




# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## Memorandum

TO: Jim Dinley, Municipal Administrator  
Mayor Westover and Members of the Assembly

FROM: Wells Williams, Planning Director 

SUBJECT: Conditional Use Permit for a day care for up to eight children in an R-1 zone

DATE: February 22, 2012

The Sitka Planning Commission is recommending approval with, twelve conditions, of a conditional use permit for day care at 506 First Street. This location is a zero lot line on First Street off of Monastery Street. The property is zoned R-1 Single Family and Duplex Residential District. The recommendation for approval with conditions and findings was made on January 17, 2012 with a vote of 3-0.

The recommended conditions appear separately on an attached page. The findings are outlined in the January 17<sup>th</sup> minutes. The Planning Commission held three hearings on the request and distributed draft conditions prior to taking action.

Peter Menendez and Dawn Mahoney-Menendez own one half of the zero lot line at the end of First Street. Amanda and Marty Johnson own the other half of the zero lot line. Day cares with up to four clients are permitted uses in the R-1 zone while day cares with five or more clients are conditional uses. The day care had been operating with eight or so clients for a number of years at its present location.

506 First Street is on a small forty foot wide segment of municipally owned right of way. Since it has never been developed to municipal standards, it has not been accepted, by the municipality for maintenance. In its current form, it is a one to one and a half lane gravel road.

The Menendez's claim to have contacted the Planning Office in 2003 and claim to have received verbal assurance that the day care was in compliance with the zoning ordinance. They were contacted by the Planning Office, in writing, in 2006 about issues with the facility. The current request was filed by the applicant last fall after issues again surfaced about clients blocking access to adjacent properties.

The request is without known precedent for a number of reasons. It is a fairly large day care in a residential area.

It is the only known day care of its size in a zero lot line. It is one of the few day cares in an R-1 zone that is along a stretch of poorly improved right of way. There are significant differences between the parties about how property owners have contributed to the maintenance of First Street. There are differences, between the applicant and property owners in the area about how the facility has historically operated. And, finally, this request has received more letters of support of any application in recent memory.

The methodical series of meetings and deliberations by the Planning Commission was an effort to work through both the issues and the differing perceptions. While there was limited value in arguing over what contributions were made to road maintenance and where clients parked over the last nine years, there was an attempt to craft conditions to guide operations moving forward. Those conditions focused on eliminating adverse impacts on adjacent properties.

The public testimony included support for the Menendez day care, and, concerns about road maintenance and parking.

A large number of current and previous clients praised the owners and their operation. Operators of other day cares in town were equally supportive. The support was coupled with a deep concern about the closure of facility. Clients expressed a willingness to agree to staggered pick up and drop of times as a way to mitigate impacts.

Amanda Johnson, the owner of the other half of the zero lot line expressed concerns about being blocked in by day care clients. David Williams, who owns the over and under duplex on the other side of the road, commented on road maintenance issues and parking. The Dennisons, who live at the end of First Street, on the left, submitted letters both in support and raising street maintenance concerns. The Municipal Engineer expressed the view that there should not be any parking on the publicly owned undeveloped First Street right of way.

While the conditions recommended by the Planning Commission are designed to address the concerns, it is unclear if they are fully acceptable to the neighborhood. The conditions are tighter than the ones normally seen for conditional use permits. Although it is clear that the applicant can live with the conditions, the position of the neighbors should be explored.

Finally, the issue of the language in the party wall agreement for the two zero line units was raised towards the end of the discussions. Amanda Johnson brought it to the board's attention. Valorie Nelson, who lives in a zero lot line in another part of town, has submitted an appeal and request for reconsideration. The Municipal Attorney has provided a memo on the party wall agreement. Ms. Nelson has been informed her comments can be made at the Assembly meeting.

#### RECOMMENDED ACTION:

Approve the conditional use request with the conditions recommended by the Planning Commission.

The board's recommendation for approval included the following conditions:

1. The day care shall be operated consistent with the plans and the narrative submitted by the applicant.
2. The number of clients is limited to eight children at any given time not including any children of the owner.
3. There shall be no loading or off loading on the First Street municipal right of way by the owners or clients of Kids First Day Care.
4. The owner shall maintain four unobstructed off street parking spaces at all times. Two off street parking spaces shall be available for clients during the periods of the day when the facility is in operation. The applicant shall submit a plan showing where the four nine feet by eighteen feet parking spaces will be located prior to Assembly review. The applicant shall construct the four off street parking spaces prior to any authorization of the conditional use permit.
5. For the purposes of the conditional use permit, the parking spaces shall be a minimum of nine feet by eighteen feet and shall not be blocked in a way that prevents use as intended. Parking spaces shall be arranged to allow clients to drive straight in and clients shall not, at anytime be required to park in front of or behind one another.
6. The clients shall adhere to a staggered drop off and pick up schedule so that no more than two vehicles shall be dropping off or picking up at any one time.
7. At no time, shall driveways of any properties along First Street be blocked by the owners and clients of Kids First Day Care.
8. The owner shall submit a narrative updating the Planning Commission in relation to the conditional use permit within 5 months of the approval of the conditional use permit.
9. The Planning Commission shall review the conditional use permit within 6 months of its approval for the purpose of reviewing and resolving any potential parking issues. The Planning Commission may also review the request at any time for the same purposes by its own initiative. While an annual review may be elevated to the Assembly, as necessary, they are not a condition for approval.
10. The narrative, plans, and conditions for approval are binding on all current and future owners of the Kids First Day Care and any other day care operating at 506 First Street.
11. Owners shall permanently delineate the north and northwest corner of the property line to facilitate the understanding of the property lines.
12. The owners agree to contribute up to 25% of the annual maintenance of First Street in the amount that is agreed to by the owners along First Street.



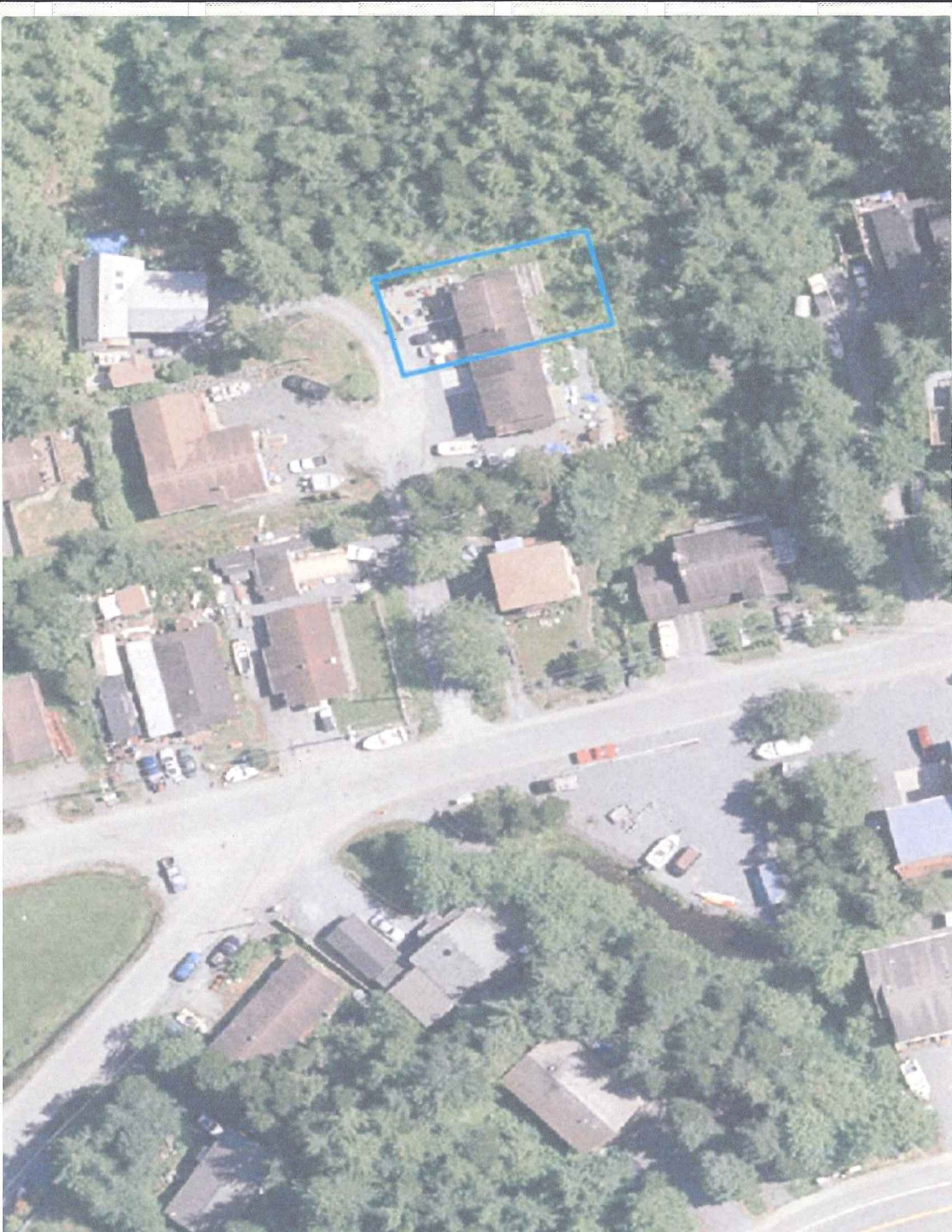
**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street

SWAN LAKE

PIONEER CEMETERY

**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street





**CERTIFICATE OF APPROVAL BY THE BOARD**

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION PLATING ACT AND THAT SAID PLAT HAS BEEN APPROVED BY THE BOARD BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985. AND THAT THE PLAT SHOWN HEREON HAS BEEN APPROVED BY THE BOARD BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985.

DATE: 4-12-85

BY: Chairman Johnson

SECRETARY: Debra Siquemore

REAL: Mike Reif

**CERTIFICATE OF APPROVAL BY THE ASSEMBLY**

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION PLATING ACT AND THAT SAID PLAT HAS BEEN APPROVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA, ALASKA, BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985. AND THAT THE PLAT SHOWN HEREON HAS BEEN APPROVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA, ALASKA, BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985.

DATE: 4-12-85

BY: Debra Siquemore

SECRETARY: Debra Siquemore

REAL: Mike Reif

**CERTIFICATE**

STATE OF ALASKA

1ST JUDICIAL DISTRICT

SS

I, THE UNDERSIGNED, BEING THE ONLY APPOINTED AND COMMISSIONED AS NOTARY PUBLIC FOR THE STATE OF ALASKA, DO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS IN MY OFFICE, THE TAX RECORDS IN THE NAME OF:

Mike Reif

DATED THIS 25th DAY OF April, 1985

AT SITKA, ALASKA

ASSESSOR: CITY AND BOROUGH OF SITKA

**CERTIFICATE OF PAYMENT OF LOCAL IMPROVEMENT DISTRICT**

I, THE UNDERSIGNED, BEING THE ONLY APPOINTED AND COMMISSIONED AS NOTARY PUBLIC FOR THE STATE OF ALASKA, DO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS IN MY OFFICE, THE TAX RECORDS IN THE NAME OF:

Mike Reif

DATED THIS 25th DAY OF April, 1985

AT SITKA, ALASKA

ASSESSOR: CITY AND BOROUGH OF SITKA

**SLAVEYARD'S CERTIFICATE**

I HEREBY CERTIFY THAT I AM AN INDIVIDUALLY REGISTERED SLAVEYARD IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SLAVEYARD MADE BY ME OR UNDER MY DIRECT CONTROL AND THAT THE PLAT SHOWN HEREON HAS BEEN APPROVED BY THE BOARD BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985.

DATE: 3-27-85

REGISTERED LAND SLAVEYARD

**SLAVEYARD'S CERTIFICATE**

I HEREBY CERTIFY THAT I AM AN INDIVIDUALLY REGISTERED SLAVEYARD IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SLAVEYARD MADE BY ME OR UNDER MY DIRECT CONTROL AND THAT THE PLAT SHOWN HEREON HAS BEEN APPROVED BY THE BOARD BY RESOLUTION NO. 1985-03-21, DATED MARCH 21, 1985.

DATE: 3-27-85

REGISTERED LAND SLAVEYARD

**NOTARY PUBLIC**

CLAUDIA S. ACKNOLL, Esq.

NOTARY PUBLIC

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989

BY: Claudia S. Acknoll

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

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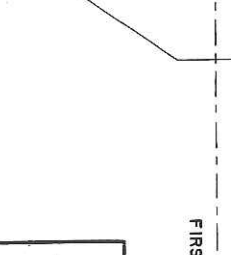
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NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989



**VICINITY MAP**

SCALE: 1" = 1000'

**THE NOTARY'S ACKNOWLEDGEMENT**

UNITED STATES OF AMERICA

SS

THIS IS TO CERTIFY THAT ON THIS 25th DAY OF April, 1985, I, CLAUDIA S. ACKNOLL, Esq., NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA, DULY COMMISSIONED AND EXPIRES JULY 24, 1989, HAVE PERSONALLY KNOWN AND BELIEVE THE SIGNATURES TO BE THE SIGNATURES OF THE PARTIES TO THE FOREGOING INSTRUMENT AND BELIEVE THE INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF THE PARTIES AND BELIEVE THE INSTRUMENT TO BE FOR THE PURPOSES THEREIN SPECIFIED.

WITNESSE MY HAND AND NOTARIAL SEAL, THE DAY AND YEAR ABOVE WRITTEN, IN AND FOR THE STATE OF ALASKA.

BY: Claudia S. Acknoll

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989

**THE NOTARY'S ACKNOWLEDGEMENT**

UNITED STATES OF AMERICA

SS

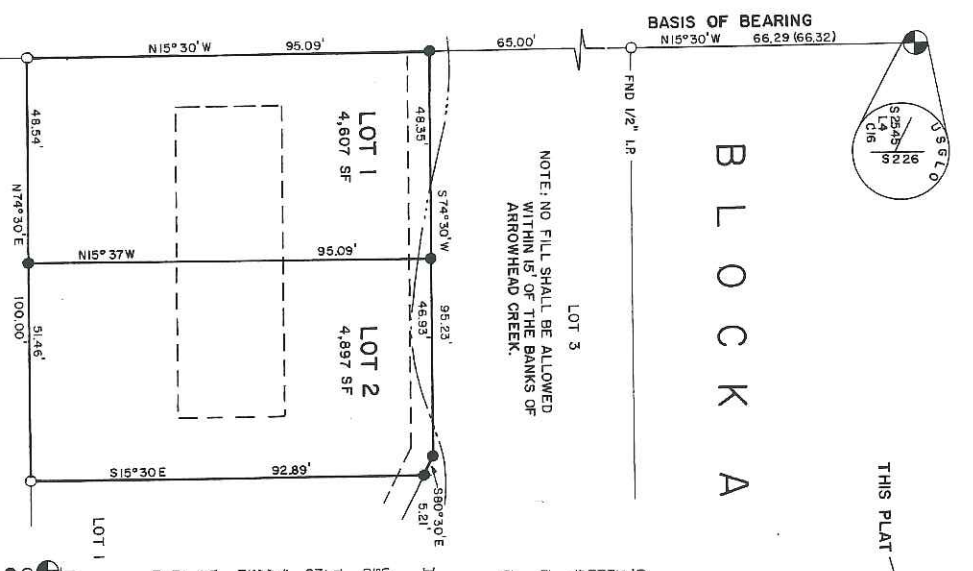
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NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989



**LEGEND**

○ U.S.G.L.O. BRASS CAP FND

○ 1/2" I.P. FND

● 5/8" REAR W/SURV-KAP SET

— EDGE OF ARROWHEAD CREEK

**NOTARY PUBLIC**

CLAUDIA S. ACKNOLL, Esq.

NOTARY PUBLIC

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989

BY: Claudia S. Acknoll

NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

MY COMMISSION EXPIRES: July 24, 1989

**STAGGERS ENGINEERING SERVICES**

CIVIL ENGINEERING

LAND SURVEYING

747-9883

571 PAUL AVENUE, SITKA, ALASKA 99835

**STAGGERS ENGINEERING SERVICES**

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CIVIL ENGINEERING

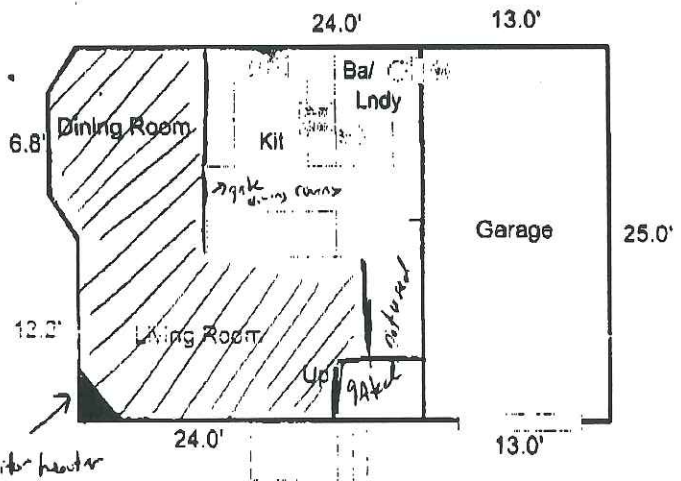
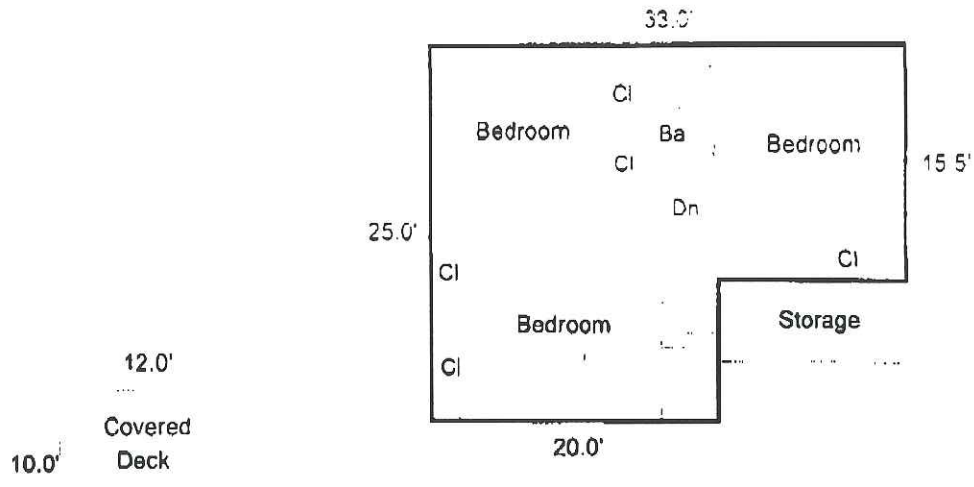
LAND SURVEYING

747-9883

571 PAUL AVENUE, SITKA, ALASKA 99835

PLAT 85-8

85-8



\* Dining Room + Living Room areas are used for the daycare  
 stair are gated at the bottom + not used

Monitor heater on raised dining not used for children

Sketch by Apex IV Windows™

Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Size	Net Totals
GLA1	First Floor	619.60	619.60
GLA2	Second Floor	701.50	701.50
P/P	Covered deck	120.00	120.00
GAR	Garage	325.00	325.00

LIVING AREA BREAKDOWN			
Breakdown			Subtotals
<b>First Floor</b>			
	2.0 x	6.8	13.60
0.5 x	3.0 x	2.0	3.00
0.5 x	3.0 x	2.0	3.00
	12.8 x	24.0	307.20
	12.2 x	24.0	292.80
<b>Second Floor</b>			
	20.0 x	25.0	500.00
	13.0 x	15.5	201.50

**Menendez**  
 Conditional Use Permit Request  
 Day Care  
 506 First Street

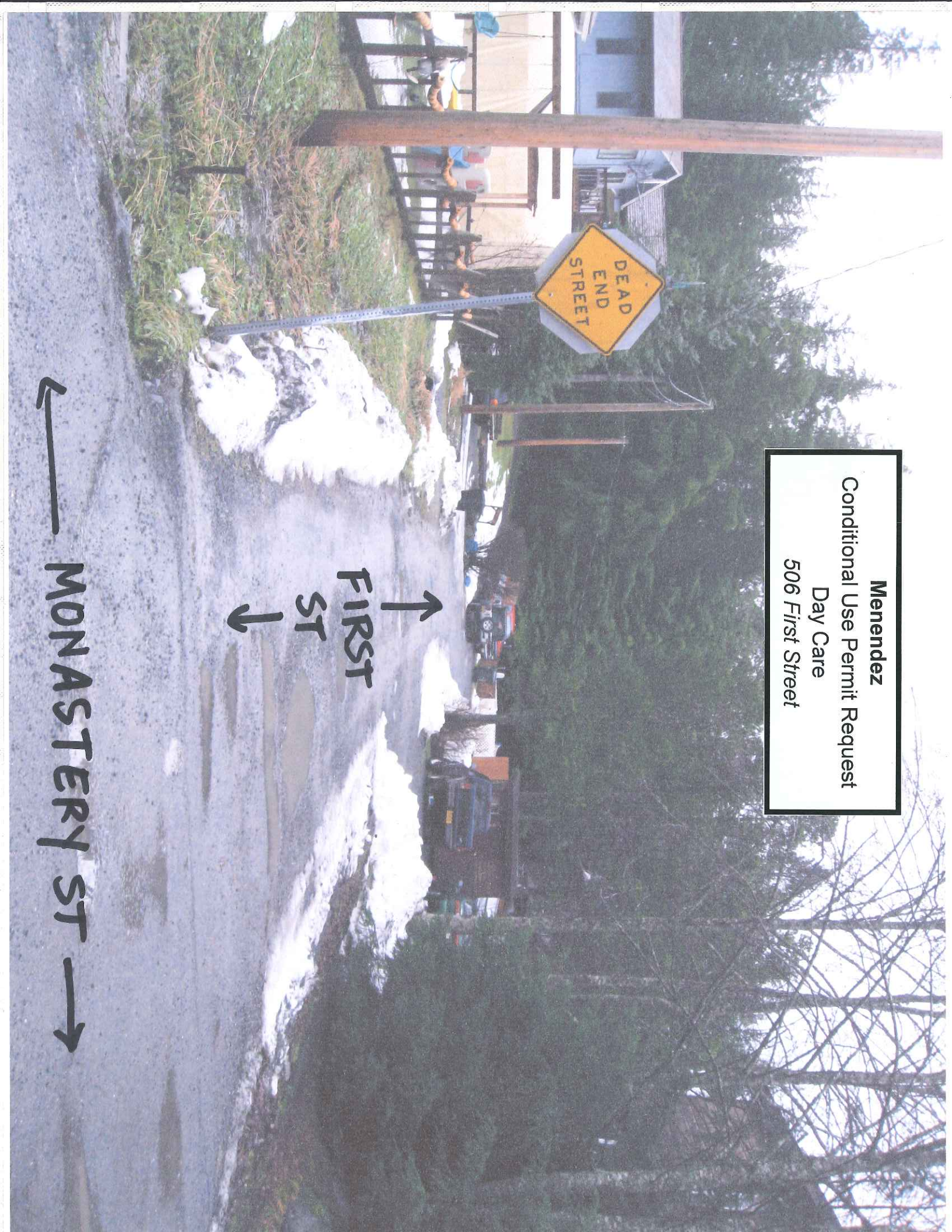


**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street

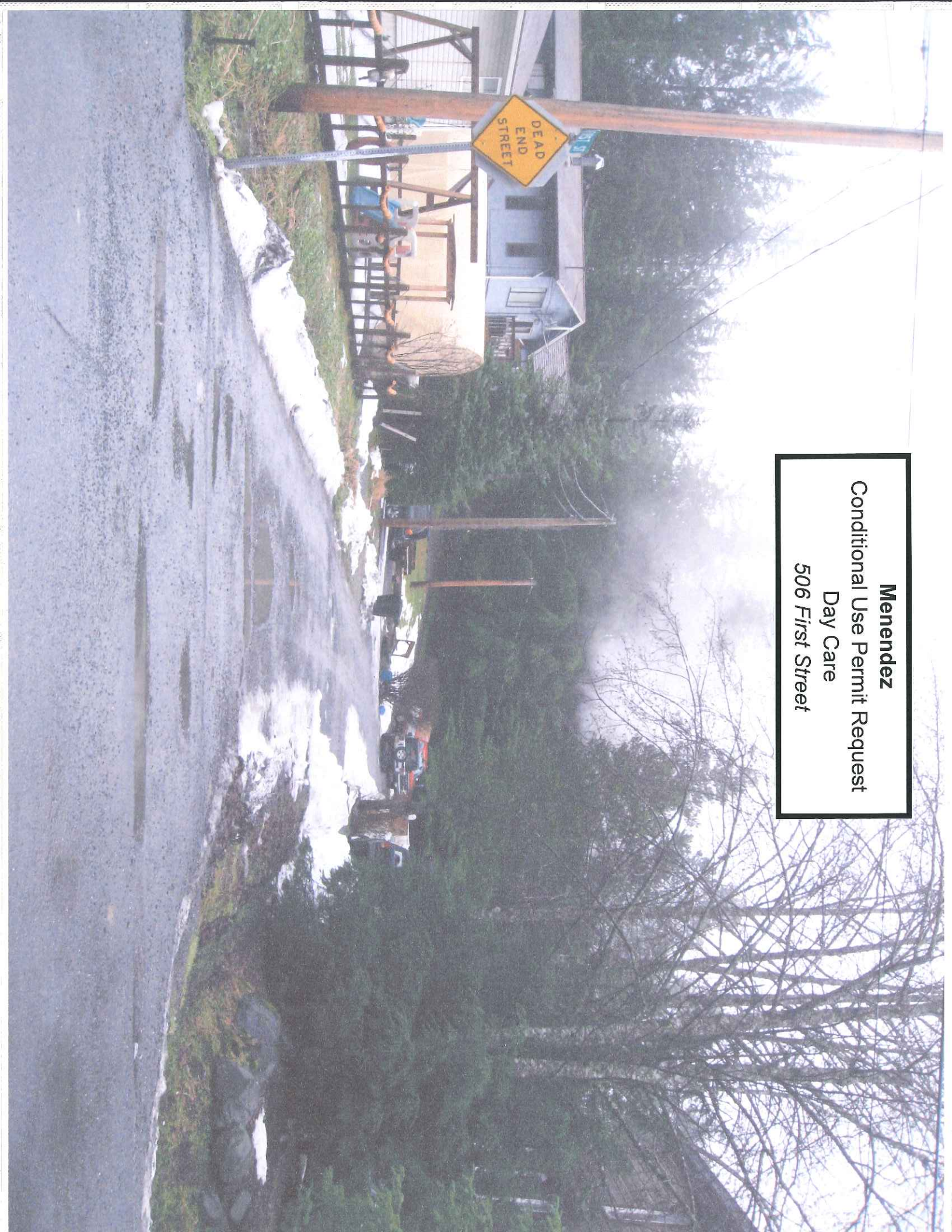


**FIRST**  
**ST**

← **MONASTERY ST** →



**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street





**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street

**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street



DRIVEWAY

DRIVEWAY

MENENDEZ

DRIVEWAY

**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street







**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street



**MONASTERY STREET**



Available to park

MAIL

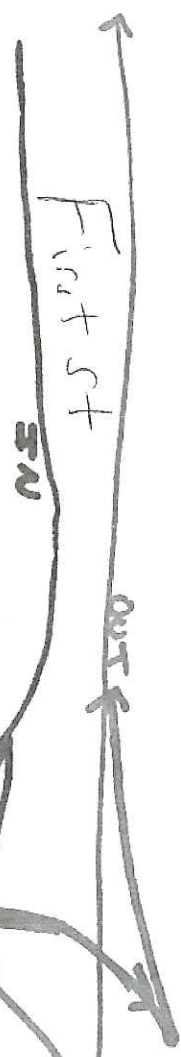
Monastery st

DO NOT PARK OR BLOCK

DO NOT PARK OR BLOCK

SD4

SD3



DAWN CAR

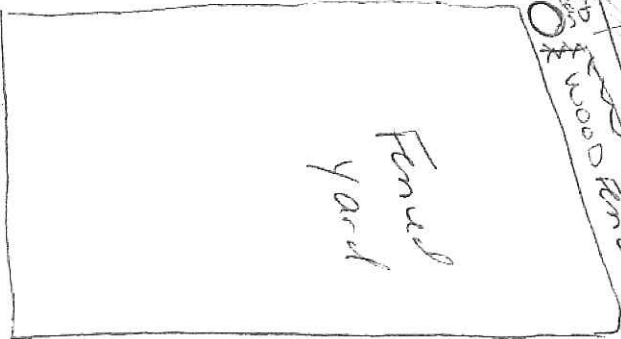
#2 spot  
pull all way to front  
leave room for another car

#1 SPOT - use 1st  
pull all way forward &  
leave room for another car

#3 SPOT if large truck &  
space 1 is taken. Pull all way  
to curb can't do not let car  
go off SD4 Parents line

POUCH

SD6 Kid First  
Day Care



SD5

MONASTERY ST

X BUS STOP

**Menendez**  
Conditional Use Permit Request  
Day Care  
506 First Street

**NOT TO SCALE**

FIRST ST

503 PROPERTY LINE

504 PROPERTY LINE

505 PROPERTY LINE

AVG CAR  
13 x 5.5 FT

IN ROUTES

OUT ROUTES

GRASSY AREA

NEIGHBOR'S FENCE

TRUCK

CAR

AVG TRUCK  
16 x 6 FT

CAR

506 PROPERTY LINE

FENCED YARD

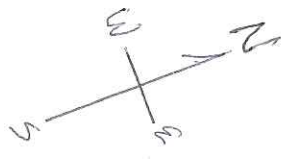
504

506  
Kids First  
DAY CARE

SPACE BETWEEN NEIGHBOR'S FENCE AND WEST SIDE OF FENCED YARD = 25 FT approx

SPACE BETWEEN PORCH AND PROPERTY LINE = 30 FT approx

SPACE BETWEEN EXTERIOR WALL AND PROPERTY LINE approx



**City and Borough of Sitka  
Planning and Zoning Commission  
Minutes of Meeting  
January 17, 2012**

**Present:** Jeremy Twaddle (Chair), Darrell Windsor (Member), Richard Parmelee (Member), Wells Williams (Planning Director via teleconference), Melissa Henshaw (Planner)

**Members of the Public:** Stephen Weatherman (Municipal Engineer), Dawn Menendez, Peter Menendez, Corrie Bosman, Valerie Nelson, Connor Nelson, Amanda Johnson, Marty Johnson, Jon Martin, Boyd Didrickson, Dennis Allen, Bill Anderson, Don Anderson, Sue Litman, Doug Osborne, Jim Steffen, Christian Fabian (via phone), Craig Giammona (Daily Sitka Sentinel)

Chairman Twaddle called the meeting to order at 7:05 p.m.

**Consideration of the Minutes from the January 3, 2012 meeting:**

**MOTION: M/S WINDSOR/PARMELEE** moved to approve the meeting minutes for January 3, 2012.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

**This evening's business:**

Chairman Twaddle addressed the audience and those who wrote the petition from island owners. He assured the public that conditional use permit criteria will remain in the code for item D.

**CONDITIONAL USE PERMIT  
506 FIRST STREET  
DAWN MENENDEZ**

*Public hearing and consideration of a conditional use permit request for a day care at 506 First Street. The request is filed by Dawn Menendez. The property is also known as Lot 1 H & P Estates. Owner of record is Joanna Giglia and Dawn and Peter Menendez.*

Planning Director Williams reviewed the last meeting's events on this item. The list of proposed conditions was mailed out. Planning Director Williams suggested that we read through the proposed conditions, add, change and/or correct them, then if the Board is comfortable, make their recommendations to the Assembly. This item will go to the Assembly on February 28<sup>th</sup> if a motion is made at this meeting due to the travel schedule of the applicant's attorney.

The conditions were discussed, added to, changed, and corrected.

**Applicant:** Ms. Menendez came forward with her attorney, Corrie Bosman. Ms. Bosman determined that the conditions are not problematic. Discussion of the applicants marking the property for the clients and conditions such as the road maintenance were discussed. Clarification on the issue of notifying the clients of parking, the road maintenance and plowing was made by Ms. Bosman.

**Public Comment:** Amanda Johnson came forward. She distributed the party wall agreement, a document that is mandatory per the Sitka General Code for zero lot lines. It states in the agreement that the use of the property is for a single family dwelling. Her determination is that the day care use should not be allowed because it is a business. Discussion occurred on this agreement. Clarification will need to come from the Municipal Attorney.

Valerie Nelson came forward. She is co-owner in a zero lot line. She has a party wall agreement that states that zero lot lines are residential only. Zero lot lines are minimum sized lots and under special circumstances. This day care is a business that creates extra traffic, impact, and noise. She feels that Ms. Johnson has been vilified.

Peter Menendez came forward. They have had issues with the zero lot line neighbors and their dogs running loose in the neighborhood along with changes being made without consent, but do not want to cause conflict so have never said anything about it. The business was running fully two years before the Johnson's moved in.

Connor Nelson came forward. He also is the owner of a couple zero lot lines. The party wall agreements are mandatory and have been in the code for 40 years. The provision in it shall state that they are single family only. The parking requirements for single parking should be two and now what is being said is that there is only one space required and then two for the business. This day care is a home occupation and the requirements for a home occupation is to not generate more traffic and it should not show that it is more than a single family residence. Only about 20% of the floor space should be used for home occupations.

Lauren Silva came forward. She is a client of the day care. She talked about her pick up times and that the lack of a street light on First Street not being an issue. She does not feel that the day care uses nearly half of the house for the day care. She suggested that Commissioners go see how the operation runs and think about if it was their child that attended the day care.

Mary Ferguson came forward stating that there is a lack of quality day cares in Sitka. She hopes that these meetings are only about how to improve the day care situation and that the day care will remain.

Corrie Bosman came forward stating that in regards to the party wall agreement that two attorneys could argue either way. When it states single family residence the intent is that the zero lot line not be turned into a duplex or multi family residence. The intent of the agreement does not include home occupancies. It would have explicitly said that home occupancies are not allowed if that were the intent.

Emily-Ann Atkinson came forward. She is a client of the day care. She stated that Dawn provides a great day care. Not even half of the house is used. She and her husband trust Dawn, the day care if affordable, and that this day care is Dawn's income also.

Debbie Strangler and her husband are clients of Dawn's day care. This is a good quality day care. Ms. Stangler teaches at SJCCC and her child thrives in a small setting rather than a large group setting.

Planning Director Williams suggested addressing two issues. Then go over the findings, criteria, and conditions. Conditions were adjusted in regards to parking. The party wall legal issue was discussed. The Municipal Attorney will need to look at it, which will be placed in the motion.

**MOTION: M/S WINDSOR/PARMELEE** moved to recommend approval to the Assembly for a conditional use permit request for a day care at 506 First Street. The request is filed by Dawn Menendez. The property is also known as Lot 1 H & P Estates. Owner of record is Joanna Giglia and Dawn and Peter Menendez with the 12 conditions as follows:

1. The day care shall be operated consistent with the plans and the narrative submitted by the applicant;
2. The number of clients is limited to eight children at any given time not including any children of the owner;
3. There shall be no loading or off loading on the First Street municipal right of way by the owners or clients of Kids First Day Care;
4. The owner shall maintain four unobstructed off street parking spaces at all times. Two off street parking spaces shall be available for clients during the periods of the day when the facility is in operation. The applicant shall submit a plan showing where the four nine feet by eighteen feet parking spaces will be located prior to Assembly review. The applicant shall construct the four off street parking spaces prior to any authorization of the conditional use permit;
5. For the purposes of the conditional use permit, the parking spaces shall be a minimum of nine feet by eighteen feet and shall not be blocked in a way that prevents use as intended. Parking spaces shall be arranged to allow clients to drive straight in and clients shall not, at anytime be required to park in front of or behind one another;
6. The clients shall adhere to a staggered drop off and pick up schedule so that no more than two vehicles shall be dropping off or picking up at any one time;
7. At no time, shall driveways of any properties along First Street be blocked by the owners and clients of Kids First Day Care;
8. The owner shall submit a narrative updating the Planning Commission in relation to the conditional use permit within 5 months of the approval of the conditional use permit;
9. The Planning Commission shall review the conditional use permit within 6 months of its approval for the purpose of reviewing and resolving any potential parking issues. The Planning Commission may also review the request at any time for the same purposes by its own initiative. While an annual review may be elevated to the Assembly, as necessary, they are not a condition for approval;
10. The narrative, plans, and conditions for approval are binding on all current and future owners of the Kids First Day Care and any other day care operating at 506 First Street;
11. Owners shall permanently delineate the north and northwest corner of the property line to facilitate the understanding of the property lines; and
12. The owners agree to contribute up to 25% of the annual maintenance of First Street in the amount that is agreed to by the owners along First Street.

**ACTION: Motion PASSED unanimously** on a voice vote.

Staff recommended findings in support of the recommended conditional use permit request.

**MOTION: M/S WINDSOR/PARMELEE** moved to approve the following findings in support of the recommended conditional use permit:

1. The Planning Commission has determined that the project can be supported by the site topography and there are no geophysical hazards present;
2. That the project is adequately served by utilities, fire protection and access to electrical power;
3. That the lot characteristics are adequate to support the proposed conditional use permit;

4. That the Planning Commission has evaluated the conditional use permit with regards to impact on adjacent uses and districts and has evaluated it with regard to hours of operation, numbers of clients, and off street parking;
5. That the Planning Commission has reviewed the presence of landscaping and buffers specifically the fence that has been constructed by the owner of the adjacent zero lot line unit;
6. That the conditional use permit will not be detrimental to public health, safety, and general welfare;
7. That the facility will not adversely affect the established character of the surrounding vicinity;
8. Nor be injurious to the uses, properties, or improvements adjacent to the operation;
9. That the granting of the proposed conditional use permit is consistent with Comprehensive Plan policies 2.1.1 Contribute to a stable, long-term, local economic base, 2.1.5 Protect the health and well-being of the people and their surroundings, and 2.3.1 To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners;
10. The Planning Commission finds that all conditions necessary to lessen the impact of the proposed use can be monitored and enforced;
11. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties in the vicinity and public health, safety, and welfare of the community;
12. That the conditional use permit is supported and will not adversely affect adequate public facilities and services and that conditions have been imposed to lessen any impact on any such facilities;
13. The applicant has met the burden of proof;
14. The Planning Commission has evaluated the proposed use in relationship to the amount of vehicular traffic to be generated and impacts on the adjacent properties and has recommended conditions accordingly;
15. The Planning Commission has evaluated the conditional use permit with regards to noise and has not made any determination that noise is an issue;
16. The Planning Commission has determined that odors are not an issue and has not been raised as such during public testimony;
17. The Planning Commission through the conditions specific to pick up and drop off of clients have evaluated for hours of operations;
18. The facility is not along a major collector street however the Planning Commission has carefully evaluated the project in relationship to its location along an unimproved municipal right of way;
19. The uses for a cut through street traffic are considered not applicable since it is a dead end street;
20. Vehicular, public, and pedestrian safety is not considered applicable because the lack of public sidewalks along the dead end street;
21. There is adequate opportunity for police, fire, and EMS personnel to respond to emergency calls;
22. The Planning Commission has evaluated and made conditions with regards to internal traffic layout;

23. The effects of signs on nearby uses is not considered an issue as signage is covered elsewhere in the Sitka General Code and signage is not proposed for the use;
24. Buffers to adjacent property owner(s) have been evaluated only in so far as necessary with regards to the fencing that the adjacent property owner has built in the area;
25. The relationship to the comprehensive plan has been evaluated and referenced; and
26. The Planning Commission has evaluated and made conditions in response to public comments that have surfaced through the course of the extensive review of this process.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

**MOTION:** **M/S PARMELEE/WINDSOR** moved to request and recommend to the Municipal Attorney to evaluate the existing party wall agreement specifically type chapter 2 paragraph 1 which describes use and single family residence and provide guidance to the Assembly prior to the Assembly review of this case.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

#### **PLANNING DIRECTOR'S REPORT**

None.

#### **PUBLIC BUSINESS FROM THE FLOOR**

None.

#### **ADJOURNMENT**

**MOTION:** **M/S WINDSOR/PARMELEE** moved to adjourn at 10:30 p.m.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

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Jeremy Twaddle, Chair

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Melissa Henshaw, Secretary

**City and Borough of Sitka  
Planning and Zoning Commission  
Minutes of Meeting  
January 3, 2012**

**Present:** Jeremy Twaddle (Chair), Tom Rogers (Vice Chair), Darrell Windsor (Member), Richard Parmelee (Member), Wells Williams (Planning Director via teleconference), Melissa Henshaw (Planner)

**Members of the Public:** Stephen Weatherman (Municipal Engineer), Dawn Menendez, Peter Menendez, Corrie Bosman, Lakoda Jones, Valerie Nelson, Connor Nelson, Amanda Johnson, Marty Johnson, Yvette Martin, Shannon Haugland (Daily Sitka Sentinel)

Chairman Twaddle called the meeting to order at 7:00 p.m.

**Consideration of the Minutes from the December 20, 2011 meeting:**

**MOTION: M/S PARMELEE/ROGERS** moved to approve the meeting minutes for December 20, 2011.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

**This evening's business:**

**CONDITIONAL USE PERMIT  
506 FIRST STREET  
DAWN MENENDEZ**

*Public hearing and consideration of a conditional use permit request for a day care at 506 First Street. The request is filed by Dawn Menendez. The property is also known as Lot 1 H & P Estates. Owner of record is Joanna Giglia and Dawn and Peter Menendez.*

Planning Director Williams via teleconference stated that the view of Staff is that there is an opportunity for a conditional use permit for an existing day care to be approved and that the conditions will hopefully meet the needs of the applicant and also allow some issues within the neighborhood be resolved. Since there was substantial public testimony at the last meeting, this meeting will focus on discussion of potential conditions that staff drew up between the applicant and Board. If there is consensus then the conditions will be distributed to the neighborhood which will allow comments from the neighborhood. The potential conditions are as follows:

1. The day care shall be operated consistent with the plans and the narrative submitted by the applicant;
2. The number of clients is limited to eight children at any given time not including any children of the owner;
3. There shall be no loading or off loading on the First Street municipal right of way;
4. The owner shall maintain three unobstructed off street parking spaces at all times. Two off street parking spaces shall be available for clients during the periods of the day when the facility is in operation;
5. For the purposes of the conditional use permit, the parking spaces shall be a minimum of nine feet by eighteen feet and shall not be blocked;
6. The clients shall adhere to a staggered drop off and pick up schedule so that no more than two clients shall be dropping off or picking up at any time;



7. At no time, shall driveways of any properties along First Street be blocked;
8. The owner shall submit a narrative detailing the operation of the facility within 5 months of the approval of the conditional use permit;
9. The Planning Commission shall review the conditional use permit within 13 months of the approval of the conditional use permit for the purposes of reviewing and resolving any potential parking issues. The Planning Commission may also review the request at any time for the same purposes by its own initiative. While an annual review may be elevated to the Assembly, as necessary, they are not a condition for approval.

Planning Director Williams mentioned that these conditions are simply an attempt by Staff to capture what appears to be a consensus that may be emerging. Staff attempted to build on what the applicant has already submitted and generalizing it to allow for flexibility. He suggested that if the Planning Commission have questions they ask and get answers then the applicant comes forward to give their thought on the potential conditions.

Commissioner Rogers was interested in the narrative being provided in five months and the review by the Planning Commission at six months. Commissioner Windsor agreed.

**Applicant:** Ms. Menendez came forward with her attorney, Corrie Bosman. Ms. Bosman suggested minor changes in the conditions to help clean up the language. She thanked staff for coming up with them as they are good practical solutions and they do really work to mitigate the concerns with the neighborhood and the issues. She asked Planning Director Williams about the narrative to which he responded that is it simply a one paragraph description on the view of the operation. Summarizing the number of clients and the experience with the staggered plan and how that has been working. Basically a short and brief update. She received clarified that in number one, the plans and narrative has already been submitted. She thought that clarifying in number five the language in that statement include "in a way that prevents use as intended." Planning Director Williams stated that getting into the specific layout of the parking spaces doesn't allow for any flexibility, rather the intent of it is to accommodate two off street parking spaces. Ms. Bosman clarified that the client number instead of the vehicle number may not be clear in that one client walks the child to the day care and other children come on the bus after school. Number eight she suggested updating the commission in relation to the conditional use permit. Ms. Bosman suggested that the narrative be six months, but the review be a year. Six months is a short time frame on a business for a review.

Planning Director Williams stated that the review timeframe may be a differing opinion when going to the Assembly. It could go to the Assembly with the Planning Commission recommending one timeframe and the applicant suggests a different timeframe.

Changes were made to the potential conditions as follows:

5. For the purposes of the conditional use permit, the parking spaces shall be a minimum of nine feet by eighteen feet and shall not be blocked to use as intended;
6. The clients shall adhere to a staggered drop off and pick up schedule so that no more than two vehicles shall be dropping off or picking up at any one time;
8. The owner shall submit a narrative updating the Commission in relation to the conditional use permit within 5 months of the approval of the conditional use permit;
9. The Planning Commission shall review the conditional use permit within 6 months of its approval for the purpose of reviewing and resolving any potential parking issues. The Planning Commission may also review the request at any time for the same purposes by its own initiative. While an annual review may be elevated to the Assembly, as necessary, they are not a condition for approval.

Ms. Bosman asked that the Commission take action tonight since there are a lot of neighbors in the attendance, possibly the Commission could get feedback tonight and make a decision.

Planning Director Williams encourage the Commission to let the Staff distribute these potential conditions via mail to ensure a full and complete process and give the neighbors a chance to have some time to think about them. He would like the Commission to take action on this item on January 17<sup>th</sup>. He also wanted to inform everyone that the conditional use is a permit to a specific property so unless spelled out in the granting of the conditional use permit, this goes with the property regardless of who owns the property. There is not a sunset and it runs with the land.

**Public Comment:** There was no public comment.

Chairman Twaddle confirmed with Commissioner Rogers the timeframe on the narrative and review.

No motion was made; this request will automatically come back at the next Planning Commission meeting on January 17, 2012.

#### **PLANNING DIRECTOR'S REPORT**

Planning Director Williams went over the agenda for the next meeting.

#### **PUBLIC BUSINESS FROM THE FLOOR**

Valerie Nelson came forward. She has concerns with the public notice code change. She suggested that the Planning Commission be cautious with the notices being sent and the size of the parcels. She has lived in a commercial zone and realized one night that the City sold off 300 acres with virtually no public notice. She thought that the area of notice used to be 500 feet. She said that people want to be notified. She had concerns with the 5 days mailing out information for the meetings and the public not getting their mail and therefore getting their rights taken away as to their choices to uses. She asked that the commission proceed with caution.

#### **ADJOURNMENT**

**MOTION: M/S PARMELEE/ROGERS** moved to adjourn at 7:47 p.m.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

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Jeremy Twaddle, Chair

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Melissa Henshaw, Secretary

**City and Borough of Sitka  
Planning and Zoning Commission  
Minutes of Meeting  
December 20, 2011**

**Present:** Jeremy Twaddle (Acting Chair), Tom Rogers (Member), Darrell Windsor (Member), Wells Williams (Planning Director), Melissa Henshaw (Planner)

**Members of the Public:** Stephen Weatherman (Municipal Engineer), Dawn Menendez, Peter Menendez, , Craig Giammona (Daily Sitka Sentinel)

Chairman Twaddle called the meeting to order at 7:00 p.m.

**Consideration of the Minutes from the December 6, 2011 meeting:**

**MOTION: M/S WINDSOR/ROGERS** moved to approve the meeting minutes for December 6, 2011.

**ACTION:** Motion **PASSED unanimously** on a voice vote.

**This evening's business:**

**CONDITIONAL USE PERMIT  
506 FIRST STREET  
DAWN MENENDEZ**

*Public hearing and consideration of a conditional use permit request for a day care at 506 First Street. The request is filed by Dawn Menendez. The property is also known as Lot 1 H & P Estates. Owner of record is Joanna Giglia and Dawn and Peter Menendez.*

Planning Director Williams reviewed this request first starting with a couple of comments. He asked that the Planning Commission not make a motion on this request tonight, but rather have time to look at the property at least twice before the next meeting. This isn't a question on if the conditional use permit should be granted, rather how this use can be mitigated and how to best accommodate this current use at the current location. There is concern that this use will go away and that is not so. The biggest question is how to accommodate the loading and off loading of the kids without having the driveways blocked.

First Street has a section that goes between Monastery Street and Lake Street that is undeveloped. The section of First Street that the day care is on is a 40 foot right of way. It is not up to City standards and therefore, it is not maintained by the City. Monastery Street is also 40 feet wide. In order to really understand this neighborhood, Commissioners are encouraged to walk this area.

Planning Director Williams talked about the three departments that are involved with this request. First being the Planning Office with regards to parking. The Sitka General Code does not regulate day care parking. Although in the code there is a section with regards to adult day cares, this request is different and shouldn't follow that since this is more about loading and unloading and not necessarily parking. Secondly, Public Works is the agent for undeveloped right of ways. Any improvements for the First Street right of way will go through Public Works. Some ways to mitigate the impacts may involve parking along Monastery Street and Mr. Williams is unaware of any parking restrictions along Monastery Street. Lastly the Police

Department Sitka General Code 11.40.160 states: It is unlawful for any person to park, or cause to be parked, any motor vehicle at such place, or in such position, as would block the way of ingress or egress of a motor vehicle to any private parking place owned by any person, firm or corporation. Planning Director Williams has been informed that if there is a complaint of a private driveway being blocked, that the Police Department will go out and issue tickets. And although this is only picking up and dropping off, the time it takes to do so is longer than parents realize.

Planning Director Williams suggested a condition that a mandatory review of this request take place after the first year and a second review the following year. This would be specific on ways to come up with how to improve and fine tune things if traffic and parking isn't optimal rather than affecting the status of the permit.

Chairman Twaddle received confirmation that there are 4 houses and the location of the two zero lot lines from Staff. Planning Director Williams also stated that the as-built records are not exactly clear and they are inconsistent. It is possible that an updated as-built will need to be done.

**Applicant:** Ms. Menendez came forward. She has lived at 506 First Street since June of 2003. They purchased this residence with the intentions of operating a licensed home day care in it and called and spoke with a woman about this in the Planning Office. She was not told that she would need to have a conditional use permit if there were more than four children. She has her business license, is certified to accept day care assistance and tribal assistance, joined AEYC, has been licensed with the State of Alaska since 2004 and has never had a complaint or major violation. When she started there were over a dozen home day cares, now she is one of three in which one closes during the summer.

November 2006 was the first time she heard complaints of the parking for the day care when she received a letter from the Planning Department. She was not told then that she needed a conditional use permit either. When the issue was raised, she wrote letters to her parents on where to park, that they could be cited, and if they didn't comply they would be released from her care.

November 17, 2011 she was made aware of an altercation with a parent and her neighbor. She then wrote a letter and reminded parents of where they can and cannot park. On November 28<sup>th</sup> she received a letter from the Planning Department. It was the first time she was made aware of the R-1 zoning and that she was possibly out of compliance. She called and spoke to Ms. Henshaw on what she needed to do to become compliant. Ms. Menendez stated that she has relocated her boat off of the property. The other step she has taken is that she gave each parent a time block for pickups and drop offs. In each 15 minute time block only two clients can be there at the same time. She pointed out that one could pull in next to her vehicle and one could pull in behind and not encroach on the neighbors property. She also noted that she informed parents that if they are not within their time block, they need to park on Monastery Street. There are eight families that are in her care, however, some are school aged and are dropped by the bus at the end of First Street, there is also a parent that walks with their child. She has made a map and distributed it to parents of where the parents can park. If the parents do not follow this, they could be released from her care. She also sent Ms. Johnson a letter letting her know that she was unaware of the problem and that hopefully she will come to her next time so she can resolve the situation.

Her hours are 7:30 am to 6:00 pm with no work in the evenings or on the weekend. However, if she has to go down to four children, she will need to make her hours of operation longer.

Chairman Twaddle received clarification on the time slots from Ms. Menendez. There should never be more than two extra cars over and above her car.

Ms. Menendez clarified that the letter went out to parents after the incident.

**Public Comment:** Lauren and Ryan Silva came forward. Their son attends the day care. She received a diagram of where they can park, and a time slot. They are in support of the full eight children day care. Mr. Silva said that he was probably the reason that they were there. On the 17<sup>th</sup> was the one that talked with the neighbor and he is glad the Commission is trying to get this resolved.

Becky Workman SEARHC with child care and Lolly Miller from SJCCC came forward. Ms. Workman stated that economically it is beneficial to have this day care, that is isn't easy to find child care, that the Planning Commission dropped the ball when she first opened, and it seems like Ms. Menendez is fixing this issue non her own. She refers children to Dawn when the child doesn't work well in a big center situation. Dawn does work year-round which is very beneficial since not everyone works for the school district.

Ms. Miller said that she thinks Dawn has come up with a solution and encourages everyone to look at that and try it and then come back to make sure it works. She stated that Dawn is one of the few people that attends training with SJCCC and that they also refer children that do not do well in large group settings to Dawn's day care. She also mentioned that she lives in the same type of situation and that good communication between the zero lot lines is important.

David Williams came forward. He is the owner of the two rentals at 503 First Street across the street from the zero lot line. He sent in a letter and stands by his statements. He says that the day care is very professional and quiet and has no problems with the facility. His issue is the traffic. The parking is not the biggest problem, but rather the extra traffic tears up the road at twice the speed. He can't get the City to maintain the road as it is too costly to get it upgraded. The division of the lots is terrible there isn't a way to tell where the road is and where and who owns what. He proposes they park on the street. He has paid to fix the pot holes along with the neighbors. He doesn't want to close down the day care, however, he is concerned with the road and safety. Chair Twaddle got confirmation that there is not currently a maintenance agreement for the road. In the past they have pitched in and he had it graded and did it once his self. He pointed out that with the day care tenants parking on his property and/or pulling in and out of it created massive pot holes. He then had to have it dugout, re-rocked, re-filled and put drainage in there because of the extra traffic. Commissioner Windsor received confirmation that the neighbors have helped with the maintenance cost, when it was the previous neighbors. He confirmed that the power poles are at the corner of his lot. He stated that if the Planning Commission makes a condition that the day care tenants park in the street, as soon as you run the plow down it (Monastery) that they won't be parking there because there is nowhere to park or go. As long as they can come up with an agreement, he is fine with the day care.

Amanda Johnson came forward. She owns and lives in the other half of the zero lot line. She has no intentions of shutting down the day care, but her issues are with the parking since hers is the parking lot that the day care parents tend to park in. The last 8 years there have been problems and she is surprised to know that Dawn wouldn't have seen that. In 2010 she built a fence for separation and the intention of keeping the day care clients out of their spot. Ryan Silva, a police officer parked in her area and blocked her truck so that she couldn't park in her driveway. After he asked where he should park, Ms. Johnson told him that that is the problem. She believes that a parking solution could be on Monastery Street, however if there is snow,

then there won't be room. Since the boat has been gone, it has been better, but it is still a problem.

Planning Director Williams stated that when he drove the area, he determined there is one spot just on the town side of the mailboxes on Monastery Street.

Ms. Johnson asked if an area could be cleared to which Planning Director stated that it is possible since it is Municipal land.

Commissioner Rogers received confirmation from Ms. Johnson that there is one street light on First Street.

Mary Ferguson came forward with her mother, Camille Ferguson. Mary Ferguson is a client of the day care. Her child has been going to the day care for about 3 years. She is hoping the Commission will give the day care solutions a chance with the parking and time slots. She as a client is willing to drive around until a spot opens or park on Monastery Street. She is concerned that her child will be one of the four that would be cut if the conditional use permit does not pass. Camille Ferguson stated that she is the grandmother and may have caused an issue with the parking since she has picked up her grandson from the day care at off hours. She thinks there is a lack of communication and that the solutions are there.

Commissioner Windsor received confirmation of Ms. Ferguson's time slot.

Lakoda Jones came forward. She is a parent of the day care. Her son has gone to this day care from 21 months and is now 7 years old. If she needs to park on Monastery Street or needs to drive around until there is a parking spot, she will do so.

Commissioner Windsor received confirmation of Ms. Jones' time slot.

Peter Menendez came forward. He wanted to address some of the concerns that have been brought up. They have the street plowed at their expense and have for several years and have bought gravel a few times, usually in the spring. He stated that there is a business on First Street and several boats and two to three cars apiece not from their property also come and go. They have one vehicle that isn't used very often. They also shovel the snow on their property and across the street. He believes that Mr. Williams' property or street in front of his property has been caused by the garbage and fuel trucks and not necessarily by the day care. He praised his wife on her organization and record keeping. He also wanted to make note that in the pictures that Ms. Henshaw took, the Dennison's cars aren't normally parked where they were. He submitted photos without the vehicles in that space. Mr. Menendez wanted to clarify that the Planning Commission didn't drop the ball, which a member of the public mentioned; rather it was an errand of the department at the time. He requested that if the conditional use permit is approved, the Commission bring this back in two years and not one.

Chair Twaddle asked staff if there are any expansions that will go beyond First Street. Staff will check with their records to have the answer on who owns the land beyond First Street at the next meeting.

Chair Twaddle asked Staff if anything prohibits the private land owners from doing excavation work within the First Street right of way. Planning Director Williams replied that any work done would have to have a permit by the City specifically Public Works. Chair Twaddle thinks that the horseshoe shape may be causing part of the problem as a partial obstruction taking up the area. Planning Director Williams clarified that there isn't a maintenance agreement for First Street

because it isn't an access easement, but rather a right of way. Twaddle thinks the neighbors are interested in having one, but doesn't think the board has the power to make that happen. Planning Director Williams also stated that a condition could be put in place by the applicant to come up with an agreement, but that the applicant may not have the power to have the other neighbors also sign and agree on it. Planning Director Williams will answer the Commission's question on where the water and sewer lines are at the next meeting.

Stephen Weatherman, Municipal Engineer came forward with a couple ideas in which there have been other undeveloped right of ways and encroachment permits have been issued to create parking spaces. The other option is to do an LID and bring up the road to City standards which may not be economically feasible.

Planning Director Williams responded to Commissioner Windsor's question on if the conditional use permit wasn't granted but the applicant kept the number of children at eight what would take place to which he replied that it would end up between attorneys.

No motion was made; this request will automatically come back at the next Planning Commission meeting on January 3, 2012.

#### **PLANNING DIRECTOR'S REPORT**

Item B will come back as an action item on January 3, 2012 to initiate the text changes and public hearing will take place on January 17, 2012.

#### **PUBLIC BUSINESS FROM THE FLOOR**

None.

#### **ADJOURNMENT**

**MOTION: M/S WINDSOR/ROGERS** moved to adjourn at 9:16 p.m.

**ACTION: Motion PASSED unanimously** on a voice vote.

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Jeremy Twaddle, Chair

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Melissa Henshaw, Secretary

**Request:**

Conditional use permit request for a day care

**Zoning District:** R-1

Front: 20 feet  
Rear: 10 feet  
Side: 8 feet

**Meeting Flow and Motions**

- Report from Staff **with overview of proposed conditions worked out so far. Types of additional potential conditions, based on recent feedback will be mentioned.**
- Applicant comes forward
- Applicant identifies him/herself – **provides comments on the proposed conditions**
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment **with the request that input be provided on proposed conditions**
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- **Staff summarizes mandatory review criteria and findings**
- **Board explores modifications to the proposed conditions for approval**
- **Motion to recommend approval with the specific conditions fully described**
- **Motion to approve mandatory findings and findings on approval criteria**

**Menendez Day Care  
Conditional Use Permit Request  
506 First Street  
January 17, 2012**

As we discussed, Tuesday night will provide an opportunity for the public to comment on the proposed conditions for approval. While there is support for a recommendation of approval, conditions that insure impacts are mitigated are essential to the process.

A draft of the conditions that were discussed at the last meeting immediately follows this narrative. The wording of some of those conditions has been modified so it is *imperative* that the board carefully go through them again. Under the best of circumstances, this case is challenging. The number of revisions to the wording of the proposed conditions has increased the difficulty of the challenge.

The owner of the other half of the duplex submitted a letter dated January 5<sup>th</sup> that offers additional insights into the situation. There continues to be differences about where clients have historically parked and how much property owners have contributed to the maintenance of the unimproved First Street right of way.

The potentially conflicting information about when the Menendez's purchased the property is considered, by Staff, to be far less important. While everyone can engage in a dialogue about phone calls in 2003, which client parked where in the past, when the property was purchased by



whom and when, and other issues past, those conversations could substantially increase the number of meetings required by this case.

The additional areas that Staff considers deserve discussion include contributions to road maintenance and whether or not the delineation of parking space is adequate.

At this point, the input from other departments has been the comments by the Municipal Engineer and insights from a conversation with the Police Chief. The State of Alaska, as you saw in your original packet, provided a letter in support of the request. Staff continues to feel that there is an adequate Comprehensive Plan policy basis for recommending approval of the request with conditions.

The proposed flow of the meeting, in the heading at the top of the page, has been expanded. The modifications are in the **bold** type face.

Thanks.

**Menendez Day Care  
Conditional Use Permit Request**

506 First Street  
January 3, 2012

The Menendez conditional use request is back on the agenda for the January 3<sup>rd</sup> meeting.

There was a substantial amount of comment at the last meeting and a substantial amount of correspondence is included in packet. Materials that came in just prior to the meeting and over the past several days are provided for your review.

Staff is suggesting that the Planning Commission work with the applicants to come up with a list of potential conditions for approval that can be included in a recommendation to the Assembly. Property owners in the area can then be given an opportunity to comment on those potential conditions.

The process of developing potential conditions can occur on January 3<sup>rd</sup>. In an effort to be fair to all concerned, the conditions should be distributed to all the parties between January 3<sup>rd</sup> and January 17<sup>th</sup>. Some of the property owners in the area may not be in attendance at the meeting on January 3<sup>rd</sup> and it's important that they be given an opportunity to review the proposals before the board takes action. The Planning Commission would be in a position to hold a third hearing on the 17<sup>th</sup> and make their recommendation to the Assembly at that time.

The proposed meeting flow would involve limited comments from staff, having the applicant come forward and asking them to summarize the conditions they are willing to follow, opening it up to hearing, and then have the Board add to the conditions outlined by the applicant. The Menendez's proposed conditions would likely mirror the proposals they have already presented.

Once the proposed conditions are worked out at the board level on January 3<sup>rd</sup>, they can be mailed to property owners in the area in advance of the January 17<sup>th</sup> meeting.

The conditions for Mt. Edgecumbe Preschool and the Michener conditional use requests follow to provide a context for conditions that may be developed

**Menendez Day Care  
Conditional Use Permit Request**  
506 First Street  
December 20, 2011

Peter Menendez and Dawn Mahoney-Menendez have applied for a conditional use permit for a day care for up to eight children at their zero lot line located at 506 First Street.

506 First Street is located off of Monastery Street below Pherson Street. The section of First Street contains about a half dozen lots, is not built to municipal standards, and is not maintained by the municipality.

The day care is currently in operation. A conditional use permit is required for day cares in the R-1 zone that have more than four children. The application was submitted after the owner of the other half of the zero lot line expressed concerns about driveways being blocked by parents dropping off their children. Since the street has not been fully developed, there is a substantial potential for congestion in the small neighborhood.

The municipality sent the Menendez a letter about the operation in 2006. The Planning Office did not explore the number of clients at that time and there was not any follow up from that correspondence.

The applicants have submitted a detailed application that includes numerous letters of support. Site plans are included and the Planning Office has provided photos of the area in your packet.

The proposal and the site characteristics are without precedent. To our knowledge, the municipality has never processed a conditional use request for a day care for eight clients in a zero lot line. The congestion in the neighborhood is a bit unusual. The numbers of letters of support also raise the profile of the request to one often associated with much larger facilities.

The zoning code assumes that conditional use permits will be granted if impacts on adjacent properties and infrastructure can be mitigated. The key issue, therefore, is whether or not specific conditions can be developed.

Board members are strongly encouraged to drive by the area at least twice to gain an understanding of the properties. The first inspection should provide the board members with a general feel for the parcels. A second field inspection is suggested to come up with potential conditions that can be enforceable.

Due to the uniqueness of the request and the timing during the holiday season, any motions should be deferred until January.