterior and no additional traffic.

**4. Congestion in the streets will not be increased, in that:**

No direct customer sales. No large vehicles for delivery so no added traffic or parked cars.

DRIVE WAY

CU16-04

DOOR

9'3"

BREAKER BOX

ADDED ELECTRIC

PREP AREA

DUQU. STEAM KADLE

PREP AREA

REFRIGERATOR

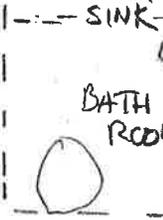
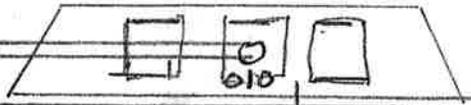
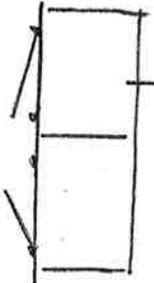
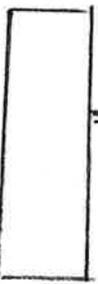
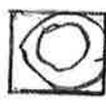
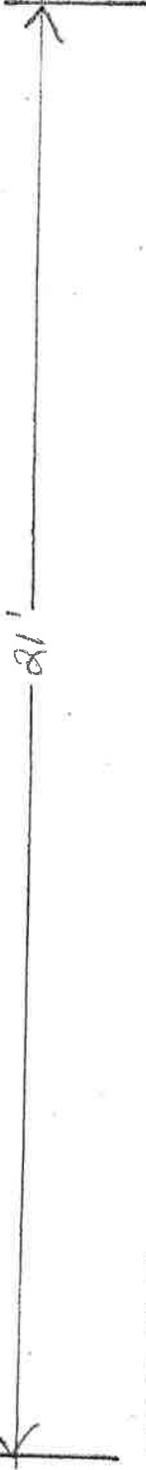
STORAGE

HAND WASH SINK

BATH ROOM

ADDED PLUMBING

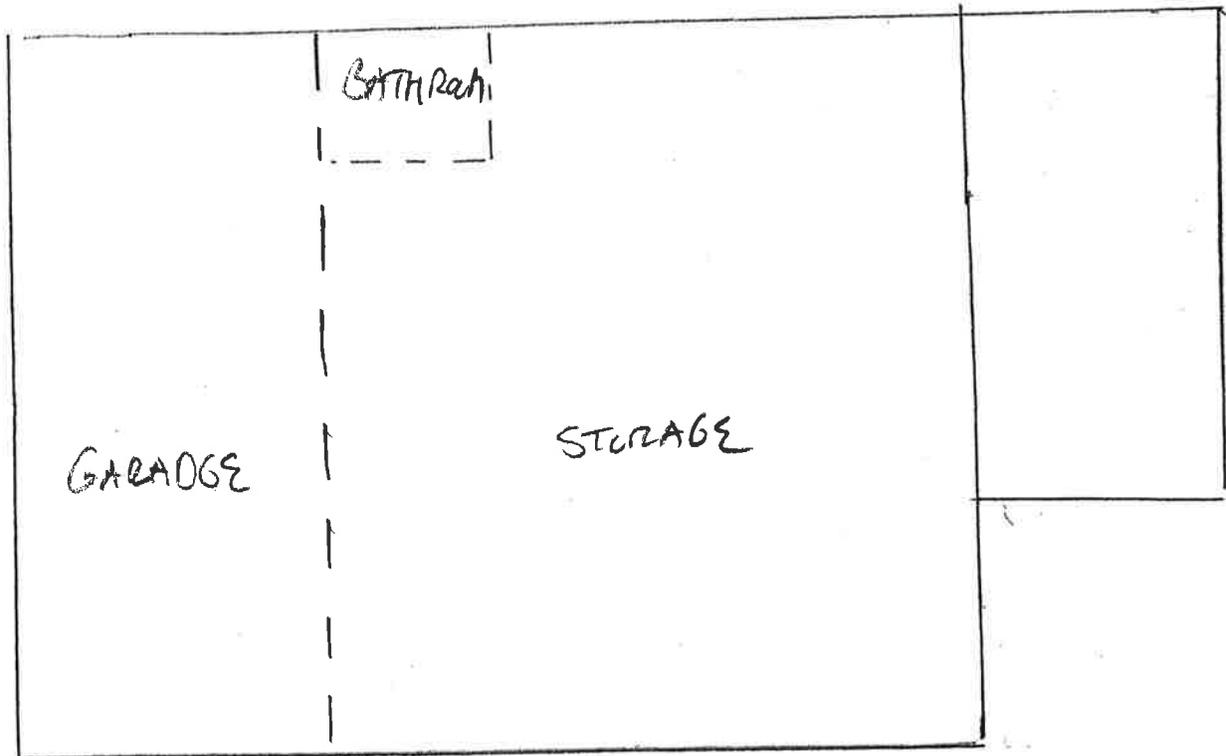
30AY DISH SINK



FD-011M

C416-04

BASMENT VIEW



GARAGE

BATH ROOM

STORAGE

DRIVEWAY

633

ASTOR AVE.