



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

April 16, 2008

SUBJECT: **2008-0265 - Coolicious Creamery** [Applicant] **Cheng & Niemen Assoc. LP** [Owner]: Application for a Use Permit. The property is located at **520 Lawrence Expressway** (at Titan Way) in an M-S/POA (Industrial & Service/Place of Assembly) Zoning District. (APN: 216-44-119)

Motion Use Permit to allow a new ice cream shop in a 728 square foot tenant space in an existing retail complex.

REPORT IN BRIEF

Existing Site Conditions Vacant space in commercial/office center (Lawrence Commercial Center)

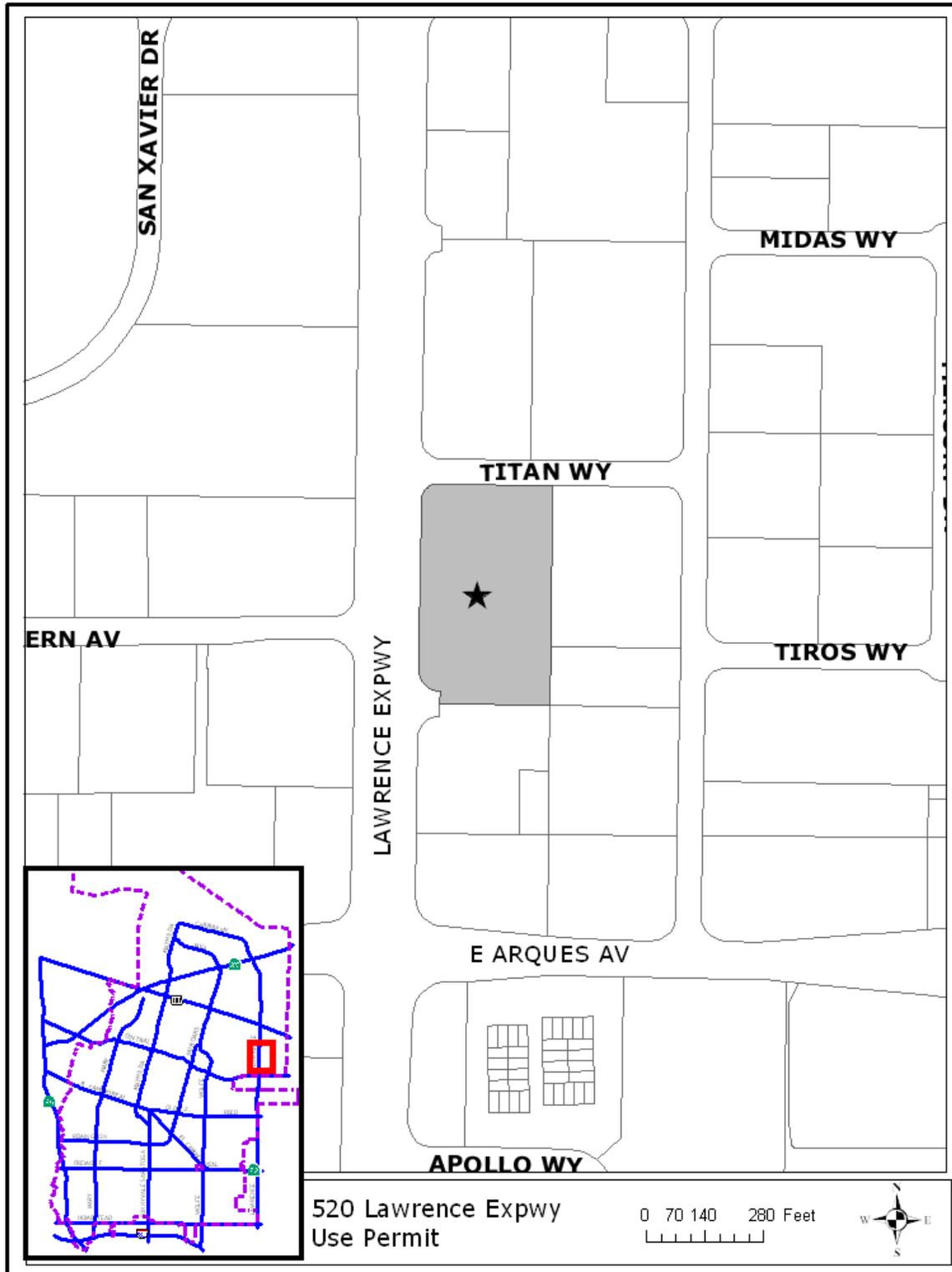
Surrounding Land Uses

North	Commercial/office
South	Commercial/office
East	Industrial
West	Commercial (across Lawrence Expressway)

Issues Parking

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approval with conditions



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Industrial	Same	Industrial
Zoning District	M-S/POA	Same	M-S/POA
Lot Size (s.f.)	162,043	Same	None
Gross Floor Area (s.f.)	43,398	Same	56,715 max.
Gross Floor Area of Tenant	728	None	None
No. of Buildings On- Site	3	Same	By Use Permit
Building Height (ft.)	16-33	Same	75 max.
No. of Stories	1-2	Same	8 max.
Parking			
Total Spaces	264	Same	217 min.**
Standard Spaces	241	Same	238 min.
Compact Spaces/ % of Total	18 / 6.8%	Same	10% max.
Accessible Spaces	5	Same	7 min.

**See parking discussion.

ANALYSIS**Description of Proposed Project**

The applicant proposes to use an existing 728 square foot tenant space (#310) within the Lawrence Commercial Center as a fast food restaurant serving frozen desserts, snacks and beverages. The business would be open from 10 a.m. to 10 p.m., Mondays through Sundays. No outdoor seating, expansion of the existing building or significant modification of the building exterior are proposed.

A Use permit is required for all restaurants in the M-S/POA zoning district.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2003-0771	Use Permit for a dance studio	Planning Commission/ Approved	11/24/2003
1999-0135 (Old File #9157)	Design Permit for tanning salon	Staff / Approved	12/1996
1988-0193 (Old File #6351)	Use Permit for massage parlor	Planning Commission/ Denied	09/12/1988
1986-0071 (Old File #5911 and V-86-26)	Variance from 8 required parking spaces to support 26 seats	Planning Commission/ Denied	11/05/1986
1984-0094 (Old File #V-84-59)	Variance to allow 7 parking spaces instead of 14 for bakery and restaurant	Planning Commission/ Denied	09/24/1984
1983-0112 (Old File #4950 and V-83-37)	Church of Scientology office and worship, Variance for 18 parking spaces	Planning Commission/ Approved	05/09/1983
1979-0071 (Old File #3960 and V-79-37)	Use Permit for 5,050 sq. ft. restaurant use and Variance for 33 parking spaces	Planning Commission/ Approved	07/23/1979
1977-0065 (Old File #3534)	Use Permit for retail/office center	Planning Commission/ Approved	10/10/1977

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include permitting, leasing, licensing, or minor modifications to existing facilities.

Use Permit

Site Layout: The Lawrence Commercial Center is comprised of two one-story buildings and one two-story building occupied by commercial and office uses. The buildings are configured in a “U” shape along the north, south and west (Lawrence Expressway) perimeter with the front facades centering a main parking lot in the interior of the lot. Customer access to the businesses is directly from the parking lot. There is no direct pedestrian or vehicular access from Lawrence Expressway to the site. The center is accessed through a road off Lawrence Expressway that is shared with the commercial center to the south, and through a driveway off Titan Way.

The subject business is located at the north end of the building that lies parallel to Lawrence Expressway (see Attachment C).

Floor Plan: The 20-seat dining area is located at the front of the tenant space with the service and prep area located just beyond it towards the rear. There is a storage room located at the rear of the space, next to public restrooms that are shared with another tenant space.

Parking/Circulation: The site is served by a main parking lot located in the interior of the site, surrounded by the three buildings. The parking lot currently contains 205 parking spaces. The site is currently deficient in accessible parking spaces. In addition to the main parking lot, the site is served by 59 more parking spaces at the adjacent commercial center to the south. The parking spaces are shared by all of the commercial enterprises between Titan Way and Arques Avenue and do not exclusively serve the subject site.

Sunnyvale Municipal Code Section 19.46.020 (b) states that any one use occupying 10% or less of the total floor area shall be treated as though it were part of the major uses of the property. The subject space represents 1.68% of the total floor area, so the standard shopping center rate can be used to calculate parking for the proposed use.

Parking requirements for shopping centers are based on a flat rate for all uses in the center, and not by describing each use in the center individually, unless the shopping center has a high concentration of uses with similar peak hours of operation. Currently, the shopping center is approximately 27% restaurant. Because of this high concentration of restaurants, parking requirements could be calculated using the restaurant ratios for the restaurant uses and then the standard shopping center rate for all other uses. However, as determined by recent shopping center approvals, a shopping center could have up to 30% restaurant uses and not have a change in the character of the center;

therefore, the standard shopping rate could still be used to calculate parking requirements.

The following table summarizes the maximum required parking spaces using both methods at the subject property.

Using individual rates			
Type of Use	Size (sq. ft.)	Required Parking per SMC 19.46.050 (space/sq. ft.)	Required Number of Spaces
Restaurants	11,814	1/110	108
Other uses	31,584	1/200	158
Total Required Spaces			266
Spaces Provided On Site			205
Total Spaces Provided			264
Using shopping center rate			
Type of Use	Size (sq. ft.)	Required Parking per SMC 19.46.050 (space/sq. ft.)	Required Number of Spaces
Shopping Center	43,398	1/200	217
Total Required Spaces			217
Spaces Provided On Site			205
Total Spaces Provided			264

As seen from the table above, the subject site meets the required number of parking spaces using the shopping center rate of 1 space per 200 square feet. Historically, concerns have been expressed about a “tight” parking supply on the site during previous permit reviews. Although the site meets the required number of spaces per Sunnyvale Municipal Code and current policy, the site does have a high parking demand during the lunch peak hour. However, staff visits revealed that although occupancy was almost at 100% during the lunch peak hour, this occupancy was not stagnant. Cars would come and go constantly, and the wait for a parking space was not long. Also, trash bins are not being properly stored in the trash enclosures and are therefore obstructing available parking spaces. During one staff visit, a truck was improperly parked across five spaces, and spaces marked “10-minute parking only” were coned off and were therefore made unavailable for use.

The subject tenant space occupies only 1.68% of the total floor area occupied by other uses on the site. The subject business serves only desserts, snacks and beverages. Although customers may come after lunch or dinner hours after their meals, the subject business would not be considered solely as a lunch destination. Staff believes that any additional parking demand would be

insignificant compared to the demand of the existing restaurants during the lunch peak hour, and could be resolved through better management at the site.

The main parking lot on the site currently contains five accessible parking spaces, where seven are required. If the project is approved, staff recommends Condition of Approval #3B to provide two more accessible spaces on the site.

Compliance with Development Standards/Guidelines: The proposed project complies with all development standards and guidelines.

Expected Impact on the Surroundings: Staff believes that the proposed use would not have a negative impact on the site or surrounding uses. The subject business would provide an additional service for businesses, customers and employees in the area. Although parking demand at the site during the lunch peak hour is high due to the existing concentration of restaurant uses, staff believes that any parking demand that the subject business causes during this time would be insignificant. The project does not include any modifications to the building or the site, so no visual impact is anticipated.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 18 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website

Conclusion

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Use Permit. Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Conditions of Approval are located in Attachment B.

Alternatives

1. Approve the Use Permit with the attached conditions.
2. Approve the Use Permit with modified conditions.
3. Deny the Use Permit.

Recommendation

Alternative 1

Prepared by:

Rosemarie Zulueta

Project Planner

Reviewed by:

Andrew Miner

Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans and Photos
- D. Letter from the Applicant

Recommended Findings – Use Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element

Policy C4.1 Maintain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy.

Policy N1.7 – Support the location of convenient retail and commercial services (e.g. restaurants and hotels) in industrial areas to support businesses, their customers and their employees.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project. *(Finding met.)*

The proposed use would provide an additional service and help support businesses, their customers and employees in the surrounding area. The proposed use is within the character of the existing shopping center and is compatible with its existing uses and adjacent uses.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *(Finding met.)*

Although parking demand in the shopping center is high during the lunch peak hour, staff believes that the proposed use would not significantly exacerbate existing conditions. Staff is recommending conditions of approval to maintain spaces so that they remain unobstructed for use at all times. The project does not include any expansion or modifications to the site, so no visual impact to the surrounding area is anticipated.

Recommended Conditions of Approval – Use Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes may be approved at a public hearing.
- B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- C. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- D. The Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- E. Any proposed signs are subject to the approved Master Sign Program for the shopping center.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

- A. Obtain necessary permits for all tenant improvements and parking space striping from the Building Safety Division.

3. PARKING

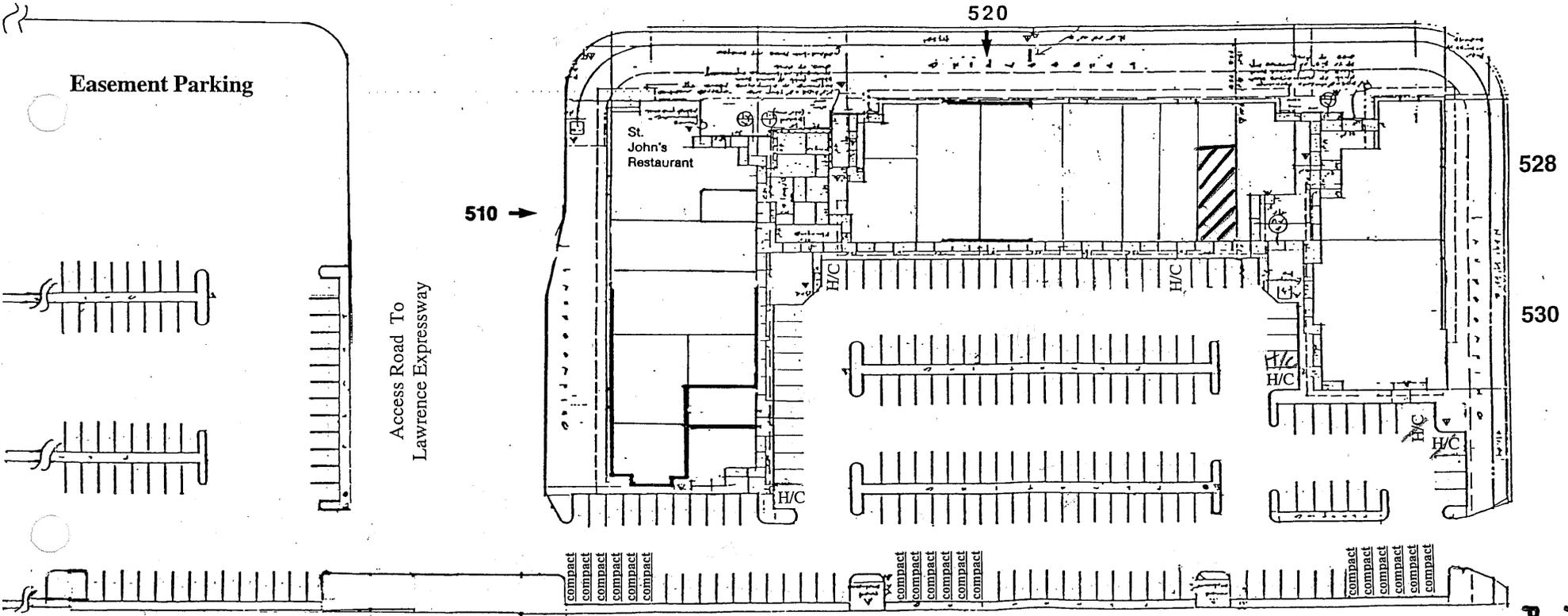
- A. All parking spaces on the site shall be maintained at all times to allow for parking of vehicles. No trash, bins, debris, equipment or other objects shall obstruct parking spaces at any time.
- B. Two additional accessible spaces shall be striped for a total of seven accessible spaces to be provided on the site.

4. RECYCLING AND SOLID WASTE

- A. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures at all times. Waste containers shall be stored within enclosures with the enclosure gates closed. Containers shall not be placed in parking spaces or landscaped areas at any time.

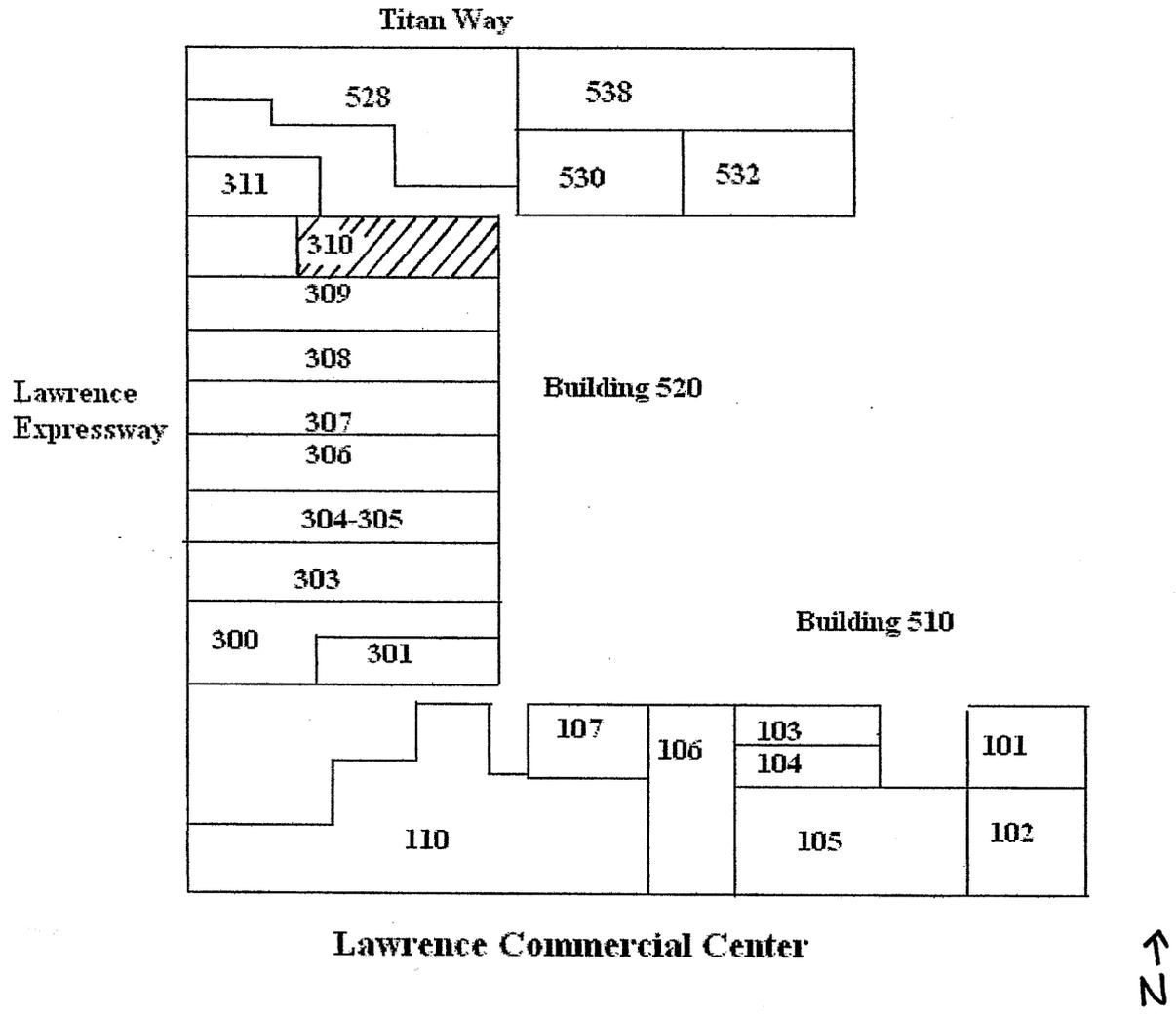
- B. Waste containers, including tallow bins and recycling bins, shall be stored with their lids closed.
- C. The property shall remain clean and free of debris and garbage.

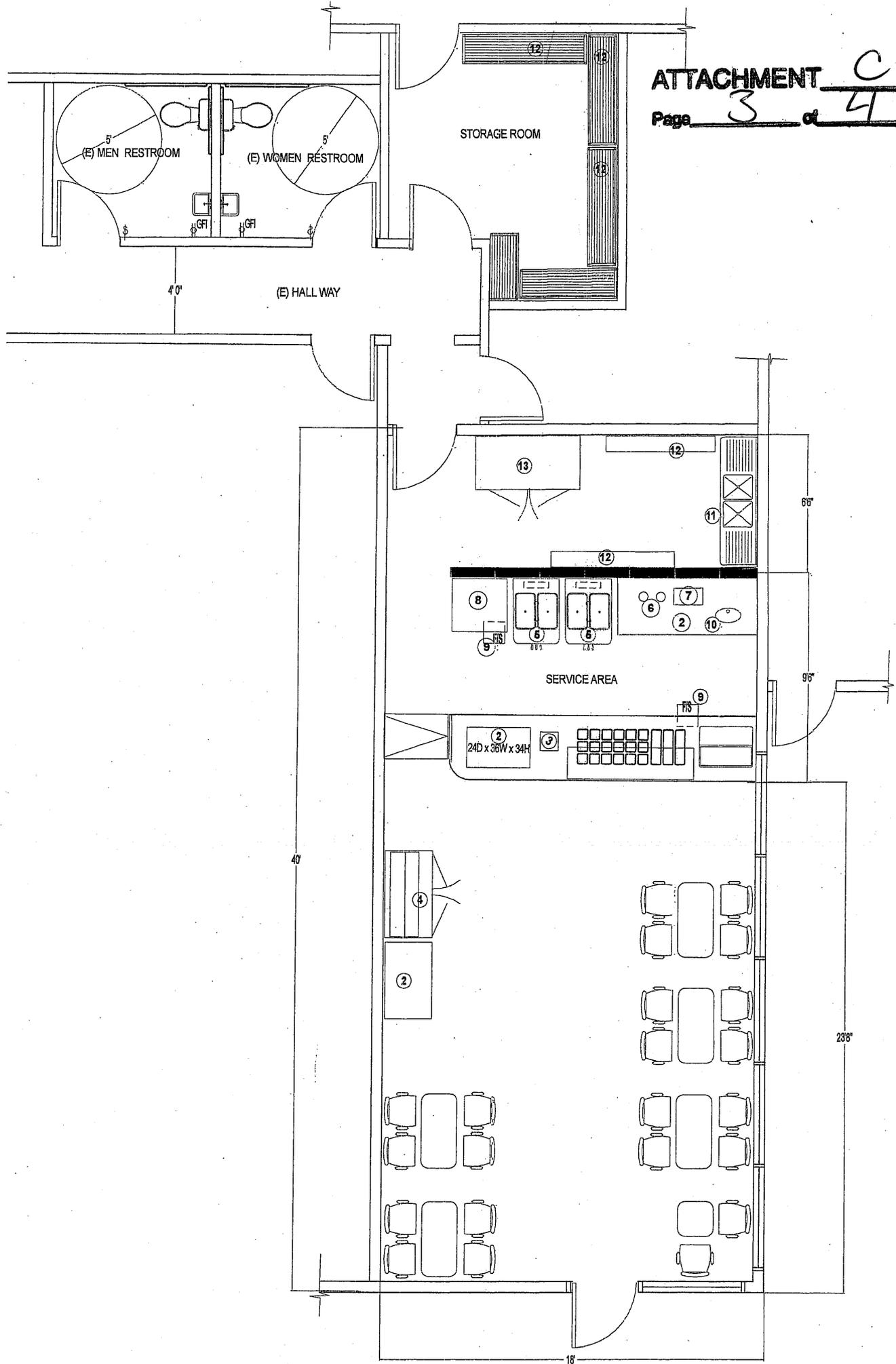
ACTUAL PARKING LAYOUT
 510, 520, 528, 530 Lawrence Expressway, Sunnyvale, CA 94086



Parking (510, 520, 528, 530):	
Standard size -	181
Compact size -	18
Handicap -	5
Subtotal	205
Parking Easement:	<u>59</u>
TOTAL PARKING	264

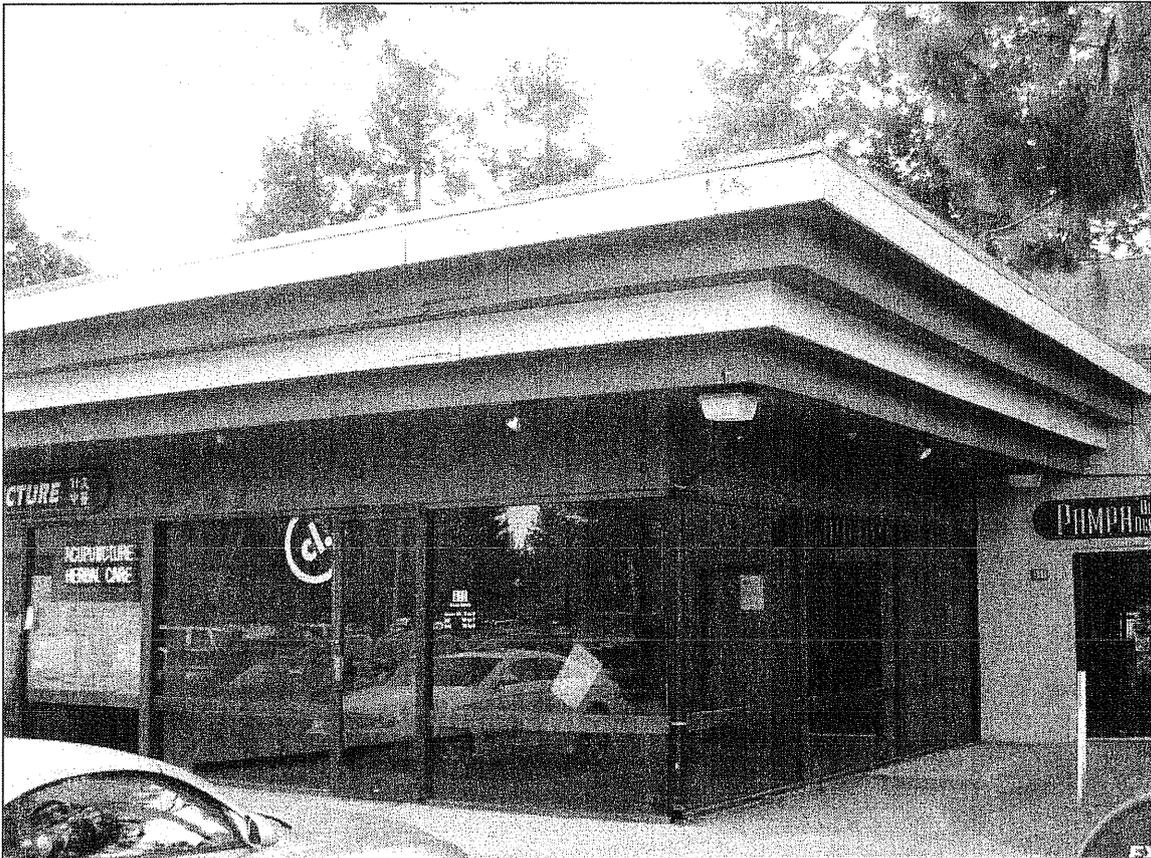
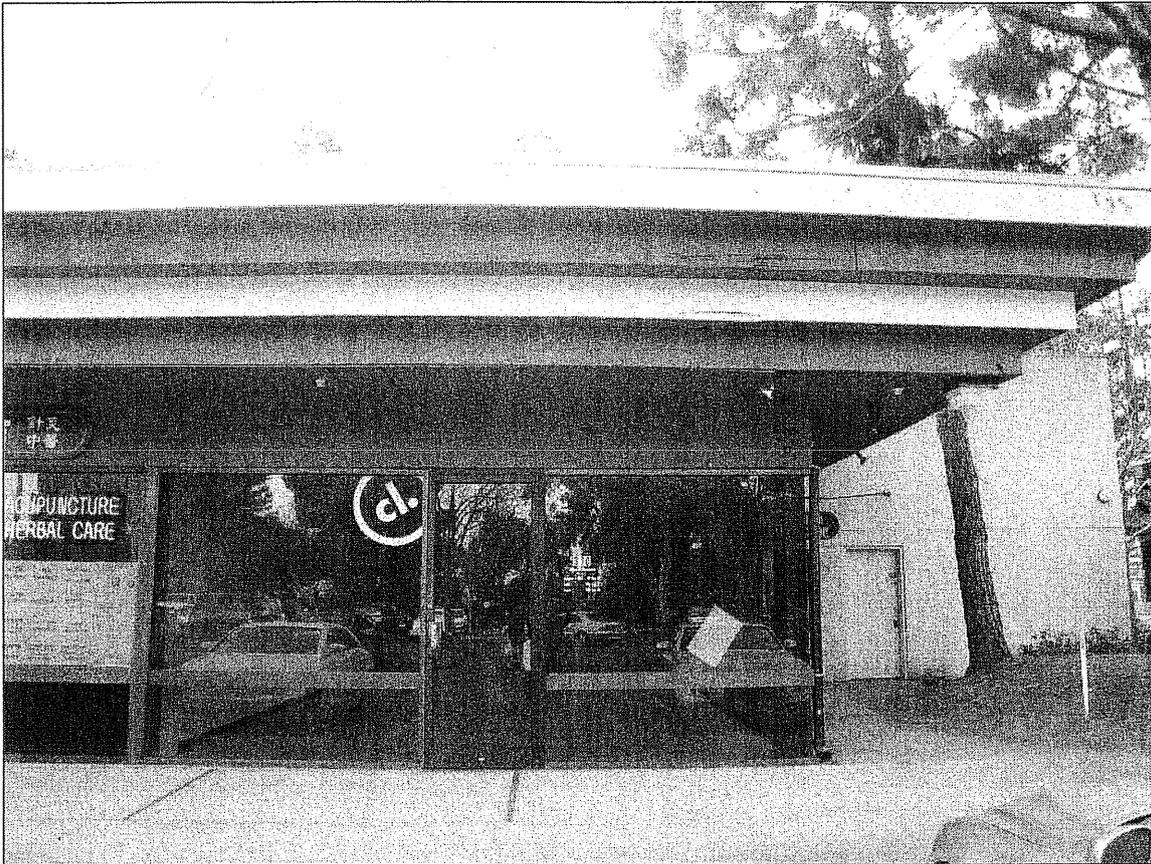
EXHIBIT A
 PREMISES LOCATION





FLOOR PLAN SCALE: 1/4" = 1'

Elevation Photos
Coolicious Creamery
520 Lawrence Expy, Sunnyvale, CA 94085



Coolicious Creamery Project Description

Our plan is to build Coolicious Creamery [CC] at Unit #310 in the Lawrence Commercial Center, 520 Lawrence Expy, Sunnyvale, CA 94085. CC will be a fast food restaurant serving in-house frozen desserts [frozen yogurt and Gelato], coffee, tea, boba milk tea [aka pearl or tapioca tea], snacks, and beverages. Our search indicates that there is currently no frozen dessert business in the City of Sunnyvale. That finding is surprising to us considering the vibrance, dynamics and diversity of this city. Hence, this represents a huge opportunity for us to open a frozen dessert business and offer surrounding business and residential communities a place enjoy delicious, fresh, healthy frozen yogurt and Gelato.

Our store will be relatively small in size, occupying only 728 sq. ft. of floor space. We will have seating for a maximum of 20 guests. However, similar to other frozen dessert business, we anticipate our eat-in customers to stay onsite on average of only 15 minutes, while the majority of our customers will take-out their orders.

We do not anticipate parking to be an issue at the Center, since CC is not a "lunch" or "dinner" restaurant. We expect brisk business after lunch and dinner hours as customers come in briefly for dessert after their meals.

We hope to open business in this Center by summer '08.

Dean Do
3325 Villa Contessa Ct
San Jose, CA 95135
408-623-6217

Hours of operation 10 am - 10 pm, Mon. - Sun.